



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

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| Agency Name: | 15 |
| VAC Chapter Number: | 30 |
| Regulation Title: | Virginia Lead-Based Paint Activities Regulations |
| Action Title: | Amending |
| Date: | October 19, 2000 |

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Board's current regulations became effective on November 13, 1996. These regulations were based upon EPA's proposed regulations which regulate lead-based paint activities in "target housing," "public buildings," "commercial buildings," and "superstructures." When EPA's final regulations became effective on August 31, 1998, activities for "public buildings," "commercial buildings," and "superstructures" were held in abeyance, and "child-occupied facilities" was added. The web site address for locating the text of the EPA regulations is: http://www.access.gpo.gov/nara/cfr/waisidx_99/40cfr745_99.html.

Section 54.1-501 (6) of the Code of Virginia mandates the Virginia Board for Asbestos and Lead (Board) to promulgate lead-based paint regulations that are no more stringent than the lead-based paint regulations promulgated by the United States Environmental Protection Agency (EPA). In

the event that the EPA adopts any final regulations subsequent to the promulgation by the Board of related regulations, then the Board shall, as soon as is practicable, amend its existing regulations so as to be not more stringent than such EPA regulations.

The proposed regulation amendments will result in a deregulation of lead-based paint activities in “public buildings,” “commercial buildings,” and “superstructures” that are currently regulated, and will begin regulating these activities in “child-occupied facilities.” The deregulation is a direct result of the EPA not finalizing certain portions of its proposed regulations, and Virginia's statutory mandate to be "no more stringent than the federal regulations."

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

On October 28, 1992, the U.S. Congress enacted the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as Title X of the Housing and Community Development Act. This Act also amended the Toxic Substances Control Act (TSCA) to include a new subchapter, Subchapter IV, 15 U.S.C. 2681-2692. (Please see: <http://www4.law.cornell.edu/uscode/15/ch53.html>). TSCA Subchapter IV directed the EPA to promulgate regulations, including the lead-based paint activities training, certification and accreditation requirements, work practice standards, and a Model State Program (MSP), which States should be encouraged to reference and use as guidance in order to develop their own Federally authorized lead-based paint activities programs.

As a result of Title X, the EPA promulgated regulations pursuant to sections 402 and 404 of TSCA (see sections 2682 and 2684 respectively at: <http://www4.law.cornell.edu/uscode/15/ch53.html>). Section 402 regulations were promulgated to ensure that individuals conducting lead-based paint activities in target housing and child-occupied facilities are properly trained and certified; that training programs throughout the nation providing instruction in such activities are accredited; and that these activities are conducted according to reliable, effective and safe work practice standards. Section 404 regulations require each State to seek authorization from the EPA to administer and enforce the regulations developed by the State pursuant to section 402 of TSCA, or to submit to the EPA's administration and enforcement of the federal regulations promulgated pursuant to section 402 of TSCA. (See <http://www.epa.gov/docs/epacfr40/chapt-I.info/subch-R/40P0745.pdf> for the EPA regulation). Virginia applied for section 404 authorization on October 30, 1998 and was informed officially of its approval as an EPA-authorized State by letter dated February 19, 1999.

It should be noted that the above-referenced EPA final regulations did not fully implement the provisions of TSCA or the provisions of the EPA proposed regulations. The EPA proposed regulations covered "target housing," "public buildings," "commercial buildings," and "superstructures." The final EPA regulations covered only "target housing" and a new category of structure called "child-occupied facilities." Regulations for the remaining structure types were held in abeyance and are now referred to by the EPA as the "building and structures" regulations or, simply, "B&S."

The Board's authority to promulgate the proposed regulations is contained in Section 54.1-201 and Section 54.1-501 of the Code of Virginia.

The imperative form of the verb "shall" is used in the statute making the rulemaking provisions mandatory rather than discretionary.

Subsection 6 of 54.1-501 states "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."

The web site address for location of the text of the cited authority is: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-501>.

By memorandum dated September 11, 2000, the Office of the Attorney General stated that the proposed regulations do not conflict with the laws of the Commonwealth of Virginia and the United States, and that the Board has the authority to promulgate the proposed regulations under Section 54.1-501 of the Code of Virginia.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The subject matter of the planned regulation amendments is to continue to establish procedures and requirements for the approval of accredited lead training programs; for the licensure of individuals and firms to engage in lead-based paint activities; and for the establishment of standards for performing lead-based paint activities.

The intent of the planned regulation amendments is to assure the existence of an infrastructure of trained and qualified individuals and firms to remove lead-based paint hazards in such a manner so as to reduce the hazard to humans, especially children under six years old.

