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Proposed Regulation Agency Background Document

Agency name	Virginia Board for Asbestos, Lead, and Home Inspectors
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC15-40
VAC Chapter title(s)	Home Inspector Licensing Regulations
Action title	2020-2021 General Review of Home Inspector Licensing Regulations
Date this document prepared	February 9, 2022 (revised May 9, 2024)

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Virginia Board for Asbestos, Lead, and Home Inspectors (“the Board”) has undertaken a general regulatory review of the Home Inspector Licensing Regulations. The regulation establishes (i) the entry requirements for home inspector licensure, including requirements for home inspectors to receive the new residential structure (NRS) specialty designation in order to perform inspections on new residential structures; (ii) requirements for maintaining and renewing a home inspector license; (iii) minimum standards for conducting home inspections; (iv) standards of conduct and practice; and (v) requirements for approval of home inspector pre-license education courses, NRS training modules, and NRS CPE.

This action proposes substantial amendments to the regulation, particularly Parts I (General), II (Entry), III (Renewal and Reinstatement of a License), IV (Minimum Standards for Conducting Home Inspections), and V (Standards of Conduct and Practice). Proposed amendments include:

1. Addition of new definitions, removal of unnecessary definitions, and clarifying revisions to some existing definitions;

2. Significant revision of the entry requirements, including establishing a points-based system for education and experience qualifications for licensure;
3. Revisions to requirements for renewal of a license. Revisions include (i) establishing a detailed list of CPE topics, based on topics covered by the home inspector license examination, that will be accepted by the Board; (ii) permitting licensees to receive CPE credit for training to maintain credentials that are related to home inspection services, such as radon testing, asbestos inspection, or lead inspection; and (iii) requiring licensees to provide proof of completing CPE as part of a renewal application;
4. Revisions to the standards for conducting home inspections. Revisions include changes to (i) the standards for home inspection contracts, including changes to the required minimum provisions for a contract, and required disclosures pertaining to potential conflicts of interest; and (ii) the standards for home inspection reports;
5. Revisions to standard of conduct pertaining conflicts of interest, including a provision permitting a home inspector to provide services to a client in addition to a home inspection, such as radon inspection, with the requirement that certain disclosures be made to the client, and that such services are performed in accordance with applicable laws and regulations; and
6. Significant revision to the prohibited acts in the standards of conduct and practice.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

The following acronyms or technical terms are used in this form:

"CPE" means continuing professional education.

"DPOR" means Department of Professional and Occupational Regulation.

"NRS" means new residential structure.

"USBC" means Uniform Statewide Building Code.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

This regulatory change is not the result of a mandate.

This regulatory change is prompted by (i) feedback received by the agency from members of the public, including individuals in the home inspector industry, and (ii) agency staff review of the regulation since amendments to the regulation made in 2017 transitioned the program from voluntary certification of home inspectors to mandatory licensure. Both the public and agency staff have identified areas where the regulation would benefit from revision or clarification to better ensure the regulation achieves its intended purpose to protect the public welfare by ensuring only those individuals who are properly qualified engage in the profession, while also reducing or mitigating regulatory burdens on applicants seeking to obtain a license, and licensees who maintain a license.

In consideration of the above, on August 20, 2020, the Board voted to initiate a general regulatory review of the regulation. A regulatory review committee of subject matter experts, including licensed home inspectors, a residential building contractor, and other citizens involved in the building industry, performed a review of the regulation and developed recommended amendments to the regulation.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The agency is the Virginia Board for Asbestos, Lead, and Home Inspectors. Chapter 5 of Title 54.1 of the Code of Virginia enumerates the legal authority for the Board to administer the licensure program for home inspectors. Section 54.1-501 of the Code of Virginia states, in part:

The Board shall administer and enforce this chapter. The Board shall:

- 7. Promulgate regulations for the licensing of home inspectors not inconsistent with this chapter regarding the professional qualifications of home inspectors applicants, the requirements necessary for passing home inspectors examinations, the proper conduct of its examinations, the proper conduct of the home inspectors licensed by the Board, and the proper discharge of its duties;

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The General Assembly has charged the Board with the responsibility for regulating those who engage in the practice of home inspection by requiring that such individuals obtain a license in order to perform home inspections on residential buildings for compensation. Home inspections are a common component of residential real estate transactions. The parties to such transactions rely on the expertise of a home inspector to provide an accurate evaluation of the condition of a home that is the subject of the transaction. The evaluation provided by a home inspector can have a significant effect on the transaction, particularly if there are substantial defects in the condition of the property. Home inspections performed by individuals who lack sufficient training and expertise expose the public to the risk of harm, which can include financial harm to purchasers who may have to assume costs after acquiring the property to remedy defects that were not properly identified during the home inspection. Similarly, home inspections and home inspection reports that fail to meet certain minimum standards can deprive the parties to a residential real estate transaction of an accurate evaluation of the condition of a home that is the subject of the transaction. In addition, home inspectors who engage in unscrupulous practices may expose the public to the risk of harm.

As mandated by the General Assembly, the Board protects the public welfare, in part, by establishing through regulation the minimum qualifications for entry into the profession, as well as the minimum requirements for the provision of home inspection services.

Since the transition from a voluntary certification to a mandatory licensure program, the agency has received feedback from members of the public and individuals in the home inspector industry. In addition,

agency staff have reviewed the regulation. Both the public and agency staff have identified areas where the regulation would benefit from revision or clarification to better ensure the regulation achieves its intended purpose to protect the public welfare by ensuring only those who are properly qualified engage in the profession, while also reducing or mitigating regulatory burdens on applicants seeking to obtain a license, and licensees who maintain a license.

Particular areas of focus during the regulatory review were (i) addressing exemptions from licensure requirements; (ii) entry requirements and addressing potential barriers to entry; (iii) requirements for CPE for renewal of a license; (iv) minimum requirements for home inspection contract; (v) minimum requirements for home inspection reports; and (vi) standards of conduct and practice, including conflicts of interest, and prohibited acts.

Substance

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.

Part I of the regulation is proposed to be amended as follows:

1. Add definitions for "course of construction inspection," "describe," and "direct supervision." These are terms previously established by way of Board guidance documents and are incorporated into the regulation. Addition of a term "qualifying experience" which is related to the changes for entry requirements in Part II of the regulation.
2. Remove definitions for "component," "prelicense education course," and "system" which do not need to be defined in the regulation.
3. Revision of the terms "fireplace," and "solid fuel burning appliances" to make the meaning of these terms clearer.
4. Revise section -20 to clarify that an inspection on an NRS includes any course of construction inspection. The term "course of construction inspection" is added to the definitions section.
5. Revise section -20 to provide that an unlicensed individual who is only conducting inspections of a component or system of a home is not considered to be performing a home inspection.

Part II of the regulation is proposed to be amended as follows:

1. Revise provisions in section -30 pertaining to the disclosure of criminal convictions. Applicants will now be required to disclose all misdemeanor convictions, except marijuana-related convictions, within three years of the date of application. Applicants are currently required to disclose all misdemeanor convictions involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury within five years of the date of application. These provisions are also revised to make the regulation more consistent with the provisions of § 54.1-204 of the Code of Virginia pertaining to criminal history.
2. Revise provisions in section -30 pertaining to disclosure of prior disciplinary action to make these provisions clearer. Applicants will be required to disclose any disciplinary action taken against a professional or occupational license issued to the applicant.
3. Significantly revise qualifications for licensure in section -32 to move to a points-based system. Currently most applicants must provide proof of having completed a combination of a minimum number of hours of Board-approved pre-license education and completed home inspections. Under the new system, applicants can qualify by receiving points for a combination of various types of education and experience. Applicants must meet a minimum threshold of points, and must have a minimum amount of points for the education and experience categories. All applicants will be required to pass the Board-approved license examination. Supporting provisions addressing full-time qualifying experience and proof of education/work experience at accredited colleges and universities are added.

