



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board for Asbestos, Lead, and Home Inspectors
<b>Virginia Administrative Code (VAC) citation</b>	18VAC15-40
<b>Regulation title</b>	Certified Home Inspector Regulations
<b>Action title</b>	Fee Adjustment
<b>Date this document prepared</b>	September 24, 2012

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 proposed regulations will increase fees for the Board for Asbestos, Lead, and Home Inspectors to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses. The Board's most recent fee changes were fee decreases that were effective in 2000. The Board has incurred an increase in costs for enforcement activities, Information Systems development costs, and application processing and customer support services. 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.

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.

## 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.*

DPOR – Department of Professional and Occupational Regulation

## 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.*

- 1) § 54.1-113 (Callahan Act) requires regulatory boards to periodically review and adjust fees.  
 § 54.1-201.A.4 provides the authority to regulatory boards to levy and collect fees.  
 § 54.1-304.3 describes the authority of DPOR to collect and account for fees.  
 § 54.1-308 requires costs to be paid by regulatory boards.
- 2) Board for Asbestos, Lead, and Home Inspectors.

All of these provisions of the Code of Virginia are mandatory.

## 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.*

The intent of the proposed changes in regulations is to increase licensing fees for regulants of the Board for Asbestos, Lead, and Home Inspectors. The Board must establish fees adequate to support the costs of the Board operations and a proportionate share of the Department's operations. By the close of the next biennium, fees will not provide adequate revenue for those costs.

The Department of Professional and Occupational Regulation (DPOR) receives no general fund money but, instead, is funded almost entirely from revenue collected for license and certificate application fees, renewal fees, examination fees, and other licensing fees. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenue collected on behalf of the various boards funds the Department's authorized special revenue appropriation.

The Board for Asbestos, Lead, and Home Inspectors has no other source of revenue from which to fund its operations.

## 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 Board for Asbestos, Lead, and Home Inspectors reviewed the fees listed in 18VAC15-40-50 and 18VAC15-40-52 and, based on projected revenues and expenses, developed a fee schedule that meets the requirements of the applicable statutes while being the least burdensome to the regulant population.

<u>Fee Type</u>		<u>Current Fees</u>	<u>Proposed Fees</u>
Application	Individuals	25	80
Renewal	Individuals	25	45
Late Renewal	Individuals	25	35
Reinstatement	Individuals	75	80

**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.*

The primary issue for the proposed fee increase is the Department's statutory requirement to comply with the Callahan Act.

Further issues to be addressed as regulations are developed include:

The Callahan Act required DPOR to review each board's expenditures at the close of each biennium, and to adjust fees if necessary. The Board for Asbestos, Lead, and Home Inspectors is expected to incur a deficit of \$82,268 by the end of the 2012-2014 biennium and a Callahan Act percentage of -11.5%.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now to avoid a greater deficit than currently projected. In order to address the deficit as currently projected, new fees will need to become effective by late in fiscal year 2014. Otherwise, the Board's deficit will increase to the point that the new fees would be inadequate to provide sufficient revenue for upcoming operating cycles, which could result in the Board having to consider additional fee increases in the near future.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the

income of the regulated population should not be of a great significance compared to their level of income.

**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.*

There are no federal requirements in place regarding the certification of home inspectors in the Commonwealth of Virginia.

**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.*

Individuals certified by the Board for Asbestos, Lead, and Home Inspectors are located throughout the Commonwealth, subsequently; no particular area will be affected more than another.

**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 Trisha L. Henshaw, Executive Director, Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, fax to (866) 350-5354, or email to [alhi@dpor.virginia.gov](mailto:alhi@dpor.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.*

**Board for Asbestos, Lead, and Home Inspectors**

**Financial Status and Projections  
Current Regulations**

	<b>Beginning Cash</b>			<b>Ending Cash</b>	<b>Callahan</b>
<b>Biennium</b>	<b>Balance</b>	<b>Revenues</b>	<b>Expenditures</b>	<b>Balance</b>	<b>Act %</b>
2010-12	370,449	435,394	585,703	220,140	37.6%
2012-14	220,140	412,660	715,068	-82,268	-11.5%
2014-16	-82,268	412,660	723,649	-393,257	-54.3%
2016-18	-393,257	412,660	776,689	-757,286	-97.5%

**Number of Regulators**

5,808 as of 7/1/2012

**Fee History**

	<b>Major Fee Type</b>	<b>1997</b>	<b>2000</b>	<b>2013</b>
	Individual Application Fee	35	25	80
	Individual Renewal Fee	35	25	45
	Contractor Application Fee	50	40	110
	Contractor Renewal Fee	50	40	70