Section 54.1-501 (6) of the Code of Virginia mandates the Virginia Board for Asbestos and Lead (Board) to promulgate lead-based paint regulations that are no more stringent than the lead-based

paint regulations promulgated by the United States Environmental Protection Agency (EPA). In the event that the EPA adopts any final regulations subsequent to the promulgation by the Board of related regulations, then the Board shall, as soon as is practicable, amend its existing regulations so as to be not more stringent than such EPA regulations.

The Board's current regulations became effective on November 13, 1996. The current EPA regulations became effective on August 31, 1998.

The goal of the planned amendments to the Board's regulations is to make the Board's regulations no more stringent than the current EPA regulations.

The planned regulation amendments will result in a deregulation of certain licensing categories that are currently regulated. The deregulation is a direct result of the EPA not finalizing certain portions of its proposed regulations, and Virginia's statutory mandate to be "no more stringent than the federal regulations."

The proposed regulations are mandated by statute, and are essential to protect the health, safety and welfare of citizens and for the efficient and economical performance of an important governmental function.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The following is a summary of the revisions to the Board's November 13, 1996 regulations that are being proposed to implement changes in EPA's final regulation that would make the Board's regulations "no more stringent" than EPA's regulations.

Section 18 VAC 15-30-10 has been modified to limit the applicability of these regulations to target housing and child-occupied facilities to align with EPA's revised limitations.

Section 18 VAC 15-30-20 has been amended to modify, add, or delete definitions for clarification and to come into alignment with EPA's regulations as mandated by the Board's enabling statutes.

Section 18 VAC 15-30-41 has been added to enable the Board to waive any requirements of the regulations if the Board finds that the waiver in no way lessens the protection of the public health, safety and welfare.

Section 18 VAC 15-30-50, Subsection A has been amended to delete the Department's mailing address, which is subject to change, appears on the printed regulation booklet and is available from the Department's web site (www.state.va.us/dpor). The instructions are simplified to

require applications to be made on a form provided by the Department. Subsection C has been amended to clarify the use of fees and the justification for not issuing refunds.

Sections 18 VAC 15-30-60, 18 VAC 15-30-70, 18 VAC 15-30-80, and 18 VAC 15-30-90 have been repealed in their entirety. The standards established in the repealed sections are redundant with the licensure requirements in Part IV for individuals, Part V for contractors, and Part VI for training programs.

Section 18 VAC 15-30-100, Subsection B has been amended to eliminate the extension of interim licenses. By eliminating the ability to extend an interim license, the third-party examination can be used as a tool for “weeding out” incompetent candidates, thereby better protecting the public health, safety, and welfare.

Section 18 VAC 15-30-110 has been amended to include allowances for proficiency based courses. This came directly from EPA’s regulations. Since these courses are more intense in both time and subject matter, refresher training is required after 60 months instead of only 36 months.

Section 18 VAC 15-30-130 has been amended to align the renewal cycle (every 24 months) of an accredited training program with the reaffirmation cycle (every 36 months) ensuring the training provider is maintaining compliance with the regulations. The proposed regulations maintains the 24-month renewal cycle, but increases the reaffirmation cycle to 48 months so that the training provider must reaffirm compliance every other renewal cycle. Additionally, the reaffirmation information from 18 VAC 15-30-320 has been moved to this section for ease of understanding.

Section 18 VAC 15-30-140, Subsection D has been amended to require an individual applying for a second interim license to retake and satisfactorily complete the initial training requirement, not just an 8-hour refresher. In conjunction with Section 18 VAC 15-30-100, the current regulations allow for an individual to take an 8-hour refresher to obtain subsequent interim licenses and never sit for or pass the third-party examination. By requiring these individuals to successfully retake the initial training, they may be better prepared to take and pass the third-party examination, ensuring that only competent lead professionals are performing work for the public.

Section 18 VAC 15-30-160, Subsection H has been added. The current regulations impose a late renewal fee on training programs that renew more than 30 days after the expiration date of the accreditation. The \$25 fee charged for late renewal is an agency-wide amount for all licenses, certificates, and accreditations. The fee amount was omitted in the current regulations.

Section 18 VAC 15-30-170 has been revised to eliminate “grandfathering.” Very few applicants have applied for licensure in the past two years through grandfathering. Since only equivalent training taken prior to January 1, 1996 is accepted and since the EPA requires refresher training every three years, the Board felt that any new applicant must complete a Board-approved training course to enable the applicant to be more familiar with any changes in federal and state regulations. There may be a few applicants who are required to take additional training, however, this additional training should better ensure that they are sufficiently trained prior to

the Board issuing a license. Additionally, “for target housing, superstructures and public and commercial buildings” has been deleted from the section title since it is stated in Section 18 VAC 15-30-10 that these regulations are applicable only to target housing and child-occupied facilities.

