



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board for Asbestos, Lead, and Home Inspectors
Virginia Administrative Code (VAC) citation	18 VAC 15-30
Regulation title	Lead-Based Paint Activities Regulations
Action title	Amendment of Exam Fee Cap for Third-Party Lead Exam
Date this document prepared	September 5, 2013

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 ability to competitively negotiate and procure contracts for the examination administration of the lead program is a critical component of the application process. The current examination cap of \$75 has been in place since October 1, 1995, the original effective date of the regulations. Due in part to the small number of candidates for lead examinations (approximately 80 per year), the increased security requirements necessary to ensure examination content is not compromised, the ability to procure services that allow maximum offerings (geographic and multi-day availability), and overall changes in the economy, the costs associated with administering examinations have increased. The examination cap inhibits the Board's ability to competitively negotiate examination services because some vendors will not submit proposals due to the extensive limitation of the examination cap and recent proposal submittals indicate the current examination cap is unrealistic. Third-party vendors who develop and administer examinations cannot provide an effective, secure examination for \$75. Since the Department strictly adheres to the competitive negotiation process in the Virginia Public Procurement Act (§2.2-4300 et seq. of the Code of Virginia) and the Department negotiates to ensure fees remain reasonable for candidates while ensuring all examination administration needs are met, removal of the examination cap is prudent as future examination costs and needed services are nearly impossible to anticipate due to the reliance on vendors - and the proposals they submit - for these services.

The most recent examination services procurement process affirms the necessity to make this change based on the above factors as no proposals could comply with the current examination cap. There is a current regulatory action in process to adjust the Board's fees pursuant to the Callahan Act (54.1-113) to

ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses. Without the proposed fee adjustments, the Board will incur a deficit by the end of the 2012-2014 biennium and the Department will not collect adequate revenue to pay for operations. The additional examination costs the Board will need to absorb due to the limitation of the examination fee cap will further compound the Board's financial position.

This change is also consistent with several other boards' regulations under the Department's purview.

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.

§ 54.1-201.5 of the *Code of Virginia* (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-201>) states that the Board has the power and duty "To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board."

§ 54.1-501 of the *Code of Virginia* (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-501>) provides the authority for the Board to promulgate regulations for the licensure of lead professionals and firms, approval of accredited lead training programs, and approval of criteria for accredited lead training programs. The content of the regulations is pursuant to the Board's discretion, but shall not be in conflict with the purposes of the statutory authority.

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.

The most recent examination services procurement process affirms the necessity to make this change as no proposals could comply with the current examination cap. As it is now with the current examination cap, the Board must absorb the additional cost of the examination (over the examination cap), which could result in a further deficit to the Board depending on the length of the process to amend the regulations. There is a current regulatory action in process to adjust the Board's fees pursuant to the Callahan Act (54.1-113) as the Board is already expected to incur a deficit by the end of the 2012-2014 biennium and the Department will not collect adequate revenue to pay for operations. The additional examination costs the Board will need to absorb due to the limitation of the examination fee cap will further compound the Board's financial position. Fees for the examinations will be subject to contracted charges to the agency by the third-party vendor; and contracts are competitively negotiated in compliance with the Virginia Public Procurement Act (§2.2-4300 et seq. of the Code of Virginia).

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 Board will propose amending 18VAC15-30-161.C to provide for the establishment of examination fees by a third party vendor through the competitive negotiation process pursuant to the Virginia Public Procurement Act (§2.2-4300 et seq. of the Code of Virginia). Examination candidates will be required to pay for the actual cost of the examination, which has been competitively negotiated and bargained for by the department and is subject to contracted charges.

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.

If the Board is required to absorb the additional cost of each examination, the Board would be forced to increase applications and other licensing fees in order to ensure that its revenue is sufficient to cover its expenses in accordance with the Callahan Act (54.1-113).

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 Trisha Henshaw, Executive Director, Board for Asbestos, Lead, and Home Inspectors, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Richmond, Virginia 23233; email: alhi@dpor.virginia.gov; fax: 866-350-5354. 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.

The agency is using the participatory approach in the development of the proposal. Pursuant to the Public Participation Guidelines, 18VAC15-11-10 *et seq.*, a panel will not be used.

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.

A family impact has not been identified.