



## Final Regulation Agency Background Document

<b>Agency name</b>	Board for Asbestos, Lead and Home Inspectors
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 15-30
<b>Regulation title</b>	Lead-Based Paint Activities Regulations
<b>Action title</b>	Amend
<b>Date this document prepared</b>	May 30, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

The Board proposed amendments to its existing regulations that would empower disciplinary action against or license denial for firms and individuals acting as an "ostensible licensee" for those who are unqualified for a license or who have be subject to the Board's discipline. Amendments were proposed to require training providers to submit all training program notices and training program participant lists electronically on forms provided by the Board in a effort to increase the speed and accuracy of license application and renewal processes. The data required on training program participant lists was proposed for amendment to replace the "date of birth" with "social security number." The regulations have been reorganized to present the regulatory requirements in a format which is easier to understand. There are no substantive changes as a result of this reorganization. All DPOR boards are going through similar regulation reorganizations.

All of the proposed amendments were adopted by the Board as final regulation. In addition, the Board amended the language to allow training program notices to be received by the Board at least 48 hours prior to the date training is to begin instead of the more restrictive seven business days currently required.

## 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.*

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The Board for Asbestos, Lead, and Home Inspectors amended the proposed regulations and adopted final Lead-Based Paint Activities Regulations on May 10, 2006.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The Board for Asbestos, Lead and Home Inspectors is empowered to promulgate regulations under the legal authority found in Section 54.1-201 of the Code of Virginia, which empowers regulatory boards generally, and Section 54.1-501 of the Code of Virginia, which empowers the Board for Asbestos, Lead, and Home Inspectors specifically.

Section 54.1-501 uses the imperative form of the verb “shall,” thus making it mandatory that the Board promulgate regulations to administer and enforce the provisions of Chapter 5 of Title 54.1 of the Code of Virginia.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it 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.*

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The proposed amendments empower the Board to deny license and approval as well as to take disciplinary action against those acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensed entity. The Board will be able to deny application to or take disciplinary action affecting individuals who have been disciplined and have found others to become licensed on their behalf.

Requiring training providers to submit notices and training program participant lists electronically will speed up the processing of license applications and enable licenses to be issued and renewed faster. Language is provided to allow manual reporting by those that do not have the hardware and software to submit electronically.

The proposed amendments requiring social security numbers instead of the date of birth on training program participant lists implements § 54.1-116 of the Code of Virginia, provides a means of quickly matching data to the appropriate record and conforms the regulatory requirements of this set of regulations with the Board’s Asbestos Licensing Regulations. Many entities authorized to provide lead-based paint activities training are also authorized to provide asbestos training. Conforming the reporting requirements will ease the burden on those Board-authorized entities that offer both types of training by enabling them to report the same data for both.

The intent of reorganizing the regulations is to present the regulatory requirements in a format which is easier to understand and to make them more consistent with other DPOR board regulations. This will further the efficient and economical performance of important government functions.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

The Board has, from time to time, taken disciplinary action against certain firms and individuals or denied licensure to those firms and individuals under its regulatory authority and its affirmative obligation to protect the public. The Board is concerned that those so disciplined or denied may find others who have not been so disciplined or denied to apply for and become licensed, thus becoming an ostensible licensee and rendering the Board's regulatory authority ineffective. The Board's proposed amendments empower the Board to deny the application of or take disciplinary action against anyone found to be an ostensible licensee acting on the behalf of a disqualified individual.

Amendments are proposed to require training programs to submit data electronically, unless exempted, and to provide the social security numbers of those trained rather than their dates of birth. The two in combination will allow more efficient application processing. Virtually all training providers have been submitting data electronically since the requirement first went into effect on October 1, 2003. In addition, the Board reduced the amount of training program notice required from seven business days to 48 hours, to allow more flexibility in meeting the industry's training needs.

## 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.*

No disadvantages to the public or the Commonwealth have been identified.

The public is protected by empowering the Board to take disciplinary action against those acting as or being an ostensible licensee for undisclosed persons who do or will control or direct the operations of the licensed or approved entity.

The agency will benefit by requiring all training program notifications and rosters to be submitted in a uniform manner that will lead to streamlining the processing of applications and will ultimately get licenses to applicants sooner. The inclusion of social security numbers will also result in more efficient operation. The training providers and those seeking training will benefit from the reduced amount of training program notice required from seven business days to 48 hours.

The agency's Compliance and Investigations Division will benefit from reorganizing the regulations by making the regulations more consistent with other DPOR board regulations. The public, government

officials and the industry will benefit by reorganizing the regulations in a format which is easier to understand.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

<b>Section number</b>	<b>Requirement at proposed stage</b>	<b>What has changed</b>	<b>Rationale for change</b>
18 VAC 15-30- 420 B	Requires the training manager to notify the Board at least seven business days before conducting a training program. Business day is defined as Monday through Friday except federal holidays.	The amount of notice has been reduced from seven business days to 48 hours and the language defining business day has been repealed.	Recently a US Navy warship came into port and required lead-based paint work. The Navy asked a training provider to give the lead-based paint supervisor training on short notice. The training provider was unable to meet the Navy’s needs because of the necessity to give the Board seven days notice. The Board decided that 48 hours was sufficient notice and is less stringent than the EPA requirement. It is also the amount of notice required for asbestos training programs.