Section 18 VAC 15-30-180 has been revised to eliminate “grandfathering.” Very few applicants have applied for licensure in the past two years through grandfathering. Since only equivalent training taken prior to January 1, 1996 is accepted and since the EPA requires refresher training every three years, the Board felt that any new applicant must complete a Board-approved training course to enable the applicant to be more familiar with any changes in federal and state regulations. There may be a few applicants who are required to take additional training, however, this additional training should better ensure that they are sufficiently trained prior to the Board issuing a license. Also, in response to EPA revisions, the discipline name has changed from planner/project designer to project designer, and an experience requirement has been added. Additionally, “for target housing and public buildings” has been deleted from the section title since it is stated in Section 18 VAC 15-30-10 that these regulations are applicable only to target housing and child-occupied facilities.

Sections 18 VAC 15-30-190 and 18 VAC 15-30-200 were replaced in their entirety with new Section 18 VAC 15-30-205 “Licensed lead abatement supervisor.” For simplification, the requirements for both sections were combined. Separate requirements were unnecessary and confusing. Also, just like Sections 18 VAC 15-30-170 and 18 VAC 15-30-180, grandfathering was eliminated. Subsection C has been added to require the applicant to retake the initial training before he can take the third-party examination for the third time. It is felt that if the applicant fails the third-party examination twice, the subject matter was not understood. Subsection D has been added to allow a licensed lead abatement supervisor to perform the duties of a licensed lead abatement worker since the worker training is included in the supervisor training course.

Sections 18 VAC 15-30-210 and 18 VAC 15-30-220 were replaced in their entirety with new Section 18 VAC 15-30-225 “Licensed lead inspector.” EPA’s regulations replace discipline title “Lead Inspector Technician” with “Lead Inspector.” The requirements are the same, only the title changes. For simplification, the requirements for both sections were combined. Separate requirements were unnecessary and confusing. Also, just like Sections 18 VAC 15-30-170 and 18 VAC 15-30-180, grandfathering was eliminated. Subsection C has been added to require the applicant to retake the initial training before he can take the third-party examination for the third time. It is felt that if the applicant fails the third-party examination twice, the subject matter was not understood.

Sections 18 VAC 15-30-230 and 18 VAC 15-30-240 were replaced in their entirety with new Section 18 VAC 15-30-245 “Licensed lead risk assessor.” EPA’s regulations replace discipline title “Lead Inspector/Risk Assessor” with “Lead Risk Assessor.” The requirements are the same, only the title changes. For simplification, the requirements for both sections were combined. Separate requirements were unnecessary and confusing. Also, just like Sections 18 VAC 15-30-170 and 18 VAC 15-30-180, grandfathering was eliminated. Subsection A.1 has been added to specify the acceptable fields of study for applicable undergraduate degrees. The current

regulations are unclear regarding any fields of study. Subsection C has been added to require the applicant to retake the initial training before he can take the third-party examination for the third time. It is felt that if the applicant fails the third-party examination twice, the subject matter was not understood.

Section 18 VAC 15-30-250 has been amended to include current procedures that were not specified in the current regulations.

Section 18 VAC 15-30-270, Subsection D has been deleted. Interim approvals were granted at the beginning of the licensing program. However, there is no longer a need to grant interim approval prior to an on-site audit.

Section 18 VAC 15-30-310 has been moved from Part VI, Training Program Accreditation to Part X, Standards of Practice and Conduct as Subsection C of Section 18 VAC 15-30-790.

Section 18 VAC 15-30-320 has been rephrased for clarity and for administrative purposes, and has been incorporated into Section 18 VAC 15-30-130 for ease of understanding.

Section 18 VAC 15-30-380 has been modified to reflect training course requirements found in EPA's regulations.

Section 18 VAC 15-30-390, Subsection E has been added to allow for a proficiency test, to implement this new EPA regulation provision.

Section 18 VAC 15-30-490 has been rewritten since Project Designer is a new training course. In the current regulation, the Supervisor and Project Designer courses were one in the same since EPA had not developed a separate course for Project Designer.

Sections 18 VAC 15-30-510, 18 VAC 15-30-520, 18 VAC 15-30-540 through 18 VAC 15-30-550, 18 VAC 15-30-610, 18 VAC 15-30-620, 18 VAC 15-30-650, and 18 VAC 15-30-651 have been revised, added, or rewritten to more accurately reflect EPA's regulations. Sections 18 VAC 15-30-530, 18 VAC 15-30-560 through 18 VAC 15-30-600, 18 VAC 15-30-630, 18 VAC 15-30-640, and 18 VAC 15-30-660 through 18 VAC 15-30-680 have been repealed.

Sections 18 VAC 15-30-690 through 18 VAC 15-30-750 have been eliminated because the scope of EPA's regulations, and subsequently these regulations, have changed to include only target housing and child-occupied facilities.

Sections 18 VAC 15-30-830 and 18 VAC 15-30-840 have been eliminated as they are redundant with Section 18 VAC 15-30-160.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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, please include a sentence to that effect.

