



Virginia
Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Labor and Industry/Safety and Health Codes Board
Virginia Administrative Code (VAC) citation	16VAC25-35-30
Regulation title	Notification and Permit Fees
Action title	Amendments to remove the \$2,000 minimum contract price provision for contractors filing a lead project notification with the Department of Labor and Industry.
Date this document prepared	June 18, 2012

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*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this intended regulatory action is to provide both increased protection to employees and employers performing lead-based paint abatement projects by requiring that licensed lead contractors submit written notification for all lead projects, as defined in 16VAC25-35-10, regardless of the contract price for the lead project.

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.

The Safety and Health Codes Board is authorized by Title 40.1-22(5) to: "...adopt, alter, amend or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal OSH Act of 1970...as may be necessary to carry out its functions established under this title".

"In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity".

Section 40.1-51.20 of the Code of Virginia mandates that all certified lead contractors notify the Department of Labor and Industry prior to commencement of each lead abatement project for which certification is required by the Department of Professional and Occupational Regulation. The contractor shall also obtain a lead permit and pay the appropriate fee in accordance with this code section. This regulation establishes the notification requirements and provides that the Department of Labor and Industry conduct on-site inspections of each certified lead contractor's actual abatement projects. This regulation does not exceed the mandate required by Section 40.1-51.20.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Currently, Paragraph A of 16VAC25-35-30, Notification and Permit Fee, requires that lead contractors must notify the Department of Labor and Industry ("the Department") for lead abatement projects when the contract price is \$2,000 or more. The U.S. Environmental Protection Agency (EPA) has notification requirements in which the Department must comply. The EPA has no price amount stipulated in its notification regulations. Therefore, the basis for this intended regulatory action is to conform the requirements of Paragraph A, Notification and Permit Fee, with that of the Environmental Protection Agency's (EPA) Notification Requirements for Lead-Based Paint Abatement Activities and Training, 40 CFR 745.227(e)(4)(i)-(ix).

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The Lead notification requirements in Paragraph A., of 16VAC25-35-30, Notification and Permit Fee, of the Regulation Concerning Licensed Lead Contractor Notification, Lead Project Permits, and Permit Fees, 16VAC25-35, currently stipulates that lead contractors notify the Department of Labor and Industry (the Department) for lead abatement projects when the contract price is \$2,000 or more. The U. S. Environmental Protection Agency (EPA) also has notification requirements with which the Department is obligated to comply. The EPA has no price amount stipulated with respect to its notification requirements; therefore, the Department seeks to remove the \$2,000 minimum contract price provision requiring lead abatement notification for all lead projects, regardless of the contract price for the lead project.

Below, is the current regulatory text for Paragraph A. of 16VAC25-35-30, Notification and Permit Fee, and the proposed changes to the regulatory text:

16VAC25-35-30. Notification and permit fee.

A. Written notification of any lead project, the contract price of which is \$2,000 or more, shall be made to the department on a department form. Such notification shall be sent by facsimile transmission as set out in subsection J of this section, by certified mail, or hand-delivered to the department. Notification shall be postmarked or made at least 20 days before the beginning of any lead projects.

16VAC25-35-30. Notification and permit fee.

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Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The Department of Labor and Industry did not consider any other alternatives to this regulatory action because the requirements of Paragraph A., Notification and Permit Fee, of 16VAC25-35-30, Regulation Concerning Licensed Lead Contractor Notification, Lead Project Permits, and Permit Fees, should have the same notification requirements as that of the U. S. Environmental Protection Agency (EPA).

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

Please also indicate, pursuant to your Public Participation Guidelines, whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel will be used in the development of the proposed regulation. Please state one of the following: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also 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) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Mr. Ron Graham, Director of Occupational Health Compliance, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219; (804) 786-0574; Fax No.: (804) 371-6524; and email address: Ron.Graham@doli.virginia.gov. 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 day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action 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.

Family impact

Assess the potential 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.

No impact on the family is anticipated as a result of this intended regulatory action.