**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.*

No comment was received from the public during the public comment period.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18 VAC 15-30-30	Repealed	Licensure required.	Redundant to statute.
18 VAC 15-30-40	Repealed	Accreditation required.	Redundant to statute.
18 VAC 15-30-50 A	18 VAC 15-30-51	Shall use form provided by the department.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30-50 B	18 VAC 15-30-52 C	18 years of age.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30-50 C	18 VAC 15-30-51	Completed application with appropriate fees.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30-50 D	18 VAC 15-30-52 I	Convictions.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30-50 E	18 VAC 15-30-52 D	Physical address.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30-50 F	18 VAC 15-30-51	Receipt of application and fees is not approval.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30-50	18 VAC 15-30-52 F	Training verification.	Reorganized to present the regulations in an easier to understand format.

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18 VAC 15-30-50 H	18 VAC 15-30-52 G	Education verification.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30-50 I	18 VAC 15-30-52 H	Experience verification.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30-50 J	Repealed	Shall have all necessary occupational and professional licenses.	Redundant with former 18 VAC 15-30-250 B 4, now 18 VAC 15-30-53 E 1 b (4)
18 VAC 15-30-100	18 VAC 15-30-164	Expiration.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30-110	18 VAC 15-30-166 A	Refresher training for individual renewal.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30-120	18 VAC 15-30-166 B	Contractor renewal.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30-130	18 VAC 15-30-166 C	Training program renewal.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30-140 A, B, C, and D	18 VAC 15-30-165	Renewal application procedures.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30-140 E and F	18 VAC 15-30-167	Late renewal procedures.	Reorganized to present the regulations in an easier to understand format.

18 VAC 15-30- 150	18 VAC 15- 30-810 A 12	Change of address or name.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30- 160 A, C, E, and F	18 VAC 15- 30-162	Application fees.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30- 160 A, B, C, D, G, and H	18 VAC 15- 30-163	Renewal and late fees.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30- 160 I	18 VAC 15- 30-161 B	Fees for nonprofit training programs.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30- 160 J	18 VAC 15- 30-161 C	Examination fees.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30- 160 K	Repealed	Dishonored check fee.	Redundant with statute.
18 VAC 15-30- 170	18 VAC 15- 30-52 E 1	Worker entry requirements.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30- 180	18 VAC 15- 30-52 E 2	Project Designer entry requirements.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30- 205	18 VAC 15- 30-52 E 3	Supervisor entry requirements.	Reorganized to present the regulations in an easier to understand format.

18 VAC 15-30- 225	18 VAC 15- 30-52 E 4	Inspector entry requirements.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30- 245	18 VAC 15- 30-52 E 5	Risk Assessor entry requirements.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30- 250	18 VAC 15- 30-53 E 1	Contractor entry requirements.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30- 260	18 VAC 15- 30-54 B through F	Training program general requirements.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30- 270	18 VAC 15- 30-54 G through J	Training program application review and audit.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30- 280	18 VAC 15- 30-54 K	Accreditation approval.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30- 290	18 VAC 15- 30-332	Changes to approved course.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30- 300	18 VAC 15- 30-334	Training program change of ownership.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30- 330	18 VAC 15- 30-54 A	Training program general requirements.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-30-	Same	Recordkeeping and provision of records to	In subdivision B, the amount of notice required before a training program may

420		the Board for lead training programs.	<p>be conducted has been reduced from seven business days to 48 hours.</p> <p>In subdivision J 4, “date of birth” has been replaced with “social security number.” SSN has served as a more reliable and effective form of identification in the verification of an applicant’s training and is a data element required from every applicant under § 54.1-116 of the Code of Virginia. Additionally, since many training providers conduct and are approved for both Lead and Asbestos training programs, it would be beneficial to conform the Lead requirement to the Asbestos requirement for the course participant SSN.</p> <p>Subsection K has been revised to require training providers to submit all notices and rosters electronically on forms provided by the board to speed up the training verification process for applicants.</p> <p>In subsection M, “will” has been replaced with the imperative form “shall.”</p>
18 VAC 15-30-510	Same	General requirements for conducting lead-based paint activities.	Inserted “of this section” following “subsection C” in subsection D for clarification.
18 VAC	Same	Sets grounds for	Rephrased to add “to” before “suspend,”

15-30-810 A		disciplinary action.	“revoke,” and “deny” to enhance language clarity.
18 VAC 15-30-810 A 3	Same	Prohibits altering or falsifying licenses and training certificates.	Rephrased for clarity
N/A	18 VAC 15-30-810 A 13	Silent	Added ostensible ownership language: “Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee’s business.”
N/A	18 VAC 15-30-810 C	Silent	Duplicated language from 18 VAC 15-30-820 B regarding disciplinary procedures as referenced in the APA.
N/A	18 VAC 15-30-820 A 8	Silent	Added ostensible ownership language: “Acted as an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the accredited lead training provider’s business.”

The amendments reorganize the regulations to make them more consistent with other DPOR board regulations and to benefit from the experiences of all of our regulatory boards. All DPOR boards are going through this sort of regulation reorganization. The reorganization presents the regulatory requirements in a different and easier to understand format.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

No disadvantages to the public or the Commonwealth have been identified.

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### Family impact

*Please assess the 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.*

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No impact on the institution of the family or family stability has been identified.