The primary advantage to the public of implementing the new regulatory provision is the added protection against lead poisoning in children six years of age and under in “child-occupied facilities” as well as continuing to protect children six years of age and under in “target housing.” The advantage to the agency and the Commonwealth is the ability to maintain Virginia’s status as an “EPA-Authorized State” in the implementation of the Residential Lead-Based Paint Hazard Reduction Act of 1992.

As with any deregulation, the disadvantage to the public would be the loss of employment opportunities of the industry in “public buildings,” “commercial buildings,” and “superstructures.” Additionally, there is the cost of regulation to the industry in the form of fees, training and equipment, and to the agency in staffing to administer the regulations. These fees and other costs incurred by the industry due to regulation are passed on to the consumer by way of increased costs for services. However, these increases are more than offset by the protection from the intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems caused from lead poisoning of the Commonwealth’s children, our most precious resource.

The fees proposed are those currently in effect for the asbestos and lead-based paint programs. In accordance with statute, the Board collects licensing fees from which its operating costs and a proportionate share of the Department’s expenses are paid. The Board has no other source of revenue from which to fund its operations. The fee structure was developed in compliance with § 54.1-113 of the Code of Virginia.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency’s best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Item 8 Analysis

Board for Asbestos and Lead Virginia Lead Based Paint Activities Fiscal Impact of Proposed Regulation

Summary: The proposed regulation will result in a deregulation of lead-based paint activities in “public buildings,” “commercial buildings,” and “superstructures” that are currently regulated and will begin regulating these activities in “child-occupied facilities.” The deregulation is a

direct result of the EPA not finalizing certain portions of its proposed regulations, and Virginia’s statutory mandate to be “no more stringent than the federal regulations.” When the department was under the assumption that the aforementioned building types were going to be included in the final federal regulations, they were also adopted into state regulations. Now that the focus has changed from facility type to occupants, Virginia must also adopt this modified approach in its regulations.

Fiscal Impact:

| | FY 2001 | FY 2002 | FY 2003 | FY 2004 |
|--------------------|------------|------------|------------|------------|
| Fund | NGF (0900) | NGF (0900) | NGF (0900) | NGF (0900) |
| Program/Subprogram | 560 44 | 560 44 | 560 44 | 560 44 |

| Impact of Regulatory Changes: | | | | |
|-------------------------------|---|---|---|---|
| One-Time Costs | 0 | 0 | 0 | 0 |
| Ongoing Costs | 0 | 0 | 0 | 0 |
| Total Fiscal Impact | 0 | 0 | 0 | 0 |

Description of Costs: The printing and mailing of revised regulations, as well as the Notices of Regulatory Intent are normal operating board costs.

Cost to Localities: The deregulation of lead-based paint activities may result in cost reductions in instances where the locality was involved in regulating or removing lead-based paint in public buildings, commercial buildings or superstructures. Now that the mandate is to protect child-occupied facilities, however, any savings which may have been realized in the above mentioned structures may be offset by the additional costs to safe guard all child-occupied facilities. Many local child occupied facilities are already covered under public buildings. Further, HUD now has a provision that all federally assisted housing must be inspected for and reduce lead-based paint hazards.

Description of Regulants: Licensed Lead professionals will no longer be needed for lead-based paint activities on public buildings, commercial buildings, or superstructures unless they are child occupied and/or federally assisted. In order to do any residential work, licensing must be maintained, so it is unlikely that there would be a significant number who would choose to be unlicensed Lead Abatement workers. With so much demand for service in child-occupied facilities, this population may even expand.

Estimated Number of Regulants: Approximately 1,375 Individuals and 152 Firms will be impacted by this change.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

All references to certificates or certification have been changed to license or licensure to reflect statutory changes throughout the regulations. There is no economic impact.

All references to the department have been changed to the Board, since it is the Board who has statutory authority, not the department. There is no economic impact.

Section 18 VAC 15-30-10 has been modified to limit the applicability of these regulations to “target housing” and “child-occupied facilities” to align them with EPA’s revised limitations. The economic impact would be the deregulation of lead abatement projects on public and commercial buildings, steel structures, and superstructures.

Section 18 VAC 15-30-20. Definitions have been modified, added, or deleted for clarification and to come into alignment with EPA’s regulations as mandated by the Board’s enabling statutes.

In paragraph number four under the definition of “abatement,” interim controls would no longer be regulated as abatement activities. This has been a gray area that had been left to Board interpretation. The economic impact would be two-fold. Demand for licensed lead professionals would decrease. However, the burden on property owners to engage the use of licensed lead professionals to perform interim controls, who generally charge higher fees for their services, whose purpose is to temporarily reduce lead-based paint hazards, would be reduced.

Section 18 VAC 15-30-30 has been rephrased for clarity. There is no economic impact.

Section 18 VAC 15-30-40 has been rephrased for clarity. There is no economic impact.

