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Proposed Regulation
Agency Background Document

Agency name	Board for Asbestos, Lead, and Home Inspectors
Virginia Administrative Code (VAC) citation(s)	18 VAC 15-40
Regulation title(s)	Certified Home Inspector Regulations
Action title	New Construction Home Inspection Training Program (House Bill 2103)
Date this document prepared	November 20, 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 (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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The Certified Home Inspector program is a voluntary regulatory program administered by the Board for Asbestos, Lead, and Home Inspectors. Chapter 411 of the 2015 Virginia Acts of the Assembly, which was a result of HB 2103, requires anyone who conducts a home inspection on a new residential structure to be certified by the Board and to have successfully completed a training module developed by the Board in conjunction with the Department of Housing and Community Development. The training module must be based on the International Residential Code component of the Virginia Uniform Statewide Building Code. Certification would become mandatory for those individuals who wish to conduct a home inspection on new residential structures.

The Board is required to develop regulation to implement Chapter 411 of the 2015 Virginia Acts of Assembly for implementation on July 1, 2016. The Act further requires the Board to develop the training module prior to July 1, 2016.

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.

The promulgating entity is the Virginia Board for Asbestos, Lead, and Home Inspectors.

Section 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. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

Section 54.1-501 (7) (http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-501) states that the Board shall promulgate regulations regarding the professional qualifications of home inspectors applicants, the requirements necessary for passing home inspectors examinations in whole or in part, the proper conduct of its examinations, the proper conduct of the home inspectors certified by the Board, the implementation of exemptions from certifications requirements, and the proper discharge of its duties.

Section 54.1-503 (E) states that it shall be unlawful for any person who is not a certified home inspector and who has not successfully completed the training module required by § 54.1-517.2 to conduct a home inspection on any new residential structure. Such training module shall be developed by the Board in conjunction with the Department of Housing and Community Development and be based on the International Residential Code component of the Virginia Uniform Statewide Building Code.

The imperative form of the verb "shall" is used, making the Board's authority to regulate mandatory rather than discretionary.

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.

This regulatory action is not discretionary, but rather mandated by Chapter 411 of the 2015 Virginia Acts of the Assembly.

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 will need to develop a mechanism to annotate those certified home inspectors who have completed the building code training module and, therefore, are qualified to conduct home inspections on new residential structures. To be qualified, a certified home inspector shall have successfully completed a training module based on the International Residential Code component of the Virginia Uniform Statewide Building Code developed by the Board in conjunction with the Department of Housing and Community Development.

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 primary advantage to the public of implementing the proposed regulations will be an assurance that persons contracted to conduct a "certified home inspection" on a new residential structure have successfully completed a training module that is based on the International Residential Code component of the Virginia Uniform Statewide Building code. No disadvantages to the Commonwealth have been identified.

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 federal requirements in place regarding the certification of home inspectors performing work 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 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 for the public comment file may do so 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. 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.

Board for Asbestos, lead, and Home Inspectors
Economic and Fiscal Impact of Proposed Regulation

Summary:

The Board for Asbestos, Lead, and Home Inspectors is amending the Home Inspector regulations to incorporate the requirements for mandatory certification for anyone conducting home inspections on new residential structures. The regulations relating to the mandatory certification will also include an entry requirement to complete a training module based on the International Residential Code component of the Virginia Uniform Statewide Building Code. There is no fiscal impact to the Agency, the state, or localities. There is a fiscal impact to the applicants/regulants.

All costs incurred in support of board activities and regulatory operations are paid by the Department and funded through fees paid by applicants and regulants. 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.

Economic Impact:

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**	There are no projected costs to the state to implement and enforce the specifics of this proposed regulatory action.
Projected cost of the new regulations or changes to existing regulations on localities.	There are no projected costs to localities.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Anyone conducting home inspections on new residential structures and training providers who wish to offer the board approved training module will be affected by this change to the Home Inspector regulations.
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.	Approximately 180 of the 363 currently certified home inspectors and an estimated 500 home inspectors not currently certified will be affected. The majority of certified home inspectors is self-employed or work for small businesses. No estimate of affected training providers is available.
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 application fee for a new certified home inspector is $80 and the projected cost to add the certification to conduct inspections on new residential structures is an additional $80. There is an indeterminate additional cost of the required home inspector training, which will vary according to the training provider. The cost to the training provider is estimated to be $150 for the onetime application fee required for board approval.
Beneficial impact the regulation is designed to produce.	The benefit of implementing this regulatory action will be to the public who will be assured that persons contracted to conduct a "certified home inspection" on new residential structures are knowledgeable of building codes by having successfully completed a training module that is based on the International Residential Code component of the Virginia Uniform Statewide Building Code.

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.

Chapter 411 of the 2015 Virginia Acts of the Assembly and the Code of Virginia mandates this regulatory action. Therefore, no alternatives exist to evaluate.