Part III of the regulation is proposed to be amended as follows:

1. Provisions pertaining to CPE are revised. A new section -73 is added to outline the specific topics, based on content covered by the Board-approved license examination, that may be accepted by the Board. The new section also provides that a licensee may receive CPE credit for training completed to maintain other professional credentials that are related to home inspection services, such as radon testing certification, or asbestos or lead inspection. In addition, a licensee who has completed an NRS training module in order to receive an NRS specialty within one year prior to the expiration date of a license is exempted from the requirement to complete an NRS CPE for that renewal.
2. Procedures for renewal of a license in section -80 are revised to require submission of a completed renewal application and proof of completing CPE as part of a license renewal. Currently, a licensee is required to return a renewal notice, and only licensees with an NRS specialty are required to provide proof of completing NRS CPE.
3. Section -108 pertaining to licenses eligible for renewal or reinstatement after July 1, 2017, is repealed as it is no longer necessary.

Part IV of the regulation is proposed to be amended as follows:

1. Standards for home inspection contracts in section -120 are revised to require (i) that home inspection contracts be signed by the licensee and the client, or client's representative, before work begins or payments are accepted; (ii) that a copy of a fully-executed contract be delivered to the client or client's representative before work begins; and (iii) that modifications to the contract which change the cost, scope of work, or estimated completion date be in writing and signed by all parties. Provisions related to contract disclosures of potential conflicts of interest are revised to be more consistent with conflicts of interest standards in section -140.
2. Requirements for minimum provisions of a home inspection contract in section -120 are revised to require a contract contain (i) a statement in the contract disclosing that any modification to the contract which changes the cost, scope of work, or estimated completion date be in writing and signed by all parties; (ii) disclosure of the cancellation rights of the parties; and (iii) a general statement on the home inspector's liability. Requirements pertaining to a home inspector's identifying information are clarified, and will now permit an inspector to provide any contact information, including telephone number or email address, on the contract. Currently, an inspector must provide a telephone number.
3. Standards for home inspection reports in section -130 are revised to (i) clarify that a home inspection report is the written evaluation of readily accessible components of a home, as contemplated by the definition of "home inspection" in § 54.1-500 of the Code of Virginia; and (ii) provide a more clear requirement that a home inspection report identify components or systems that cannot be inspected, and include an explanation for why such components or systems were not inspected.
4. Minimum requirements for home inspection reports in section -130 are revised to make these provisions clearer. Provisions related to electrical systems in a home are revised to require reports note the presence or absence of both smoke detectors and carbon monoxide detectors. Currently, this is limited to just the presence or absence of smoke detectors.

Part V of the regulation is proposed to be amended as follows:

1. Section -140 is revised to clarify that a home inspector is prohibited from designing or performing repairs or modifications to a home on which the inspector has performed an inspection within 12 months after the date of inspection. The section is also revised to require a home inspector to disclose to a client whether the inspector represents the interests of any parties to a sale of a home on which the inspector has performed an inspection. Currently, the section prohibits the inspector from representing the financial interests of such parties. Section -140 is revised to add provisions that an inspector may provide services to a client in addition to a home inspection (for example radon testing), but that the home inspector must make certain disclosures regarding

such services, and that the home inspector must provide these services according to applicable laws and regulations.

2. Provisions related to reporting of criminal convictions in section -152 are revised to require a licensee to disclose any misdemeanor conviction, except for marijuana-related convictions. Currently, a licensee is required to report any misdemeanor convictions involving moral turpitude, sexual offense, non-marijuana drug distribution, physical injury, or which are related to performing a home inspection. The section is also revised to make the regulation more consistent with the provisions of § 54.1-204 of the Code of Virginia pertaining to criminal history.
3. Prohibited acts in section -155 are significantly revised. Subdivisions outlining specific prohibited acts are reordered to group similar types of offenses together. The existing prohibited act pertaining to a licensee's failure to safeguard the interest of the public is replaced with a clearer prohibited act addressing negligence, incompetence, and misconduct, which enumerates specific activities that fall under the scope of this prohibited act. The prohibited act pertaining to improper, fraudulent, or dishonest conduct is revised to enumerate specific activities that fall under the scope of this prohibited act, and remove language limiting the prohibited act to the performing of home inspections. Other prohibited acts are added to proscribe violations of specific sections in the regulation pertaining to standards for home inspection contracts and home inspection reports, conflicts of interest, maintenance of license and records, and responding to inquiries of the Board.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The primary advantages to the public and the regulated community are that the amendments to the regulation will:

1. Provide needed updating and clarification, including incorporating the Board's previous interpretive guidance;
2. Address concerns regarding barriers to licensure, including to individuals in neighboring states;
3. Enhance standards for home inspection contracts and home inspection reports that will better serve to protect members of the public; and
4. Enhance standards of conduct and practice that will better serve to protect members of the public.

An anticipated advantage is that the regulatory change potentially increases the number of individuals who may qualify for licensure, and, therefore, be available to members of the public to provide home inspection services. This may be of particular benefit to members of the public located in more rural areas of the Commonwealth where there are fewer licensed home inspectors whose services are available.

There are no identifiable disadvantages to the public. It is not anticipated that the regulatory change will create any substantial disadvantages to the regulated community.

The primary advantage of the regulatory change to the Commonwealth is that it will permit the agency to more ably administer the licensure program, including the process for renewal of licenses; and will permit the agency to more effectively address issues that are the subject of complaints from the public against licensees.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agencies are particularly affected by the regulatory change.

Localities Particularly Affected

No localities are particularly affected by the regulatory change.

Other Entities Particularly Affected

No other entities are particularly affected by the regulatory change.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

The Virginia Board for Asbestos, Lead, and Home Inspectors is amending the Home Inspector Licensing Regulations. The Board proposes to update and clarify definitions; revise the entry requirements, including establishing a points-based system for education and experience qualifications for licensure; revise the requirements for renewal of a license to include establishing a detailed list of CPE topics, permitting licensees to receive CPE credit for training to maintain credentials that are related to home inspection services, such as radon testing, asbestos inspection, or lead inspection; and requiring licensees to provide proof of completing CPE as part of a renewal application; revise the standards for conducting home inspections to include changes to the standards for home inspection contracts, including changes to the required minimum provisions for a contract, and required disclosures pertaining to potential conflicts of interest; and the standards for home inspection reports; revise the standard of conduct pertaining conflicts of interest; and revise the prohibited acts in the standards of conduct and practice. There is no economic or fiscal impact to state agencies, individuals, or businesses.

All costs incurred in support of board activities and regulatory operations are paid by the Department of Professional and Occupational Regulation (DPOR) and funded through fees paid by applicants and regulants. All boards within DPOR 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. DPOR allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There are no savings and no changes to costs, fees, or revenues of DPOR resulting from this regulatory change.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no savings and no changes to costs, fees, or revenues of other state agencies resulting from this regulatory change.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The primary benefit of the regulatory change to DPOR is that it should enable the agency to more ably administer the licensure program, including the process for renewal of licenses; and should enable the agency to more effectively address issues that are the subject of complaints from the public against licensees.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are no savings and no changes to costs, fees, or revenues of localities resulting from this regulatory change.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>None.</p>

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Home inspectors and those seeking to obtain a license, and business entities that offer home inspection services may be affected by this regulatory change.</p>
<p>Agency's best estimate of the number of such entities that will be affected. 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.</p>	<p>As of January 28, 2022 there are 1,318 home inspectors. In addition 28 training providers are affected by this change. All training providers are considered small businesses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the</p>	<p>a) Although there are no direct changes in costs to applicants or licensees, some savings could be</p>

<p>regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	<p>realized from the additional options available for training which could be offered at lower costs.b) There are no real estate development costs resulting from the change, c) There are no fees related to the change, d) No equipment or services are needed to be purchased from this change, and e) No specific additional time is required.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefits of the regulatory change include providing needed updating and clarification, including incorporating the Board's previous interpretive guidance; addressing concerns regarding barriers to licensure, including to individuals in neighboring states; enhancing standards for home inspection contracts and home inspection reports that will better serve to protect members of the public; and enhancing the standards of conduct and practice that will better serve to protect the public.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

Prior to undertaking this regulatory action, the Board has attempted to address some of the concerns brought to its attention through issuing interpretive guidance. However, these efforts are insufficient to adequately address these concerns on a long-term basis, as interpretive guidance cannot be a substitute for amending a regulation. No other viable alternatives to a regulatory change have been identified. One of the objectives of the regulatory review has been to identify areas where the regulation can be changed to reduce or mitigate regulatory burdens on applicants and licensees.