Section 18 VAC 15-30-41 has been added to enable the Board to waive any requirements of the regulations if the Board finds that the waiver in no way lessens the protection of the public health, safety and welfare. There is no economic impact.

Section 18 VAC 15-30-50

Subsection A has been amended to delete the Department’s mailing address, which is subject to change, appears on the printed regulation booklet and is available from the Department’s web site (www.state.va.us/dpor). The instructions are simplified to require applications to be made on a form provided by the Department. There is no economic impact.

Subsection C has been amended to clarify the use of fees and the justification for not issuing refunds. There is no economic impact.

Subsection E has been rephrased for clarity. There is no economic impact.

Old Subsection E has been incorporated into Subsection C. There is no economic impact.

Subsections H through K have been added for administrative purposes. There is no economic impact.

Sections 18 VAC 15-30-60, 18 VAC 15-30-70, 18 VAC 15-30-80, and 18 VAC 15-30-90 have been repealed in their entirety. The standards established in the repealed sections are redundant with the licensure requirements in Part IV for individuals, Part V for contractors, and Part VI for training programs. There is no economic impact.

Section 18 VAC 15-30-100

Subsection B has been amended to eliminate the extension of interim licenses. It was observed that individuals requesting extensions never sat for and passed the third-party examination. By eliminating the ability to extend an interim license, the third-party examination can be used as a tool for “weeding out” incompetent candidates, thereby better protecting the public health, safety, and welfare. There is no economic impact.

Section 18 VAC 15-30-110 has been amended to include allowances for proficiency based courses. This came directly from EPA’s regulations. Since these courses are more intense in both time and subject matter, refresher training is required after 60 months instead of only 36 months. There is no economic impact.

Section 18 VAC 15-30-130 has been amended to align the renewal cycle (every 24 months) of an accredited training program with the reaffirmation cycle (every 36 months) ensuring the training provider is maintaining compliance with the regulations. The proposed regulations maintains the 24-month renewal cycle, but increases the reaffirmation cycle to 48 months so that the training provider must reaffirm compliance every other renewal cycle. This was an administrative change to alleviate confusion between the two different cycles. Additionally, the reaffirmation information from 18 VAC 15-30-320 has been moved to this section for ease of understanding. There is no economic impact.

Section 18 VAC 15-30-140

Subsection D has been amended to require an individual applying for a second interim license to retake and satisfactorily complete the initial training requirement, not just an 8-hour refresher. In conjunction with Section 18 VAC 15-30-100, the current regulations allow for an individual to take an 8-hour refresher to obtain subsequent interim licenses and never sit for or pass the third-party examination. There will be the cost to the applicant of having to retake the initial training, however, by requiring these individuals to successfully retake the initial training, they may be

better prepared to take and pass the third-party examination, ensuring that only competent lead professionals are performing work for the public.

Section 18 VAC 15-30-150 has been rephrased for clarity. There is no economic impact.

Section 18 VAC 15-30-160

Subsection H has been added. The current regulations impose a late renewal fee on training programs that renew more than 30 days after the expiration date of the accreditation. The \$25 fee charged for late renewal is an agency-wide amount for all licenses, certificates, and accreditations. The fee amount was omitted in the current regulations. This will only impact training programs that renew late.

Section 18 VAC 15-30-170 has been revised to eliminate “grandfathering” for lead workers. Very few applicants have applied for licensure in the past two years through grandfathering. Since only equivalent training taken prior to January 1, 1996 is accepted, the Board feels the public interest is better met by requiring any new candidate to complete a Board-approved training course. There may be a few applicants who are required to take additional training, however, this additional training should better ensure that they are sufficiently trained before obtaining their license. Additionally, “for target housing, superstructures and public and commercial buildings” has been deleted from the section title since it is stated in Section 18 VAC 15-30-10 that these regulations are applicable only to target housing and child-occupied facilities.

Section 18 VAC 15-30-180 has been revised to eliminate “grandfathering” for lead project designers. Very few applicants have applied for licensure in the past two years through grandfathering. Since only equivalent training taken prior to January 1, 1996 is accepted, the Board feels the public interest is better met by requiring any new candidate to complete a Board-approved training course. There may be a few applicants who are required to take additional training, however, this additional training should better ensure that they are sufficiently trained before obtaining their license. Also, due to EPA changes, the discipline name has changed from planner/project designer to project designer, and an experience requirement has been added. Additionally, “for target housing and public buildings” has been deleted from the section title since it is stated in Section 18 VAC 15-30-10 that these regulations are applicable only to target housing and child-occupied facilities.

Sections 18 VAC 15-30-190 “Interim certified supervisor . . .” and 18 VAC 15-30-200 “Certified supervisor . . .” were replaced in their entirety with new Section 18 VAC 15-30-205 “Licensed lead abatement supervisor.”

