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Fast-Track Regulation Agency Background Document

Agency name	Virginia Board for Asbestos, Lead, and Home Inspectors
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC15-30
VAC Chapter title(s)	Virginia Lead-Based Paint Activities Regulations
Action title	Update to 18VAC15-30-510 and DIBR
Date this document prepared	February 1, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 regulatory action amends subdivision E 1 of 18VAC15-30-510 to update the applicable edition of the U.S. Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing as it pertains to the appropriate methodologies for performing a lead-based paint inspection, lead-hazard screen, risk assessment or abatement. The current edition of these guidelines is the Second Edition, published July 2012. In addition, the DIBR section in the regulation is similarly revised to reflect the current edition of these guidelines.

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.

“DIBR” means document incorporated by reference.

“DOLI” refers the Virginia Department of Labor and Industry.

“EPA” means the United States Environmental Protection Agency.

“HUD” means the United States Department of Housing and Urban Development.

“TSCA” means Toxic Substances Control Act of 1976 (15 USC § 2601 et seq).

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On May 12, 2022, the Virginia Board for Asbestos, Lead, and Home Inspectors voted amend the Virginia Lead-Based Paint Activities Regulations.

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 the ORM procedures, “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.”

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Section 54.1-501 of the Code of Virginia states, in part:

The Board shall administer and enforce this chapter. The Board shall:

6. Promulgate, in accordance with the Administrative Process Act, regulations necessary to establish procedures and requirements for the: (i) approval of accredited lead training programs, (ii) licensure of individuals and firms to engage in lead-based paint activities, and (iii) establishment of standards for performing lead-based paint activities consistent with the Residential Lead-based Paint Hazard Reduction Act and United States Environmental Protection Agency regulations. If the United States Environmental Protection Agency (EPA) has adopted, prior to the promulgation of any related regulations by the Board, any final regulations relating to lead-based paint activities, then the related regulations of the Board shall not be more stringent than the EPA regulations in effect as of the date of such promulgation. In addition, if the EPA shall have outstanding any proposed regulations relating to lead-based paint activities (other than as amendments to existing EPA regulations), as of the date of promulgation of any related regulations by the Board, then the related regulations of the Board shall not be more stringent than the proposed EPA regulations. In the event that the EPA shall adopt any final regulations subsequent to the promulgation by the Board of related regulations, then the Board shall, as soon as practicable, amend its existing regulations so as to be not more stringent than such EPA regulations;

In addition, 40 CFR § 745.227 (Lead-Based Paint Activities Regulation) states, in part:

- (a) Effective date, applicability, and terms.
 - (1) Beginning on March 1, 2000, all lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.
 - (2) When performing any lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment or abatement, a certified individual must perform that activity in compliance with the appropriate requirements below.
 - (3) Documented methodologies that are appropriate for this section are found in the following: The U.S. Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing; the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001); Regulations, guidance, methods or protocols issued by States and Indian Tribes that have been authorized by EPA; and other equivalent methods and guidelines.

This action was prompted by an agency staff review of the DIBR section of the current regulation to determine whether documents incorporated by reference into the regulation had been amended or replaced. Staff research determined that the edition of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing referenced in the DIBR section had been replaced by a second edition, effective 2012. This action is not the result of a mandate.

This action is expected to be non-controversial and is appropriate for the fast-track rulemaking process established in § 2.2-4012.1 of the Code of Virginia. This action is limited to amending the regulation to ensure the regulation accurately reflects the edition of the HUD guidelines that are currently applicable to lead-based paint activities. Section 18VAC15-30-510.E provides that licensees are required to follow “[a]ny future EPA or HUD guidance that may replace...” the documented methodologies established by the subsection. This action does not increase existing requirements or impose new requirements on regulants. This action will make the regulation clearer to regulants by ensuring that the list of documented methodologies is current and accurate. Moreover, this action will help ensure that the standards in the regulation are consistent with applicable EPA regulations.

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.

The agency is the Virginia Board for Asbestos, Lead, and Home Inspectors. Chapter 5 of Title 54.1 of the Code of Virginia enumerates the legal authority for the Board to administer the licensure program for lead-based paint activities.