Home inspector licenses are issued to individuals, and not to business entities. However, many licensed home inspectors are likely owners or employees of business entities that meet the definition of "small business" in § 2.2-4007.1 of the Code of Virginia. In addition, training providers who must obtain approval from the Board for certain training courses (pre-license education, NRS training module, and NRS CPE) are likely business entities that meet the definition of "small business" in § 2.2-4007.1 of the Code of Virginia. No less intrusive or less costly alternatives to achieve the regulatory change were identified.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting

requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

Home inspector licenses are issued to individuals, and not to business entities. However, many licensed home inspectors are likely owners or employees of business entities that meet the definition of "small business" in § 2.2-4007.1 of the Code of Virginia. In addition, training providers who must obtain approval from the Board for certain training courses (pre-license education, NRS training module, and NRS CPE) are likely business entities that meet the definition of "small business" in § 2.2-4007.1 of the Code of Virginia.

The Board protects the public welfare, in part, by establishing through regulation the minimum requirements for the provision of home inspection services, and standards of conduct and practice for licensees. These standards are designed to prevent economic harm to the public that can be caused by (i) home inspectors who are not properly qualified to perform inspections; (ii) home inspections that are not properly performed; and (iii) home inspectors who lack the minimum competency or character to engage in the profession.

The Board considered the potential adverse effects of the proposed amendments on applicants and licensees during the development process. The Board determined the compliance and reporting requirements in the proposed amendments are necessary to protect the public welfare, including to permit the agency to more effectively address issues that are the subject of complaints from the public against licensees. These amendments do not pose an unreasonable administrative or financial burden. The enabling statute establishing the home inspector licensing program provides no exemption for small business; therefore there are no such exemptions contained in the proposed change.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This action is not being used to conduct a periodic review or small business impact review.

The Board last completed a periodic review in 2019, which included a small business impact review.

Section 54.1-501 of the Code of Virginia mandates the Board "[p]romulgate regulations for the licensing of home inspectors not inconsistent with this chapter..." The continued need for the regulation is established

in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals that meet specific criteria set forth in the statutes and regulations are eligible to receive a license. The Board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. The regulation is clearly written, easily understandable, and does not overlap, duplicate or conflict with federal or state law or regulation.

On August 15, 2019, the Board discussed the regulation and determined at that time that the regulation should not be amended or repealed, but should be retained in its current form.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
Chloe Lorenz, Inspection Certification Associates (Town Hall)	<p>The commenter requests the Board revise 15-40-32 to permit synchronous distance learning for pre-license education. The commenter suggests the following language:</p> <p>“Prelicense education courses must be approved by the board pursuant to Part VI (18VAC15-40-120 et seq.) of this chapter. No more than half of the required hours may be completed using asynchronous distance or online education technology. The remaining required hours must be completed via synchronous learning which includes online webinar technology.”</p> <p>Commenter noted that during the pandemic the organization was forced to conduct live classroom hours via webinar, and that pre-license students were successful in these online webinars. The commenter noted the benefits of this approach, including reduced costs on students, fewer distractions, and ability to engage with students outside their community.</p>	<p>The Board thanks the commenter and will consider this comment prior to adoption of proposed regulations.</p> <p>The regulation, if amended, would no longer impose a limitation on the number of pre-license education hours which may be completed using distance or online education.</p>
Donald Masters,	Commenter disagrees with the regulatory review committee recommendation that a home	The Board thanks the commenter and will consider this comment prior to the adoption of the proposed regulations.

<p>Master Home & Building Inspections LLC (Town Hall)</p>	<p>inspection report contain contact information of the client. Commenter believes anything more than the client's name is an imposition on the client's personally identifiable information. The commenter notes that home inspection reports are transmitted to multiple third parties during a real estate transaction, and there is no need for the client's personally identifiable information to be on the inspection report.</p>	<p>The Board notes the regulation, if amended, would no longer provide a specific requirement that a home inspection report contain the address and telephone number for the home inspector's client or authorized representative. The regulation would only require some type of contact information. Such contact information could be as little as an email address or a phone number. The burden imposed by the requirement is minimal to regulants and members of the public.</p> <p>To the extent a member of the public who is a client of a home inspector may be concerned about the transmission of any identifying information to third parties, an authorized representative of the client (e.g. a real estate agent or an attorney) may be identified on the inspection report instead of the client.</p>
<p>Donald Masters, Master Home & Building Inspections LLC (Town Hall)</p>	<p>Commenter requests the term "contact information" be defined, and that individual pieces of personally identifiable information be specified. DPOR should explain their "need to know" this information about clients.</p>	<p>The Board thanks the commenter.</p> <p>The term "contact information" does not require a definition in the regulation as the plain-language meaning of the term is applicable. The meaning of the term as it is commonly understood is sufficient for the regulation to be clear and understandable.</p> <p>The Board provides the minimum requirements for home inspection reports as part of its duty to protect the health, safety, and welfare of the public.</p> <p>The Department would typically only receive a home inspection report in connection with the investigation of a complaint. In addition to legal aspects of unambiguously identifying parties to a contract, the Department would need to ensure the validity of parties name to a contract in the event a complaint is filed with the Board. As part of the process for filing a complaint, the complaining party, which could be a client of a home inspector, would be requested to provide their name and contact information to the Department so that the Department may contact the complaining party. Finally, the Department can receive a complaint from any party concerning a regulant of the Board so it would not be accurate to state that only a party to a contract could be the complainant.</p>
<p>Donald Masters,</p>	<p>Commenter expressed concern regarding the committee</p>	<p>The Board thanks the commenter.</p>

<p>Master Home & Building Inspections LLC (Town Hall)</p>	<p>recommendation that a fully-executed copy of the contract be provided to the client prior to performing work. Commenter indicates the subject requires more discussion due to effects the requirement may have on inspectors.</p> <p>Commenter contends that since many clients do not complete a contract prior to the inspection, an inspector will be required to use a carbon-copy contract form, a digital application to allow online signature and filing of a form, or carry a mobile printer, in order to provide the client with a copy of an executed contract. Commenter adds that in some cases the inspector does not know what will not or cannot be inspected until the inspection is completed.</p>	<p>The Board provides the minimum requirements for home inspection contracts as part of its duty to protect the health, safety, and welfare of the public.</p> <p>The requirements that both parties execute the contract, and that the fully-executed contract be delivered to the client prior to the performing of work, help protect the public welfare by ensuring that the parties to the contract have properly memorialized their agreement to the terms of the inspection contract. The requirements help to protect both the home inspector and the client in the event of a misunderstanding or dispute.</p> <p>The regulation does not prohibit modifications to the contract in the event circumstances may change. However, the regulation does require that any modifications to the contract which change the cost, scope of work, or completion date be in writing and signed by all parties.</p>
<p>Donald Masters, Master Home & Building Inspections LLC (Town Hall)</p>	<p>Commenter expressed concern regarding moving exclusions to the home inspection report.</p>	<p>The Board thanks the commenter.</p> <p>The regulation, if amended, does not remove the requirement that exclusions to the home inspection be disclosed in the home inspection contract. The regulation would be revised to clarify that any exclusions to the home inspection must be disclosed in the home inspection contract. In addition to the requirement that exclusions to the home inspection be disclosed in the home inspection contract, the home inspection report must disclose any component or system that was not inspected, and the reason why such component or system was not inspected.</p>
<p>Donald Masters, Master Home & Building Inspections LLC (Town Hall)</p>	<p>The commenter believes that Virginia’s home inspector regulations are more prescriptive than those of other states. Commenter feels the specific requirements in Virginia’s regulations are not typical, and go beyond Virginia’s reputation of having limited regulatory impact necessary to protect the safety and well-being of the public.</p>	<p>The Board thanks the commenter.</p> <p>The Home Inspector Licensing Regulations are consistent with Virginia’s regulatory policy outlined in Governor’s Executive Order 14, amended July 16, 2018.</p> <p>The Board last conducted a periodic review of the regulation in 2019, to determine whether this regulation should be repealed, amended, or retained in its current form. Review included whether the regulation (i) was necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimized the economic impact on small businesses in a</p>