For simplification, the requirements for both sections were combined since an individual applies for a Supervisor License, not an Interim Supervisor License. If his initial or refresher training is less than six months old, he will be issued an Interim License that expires six months from the date of training. If the training has gone past the six-month window, he will be issued an examination eligibility letter. Separate requirements were unnecessary and confusing. Also, just like Sections 18 VAC 15-30-170 and 18 VAC 15-30-180, grandfathering was eliminated.

Subsection C has been added to require the applicant to retake the initial training before he can take the third-party examination for the third time. It is felt that if the applicant fails the third-party examination twice, the subject matter was not understood. The only economic impact would be on the applicant, who either did not receive sufficient training or needed to be retrained to work with potentially hazardous material. Public protection more than outweighs the economic burden of the applicant.

Subsection D has been added to allow a licensed lead abatement supervisor to perform the duties of a licensed lead abatement worker since the worker training is included in the supervisor training course. By adding this subsection, the lead abatement supervisor would be spared the expense of attending a worker course and the expense of acquiring a lead abatement worker license should he obtain employment as a lead abatement worker.

Sections 18 VAC 15-30-210 “Interim certified inspector technician . . .” and 18 VAC 15-30-220 “Certified inspector technician . . .” were replaced in their entirety with new Section 18 VAC 15-30-225 “Licensed lead inspector.”

EPA’s regulations replace discipline title “Lead Inspector Technician” with “Lead Inspector.” The requirements are the same, only the title changes.

For simplification, the requirements for both sections were combined since an individual applies for an Inspector License, not an Interim Inspector License. If his initial or refresher training is less than six months old, he will be issued an Interim License that expires six months from the date of training. If the training has gone past the six-month window, he will be issued an examination eligibility letter. Separate requirements were unnecessary and confusing. Also, just like Sections 18 VAC 15-30-170 and 18 VAC 15-30-180, grandfathering was eliminated.

Subsection C has been added to require the applicant to retake the initial training before he can take the third-party examination for the third time. It is felt that if the applicant fails the third-party examination twice, the subject matter was not understood. The only economic impact would be on the applicant, who either did not receive sufficient training or needed to be retrained to work with potentially hazardous material. Public protection more than outweighs the economic burden of the applicant.

Sections 18 VAC 15-30-230 “Interim certified inspector/risk assessor . . .” and 18 VAC 15-30-240 “Certified inspector/risk assessor . . .” were replaced in their entirety with new Section 18 VAC 15-30-245 “Licensed lead risk assessor.”

EPA’s regulations replace discipline title “Lead Inspector/Risk Assessor” with “Lead Risk Assessor.” The requirements are the same, only the title changes.

For simplification, the requirements for both sections were combined since an individual applies for a Risk Assessor License, not an Interim Risk Assessor License. If his initial or refresher training is less than six months old, he will be issued an Interim License that expires six months from the date of training. If the training has gone past the six-month window, he will be issued

an examination eligibility letter. Separate requirements were unnecessary and confusing. Also, just like Sections 18 VAC 15-30-170 and 18 VAC 15-30-180, grandfathering was eliminated.

Subsection A.1 has been added to specify the acceptable fields of study for applicable undergraduate degrees. The current regulations are unclear regarding any fields of study.

Subsection C has been added to require the applicant to retake the initial training before he can take the third-party examination for the third time. It is felt that if the applicant fails the third-party examination twice, the subject matter was not understood. The only economic impact would be on the applicant, who either did not receive sufficient training or needed to be retrained to work with potentially hazardous material. Public protection more than outweighs the economic burden of the applicant.

Section 18 VAC 15-30-250 has been amended to include current procedures that were not spelled out in the regulations. There is no economic impact.

Section 18 VAC 15-30-260 has been rephrased for clarity. In Subsections B and D, dates in the past have been deleted. There is no economic impact.

Section 18 VAC 15-30-270

Subsection D has been deleted. Interim approvals were granted at the beginning of the licensing program. Since there is a substantial list of approved training courses, there is no longer a need to grant interim approval prior to an on-site audit. There is no economic impact.

Section 18 VAC 15-30-280 has been amended to reflect the elimination of interim approvals in Section 18 VAC 15-30-270. There is no economic impact.

Section 18 VAC 15-30-290 has been rephrased for clarity. There is no economic impact.

Section 18 VAC 15-30-310 has been moved from Part VI, Training Program Accreditation to Part X, Standards of Practice and Conduct as Subsection C of Section 18 VAC 15-30-790. There is no economic impact.

Section 18 VAC 15-30-320 has been rephrased for clarity and for administrative purposes, and has been incorporated into Section 18 VAC 15-30-130 for ease of understanding. There is no economic impact.

Section 18 VAC 15-30-340 has been rephrased for clarity and to reflect changes in EPA's regulations. There is no economic impact.

Section 18 VAC 15-30-350 has been rephrased for clarity and to reflect changes in EPA's regulations. There is no economic impact.

