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Proposed Regulation Agency Background Document

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| 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 | February 26, 2014 Revised December 19, 2014 |

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 (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This regulatory action will amend 18VAC15-30-161.C to increase the maximum cost of the examination to the candidate to reflect the \$150 maximum amount of the current exam vendor contract. 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.

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. Increasing the examination cap is essential to cover the current cost of the examination as well as proposals from vendors in the future 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 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 will need to absorb due to the limitation of the examination fee cap will further compound the Board's financial position.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

The Board proposes amending 18VAC15-30-161.C to increase the maximum cost of the examination to the candidate to reflect the \$150 maximum amount of the current exam vendor contract. 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, not to exceed the maximum of \$150, 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.

- 1) 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, a valid, comprehensive, psychometrically-sound examination is essential.
- 2) The advantage of this action will be to prevent and reduce the likelihood that the Board will have to take action in the near future to increase application and other licensing fees resulting from the Board's absorption of examination costs over the examination cap. There are no disadvantages to the Commonwealth.
- 3) Approximately 80 candidates per year take the lead examination. There will be a necessity to increase the examination fees, which will result in increased costs to the candidates. However, the examination fee cap has been set at \$75 for 18 years, which is no longer feasible to maintain. While the agency will keep the cost to candidates for the third-party lead examination at a minimum, the cost will increase.

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.

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 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 for the public comment file may do so 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. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage 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 (<https://www.virginia.gov/connect/commonwealth-calendar>). 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 requirement creates the anticipated economic impact.

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| <p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p> | <p>a) Fund: NGF (0900) Program/Service Area: 560 46</p> <p>b) One-Time: No one-time costs are expected as a result of this regulatory change.</p> |
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| | Ongoing: No ongoing costs are expected as a result of this regulatory change. |
| Projected cost of the new regulations or changes to existing regulations on localities. | No change anticipated. |
| Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations. | This regulation change will affect all individual examination candidates and applicants for licensure. |
| 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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. | As of July 1, 2013, there were 896 licensed individuals. There are approximately 80 examination candidates each year. |
| All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) 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. | The cost for the lead examination increased to \$125 for calendar year 2014, with the Board picking up the difference between \$75 and \$125. For calendar year 2015, the cost will increase to \$137.50, with the Board picking up the difference if the regulations are not amended, and will increase to \$150 for calendar year 2016. |
| Beneficial impact the regulation is designed to produce. | The amendment to 18VAC15-30-161.C will increase the maximum \$75 cost of the lead examination to \$150. Future examination service contracts shall continue to be established through the competitive negotiation process pursuant to the Virginia Public Procurement Act. |

**Board for Asbestos, Lead, and Home Inspectors
Fiscal Impact of Proposed Regulation**

Summary:

The proposed amendments to the Lead-based Paint Activities regulations within the Board for Asbestos, Lead, and Home Inspectors will increase the maximum \$75 cost of the lead examination to \$150. Examination fees will continue to be set according to the contract negotiated with the exam vendor in compliance with the Virginia Public Procurement Act. No fiscal impact to the Board is expected as a result of the amendment.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

Fiscal Impact:

| | FY 2014 | FY 2015 | FY2016 | FY2017 |
|----------------------|------------|------------|------------|------------|
| Fund | NGF (0900) | NGF (0900) | NGF (0900) | NGF (0900) |
| Program/Service Area | 560 46 | 560 46 | 560 46 | 560 46 |

| Impact of Regulatory Changes: | | | | |
|-------------------------------|------|------|------|------|
| One-Time Costs | \$0 | \$0 | \$0 | \$0 |
| Ongoing Costs | \$0 | \$0 | \$0 | \$0 |
| Total Fiscal Impact | \$0 | \$0 | \$0 | \$0 |
| FTE | 0.00 | 0.00 | 0.00 | 0.00 |

Description of Costs:

One-Time: No one-time costs are expected as a result of this regulatory change.

Ongoing: No ongoing costs are expected as a result of this regulatory change.

Cost to Localities: No change anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: This regulation change will affect all individual examination candidates and applicants for licensure.

Estimated Number of Regulators: As of July 1, 2013, there were 896 licensed individuals. There are approximately 80 examination candidates each year.

Projected Cost to Regulators: With the current exam vendor contract, the cost for the lead examination increased to \$125 for calendar year 2014, with the Board picking up the difference between \$75 and \$125. For calendar year 2015, the cost will increase to \$137.50, with the Board picking up the difference if the regulations are not amended, and will increase to \$150 for calendar year 2016.

The Board has to absorb the difference in the cost versus what can be charged to the candidate, which negatively impacts the Board’s cash position. This impact is significant as the Board is currently undergoing regulation review for a fee adjustment due to the Board’s current cash position.

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 most viable long-term solution is to allow for a maximum fee that will not require adjustment each time a new contract is negotiated in accordance with the Public Procurement Act. The candidate is only charged the fee assessed by the vendor for administration of the examination, and any increase in

examination fees that may result from a new contract will have to be absorbed by the Board. Not only does that impact the Board's financial standing, it could result in an increase in fees for all current licensees (as opposed to just the examination candidates being responsible for paying the fees for the examinations they are taking) as the Board is subject to the Callahan Act and is non-general funded.

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).

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

Without this amendment, the Board will have to take action in the near future to increase application and other licensing fees resulting from the Board's absorption of examination costs in excess of the examination cap. Applicants and regulants of the program will pay for the increase in examination cost, either from examination service fees or through the subsidization of other fees collected by the Board.

Periodic review and small business impact review report of findings

If this NOIRA is the result of a periodic review/small business impact review, use this NOIRA to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

The NOIRA was not the result of a periodic review/small business impact review.

Public comment

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

No comments were received.

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.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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 |
|------------------------|--|--|---|
| 18VAC15-30-161.C | N/A | Currently, the examination shall not exceed a cost of \$75 to the candidate. | <p>This proposed amendment increases the maximum cost of the examination to the candidate to \$150, the cost of the exam charged by the exam vendor in calendar year 2016 under the current exam vendor contract.</p> <p>The amendment will require the examination candidate to pay for the actual cost of the examination, not to exceed \$150.</p> |