		manner consistent with the stated objectives of applicable law; and (iii) was clearly written and easily understandable. The Board voted to retain the regulation.
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Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Virginia Board for Asbestos, Lead, and Home Inspectors is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Lee D. Bryant, Regulatory Administrator, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, email: ALHI@dpor.virginia.gov, phone: (804) 367-0524, or fax (866) 350-5354. 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 (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
40-10	N/A	Incorporates by reference applicable definitions from §§ 54.1-500 and 54.1-517.2:1 of the Code of Virginia. Adds definitions that are necessary	Removes definitions of “component” and “system” as definitions of these terms are not required. The dictionary meaning of the terms is sufficient.

		<p>to make the regulation clear and understandable, and provides definitions for other specific terms used throughout the regulation.</p>	<p>Removes definition of “prelicense education course” as the definition is redundant and unnecessary.</p> <p>Adds definition for “course of construction inspection.” The term is needed to complement a change to section 40-20 regarding the necessity for licensure.</p> <p>Adds definition for “describe.” The term is being added to incorporate previous Board guidance regarding the meaning of this term as it is used in the regulation.</p> <p>Adds definition for “direct supervision.” The term is being added to incorporate previous Board guidance regarding the meaning of this term as it is used in the regulation.</p> <p>Adds definition for “qualifying experience.” This term is used in section -32 of the regulation pertaining to qualifications for licensure, and is necessary to make the regulation clear and understandable.</p> <p>The term “fireplace” is revised so the meaning of the term is consistent with the meaning of the term as it is defined in the USBC.</p> <p>The term “solid fuel burning appliances” is revised to make the meaning of the term clearer.</p> <p>The term “NRS specialty” was revised to make the meaning of the term clearer.</p>
40-20	N/A	<p>The section establishes the requirement for an individual who performs a home inspection to have a home inspector license, and that a home inspection on a new residential structure must be conducted by a licensed home inspector with an NRS specialty.</p>	<p>Subsection A is revised to remove unnecessary language relating to a home inspection being performed for compensation on a residential building. The definition of “home inspection” in § 54.1-500 of the Code of Virginia already specifies that home inspection is an inspection of a residential building for compensation.</p> <p>Subsection B is revised to remove unnecessary language specifying a home inspector must have taken a training module on the Virginia Residential Code. In order to receive an NRS specialty, a licensee will have needed complete an NRS training</p>

			<p>module which covers the Virginia Residential Code.</p> <p>Subsection B is revised to clarify that an inspection on a new residential structure includes any course of construction inspection. A course of construction inspection is an inspection conducted during the construction of a new residential structure. The change incorporates previous Board guidance that a licensee must have an NRS specialty to perform such inspections.</p> <p>A new subsection C is added to provide that an unlicensed individual who only conducts inspections of a component or system of a residential building (e.g. roof inspection, foundation inspection, HVAC inspection) is not considered to be performing a home inspection. The change incorporates previous Board guidance regarding inspections that do not fall within the meaning of home inspection.</p>
40-25	N/A	<p>This section establishes the basic procedures for submission and review of an application for licensure. The section provides that applications must be completed in accordance with application instructions and that an application is not complete until all required documents are received by the Board. The section further provides that applications will be reviewed within 30 days of receipt, and that an applicant has 12 months to complete the application process.</p>	<p>Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.</p>
40-30	N/A	<p>This section establishes the general requirements for licensure. An applicant is required to be at least 18 years of age, disclose a mailing address, disclose prior criminal convictions, and report prior administrative discipline.</p> <p>An applicant is required to disclose all felony convictions and all misdemeanor</p>	<p>The requirement for disclosure of misdemeanor criminal convictions in subsection D was revised to remove the provision that specified types of offenses be disclosed and reduce the timeframe from five years prior to application to three years prior to application.</p> <p>Changing the regulation to only require disclosure of misdemeanor convictions within three years of the application, instead of the current five years, will help</p>

		<p>convictions involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury.</p> <p>An applicant is required to report prior any prior disciplinary action taken against a license, certification, or registration held by the applicant.</p> <p>The section also requires an applicant to provide proof of having obtained liability insurance with a minimum limit of \$250,000 per occurrence.</p>	<p>reduce barriers to licensure for individuals with a prior criminal history.</p> <p>An applicant would be required to disclose all misdemeanor convictions, excluding marijuana convictions, during the three year period prior to application, instead of specified types of offenses. This makes the regulation easier to understand and removes the burden on an applicant with misdemeanor convictions to make a determination as to which criminal convictions should or should not be disclosed. It will also enhance the Board's protection of the public welfare to address an applicant's fitness for licensure, as applicants with a more recent criminal history may not be fit for licensure.</p> <p>Removed provisions in subsection D that (i) provided that a plea of <i>nolo contendere</i> is considered a conviction; and (ii) a certified record of conviction is <i>prima facie</i> evidence of guilt of a criminal conviction.</p> <p>Provisions regarding <i>nolo contendere</i> pleas and certified record of conviction as being prima facie evidence of guilt appear to be contrary to the provisions of § 54.1-204 of the Code of Virginia. Under the regulation, any conviction of a regulant must be considered in accordance with § 54.1-204 of the Code of Virginia.</p> <p>Subsection F was revised to provide that an applicant must disclose any action taken by a board or administrative body against a professional or occupational license, certificate, or registration issued to the applicant, and specify that disciplinary action includes (i) suspension; (ii) revocation; (iii) surrender; (iv) imposition of monetary penalty; (v) requirement for remedial education; or (vi) requirement for other remedial action. The subsection was also revised to clarify the Board may deny licensure based on any prior disciplinary action taken by any board or administrative body.</p> <p>The revisions to subsection F make the regulation clearer as to what disciplinary</p>
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			<p>matters an applicant is required to report to the Board, and make clearer the scope of the Board’s authority to deny an application based on prior disciplinary action taken against a professional or occupational license issued to an applicant.</p> <p>Added to language to subsection G to clarify that evidence of insurance provided by an applicant must be satisfactory to the Board.</p> <p>Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.</p>
40-32	N/A	<p>This section establishes the qualifications for licensure to include a combination of education, by completion of Board-approved pre-license education, and experience, by proof of completion of home inspections. Applicants must have passed the Board-approved license examination.</p> <p>Applicants must provide proof that completed home inspections were under the direct supervision of a licensee, unless the inspections were completed prior July 1, 2017, when home inspectors were not required to be licensed.</p> <p>The section allows applicants who have more than 10 years of experience as a home inspector prior to July 1, 2017, to qualify for licensure without having completed Board-approved pre-license education.</p> <p>The section specifies that pre-license education courses must be approved by the Board, and that no more than half of the requirement pre-license education course hours may</p>	<p>The qualifications for licensure are significantly revised. Applicants are still required to pass the National Home Inspector Examination, which is the Board-approved examination. However, an applicant may qualify for licensure based on a combination of education and experience using a points-based system.</p> <p>Table 1 details the types of qualifying education and the points assigned. Completion of Board-approved pre-license education courses can qualify an applicant, but an applicant may also qualify based on proof of completion of industry-related classes from accredited colleges or universities, or proof of completion of home inspection specific courses.</p> <p>Table 2 details the types of experience and the points assigned. Applicable experience includes (i) full-time qualifying experience; (ii) completion of home inspections; (iii) membership in a home inspector trade or professional association; (iv) teaching for compensation in an industry-related discipline at an accredited college or university, trade school, or private business; (v) being the qualified individual of a licensed contractor in specified classifications or specialty services; (vi) licensure as an architect or professional engineer; and (vii) certification as a building code official.</p> <p>An applicant must have a minimum of 20 qualifying points to qualify for licensure. Of the minimum 20 qualifying points, an</p>