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.

The Board is required to develop regulation to implement Chapter 411 of the 2015 Virginia Acts of Assembly for implementation on July 1, 2016. The Act further requires the Board to develop the training module prior to July 1, 2016, and make such training module available for use in accordance with this Act.

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 during the NOIRA public comment period.

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.

No impact on families in Virginia has been identified as resulting from the proposed regulations.

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 follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10	N/A	Definitions.	Subsection A refers the reader to the Code of Virginia for the definition of certain terms used throughout the regulations, replacing the last paragraph of this section. Terms used in relation to home inspectors conducting inspections on new residential structures were defined to accommodate the statutory change.
20	N/A	Necessity for certification.	Language was added to state that a home inspection on any new residential structure shall only be conducted by a certified home inspector with the NRS specialty. This change will require any currently certified home inspector to obtain the NRS specialty in order to conduct home inspections on new residential structures.
30	N/A	Qualifications for certification.	Language was revised for clarity.
N/A	35	New section.	This new section indicates the qualifications to obtain the NRS specialty.
45	N/A	Application denial.	Replaces “regulant” with the more appropriate term “certificate holder.”
50	N/A	Application fees.	The section combines the application fees with the renewal and reinstatement fees, and adds the fees for the new NRS specialty.
52	N/A	Renewal and reinstatement fees.	This section is repealed because the renewal and reinstatement fees have been combined with the application fees in Section 50.
72	N/A	Continuing professional education (CPE) required.	Subsection A has been revised to delete dated information, and to allow distance learning and online education technology in addition to classroom training for CPE. Subsections D, E, and G have been moved to new Section 78 pertaining to the

			maintenance of CPE records. Subsection F has been incorporated into Subsection A.
N/A	75	New section.	This section has been added to require four hours of NRS CPE to maintain the NRS specialty, which can be applied toward the 16 contact hours of CPE required for renewal.
N/A	78	New section.	This section has been created to better organize the maintenance requirements of CPE records. Language for this section has been moved from Subsection D, E, and G of Section 72.
80	N/A	Procedures for renewal.	This section has been revised and reorganized for clarity. Also, language has been added concerning renewal requirements for those certified home inspectors who have the NRS specialty.
85	N/A	Late renewal.	This section has been revised for clarity.
90	N/A	Reinstatement.	This section has been revised to accommodate those certified home inspectors who have the NRS specialty.
105	N/A	Status of certificate holder during the period prior to reinstatement.	This section has been revised to accommodate those certified home inspectors who have the NRS specialty.
120	N/A	Certified home inspection contract.	Subdivision B.2 has been revised for those certified home inspectors who have the NRS specialty. Subdivision B.7.h has revised for clarity and is now Subdivision B.7.
130	N/A	Certified home inspection report.	Subdivision A.1 has been revised for clarity and to accommodate those certified home inspectors who have the NRS specialty.
150	N/A	Grounds for disciplinary action.	This section has been revised to clarify the board's power to take disciplinary action against a certificate holder.
N/A	155	New section.	This new section is a reorganization and expansion of Section 190 to better define prohibited acts by a certified home inspector which may result in disciplinary action by the board.
160	N/A	Maintenance of certificates,	The article "A" had been replaced with

		reports, and documentation.	"The." Subsection D has been added to require the certificate holder to report any change to the general liability insurance policy submitted in accordance with Section 30.9.
190	N/A	Unworthiness and incompetence.	This section has been repealed. The contents of this section have been moved to new Section 155, Prohibited Acts.
N/A	200	New section.	This section has been added to require any NRS training module and NRS CPE course to be approved by the board for the purposes of meeting the requirements of this chapter. This section allows all approved training to be administered using distance or online education technology.
N/A	210	New section.	This section requires a training provider seeking approval of a NRS training module or NRS CPE course to provide an application and fee. The section outlines what must be included with the application.
N/A	220	New section.	This section indicates the minimum contact hours of an approved NRS training module, and lists the subject areas that must be included in the NRS training module.
N/A	230	New section.	This section requires a minimum of four contact hours for an approved NRS CPE. The syllabus shall encompass all of the topic areas listed in Section 220 for a NRS training module.
N/A	240	New section.	This section requires the training provider to provide each student of a NRS training module or NRS CPE a certificate of completion or other documentation that the student may use as proof of training completion. This section also lists information that must be included on such documentation.
N/A	250	New section.	This section requires the training provider to establish and maintain a record for each student. These records shall be available for inspection by authorized representatives of the board and be maintained for a minimum of five years.

N/A	260	New section.	This section requires any change in the information provided in Section 210 to be reported to the board within 30 days of the change.
N/A	270	New section.	This section provides the reasons for which the board may withdraw approval of a NRS training module or NRS CPE course.