**Financial Status and Projections  
Proposed Regulations**

	<b>Beginning Cash</b>			<b>Ending Cash</b>	<b>Callahan</b>
<b>Biennium</b>	<b>Balance</b>	<b>Revenues</b>	<b>Expenditures</b>	<b>Balance</b>	<b>Act %</b>
2010-12	370,449	435,394	585,703	220,140	37.6%
2012-14	220,140	412,660	715,068	-82,268	-11.5%
2014-16	-82,268	868,418	723,649	62,501	8.6%
2016-18	62,501	868,418	776,689	154,230	19.9%

**Number of Regulators**

5,808 as of 7/1/2012

**Fee History**

	<b>Major Fee Type</b>	<b>1997</b>	<b>2000</b>	<b>2013</b>
	Individual Application Fee	35	25	80
	Individual Renewal Fee	35	25	45
	Contractor Application Fee	50	40	110
	Contractor Renewal Fee	50	40	70

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

**Summary:**

The proposed regulations will increase fees for the Board for Asbestos, Lead, and Home Inspectors, to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses. The board's most recent fee changes were fee decreases that were effective in 2000. The proposed fee increases are expected to become effective late in fiscal year 2014. Without the proposed fee increases, the Board will not collect sufficient revenue to pay for operations.

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**Fiscal Impact:**

	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY2015</b>	<b>FY2016</b>
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:**

<b>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.</b>	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.
<b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b>	No change anticipated.
<b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b>	This regulation change will affect all applicants and licensed individuals and contractors in asbestos and lead, and certified home inspectors. The regulation change also affects asbestos analytical

<p><b>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.</b> 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.</p>	<p>labs and asbestos or lead courses. As of July 1, 2012, the Board regulates 5,808 individuals, contractors, labs, and courses.</p>
<p><b>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. 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.</b></p>	<p>All fees except home inspectors and accredited asbestos and lead training programs cover a one year period. Home inspectors are certified for two years; asbestos and lead accredited training programs are accredited for two years. The cost for individuals to become licensed or certified will increase by \$55 from \$25 to \$80. The cost for contractors to become licensed will increase by \$70, from \$40 to \$110. The cost for individuals to renew a license or certification will increase by \$20, from \$25 to \$45. The cost for the registration of training courses will increase by \$100, from \$400 to \$500 per 8 hours of instruction. The cost for asbestos analytical labs to become licensed will increase by \$80 from \$40 to \$120.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>No economic impact is anticipated beyond the direct impact of the increased cost to become and remain licensed or certified. Increases in fees are not expected to have a significant effect on individuals deciding to become or remain licensed or certified by the Board.</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 has considered the following alternatives to increasing fees for the Board for Asbestos, Lead, and Home Inspectors:

- Reduce services: Because the regulatory activities conducted by the Board are mandated by statute, this is not considered a viable alternative. In addition, reductions in services would result in delays in issuing licenses, creating barriers to citizen’s ability to work, and would decrease the Department’s effectiveness in ensuring that licensees conduct their activities in a manner adequate to protect the public health, safety and welfare.
- Obtain a Treasury loan to fund operations: The Department could request a loan from the general fund to cover the Board’s deficit and supplement its ongoing operations. However, this would be a short-term solution only, and would only delay the need for fee increases. When eventually implemented, fee increases would need to be even greater to provide for repayment of the loan.

- Supplement Board activities with general funds: The Department currently receives no general fund revenue, and this would require a change in the Code of Virginia and the Appropriation Act. The Department's boards are intended to be self-funding per §§ 54.1-113, 54.1-201, 54.1-304.3, and 54.1-308 of the Code of Virginia. Use of general funds to support board operations does not appear to be an appropriate use of taxpayer dollars.

**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.*

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The adjustment of fees is mandated by statute and subsequently there is no flexibility.

**Public comment**

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

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No public comment was received during the NOIRA period.

**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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This fee adjustment is not anticipated to have any significant impact on Virginia's families.

**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
18VAC15-40-50		Application fee for home inspector certification: \$25	Application fee for home inspector certification: \$80  The adjustment of fees is mandated by statute.
18VAC15-40-52		Renewal fee for home inspector certification: \$25  Late renewal fee for home inspector certification: \$50 (\$25 renewal + \$25 late fee)  Reinstatement fee for home inspector certification: \$100 (\$75 reinstatement + \$25 renewal)	Renewal fee for home inspector certification: \$45  Late renewal fee for home inspector certification: 80 (\$45 renewal + \$35 late fee)  Reinstatement fee for home inspector certification: \$125 (\$80 reinstatement + \$45 renewal)  The adjustment of fees is mandated by statute.