		<p>be completed using distance or online education.</p> <p>The section provides that the National Home Inspector Examination is the Board-approved license examination.</p>	<p>applicant must have a minimum of five (5) points from each of Table 1 and Table 2. Each table establishes the maximum allowable points that may be assigned to an applicant for the various types of education and experience outlined in the tables. Applicants cannot be assigned points, except as provided in the tables, from multiple areas in each table for the same activity.</p> <p>For example, an applicant may submit proof of having completed a 35-hour Board-approved pre-license education course. The applicant would be assigned five (5) points toward the minimum required 20 points. Were the applicant to provide proof of completing a second 35-hour education course, the applicant could not receive an additional 5 points. The maximum number of points the applicant could receive for this activity is set at 5. However, an applicant could provide proof of having completed up to three (3) 4-hour courses specific to topics covered on the home inspector examination. The applicant would be assigned one (1) point for each course completed, for an additional 3 points toward the required 20.</p> <p>In addition, experience qualifications are changed to allow an applicant to provide proof of completion of home inspections without the direct supervision of a licensee if the inspections were lawfully conducted under the applicable laws of the jurisdiction.</p> <p>The qualifications were significantly revised, in part, to address issues brought to the attention of the Board and agency staff following the implementation of home inspector licensure in 2017.</p> <p>Individuals who perform home inspections in neighboring states, such as Tennessee, have encountered substantial difficulty in obtaining licensure in Virginia due to the requirement in the current regulation that qualifying inspections be conducted under the supervision of a Virginia-licensed home inspector. Out-of-state applicants have reported being unable to find Virginia licensees that are either</p>
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		<p>willing or available to them so that the applicants can perform the inspections needed to qualify for licensure. There have also been instances where licensees are charging individuals seeking licensure substantial fees to permit the individuals to perform inspections under their supervision.</p> <p>A new subsection B outlines the criteria for what may be accepted as “qualifying experience” under Table 2. An applicant may receive two (2) qualifying points toward meeting experience requirements for each month of full-time qualifying experience.</p> <p>The experience must have been gained by assisting a licensed home inspector under the inspector’s direct supervision, or through lawfully performing home inspections as authorized under the laws of the jurisdiction.</p> <p>Subsection B establishes how full-time qualifying experience is to be calculated. A month of full-time qualifying experience is a minimum 146 hours during a one-month period, or a minimum of 18 workdays in a one-month period. An applicant may receive partial credit if experience was gained working less than full-time.</p> <p>Experience must be verified by either (i) a licensed home inspector; (ii) the qualified individual or responsible manager of a licensed contractor; or (iii) any combination of at least three licensed real estate professionals or home inspector clients.</p> <p>A new subsection C outlines the criteria for acceptable documentation for an applicant seeking to receive (i) qualifying points under Table 1 for completion of classes from an accredited college or university; or (ii) qualifying points for teaching at an accredited college or university under Table 2.</p> <p>Under Table 1, an applicant may receive five (5) points, up to a maximum of 5, for successfully passing a 3-credit hour minimum class in home inspection from an accredited college or university; or</p>
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			<p>one (1) point, up to a maximum of three (3), for successfully passing a 3-credit hour minimum class in specified disciplines. Under Table 2, an applicant may receive two (2) points, up to a maximum of six (6), for one year of teaching at an accredited college or university in specified disciplines.</p> <p>An accredited college or university is one that is accredited by (i) the Commission of Colleges of the Southern Association of Colleges and Schools, (ii) a regional or national accreditation association; or (iii) an accrediting agency that recognized by the U.S. Secretary of Education.</p> <p>If seeking qualifying education points, the applicant must submit a transcript from the accredited college or university. If seeking qualifying experience point, the applicant must submit satisfactory evidence of having been employed by the accredited college or university.</p> <p>In addition, the provision in the current regulation that no more than half of the required pre-license education hours be completed with distance or online education is being removed. Removal of this provision allows for greater flexibility for individuals seeking licensure to meet entry qualifications.</p> <p>The revisions are intended to reduce barriers to entry into the profession.</p> <p>Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.</p>
40-33	N/A	This section requires applicants to adhere to the examination instructions and procedures established by the Board or the organization that is administering the Board-approved examination. Failure to comply with examination instructions and procedures are grounds for denial of the application.	Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.
40-35	N/A	This section establishes the requirements for a home inspector to receive the NRS specialty designation.	Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.

			Subdivision 2 is revised to correct an error in the citation of Part VI of the regulation.
40-48	N/A	This section provides for general requirements applicable to fees received on behalf of the Board. Fees are non-refundable and the date on which a fee is received determines whether the fee was received on time.	Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.
40-60	N/A	This section provides that licenses issued by the Board have a term of two (2) years, ending on the last day of the month in which the license was issued.	Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.
40-72	N/A	<p>This section provides that a licensee must complete 16 contact hours of CPE in order to renew a license. CPE may be completed through classroom instruction, distance learning, or online education. CPE is limited to content areas covered by the Board-approved license examination.</p> <p>A licensee may not receive CPE credit for the same training course more than once for the same license cycle. Licensees who complete the initial NRS training module to receive an NRS specialty designation may count completion of that course toward meeting CPE requirements.</p>	<p>Subsection A of the section is revised to more clearly state a licensee is required to complete CPE.</p> <p>Subsection B is revised to broaden content areas acceptable for CPE credit. The list of acceptable topics is enumerated under proposed section -73.</p> <p>Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.</p>
N/A	40-73	N/A – No current requirements.	<p>This new section outlines home inspection topics that the Board will accept as CPE toward renewal of a license.</p> <p>As revised, the section provides greater clarity to licensees as to topics that are acceptable for CPE credit. Currently, to determine acceptable CPE topics a licensee would need to consult examination information provided by the Examination Board of Professional Home Inspectors, or contact the agency. The list of topics detailed in subsection A of this new section is based on the content</p>

			<p>covered by the National Home Inspector Examination.</p> <p>The section also provides that a licensee may receive a maximum of four (4) contact hours CPE credit if completing training required to maintain credentials related to home inspection services, such as asbestos or lead inspection, or radon testing.</p> <p>This provision provides more flexibility to licensees who hold credentials in related professions to apply professional education for maintaining such credentials to renewal of their home inspector license.</p> <p>Subsection C of this new section provides that a licensee may apply completion of an NRS CPE course toward the required 16 contact hours needed for renewal. Such provision exists in the current regulation, but is being moved from section -75 to this new section.</p>
40-75	N/A	<p>This section provides that a licensee who holds an NRS designation must complete a Board-approved NRS CPE course in order to maintain the NRS designation. Completion of the course can be applied toward the 16 contact hours of CPE required for renewal of a license.</p>	<p>The provision of this section that permits a licensee to apply NRS CPE toward completion of the 16 contact hours of CPE to renew a license is removed and relocated to the new section -73.</p> <p>The section is revised to add a new provision that a licensee who has completed an NRS training module to receive an NRS designation within one year prior to the expiration date of the license is not required to complete an NRS CPE course in order to renew the license. This change incorporates previous Board guidance to ensure that licensees who have recently completed the NRS training module to receive an NRS designation are not required to then also complete an NRS CPE.</p> <p>The section is revised to remove reference to NRS CPE being a four hour course. This change was made to make this section of regulation clearer. A Board-approved NRS CPE is required to be a minimum of four (4) contact hours.</p> <p>Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.</p>