Section 18 VAC 15-30-360 has been amended to remove “lead certification in another state” and “train the trainer courses” as recognized documentation for instructors. The Board felt that these qualifications for instructors were not relevant. There is no economic impact.

Section 18 VAC 15-30-370 has been rephrased for clarity. There is no economic impact.

Section 18 VAC 15-30-380 has been modified to reflect training course requirements found in EPA’s regulations. There is no economic impact.

Section 18 VAC 15-30-390

Subsection E has been added to allow for a proficiency test, to implement this new EPA regulation provision. There is no economic impact.

Section 18 VAC 15-30-400 has been rephrased for clarity. Because of the inclusion of proficiency based training courses in Section 18 VAC 15-30-110, a different expiration date has been added for these training certificates. Subsection 7 has been added to ensure that only approved instructors are teaching board-approved training courses. There is no economic impact.

Section 18 VAC 15-30-440 has been rephrased for clarity. There is no economic impact.

Sections 18 VAC 15-30-450 through 18 VAC 15-30-480 have been revised and rewritten to more accurately reflect EPA’s regulations. There is no economic impact.

Section 18 VAC 15-30-490 has been rewritten since Project Designer is a new training course. In the current regulations, the Supervisor and Project Designer courses were one in the same since EPA had not developed a separate course for Project Designer. There is no economic impact.

Sections 18 VAC 15-30-510, 18 VAC 15-30-520, 18 VAC 15-30-540 through 18 VAC 15-30-550, 18 VAC 15-30-610, 18 VAC 15-30-620, 18 VAC 15-30-650, and 18 VAC 15-30-651 have been revised, added, or rewritten to more accurately reflect EPA’s regulations. Sections 18 VAC 15-30-530, 18 VAC 15-30-560 through 18 VAC 15-30-600, 18 VAC 15-30-630, 18 VAC 15-30-640, and 18 VAC 15-30-660 through 18 VAC 15-30-680 have been repealed. There is no economic impact.

Sections 18 VAC 15-30-690 through 18 VAC 15-30-750 have been eliminated because the scope of EPA’s regulations, and subsequently these regulations, has changed to include only target housing and child-occupied facilities. As previously mentioned, the demand for licensed lead professionals would decrease. However, the burden on property owners to engage the use of licensed lead professionals to perform interim controls, who generally charge higher fees for their services, whose purpose is to temporarily reduce lead-based paint hazards, would be reduced.

Section 18 VAC 15-30-790 has been rephrased for clarity. Subsection C has been added to allowed board representatives to monitor approved training courses. There is no economic impact.

Section 18 VAC 15-30-800 has been rephrased for clarity. There is no economic impact.

Section 18 VAC 15-30-810 has been rephrased for clarity. Also, in Subsection A, language has been added to give the board the authority to revoke and suspend accreditation and licensure in addition to denial of same. There is no economic impact.

Section 18 VAC 15-30-820 has been revised to delete “after notice and an opportunity for hearing” since this is part of the APA procedures referred to in Subsection B. There is no economic impact.

Sections 18 VAC 15-30-830 and 18 VAC 15-30-840 have been eliminated, as they are redundant with Section 18 VAC 15-30-160. There is no economic impact.

The proposed regulations are essential to protect the health, safety and welfare and for the efficient and economical performance of an important governmental function.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

In promulgating lead-based paint regulations, the Board was and will be faced with dual challenges. The first is the EPA standard that requires state programs and regulations to be at least as protective as the federal program and regulations in order to qualify for EPA authorization. The second is the Virginia statute that requires the Virginia program and regulations to be no more stringent than the EPA program and regulations. As a result, the Board has very little of the latitude which most Virginia regulatory boards enjoy while developing regulations.

In every case, the Board considered whether there was a less burdensome alternative that was no more stringent than the EPA Final Rule, but that also was as protective as the EPA regulations. The EPA regulations are silent in the areas of fee amounts, application processing and procedures, and conflicts of interest between the various categories of certificates. In these areas, the Board carefully weighed the impact of the regulations on the industry with the benefit to the public's protection.

Virginia is an EPA authorized state. The federal regulations state that the EPA Administrator may approve an application for authorization of a state program only after finding that the state program is at least as protective of human health and the environment as the federal program established according to the mandates. State programs that fail to meet this standard will be

rejected. The EPA authorization can be withdrawn if Virginia's regulations are found to be NOT as protective as the EPA regulations.

The planned amendments were taken word-for-word from the final EPA regulations whenever possible to assure that the Virginia regulations remain at least as protective as the federal regulations.

The proposed regulations are essential to protect the health, safety and welfare and for the efficient and economical performance of an important governmental function.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

A Notice of Intended Regulatory Action (NOIRA) was published in the June 19, 2000 issue of the Virginia Register of Regulations to obtain public comment on the effectiveness of and the continued need for the Board's current retaliations. The public comment period expired on July 19, 2000.

