



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board for Asbestos, Lead, and Home Inspectors
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 15-40
<b>Regulation title</b>	Certified Home Inspectors Regulations
<b>Action title</b>	Remove requirement that training courses have to be taken in a classroom setting to be accepted as meeting the Certified Home Inspector entry requirements.
<b>Date this document prepared</b>	July 8, 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.*

This regulatory action will amend 18VAC15-40-30 by removing the requirement that training courses have to be taken in a classroom setting to be accepted as meeting the Certified Home Inspector entry requirements. This will allow for distance learning options including, but not limited to, online courses. The current regulations allow Continuing Professional Education to be taken outside of a classroom setting and this amendment will make the regulations regarding pre-certification training and continuing professional education requirements to be more consistent with each other.

### 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.

§ 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.

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 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 fact that distance learning is not acceptable as an entry requirement but is acceptable as a renewal requirement may create confusion among the regulant population. In addition, the desire to complete distance learning courses, online courses specifically, has grown in popularity. The cost reduction from not having to travel, to find lodging, and time away from work could be substantial for some individuals. With the advancement in technology, the number of Home Inspector online courses has increased and are readily available. At the same time, classroom courses are becoming more difficult to find compared to online courses and this creates a barrier to certification. The Board feels there will be no loss in the required skills resulting from the switch to distance learning.

## 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.)*

No new substantive provisions or changes are being introduced.

**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.*

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- 1) The primary advantage to the public is a more flexible training entry requirement which may allow for additional Certified Home Inspectors. There are no disadvantages to the public as pre-certification training is still a requirement.
  - 2) The primary advantage to the Commonwealth is a more flexible training entry requirement which may allow for additional Certified Home Inspectors. There are no disadvantages to the Commonwealth as pre-certification training is still a requirement.
  - 3) The primary advantage to those wishing to become a Certified Home Inspector is that the barrier of completing classroom instruction is removed and more flexible and more available pre-certification training options such as online course will now be accepted by the Board.

**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.*

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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.*

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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.*

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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 requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.*

<p><b>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal.</b> Think broadly, e.g., these entities may or may not be regulated by this board</p>	<p>The revised regulations apply to individuals applying for home inspector certification. There were 41 applicants in fiscal year 2012.</p>
<p><b>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected.</b> Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.</p>	<p>There are approximately 282 individuals certified as home inspectors.</p>
<p><b>Benefits expected as a result of this regulatory proposal.</b></p>	<p>The regulations are being revised to remove a requirement regarding pre-certification training. The current regulations require pre-certification training be taken in a classroom setting. The revision will allow distance learning including but not limited to online courses. The desire to complete distance learning courses, online courses specifically, has grown in popularity and the cost reduction from not having to travel, to find lodging, and time away from work could be substantial for some individuals. Also, the pre-certification requirements will then be consistent with continuing professional educational requirements which already allow training outside the classroom setting, including distance learning</p>

	and online courses.
<b>Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.</b>	a) Fund: NGF (0900) Program/Service Area: 560 46  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 to <u>localities</u> to implement and enforce this regulatory proposal.</b>	No change anticipated.
<b>All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>.</b> Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	There is no anticipated additional cost to the regulants.

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

**Summary:**

The current Home Inspector Regulations for the Board for Asbestos, Lead, and Home Inspectors are being revised to remove a requirement regarding pre-certification training. The current regulations require pre-certification training be taken in a classroom setting. The revision will allow distance learning including but not limited to online courses. The pre-certification requirements will then be consistent with continuing professional educational requirements which already allow training outside the classroom setting, including distance learning and online courses. No fiscal impact is expected as a result of these changes.

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 2012	FY 2013	FY2014	FY2015
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:** The revised regulations apply to individuals applying for home inspector certification. There were 41 applicants in fiscal year 2012.

**Estimated Number of Regulators:** There are approximately 282 individuals certified as home inspectors.

**Projected Cost to Regulators:** There is no anticipated additional cost to the regulators.

**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.*

No new substantive provisions or changes are being introduced. The absence of any substantive changes and the narrow scope of their applicability preclude any alternatives.

**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.*

1) The current compliance and reporting requirements are the least stringent consistent with public protection. Reporting requirements for the amended regulations will not change from what is in effect currently. Currently, documentation must be submitted upon initial application for certification to verify

training instruction. No other standard reporting requirements are created by the proposed new regulations.

- 2) The current regulation provisions and the proposed amendments do not establish schedules or deadlines for compliance or reporting requirements.
- 3) There are no compliance or reporting requirements to simplify.
- 4) The current regulations and the proposed amendments apply to individuals and not to businesses, small or otherwise.
- 5) The current regulation and the proposed amendments apply to individuals and not to businesses.

### Small business impact review report of findings

In order to minimize the economic impact of regulations on small businesses, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, 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. Also, include a discussion of the agency's determination of whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

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- 1) Promulgation of these regulations are mandated by § 54.1-501 (7) of the Code of Virginia.
  - 2) Most of the objections to this regulatory action stems from the use of the fast track method and home inspectors not having the opportunity to make suggestions and comments during the formulation of the regulatory change.
  - 3) The agency's goal is to remove the barrier of having to complete instruction in a classroom setting to meet the pre-certification training requirement. This will result in making available to potential applicants training that is more accessible and cost effective, as well as making regulations less restrictive.
  - 4) The regulations do not overlap, duplicate, or conflict with any federal or state law or regulation.
  - 5) The proposed language was adopted by the Board for Asbestos, Lead, and Home Inspectors on August 23, 2011. The current regulations and the proposed change apply to individuals applying for home inspector certification, and not to businesses.

### 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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The proposed amendments began as a fast-track process; however, because of the number of objections to the fast-track process, the fast-track process has been converted to the Standard rulemaking process, pursuant to §2.2-4012.1 of the Code of Virginia.

**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.*

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. 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) or regulations that are being repealed and replaced, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
18VAC15-40-30.2.b	N/A	Current requirement is that pre-certification training instruction must be completed in a classroom setting.	<p>This proposed amendment strikes the word classroom and therefore allows pre-license training to be completed in other settings should the applicant choose, such as online.</p> <p>Online courses are becoming more popular and available in greater number, while at the same time classroom courses are increasingly hard to find. The cost reduction from not having travel, lodging, and time away from work could be substantial for some individuals. The Board feels there will be no loss in the required skills resulting from the switch to distance learning.</p>