40-76	N/A	<p>This section provides that a licensee may receive CPE credit for teaching a course that meets the requirements for acceptable CPE in the regulation, but may not receive credit multiple times in a license cycle for the same course.</p> <p>The section also provides a licensee may receive two (2) hours of CPE no more than once per license cycle for development or substantial updating of a CPE course.</p>	<p>Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.</p>
40-78	N/A	<p>This section establishes a recordkeeping requirement for documentation of a licensee’s CPE.</p> <p>Licensees are required to maintain evidence of satisfactory completion of CPE for at least three years following the end of the license renewal cycle for which the CPE was taken. Records of CPE completed must include (i) information pertaining to the training provider; (ii) dates the licensee participated in training; (iii) a description of subject matter and content of the covered by the training; and (iv) a statement from the CPE provider of the contact hours completed.</p> <p>The section provides that the documentation required to be maintained by a licensee must be provided to the Board or its agent upon request, and that the Board has the authority to conduct an audit of a licensee to ensure compliance with CPE requirements.</p> <p>The section further provides a licensee may request additional time to meet CPE requirements, but that CPE completed during a license</p>	<p>Subdivision A 3 of this section is revised to provide that documentation of CPE to be maintained by a licensee must include descriptive material of the subject matter presented that covers the content areas covered by the Board’s examination or the list of acceptable topics provided for in section -73.</p> <p>The change is intended to complement the change made to section -72 regarding content that may be accepted for CPE credit.</p> <p>The section is revised to make minor corrections for clarity or style. Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.</p>

		renewal cycle to meet the requirements for a preceding cycle are only valid for that preceding renewal cycle.	
40-80	N/A	<p>This section outlines the procedures for renewal of a license.</p> <p>The Board will mail a renewal notice to a licensee prior to the expiration date on the license. A licensee is required to return the renewal notice to the Board, along with appropriate fee, and proof of insurance. A licensee with an NRS specialty designation must submit proof of completion of NRS CPE.</p> <p>The section also provides that a licensee’s failure to receive the renewal notice does not relieve the licensee of the obligation to renew, and prescribes how a licensee may renew when the licensee does not receive the renewal notice.</p> <p>The section further provides that the date a renewal application is received by the Department determines whether the renewal is received on time. A licensee’s submission of a renewal application is affirmation by the licensee that the licensee is in compliance with CPE requirements and in compliance with the Board’s regulations.</p>	<p>The section is revised to require licensees to submit a completed renewal application to align renewal procedures with agency practice for renewals where a licensee must submit additional documents to renew a licensee. Renewal forms are sent to the licensee as part of the renewal notice.</p> <p>The section is revised to require a licensee to provide proof of completion of all CPE for the renewal cycle in order to renew. The change is based on information received from periodic audits of licensees which revealed non-compliance with CPE requirements. When renewing a license, the licensee certifies the licensee has complied with CPE requirements. However, audits have shown that some licensees are not in compliance. Licensees that fail to respond to an audit, or provide incomplete documentation in response to an audit, are referred for disciplinary action. This process consumes substantial agency time and resources to pursue compliance.</p> <p>Requiring licensees to provide proof of completing CPE when renewing licenses is expected to provide greater assurance that licensees will remain in compliance because licensees will not be able to renew without meeting CPE requirements.</p> <p>Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.</p>
40-90	N/A	<p>This section outlines the requirements for reinstatement of a license that has expired.</p> <p>A licensee that does not renew the license within 30 days after the expiration date of the license must pay a reinstatement fee, submit proof of insurance, and</p>	<p>Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.</p>

		submit proof of completion of required CPE. A licensee has two years from the date of license expiration to reinstate a license, after which time the individual would be ineligible to reinstate the license, and must apply as a new application.	
40-105	N/A	<p>This section provides that a licensee who reinstates an expired license will be regarded as having been continuously licensed and is subject to the Board's jurisdiction for their activities while the license was expired.</p> <p>The section further provides that any regulated activity conducted while a license is expired may constitute unlicensed activity and may be subject to prosecution under applicable provisions of statute.</p>	Minor stylistic changes are made to replace the word "shall" with "must" or "will" where appropriate.
40-108	N/A	This section provides that licensees who were eligible for renewal or reinstatement of a license on or after July 1, 2017, the date when the licensure requirement became effective, must meet the requirements for renewal or reinstatement in the regulation effective as of July 1, 2017.	This section of the regulation is repealed as it is no longer necessary. Under § 54.1-517.2 of the Code of Virginia, any certified home inspector who held an unexpired certificate as of June 30, 2017 became automatically licensed as a home inspector. This provision of the regulation was designed to address those with existing licenses whose licenses became eligible for renewal or reinstatement after July 1, 2017, by stipulating these licensees had to meet the new renewal and reinstatement requirements.
40-120	N/A	<p>This section outlines the minimum standards and requirements for home inspection contracts.</p> <p>Contracts must be in writing, and signed by the parties. Contracts must clearly specify terms, conditions, limitations, and exclusions to the work the home inspector will perform.</p> <p>Contracts must contain certain information pertaining</p>	The section is revised to add provisions that (i) the home inspection contract must be signed by the licensee and the client, or the client's authorized agent, prior to commencement of work or acceptance of payments; (ii) the licensee must make prompt delivery of the fully executed contract to the client, or client's authorized representative, before work begins; and (iii) any modification to the contract which changes the cost, scope of work, or estimated completion date, be in writing and signed by all parties.

	<p>to (i) the home inspector, including name, contact information, and license information; (ii) the client; (iii) the property to be inspected; (iv) cost; and (v) the scope of the home inspection. Contracts must also contain the estimated delivery date of the home inspection report.</p> <p>Contracts must also contain a provision that the home inspection is not an inspection for regulatory compliance, such as compliance with the USBC or local ordinances.</p> <p>The section details several matters that, if not included as part of the inspection, must be disclosed as being exclusions to the contract. These include (i) non-accessible components or systems; (ii) the remaining life of systems or components; (iii) suitability of the property for any specialized use; (iv) market value of the property or marketability; and (v) advisability of the purchase of the property.</p> <p>Contracts must also disclose in writing that the inspection is based on upon visual observation of existing conditions at the time of inspection, and are not intended to be construed as a guarantee, warranty, or a form of insurance.</p> <p>In cases where a home inspector recommends a person to a client to perform repairs or modifications to the inspected property, the contract must disclose any financial interest the home inspector has with the person whom the inspector recommends.</p>	<p>These provisions have been added to help to protect the public, and also licensees, by ensuring that before money changes hands and work is performed that the contracting parties have memorialized their agreement, and that the client has a copy of the same. This will help to minimize disputes, and may help to resolve some disputes that might occur. For the same reasons, certain modifications to the contract should be reduced to writing and signed by the parties.</p> <p>Subsection B to the section is revised to clarify the requirements for information that must be included in the contract. Information related to the home inspector, including license information, is consolidated into subdivision B.1. The subsection is revised to more clearly state a contract must list all areas and systems that will be inspected. The subsection is revised to more clearly state that exclusions to the home inspection be disclosed.</p> <p>Subsection B is revised to require the contract include a statement disclosing that any modifications to the contract the change the cost, scope of work, and estimated completion date be in writing and signed by all parties. This new disclosure requirement complements the revision to subsection A discussed above by putting a consumer on notice that certain changes to the contract be in writing and signed by the parties.</p> <p>Subsection B is revised to require the contract (i) disclose the cancellation rights of the parties; and (ii) contain a general statement on the limits of the home inspector's liability. These requirements are intended to protect both the consumer and the licensee.</p> <p>Subsection D is revised to clarify the contract disclosure requirement for a licensee who has a financial interest, or reasonably expects to have a financial interest, with a person whom the licensee recommends to a client for repairs or modifications to a home. Subdivision A.3 of section -140 (Conflicts of Interest) require a licensee to provide</p>
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			<p>written documentation to a client to disclose any financial interest the licensee has or reasonably expects to have with a person who the licensee recommends to a client to perform repairs or modifications. The change ensures these disclosure provisions in the regulation are consistent.</p> <p>A new subsection is added to require a licensee to disclose in a home inspection contract whether the licensee has designed or performed repairs or modifications to, or has inspected, the home to be inspected within the preceding 12 months. The change, in part, incorporates into contract disclosure requirements provisions that are outlined in subdivision A.2 of section -140 pertaining to homes where a licensee has designed or performed repairs within the 12 months preceding the inspection. The change also helps to protect consumers by ensuring a consumer is aware when the home inspector has previously inspected the same property.</p> <p>The changes to subsection D and the new subsection E are intended to ensure a client is aware of potential conflicts of interest.</p> <p>Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.</p>
40-130	N/A	<p>This section outlines the minimum standards and requirements for home inspection reports.</p> <p>Home inspection reports must contain (i) certain information pertaining to the licensee, including the licensee’s name, address, and license information; (ii) certain information pertaining to the client; (iii) the address of the home that is inspected; and (iv) the date and time of the inspection, and weather conditions at the time of inspection.</p> <p>The section details the systems and components of</p>	<p>The section is revised to add a subsection which clarifies that a home inspection report is a written evaluation of the readily accessible components and systems in a residential building or NRS, and includes a list of applicable components and systems. This is derived from the definition of “home inspection” in § 54.1-500 of the Code of Virginia, which establishes that a home inspection must include such written evaluation.</p> <p>Subsection B is revised to clarify the information pertaining to the licensee that must be included in the home inspection report. The revisions provide flexibility to regulants by allowing regulants to provide either a telephone number or email address, or other contact information in the report.</p>

