



Proposed Regulation Agency Background Document

Agency name	Virginia Department of Labor and Industry/Safety and Health Codes Board
Virginia Administrative Code (VAC) citation	16 VAC25-35
Regulation title	Certified Lead Contractors Notification, Lead Project Permits and Permit Fees
Action title	Amendments to Certified Lead Contractors Notification, Lead Project Permits and Permit Fees
Date this document prepared	March 26, 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*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The Department seeks to remove the \$2,000 minimum contract price provision required of lead contractors to file a lead project notification with the Department, as provided in Paragraph A. of 16VAC25-35-30 of the Regulation. This change would require that licensed lead contractors submit written notification for all lead projects, as defined in 16VAC25-35-10, regardless of the contract price for the lead project.

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.

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 Safety and Health Codes Board is authorized by Title 40.1-22(5) to: "...adopt, alter, amend or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal OSH Act of 1970...as may be necessary to carry out its functions established under this title".

"In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity".

Section 40.1-51.20 of the Code of Virginia mandates that all certified lead contractors notify the Department of Labor and Industry prior to commencement of each lead abatement project for which certification is required by the Department of Professional and Occupational Regulation. The contractor shall also obtain a lead permit and pay the appropriate fee in accordance with this code section. This regulation establishes the notification requirements and provides that the Department of Labor and Industry conduct on-site inspections of each certified lead contractor's actual abatement projects. This regulation does not exceed the mandate required by Section 40.1-51.20.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

Currently, Paragraph A of 16VAC25-35-30, Notification and Permit Fee, requires that lead contractors notify the Department of Labor and Industry ("the Department") for lead abatement projects when the contract price is \$2,000 or more. The U.S. Environmental Protection Agency (EPA) has notification requirements in which the Department must comply. The EPA has no price amount stipulated in its notification regulations. Therefore, the basis for this intended regulatory action is to conform the requirements of Paragraph A of 16VAC25-35-30 with that of the Environmental Protection Agency's (EPA) Notification Requirements for Lead-Based Paint Abatement Activities and Training, 40 CFR 745.227(e)(4)(i)-(ix).

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested

in the "Detail of changes" section.)

The Lead notification requirements in Paragraph A., of 16VAC25-35-30, Notification and Permit Fee, of the Regulation Concerning Licensed Lead Contractor Notification, Lead Project Permits, and Permit Fees, 16VAC25-35, currently stipulates that lead contractors notify the Department of Labor and Industry (the Department) for lead abatement projects when the contract price is \$2,000 or more. The U. S. Environmental Protection Agency (EPA) also has notification requirements with which the Department is obligated to comply. The EPA has no price amount stipulated with respect to its notification requirements; therefore, the Department seeks to remove the \$2,000 minimum contract price provision requiring lead abatement notification for all lead projects, regardless of the contract price for the lead project.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

- 1) The primary advantages of implementing the amended provisions to the public is that the \$2,000 minimum contract price provision required for lead abatement notification will be removed for consistency with the notification requirements of the U.S. Environmental Protection Agency (EPA). However, since there will no longer be a contractor price threshold of \$2,000, lead contractors will be required to submit more notification permit applications which will, in turn, increase the overall costs of lead permit fees that contractors need to pay in order to get their lead abatement permit.
- 2) The primary advantages and disadvantages to the agency or the Commonwealth – The Department will incur no added costs nor will staffing levels require an increase as a result of the rule change. Any additional revenue received will be deposited in the Lead Program Special Fund.
- 3) There are no disadvantages to the public or to the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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.

Unlike the requirements of the U.S. Department of Environmental Protection (EPA) which has no price amount stipulated in its notification regulations, Paragraph A of 16VAC25-35-30, Notification and Permit Fee, which is more restrictive than applicable federal requirements in that it requires that lead contractors notify the Department of labor and Industry (“the Department”) for lead abatement projects when the contract price is \$2,000 or more. Therefore, this regulatory action is to make the requirements of 16VAC25-35-30.A., Notification and Permit Fee, conform to that of the EPA Notification Requirements for Lead-Based Paint Abatement activities and Training, 40 CFR 745.227(e)(4)(i)-(ix).

Below, is the current regulatory text for Paragraph A. of 16VAC25-35-30, Notification and Permit Fee, and the proposed changes to the regulatory text:

16VAC25-35-30. Notification and permit fee.
A. Written notification of any lead project, the contract price of which is \$2,000 or more, shall be made to the department on a department form. Such notification shall be sent by facsimile transmission as set out in subsection J of this section, by certified mail, or hand-delivered to the department. Notification shall be postmarked or made at least 20 days before the beginning of any lead project.