The following is a summary of the comments received and of the response:

Zachary R. Adams, PE, CSP
Occupational Safety Programs Manager
Virginia Polytechnic Institute and State University
Environmental Health and Safety Services

Recommended that regulations be amended to provide a uniform, workable definition of "abatement" and "lead-based paint activities," that the scope of the revised DPOR regulations be reconciled with the federal requirements, and that renovation-related lead work activities be removed from the scope of the regulations.

DPOR definition of "lead-based paint activities" must be clarified and reconciled with current federal regulations.

Since worker protection is currently regulated by OSHA, it is recommended that the Board constrain the scope of its regulations to mirror the requirements of 40 CFR 745, and that application of these requirements to work in public and commercial buildings be reserved pending the results of the federal study and rulemaking.

It is recommended that renovation-related lead work activities be clearly removed from the scope of the DPOR regulation. This is supported by §54.1-501 of the Code of Virginia which asserts that the Board's regulations shall not be more stringent than the federal requirements set forth in the United States Environmental Protection Agency's (EPA) proposed regulations.

Agency Response: These suggested changes have been incorporated into the proposed regulations so as to be no more stringent than EPA's regulations as mandated by state statute.

David W. McElwey, PE, CIH
Vice President
OSHealth, Inc.

Changes in lead review and subsequent design/permitting activities could lower current lead environmental control measures and could lead to increased hazards to the general public through the release of lead dust from paint operations on superstructures.

Incremental controls on superstructures may still be needed to contain/control lead emissions into our neighborhoods and the environment from superstructures.

Current regulations only allow lead supervisors to inspect superstructures. Regulations need to be expanded to allow lead designers (who sit through the same training courses) to also perform the superstructure lead historical review and lead determination functions.

Agency Response: Subsection 6 of 54.1-501 of the Code of Virginia states "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." Since lead-based paint activities on superstructures were not included in EPA's final regulations, they must be removed from Virginia's regulations.

Marshall Marcus, CIH

State regulations should not be more stringent than the Federal. However, DPOR should retain its current Lead-Based Paint Activities regulations under the authority of §54.1-501. The regulations can easily be modified when the new EPA regulations are proposed.

Agency Response: Subsection 6 of 54.1-501 of the Code of Virginia states "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."

Ken Fisher, PE, CIH

Proposed changes to the Lead-Based Paint Activities Regulations identified on the postcard mailing are well founded and will contribute to sensible regulation to control the risk of exposure to lead-based paint.

Agency Response: The agency thanks Mr. Fisher for his support.

Ellis Huffman

Implementation of final regulations is a must for contractors of dwelling. Protecting our children is a must.

Taking down buildings without using a torch on them is causing a problem for some contractors. To do a project involving lead paint, the company has to be SSPC certified. The company cannot become SSPC certified unless they have an ongoing job to be audited.

In favor of implementation of final regulation. It is felt that the regulation is overkill, even if this is not the intent of the Board.

Agency Response: The agency thanks Mr. Huffman for his support.

Gabe Leigh

Glad to see that these items are being deleted. Hope the bill goes through. Supports it.

Agency Response: The agency thanks Mr. Leigh for his support.

Thomas R. Hyland**Vice President, Government Affairs****Apartment and Office Building Association of Metropolitan Washington**

Strongly supports the department's intent to institute regulatory action to amend the existing Virginia Lead-Based Paint Activities Regulations (18 VAC 15-30-710) to conform those regulations to the final Federal EPA regulations and meet the requirements under the Code of Virginia (§54.1-506.6) mandating that the Virginia regulations be no more stringent than the federal regulations.

Believes that the matters cited therein warrant immediate revision to assure that existing conflicts between the Virginia and federal regulations do not hamper implementation and enforcement of lead-based paint activities for target properties and child-occupied facilities in Virginia.

Agency Response: The agency thanks Mr. Hyland for his support.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

These proposed regulations modify and make permanent changes necessary to implement EPA's final regulations and amendments suggested by the Office of the Attorney General.

The experiences of the Department of Professional and Occupational Regulation staff, the Board members, and the public expressed through their comments have been considered during the regulation development process and have resulted in a more easily understandable document. Both the members of the Board and the Department of Professional and Occupational Regulation staff have made considerable effort to identify unnecessarily complicated language.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Board for Asbestos and Lead will enter into regulatory review two years following the date the final regulations are effective. The review will be conducted to determine if the regulations should be continued, amended, or terminated, including a description of specific and measurable goals the regulations are intended to achieve.

It should also be noted that Section 54.1-113 of the Code of Virginia mandates regulatory boards to examine its fee structure at the end of the biennium. It is the Department's custom to encourage its affiliated boards to examine its regulations as described above at the same time the fee structure is examined for compliance.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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 families has been identified.