		<p>a home that, unless limited by the home inspection contract, are to be inspected and included in the home inspection report. The home inspector must describe the composition and characteristics of the readily accessible systems and components, and describe readily observable defects of the same.</p> <p>The section provides that a home inspector is not required to put into operation systems that are turned off, winterized, or secured so as to not respond to normal activation.</p> <p>The section further provides that if a home inspector observes yellow corrugated stainless steel tubing (defined in § 54.1-517.2:1 of the Code of Virginia) in a home built prior to the adoption of the 2006 Virginia Construction Code, the home inspector must include this observation in the inspection report, along with a statement required by § 54.1-517.2:1 of the Code of Virginia.</p>	<p>Similarly subsection B is revised to now only require contact information for the home inspector's client or authorized representative, instead of requiring an address and telephone number.</p> <p>Subsection C is revised to remove language indicating that the home inspection report must include information as to why certain components (e.g. crawl space, roof covering) could not be inspected. Similarly, references to certain components (e.g. attic, doors, and windows) being readily accessible in order to be included in the report are removed. These matters are addressed in a new subsection D.</p> <p>Subsection C is revised to provide greater clarity as to the systems and components that are to be inspected and included in the home inspection report, and those items that are not required to be part of the inspection and report.</p> <p>Subdivision C.6 is revised to require the inspection note the presence or absence of carbon monoxide detectors, in addition to smoke detectors. This change was made given that carbon monoxide detectors are increasingly common equipment in homes.</p> <p>A new subsection D is added to specify that the inspection report identify any component or system that could not be inspected, and an explanation for why the component or system could not be inspected. Similarly, the provisions regarding systems that are turned off or winterized is revised to clarify the home inspection report must state the reason why such systems or components were not inspected.</p> <p>Where applicable, the term residential property is replaced with "residential building or NRS" for clarity and consistency in the regulation.</p> <p>Minor stylistic changes are made to replace the word "shall" with "must" or "will" where appropriate.</p>
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<p>40-140</p>	<p>N/A</p>	<p>This section outlines conduct that is considered a conflict of interest and either proscribes such conduct, or requires certain disclosures be made by the home inspector to the client.</p> <p>A home inspector is prohibited from designing or performing repairs or modifications to a home on which the inspector has performed an inspection within 12 months after the date of the inspection, unless the inspector purchased the home after performing the inspection.</p> <p>A home inspector is prohibited from performing a home inspection on a home where the inspector has designed or performed repairs or modifications in the preceding 12 months unless the specifics of such repairs or modifications are disclosed in the home inspection contract.</p> <p>A home inspector is prohibited from referring a client to another person to make repairs or modifications to a home which the inspector has performed an inspection unless the inspector provides disclosure to the client the inspector's financial interest the inspector has, or reasonably expects to have, with the person recommended.</p> <p>A home inspector is prohibited from representing the interests of the parties to the transfer or sale of a home on which the inspector has performed an inspection.</p> <p>A home inspector is prohibited from performing a home inspection under an</p>	<p>Subdivision A.1 is revised to clarify that a home inspector will not design or perform repairs or modifications to a home where the inspector has performed an inspection within the preceding 12 months by removing language indicating the repairs or modifications are the result of the findings of an inspection.</p> <p>Subdivision A.3 is revised to clarify an inspector must disclose any financial interest the inspector has or reasonably expects to have with a person who is recommended to a client to make repairs or modifications.</p> <p>Subdivision A.4 is revised to require an inspector to make a disclosure to a client whenever the inspector represents the interests of any parties to the sale or transfer of a home, rather than impose a strict prohibition. Otherwise, an inspector is not permitted to represent the interests of the parties to the sale or transfer of a home.</p> <p>Subsection B is revised to clarify that the home inspector's obligations under 18VAC15-40-180 (i.e. to respond to inquires of the Board or its agents) are not applicable to the prohibition on an inspector from disclosing information concerning the results of a home inspection without consent of the client. This change was made to address concerns that home inspectors could cite this provision of the regulation in order to justify not cooperating with the Board during administrative investigations of complaints filed against licensees.</p> <p>Subsection C is revised to clarify that a home inspector not accept compensation from more than one interested party for the home inspection performed on the same property without consent of all parties. Similarly, subsection D is revised to clarify that a home inspector not accept commissions or allowances from other parties dealing with the client in connection with a home inspection.</p> <p>A new subsection is added to clarify that a home inspector may provide other services to a client (e.g. radon inspection or asbestos inspection) but that a home</p>
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		<p>agreement where the inspector's compensation or future referrals are contingent upon the inspector's findings or the sale of the property.</p> <p>The section further provides that an inspector not disclose information concerning the results of the inspection without permission of the client, unless there is a situation where there is imminent endangerment to life or health.</p> <p>The section further provides that an inspector not accept compensation from more than one party for the same service on the same property without the consent of all interested parties.</p> <p>The section further provides that an inspector not accept commissions or allowances from other parties connected to the home inspection, and cannot enter into any financial relationship with any party that may compromise the inspector's commitment to the best interest of the inspector's client.</p> <p>The section also provides that the home inspection not be used as a pretext to solicit or obtain work in another field, except for additional diagnostic inspections or testing.</p>	<p>inspector must disclose to the client, in writing and incorporated into the home inspection contract or other separate agreement, the additional services to be performed and how these might conflict with the home inspection. The additional services must be performed according to applicable law or regulation. These provisions are intended to address additional services that home inspectors may offer in connection with a home inspection, but which do not fall within the statutory scope of a home inspection. The agency has in the past received complaints where home inspectors have offered and performed additional services such as radon inspections without the appropriate licensure or certification, or appropriate qualification or training. This will help to address such non-home inspection services that are provided by a home inspector under the imprimatur of the inspector's licensure.</p> <p>Minor stylistic changes are made to replace the word "shall" with "must" or "will" where appropriate.</p>
40-145	N/A	<p>This section provides that a home inspector undertake professional assignments only when qualified by education or experience. The section further provides that a home inspector not misrepresent the home inspector's qualifications or scope of responsibility to a prospective client, an existing client, or employer.</p>	<p>Minor stylistic changes are made to replace the word "shall" with "must" or "will" where appropriate.</p>