16VAC25-35-30. Notification and permit fee.
A. Written notification of any lead project ~~the contract price of which is \$2,000 or more,~~ shall be made to the department on a department form. Such notification shall be sent by facsimile transmission as set out in subsection J of this section, by certified mail, or hand-delivered to the department. Notification shall be postmarked or made at least 20 days before the beginning of any lead project.

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 localities that are particularly affected by the proposed regulation.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to Mr. Ron Graham, Director, Division of Occupational Health Compliance, Virginia Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219; telephone #: 804.786.0574; fax #: 804.786.8418; Ron.Graham@doli.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 date of the public comment period.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* 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.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.	The Department will incur no additional costs nor will staffing levels increase as a result of the rule change. Any additional revenue received is deposited in the Lead Program Special Fund.
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	Changes to existing regulations on localities will have no anticipated costs.
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	Licensed lead contractors and licensed lead workers who undertake affected projects
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Based on the number of lead abatement contractors licensed by the Department of Professional and Occupational Regulation, the Department of Labor and Industry estimates that there are approximately 142 licensed lead abatement contractors in Virginia and that most of these contractors are considered small businesses.

<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>Notification permit applications will increase, and therefore, the overall costs of lead permit fees that contractors need to pay in order to get their lead abatement permit.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>There will no longer be a required contractor price threshold of \$2,000 for lead abatement contractors to submit notification permit applications. However, this change will require that licensed lead contractors submit written notification for <u>all</u> lead projects, as defined in 16VAC25-35-10, regardless of the contract price for the lead project. Otherwise, the permit fee under Subsection C.1. will not change.</p>

Alternatives

Please describe any viable 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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The Department of Labor and Industry did not consider any other alternatives to this regulatory action because the requirements of Paragraph A., Notification and Permit Fees, of 16VAC25-35-30, Regulation Concerning Licensed Lead Contractor Notification, Lead Project Permits, and Permit Fees, should have the same notification requirements as that of the U.S. Environmental Protection Agency’s (EPA) Notification Requirements for Lead-Based Paint Abatement Activities and Training, 40 CFR 745.227(e)(4)(i)-(ix).

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.

The Department of Labor and Industry did not consider any other alternatives to this regulatory action because the requirements of Paragraph A. of 16VAC25-35-30, Notification and Permit Fees, of the Regulation Concerning Licensed Lead Contractor Notification, Lead Project Permits, and Permit Fees, should have the same notification requirements as that of the U.S. Environmental Protection Agency's (EPA) Notification Requirements for Lead-Based Paint Abatement Activities and Training, 40 CFR 745.227(e)(4)(i)-(ix); therefore, the Department of Labor and Industry seeks to remove its \$2,000 minimum contract price provision to comply with the EPA's notification requirements.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

There were no public comments received for this proposed amendment.

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.

This proposed amendment will not impact the institution of the family and family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
16VAC25-35-30.A.		Written notification of any lead project, the contract price of which is \$2,000 or more, shall be made to the department on a department form. Such notification shall be sent by facsimile transmission as set out in subsection J of this section, by certified mail, or hand-delivered to the department. Notification shall be postmarked or made at least 20 days before the beginning of any lead project.	<p>Written notification of any lead project, the contract price of which is \$2,000 or more, shall be made to the department on a department form. Such notification shall be sent by facsimile transmission as set out in subsection J of this section, by certified mail, or hand-delivered to the department. Notification shall be postmarked or made at least 20 days before the beginning of any lead project.</p> <p><u>Rationale:</u> The Department of Labor and Industry must comply with, and conform to, the notification requirements of the U.S. Department of Environmental Protection Agency (EPA) which has no price amount stipulated with respect to its notification requirements.</p>

16VAC25-35-30. Notification and permit fee.

A. Written notification of any lead project, ~~the contract price of which is \$2,000 or more,~~ shall be made to the department on a department form. Such notification shall be sent by facsimile transmission as set out in subsection J of this section, by certified mail, or hand-delivered to the department. Notification shall be postmarked or made at least 20 days before the beginning of any lead project.

