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Final Regulation Agency Background Document

Agency name	Board for Asbestos, Lead, and Home Inspectors
Virginia Administrative Code (VAC) citation(s)	18 VAC 15-30
Regulation title(s)	Lead-Based Paint Activities Regulations
Action title	Amendment of Exam Fee Cap for Third-Party Lead Exam
Date this document prepared	June 2, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulatory action will amend 18VAC15-30-161.C to remove the exam fee cap. Examination fees are paid directly by the candidate and are established through competitive negotiation pursuant to the Virginia Public Procurement Act (§2.2-4300 et seq. of the Code of Virginia) ("VPPA"). Future examination service contracts shall continue to be established through the competitive negotiation process pursuant to the Virginia Public Procurement Act (§2.2-4300 et seq. of the Code of Virginia).

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

No acronyms or technical terms were identified that were not defined in the “Definitions” section of the regulations.

Statement of final agency action

Please 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.

The Board for Asbestos, Lead, and Home Inspectors adopted final Lead-Based Paint Activities Regulations at its May 14, 2015 board meeting.

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.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

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 current 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. 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. Removing the examination cap is essential to cover the current cost of the examination and promote competitive negotiation in adherence to the VPPA. In addition, examination fees will be established through competitive negotiation and would not be permitted to be overly burdensome or in excess of the charges necessary to cover the cost of the examination.

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 increases, 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 is absorbing due to the limitation of the examination fee cap is further compounding the Board’s financial deficit.

The purpose of the lead examination is to ensure minimum competency of those who perform lead abatement activities, which is critical to reducing the risk of lead exposure to the public, particularly children. In order to establish minimum competency of individuals and businesses performing abatement activities and protect the public health, safety, and welfare, a valid, comprehensive, psychometrically-sound examination is essential.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The Board proposes amending 18VAC15-30-161.C to remove the exam fee cap to allow the exam fee to be set consistent with the cost of the exam as established through the competitive negotiation process. All future examination service contracts shall continue to be established 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.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

The advantage of this action to the Board’s regulants, that is, the public, is that there is less risk of a significant increase in application or renewal fees due to the Board having to absorb the additional cost of each examination. Without raising the exam cap, the Board is forced to increase application 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 of the Code of Virginia), which must ultimately be paid by the Board’s regulants. There are no disadvantages to the public or the agency.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

There are no requirements that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no particularly affected localities.

Family impact

Please assess the impact of this 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.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
161.C	Exam fee cap established at \$150.	Removal of a specific fee	The exam fee cap of \$150 is the current cost of the examination pursuant to the last contract negotiated. In two years, this contract

			may be up for negotiation which would again necessitate a regulatory change to permit the whole cost of the exam to be paid by the candidate and not absorbed by the Board (and, therefore, its regulants who are not candidates for the exam).
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Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

No comments were received from the public during the public comment period.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18VAC15-30-161.C	N/A	Currently, the examination shall not exceed a cost of \$75 to the candidate.	This proposed amendment removes the exam fee cap. The amendment will allow the Board to competitively negotiate the examination contract pursuant to the VPPA and require the examination candidate to pay for the actual cost of the examination.