Section 54.1-501 of the Code of Virginia states, in part:

- The Board shall administer and enforce this chapter. The Board shall:
 - 1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to

include but not be limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of asbestos, lead, and renovation licenses, and governing conflicts of interest among various categories of asbestos, lead, and renovation licenses;

2. Approve the criteria for accredited asbestos training programs, accredited lead training programs, accredited renovation training programs, training managers, and principal instructors;

3. Approve accredited asbestos training programs, accredited lead training programs, accredited renovation training programs, examinations and the grading system for testing applicants for asbestos, lead, and renovation licensure;

6. Promulgate, in accordance with the Administrative Process Act, regulations necessary to establish procedures and requirements for the: (i) approval of accredited lead training programs, (ii) licensure of individuals and firms to engage in lead-based paint activities, and (iii) establishment of standards for performing lead-based paint activities consistent with the Residential Lead-based Paint Hazard Reduction Act and United States Environmental Protection Agency regulations. If the United States Environmental Protection Agency (EPA) has adopted, prior to the promulgation of any related regulations by the Board, any final regulations relating to lead-based paint activities, then the related regulations of the Board shall not be more stringent than the EPA regulations in effect as of the date of such promulgation. In addition, if the EPA shall have outstanding any proposed regulations relating to lead-based paint activities (other than as amendments to existing EPA regulations), as of the date of promulgation of any related regulations by the Board, then the related regulations of the Board shall not be more stringent than the proposed EPA regulations. In the event that the EPA shall adopt any final regulations subsequent to the promulgation by the Board of related regulations, then the Board shall, as soon as practicable, amend its existing regulations so as to be not more stringent than such EPA regulations;

In addition, 40 CFR, Part 745, Subpart Q (§ 745.320 et seq.) outlines the requirements for authorization of state programs "...to administer and enforce the standards, regulations, or other requirements established under TSCA..." Requirements for lead-based paint activities regulation are established under 40 CFR § 745.325.

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 is intended to solve.

The General Assembly has charged the Board with the responsibility for regulating those individuals and firms who engage in lead-based paint activities by requiring that such individuals and firms obtain a license in order to engage in the occupations that perform these activities. The Board is also charged with establishing standards for performing lead-based paint activities consistent with the Residential Lead-based Paint Hazard Reduction Act of 1992 and EPA regulations.

Activities that disturb lead-based paint in target housing and child-occupied facilities increase the threat of lead-based paint exposure by dispersing lead particles in the air and over household items. Both adults and children can receive hazardous lead paint exposures by inhaling or ingesting lead-based paint dust. Studies have shown that lead poisoning can cause permanent damage to the brain and other organs. In children, lead poisoning can cause lower IQ levels and behavioral problems.

The performing of activities that disturb lead-based paint by individuals who lack sufficient expertise, or without minimum safeguards to prevent dispersal of lead particles. poses a risk to the public health and welfare.

The goal of the regulatory change is to update the regulation to ensure that it reflects the current HUD guidelines that are applicable to lead-based paint activities. The change will make the regulation clearer to regulants by ensuring the list of documented methodologies is current and accurate, and will help ensure that the regulation is consistent with applicable EPA regulations.

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.

Subdivision E 1 of 18VAC15-30-510 is amended to update the applicable edition of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing as it pertains to the appropriate methodologies for performing a lead-based paint inspection, lead-hazard screen, risk assessment or abatement. The current edition of these guidelines is the Second Edition, published July 2012. In addition, the DIBR section in the regulation is similarly revised to reflect the current edition of these guidelines.

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 of the regulatory change to the public is that it will make the regulation clearer to the regulants who engage in lead-based paint activities by ensuring the list of documented methodologies is current and accurate and will help ensure that the regulation is consistent with applicable EPA regulations. There are no identifiable disadvantages to either the public or the Commonwealth.

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 no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "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 by the regulatory change.

Localities Particularly Affected

No localities are particularly affected by the regulatory change.

Other Entities Particularly Affected

No other entities are particularly affected by the regulatory change.

Economic Impact

Consistent with § 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 the proposed change versus the status quo.

The Virginia Board for Asbestos, Lead, and Home Inspectors proposes to amend the Virginia Lead-Based Paint Activities Regulations to update the applicable edition of the U.S. Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing as it pertains to the appropriate methodologies for performing a lead-based paint inspection, lead-hazard screen, risk assessment, or abatement. This will ensure that the regulation is consistent with applicable EPA regulations. Lead abatement contractor licensees are considered as small businesses and may be affected by this change. Licensed lead abatement individuals may also be affected by this change. There is no direct economic or fiscal impact to other state agencies.

