



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Historic Resources
Virginia Administrative Code (VAC) citation	17 VAC 10-30
Regulation title	Historic Rehabilitation Tax Credit
Action title	Amend the regulation to clarify application process and requirements, adjust application review fees
Date this document prepared	November 8, 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.

17 VAC 10-30 sets out the requirements for participation in the Virginia Historic Rehabilitation Tax Credit Program, the standards by which all projects are evaluated, and the process for applying for the tax credits.

The proposed action will clarify the existing language, provide a more precise and detailed description of the program requirements and application process, and revise the current fee structure for review of the applications.

The proposed action is necessary to address deficiencies in the existing program regulations, which cause confusion about the program requirements and application process, and to prevent fraud and misuse of the program. The proposed action would revise the current review fees, to reflect the increased cost of staff time and resources necessary for review of projects and administration of the program.

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 Department of Historic Resources (DHR) has specific statutory authority under Va. Code § 58.1-339.2 to promulgate regulations necessary to implement the program. The regulation is mandated in whole by the state statute. The statute provides that the Director of the Department of Historic Resources shall establish by regulation the requirements needed for the program, including the fees to defray the necessary expenses and the extent to which the availability of the credit is coextensive with the availability of the federal rehabilitation tax credit.

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.

Amendment of the program regulations is necessary to prevent fraud, enhance ease of use for applicants, and reduce ambiguity and confusion for both applicants and DHR staff. Additionally, the amendment will adjust the fee structure to more fairly reflect the time and professional expertise required by DHR staff for review of a project.

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 following revisions to 17 VAC 10-30 are proposed:

- More precisely define and capitalize all defined terms to avoid confusion and alert users that the term has a specific meaning, as it is used and defined in the regulations.
- Clarify and further delineate the requirements for obtaining Certification of Historic Significance and Certification of Rehabilitation.
- Strengthen the attestation requirements of the Owner.
- Clarify Eligible Rehabilitation Expenses.
- Revise the fees charged for review of applications.

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.

There is no feasible alternative to making these amendments. The regulations are mandated by state law, and they are necessary to provide clear guidance and an efficient procedure for qualifying for and claiming the tax credit. Since the regulations were promulgated on April 5, 2006, the Department and members of the affected public have identified certain areas that require improvement. Failure to implement these amendments would leave the program vulnerable to misuse.

DHR has identified and implemented procedural improvements that do not require regulatory action, in order to increase assurance that the information submitted for review and certification by DHR is accurate. However, the regulatory amendments are critical to increasing the efficiency and maintaining the integrity of the tax credit program, and therefore the Department has not considered alternatives to making such amendments.

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 panel will be appointed to assist 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 Elizabeth Tune, 2801 Kensington Avenue, Richmond, VA 23221, Phone: (804) 482-6093, Fax: (804) 367-2391, Elizabeth.Tune@dhr.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.

Pursuant to 17 VAC 10-11-70, the Agency has established an ad hoc advisory panel, the members of which have expertise in the rehabilitation of historic properties, tax law, and accounting practices and procedures, to assist in the development of amendments to the existing regulations.

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.

These amendments will have no impact on the institution of the family or family stability.