40-150	N/A	<p>This section outlines the Board’s general authority to impose sanctions on a licensee for violation of the regulations of the Board, or applicable statute.</p>	<p>The section is revised to remove reference to the Board’s authority to impose probation on a licensee. Review of applicable statute, § 54.1-516 of the Code of Virginia, indicates the Board may not have the power to impose probation on a licensee.</p> <p>The section is revised to clarify the Board may take disciplinary action when a licensee is found to have violated, or cooperated with others, in violating any provision of the Board’s regulations. The revised language permits the Board to take action against a home inspector licensee in instances where the licensee may have violated regulations related to other disciplines (e.g. asbestos or lead) falling under the Board’s jurisdiction. The Board is aware of instances where a home inspector licensee has engaged in activities falling under these other disciplines while performing a home inspection. This change will better allow the Board to address those instances of misconduct.</p>
40-152	N/A	<p>This section establishes that a home inspector must notify the Board when (i) the home inspector has been administratively disciplined by another board or administrative body; (ii) has voluntarily surrendered a license in connection with a disciplinary action in another jurisdiction; (iii) or has been convicted or found guilty of a felony, or misdemeanor for certain classes of offenses.</p> <p>Review of any reported criminal convictions is subject to the requirements of § 54.1-204 of the Code of Virginia.</p> <p>The section further requires a home inspector to notify the Board in writing of such adverse action within 30 days, and provide a copy of the order or other supporting documentation.</p>	<p>The requirement for reporting of misdemeanor criminal convictions in subdivision A.3 was revised to remove the provision that specified certain types of offenses be reported. A licensee will be required to report any misdemeanor conviction, with the exception of marijuana convictions. This change will make the regulation easier to understand and removes the burden on an applicant with misdemeanor convictions to make a determination as to which criminal convictions should be reported, and which should not. It will also enhance the Board’s protection of the public welfare to address an applicant’s fitness for licensure.</p> <p>Removed provisions in subsections A and B that (i) provided that a plea of <i>nolo contendere</i> is considered a conviction; and (ii) a certified record of conviction is <i>prima facie</i> evidence of guilt of a criminal conviction.</p> <p>Provisions regarding <i>nolo contendere</i> pleas and certified record of conviction as being <i>prima facie</i> evidence of guilt appear to be contrary to the provisions of § 54.1-204 of the Code of Virginia. Under</p>

			<p>the regulation, any conviction of a regulant must be considered in accordance with § 54.1-204 of the Code of Virginia.</p> <p>Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.</p>
40-155	N/A	<p>This section establishes specific prohibited acts which may be grounds for disciplinary action against a licensee.</p> <p>Prohibited acts include (i) obtaining or attempting to obtain a license by false or fraudulent representation; (ii) failing to act as a licensee in such a manner as to safeguard the interests of the public; (iii) engaging in improper, dishonest, or fraudulent conduct in conducting a home inspection; (iv) performing a home inspection when not qualified by training or experience to competently perform any part of the home inspection; (v) having been convicted, found guilty of criminal offenses or disciplined in any jurisdiction; and (vi) failing to report a conviction, finding of guilt, or disciplinary action within 30 days.</p>	<p>This section is significantly revised. Among other changes noted below, the subdivisions outlining the offenses are revised to group similar types of offenses together. The general “catch all” prohibited act is provided first, followed by (i) offenses related to obtaining and maintaining licensure, (ii) offenses related to the performing of home inspections and reporting findings; and (iii) offenses related to failing to respond to inquiries of the Board.</p> <p>The “catch all” prohibited act in the current subdivision 3 is revised to expand the scope prohibited act to include actions of cooperating with another, or combining, conspiring with or acting as an agent, partner, or associate with another to violate provisions of Chapters 1, 2, 3, and 5 of Title 54.1 of the Code of Virginia, or any regulations of the Board (to include the Board’s asbestos and lead regulations). This change is made to reflect agency practice regarding “catch all” prohibited acts in other DPOR regulations.</p> <p>Existing subdivision 1 is revised to include (i) actions of maintaining, renewing, or reinstating a license by false or fraudulent representation; and (ii) furnishing substantially inaccurate or incomplete information to the Board in obtaining, renewing, or maintaining a license. These changes are made to clarify the Board’s ability address instances where a licensee has falsely renewed or maintained a license without meeting applicable requirements. In addition, the changes allow for the Board to address instances where a licensee may not act with a fraudulent intent, but nonetheless provides inaccurate or incomplete information to the Board that induces the Board to issue or renew a license. These changes make this prohibited act more consistent with</p>

			<p>similar provisions in other DPOR regulations.</p> <p>The prohibited act in current subdivision 2 prohibiting the performing of improvements or repairs to a home as the result of the findings of an inspection within 12 of the inspection is removed. This conduct is proscribed by section - 140.</p> <p>The prohibited act in current subdivision 12 is revised to include as a prohibited act the failure to maintain records as required by section -160.</p> <p>The prohibited act in current subdivision 4 is revised to clarify that a licensee's having been convicted or found guilty in any jurisdiction, or disciplined by any jurisdiction, board, or administrative body is a prohibited act. The intent of the change is to make clearer the prohibited act is applicable in cases where a licensee is convicted of a criminal offense outside of Virginia, or is disciplined by any regulatory body regardless of whether the regulatory body is in Virginia, or regulates professions other than home inspectors. Virginia home inspector licensees may operate and hold licenses in other states, particularly neighboring states. In addition, home inspector licensees may hold licenses in other regulated professions, including contracting and real estate. The Board has the authority to review criminal convictions and disciplinary actions taken against the individuals to evaluate whether allowing the individual to hold a home inspector license poses a risk to the public welfare. The prohibited act in current subdivision 5 is revised to be consistent with this revised wording.</p> <p>A new prohibited act related to a licensee's failure to use a contract that complies with section -120 is added.</p> <p>A new prohibited act related to a licensee's failure to produce a home inspection report that complies with section -130 is added.</p>
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			<p>would constitute negligence/incompetence/misconduct.</p> <p>The current subdivision 9 (failing to maintain proficiency to perform home inspections) is removed. This prohibited act is unnecessary since a licensee is required to complete CPE in order to maintain a license.</p> <p>Current subdivision 7 is revised to enumerate specific types of conduct that constitute improper, fraudulent, and dishonest conduct. Such conduct includes (i) making any misrepresentation or making a false promise that might influence, persuade, or induce; (ii) knowingly misrepresenting facts in making a professional opinion; (iii) intentional and unjustified failure to complete work; and (iv) retention or misapplication of funds for work that is not performed. Language limiting the prohibited conduct to the conducting of home inspections is removed to permit the Board address improper, fraudulent, or dishonest conduct that may occur outside of the conduct of the inspection, such as in soliciting a contract or following the production of the home inspection report.</p> <p>A new subdivision is added to make failure to comply with the requirements of section -180 a prohibited act. Adding the subdivision will allow the Board to more directly address issues where a licensee fails to respond to an inquiry of the Board, or the Board’s agent, including responding to regulatory complaints and producing records. These changes make this section of the regulation more consistent with other DPOR regulations.</p> <p>Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.</p>
40-160	N/A	This section establishes requirements for a licensee to report certain changes to the Board including (i) changes of address; and (ii) changes of name, within 30 days of the change.	Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.

		<p>The section requires a licensee to report changes to the licensee’s insurance, including cancellation, amendment, or expiration.</p> <p>The section further requires a licensee to retain all records pertaining to home inspections, including reports, for three years from the date of the inspection.</p>	
40-180	N/A	This section establishes the requirement for licensees to respond to inquiries made by the Board or its agent.	Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.
40-210	N/A	The section outlines the application requirements for approval of a pre-license education course.	Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.
40-220	N/A	This section outlines the requirements to receive approval as a pre-license education course.	Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.
40-230	N/A	This section outlines the application requirements for approval of a NRS training module or NRS CPE training course.	Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.
40-240	N/A	This section outlines the requirements to receive approval as an NRS training module.	Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.
40-250	N/A	This section outlines the requirements to receive approval as an NRS CPE course.	Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.
40-260	N/A	This section outlines the requirements for documentation an approved training provider must provide to each student as proof of course completion.	Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.
40-270	N/A	This section outlines recordkeeping requirements for training providers of approved courses.	Minor stylistic changes are made to replace the word “shall” with “must” or “will” where appropriate.