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 c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There are no savings and no changes to costs, fees, or revenues of DPOR resulting from this regulatory change.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the</p>	<p>There are no savings and no changes to costs, fees, or revenues of other state agencies resulting from this regulatory change.</p>

regulatory change, including a delineation of one-time versus on-going expenditures.	
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	There are no benefits to agencies from this regulatory change.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no savings and no changes to costs, fees, or revenues of localities resulting from this regulatory change.
Benefits the regulatory change is designed to produce.	None.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

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.	All individuals and firms licensed in lead-based paint activities will be affected by the change. No other entities are anticipated to be affected by the change.
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.	As of November 1, 2022, there are 284 licensed lead workers, 135 licensed lead supervisors, 86 licensed lead inspectors, 157 licensed lead risk assessors, 28 licensed lead project designers and 15 licensed interim licensees (supervisors, inspectors, and risk assessors). Also, there are 59 licensed lead abatement contractors that are considered small businesses.
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: 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.	a) There are no anticipated costs resulting from the change. b) There are no real estate development costs resulting from the change. c) There are no fees related to the change. d) No equipment or services are needed to be purchased from this change. e) Individuals are required by EPA and HUD guidelines to follow the current and future guidance that may replace the methodologies cited in the regulation.
Benefits the regulatory change is designed to produce.	The regulatory change will benefit the public by allowing the regulation to be clearer to the

	<p>individuals who engage in lead-based paint activities by ensuring the list of documented methodologies is current, accurate and will help to ensure that the regulation is consistent with applicable EPA regulations. Thus, protecting the health, safety, and welfare of citizens.</p>
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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.

The only viable alternative is to make no change to regulation. Regulants are required by the applicable EPA regulation to follow the current HUD guidelines. In addition, the regulation requires regulants to follow any future EPA or HUD guidance that may replace the methodologies cited in the regulation.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B 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.

Under the enabling statute, the standards for performing lead-based paint activities established by the Board must be consistent with the Residential Lead-based Paint Hazard Reduction Act and United States Environmental Protection Agency regulations, but must not be more stringent than EPA regulations. Regulants are required by EPA regulation to follow the current HUD guidelines. In addition, the regulation requires regulants to follow any future EPA or HUD guidance that may replace the methodologies cited in the regulation. The enabling statute establishing the licensing program for those engaged in lead-based paint activities provides no exemption for small business; therefore there are no such exemptions contained in the proposed change.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

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.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Virginia Board for Asbestos, Lead, and Home Inspectors is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in 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:

Joseph C. Haughwout, Jr.
 Regulatory Administrator
 9960 Mayland Drive
 Perimeter Center, Suite 400
 Richmond, VA 23233
ALHI@dpor.virginia.gov
 (866) 350-5354 (fax)

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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
30-510	N/A	<p>Establishes the work practice standards for conducting lead-based paint activities in target housing and child-occupied facilities. Requires individuals conducting lead-based paint activities to comply with the work practice standards enumerated in the regulation.</p> <p>Requires that lead-based paint activities be performed only by individuals licensed by the Board.</p> <p>Requires a lead abatement contractor to provide notification to DOLI prior to commencing with any lead-based paint activities.</p> <p>Prohibits a lead abatement contractor from contracting for an abatement project if the lead inspection or project design has an employment relationship with or financial interest in the contractor, unless the contractor provides the building owner with the "Virginia Lead Consumer Information and Disclosure Sheet." The contractor is required to disclose such relationships and obtain the building owner's signature on the disclosure sheet prior to executing the contract. The contractor is also required provide the disclosure form to all parties involved in the project and keep a copy of the form on the project site for review.</p> <p>Requires that individuals who perform post-abatement clearance procedures be</p>	<p>Updates the documented HUD methodology from the June 1995 edition to the Second Edition, published July 2012, which is the current edition of these guidelines.</p> <p>This change will ensure the regulation reflects the current HUD guidelines applicable to lead-based paint activities and will make the regulation clearer to regulants by ensuring the list of documented methodologies is current and accurate. The change will also help ensure the regulation is consistent with applicable EPA regulations.</p>

		<p>independent from the contractor and have no employment relationship with or financial interest in the contractor.</p> <p>Requires that a lead-based paint inspection, lead-hazard screen, risk assessment, or abatement be performed by a licensed individual and in accordance with documented methodologies.</p> <p>The documented methodologies include:</p> <ul style="list-style-type: none"> • HUD Guidelines for Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995 edition with 1997 revision to Chapter 7); • 40 CFR Part 745, Subpart D; • EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust and Lead-Contaminated Soil; • EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling, Final Report (March 1995); • Any future EPA or HUD guidance that may replace the documented methodologies; and • Regulations, guidance, methods, or protocols adopted by the Board. <p>Requires all reports and plans required under Part VIII (e.g. inspection, hazard screen, risk assessment, abatement, and clearance) of the regulation to be maintained by the licensee who prepared the report for at least three years. The licensee must also provide copies of reports to the</p>	
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