B. The department form shall include the following information:

1. Name, address, telephone number, and the certification number of each person intending to engage in a lead project.
2. Name, address, and telephone number of the owner or operator of the facility in which the lead project is to take place.
3. Type of notification: amended, emergency, renovation or demolition.
4. Description of facility in which the lead project is to take place, including address, size, and number of floors.
5. Estimate of amount of lead and method of estimation.
6. Amount of the lead project fee submitted.
7. Scheduled setup date, removal date or dates, and completion date and times during which lead-related activity will take place.
8. Name and license number of the supervisor on site.
9. Name, address, telephone number, contact person, and landfill permit number of the waste disposal site or sites where the lead-containing material will be disposed.
10. Detailed description of the methods to be used in performing the lead project.
11. Procedures and equipment used to control the emission of lead-contaminated dust, to contain or encapsulate lead-based paint, and to replace lead-painted surfaces or fixtures in order to protect public health during performance of the lead project.

12. If a facsimile transmission is to be made pursuant to subsection J of this section, the credit card number, expiration date, and signature of cardholder.

13. Any other information requested on the department form.

C. A lead project permit fee shall be submitted with the completed project notification form. The fee shall be in accordance with the following schedule:

1. The greater of \$100 or 1.0% of the contract price, with a maximum of \$500.

2. If, at any time, the Commissioner of Labor and Industry determines that projected revenues from lead project permit fees may exceed projected administrative expenses related to the lead program by at least 10%, the commissioner may reduce the minimum and maximum fees and contract price percentage set forth in subdivision 1 of this subsection.

D. A blanket notification, valid for a period of one year, may be granted to a contractor who enters into a contract for a lead project on a specific site which is expected to last for one year or longer.

1. The contractor shall submit the notification required in subsection A of this section to the department at least 20 days prior to the start of the requested blanket notification period. The notification submitted shall contain the following additional information:

a. The dates of work required by subdivision B 7 of this section shall be every work day during the blanket notification period, excluding weekends and state holidays.

b. The estimate of lead to be removed required under subdivision B 5 of this section shall be signed by the owner and the owner's signature authenticated by a notary.

c. A copy of the contract shall be submitted with the notification.

2. The lead project permit fee for blanket notifications shall be as set forth in subsection C of this section.

3. The contractor shall submit an amended notification at least one day prior to each time the contractor will not be present at the site. The fee for each amended notification will be \$15.

4. Cancellation of a blanket notification may be made at any time by submitting a notarized notice of cancellation signed by the owner. The notice of cancellation must include the actual amount of lead removed and the actual amount of payments made under the contract. The refund shall be the difference between the original lead permit fee paid and 1.0% of the actual amount of payments made under the contract.

E. Notification of fewer than 20 days may be allowed in case of an emergency involving protection of life, health or property. In such cases, notification and the lead permit fee shall be submitted within five working days after the start of the emergency lead project. A description of the emergency situation shall be included when filing an emergency notification.

F. A notification shall not be effective unless a complete form is submitted and the proper permit fee is enclosed with the completed form. A notification made by facsimile transmission pursuant to subsection J of this section shall not be effective if the accompanying credit card payment is not approved.

G. On the basis of the information submitted in the lead notification, the department shall issue a permit to the contractor within seven working days of the receipt of a completed notification form and permit fee.

1. The permit shall be effective for the dates entered on the notification.

2. The permit or a copy of the permit shall be kept on site during work on the project.

H. Amended notifications may be submitted for modifications of subdivisions B 3 through B 11 of this section. No amendments to subdivision B 1 or B 2 of this section shall be allowed. A copy of the original notification form with the amended items circled and the permit number entered shall be submitted at any time prior to the removal date on the original notification.

1. No amended notification shall be effective if an incomplete form is submitted or if the proper permit amendment fee is not enclosed with the completed notification.

2. A permit amendment fee shall be submitted with the amended notification form. The fee shall be in accordance with the following schedule:

a. For modifications to subdivisions B 3, B 4, and B 6 through B 10 of this section, \$15.

b. For modifications to subdivision B 5 of this section, the difference between the permit fee in subsection C of this section for the amended amount of lead and the original permit fee submitted, plus \$15.

3. Modifications to the completion date may be made at any time up to the completion date on the original notification.

4. If the amended notification is complete and the required fee is included, the department will issue an amended permit if necessary.

I. The department must be notified prior to any cancellation. A copy of the original notification form marked "canceled" must be received no later than the scheduled removal date. Cancellation of a project may also be done by facsimile transmission. Refunds of the lead project permit fee will be made for timely cancellations when a notarized notice of cancellation signed by the owner is submitted.

The following amounts will be deducted from the refund payment: \$15 for processing of the original notification, \$15 for each amendment filed, and \$15 for processing the refund payment.

J. Notification for any lead project, emergency notification, or amendment to notification may be done by facsimile transmission if the required fees are paid by credit card.