



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| <b>Agency name</b>                                 | Board for Asbestos, Lead, Mold, and Home Inspectors |
| <b>Virginia Administrative Code (VAC) citation</b> | 18VAC15-20  |
| <b>Regulation title</b>                            | Asbestos Licensing Regulations                      |
| <b>Action title</b>                                | Fee Adjustment                                      |
| <b>Date this document prepared</b>                 | March 16, 2012                                      |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

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

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

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

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if*

*applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.*

- 1) § 54.1-113 (Callahan Act) requires regulatory boards to periodically review and adjust fees.  
 § 54.1-201.4 provides the authority to regulatory boards to levy and collect fees.  
 § 54.1-304.3 describes the authority of DPOR to collect and account for fees.  
 § 54.1-308 requires costs to be paid by regulatory boards.
- 2) Board for Asbestos, Lead, Mold, and Home Inspectors.

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

**Need**

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the Board evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

§ 54.1-113 (Callahan Act) regulatory boards to adjust fees and states, in part “Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.”

§ 54.1-201.4 describes each regulatory board’s power and duty to “levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department...”

§ 54.1-304.3 describes the power and duty of the Director to “collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid...”

§ 54.1-308 provides for compensation of the Director, employees, and board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

These Code sections require the Department to:

- pay expenses of each board and the Department from revenues collected;
- establish fees adequate to provide sufficient revenue to pay expenses;
- account for the revenues collected and expenses charged to each board; and
- revise fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the Department:

- Accounts for the revenue collected for each board distinctly;
- Accounts for direct board expenses for each board, and allocates a proportionate share of agency operating expenses to each board;
- Reviews the actual and projected financial position of each board biennially to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles; and
- Recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended. If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

Fee adjustments are mandatory in accordance with these Code sections. The Board exercises discretion on how the fees are adjusted by determining the amount of adjustment for each type of fee. The Board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

With the effective date for new fees anticipated to be around FY2015, it will have been fourteen years since the last fee adjustment for this board, when fees were decreased to allow the board to spend down its accumulated cash balance. At that time it was anticipated that fees would increase in approximately six to eight years. The last fee increase occurred in 1991. The department generally tries to structure fees so that they will cover the board’s expenses for a period of four to eight years, so that revenues are adequate for operating expenses but not excessive. It is generally anticipated that each board would need to reassess its fee structure and raise fees in response to ongoing cost increases about every five to six years. One-time costs or unusual cost increases may shorten that time period.

VITA cost increases impact all the boards and contribute to increased fees. VITA costs have increased from \$554K in FY2006 to \$1.2M in FY2011, and continue to increase. VITA costs are allocated based on each board’s regulants. This board has about 6,860 regulants, representing about 2.2% of total regulants.

Rent increased about \$513K from FY2006 to FY2011 and rent is expected to increase annually. This cost is also allocated to all boards based on the board’s occupied space and an allocation of shared space for support sections.

Staff expenses have increased by about 50% from FY2006 to FY2011.

**Substance**

*Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

The Board for Asbestos, Lead, Mold, and Home Inspectors will review the fees listed in 18VAC15-20-52 and 18VAC15-20-53 and, based on projected revenues and expenses, develop a fee schedule that meets the requirements of the applicable statutes while being the least burdensome to the regulant population.

| <u>Fee Type</u> | <u>Current Fees</u> | <u>Proposed Range</u> |
|-----------------|---------------------|-----------------------|
|                 |                     |                       |

|             |                  |         |          |
|-------------|------------------|---------|----------|
| Application | Individuals      | 25      | 45 - 85  |
| Application | Contractors      | 40      | 65 - 110 |
| Application | Labs             | 40      | 85 - 120 |
| Application | Training courses | 400/day | 500/day  |
| Renewal     | Individuals      | 25      | 50 - 65  |
| Renewal     | Contractors      | 40      | 70 - 85  |
| Renewal     | Labs             | 40      | 75 - 95  |
| Renewal     | Training courses | 50      | 125      |
| Late Renew  | Individuals      | 25      | 35       |
| Late Renew  | Contractors      | 25      | 35       |
| Late Renew  | Labs             | 25      | 35       |
| Late Renew  | Training courses | 25      | 35       |

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

The Department has considered the following alternatives to increasing fees for the Board for Asbestos, Lead, Mold, and Home Inspectors:

- Reduce services: Because the regulatory activities conducted by the Board are mandated by statute, this is not considered a viable alternative. In addition, reductions in services would result in delays in issuing licenses, creating barriers to citizen’s ability to work, and would decrease the Department’s effectiveness in ensuring that licensees conduct their activities in a manner adequate to protect the public health, safety and welfare.
- Obtain a Treasury loan to fund operations: The Department could request a loan from the general fund to cover the Board’s deficit and supplement its ongoing operations. However, this would be a short-term solution only, and would only delay the need for fee increases. When eventually implemented, fee increases would need to be even greater to provide for repayment of the loan.
- Supplement Board activities with general funds: The Department currently receives no general fund revenue, and this would require a change in the Code of Virginia and the Appropriation Act. The Department’s boards are intended to be self-funding per §§ 54.1-113, 54.1-201, 54.1-304.3, and 54.1-308 of the Code of Virginia. Use of general funds to support board operations does not appear to be an appropriate use of taxpayer dollars.

**Public participation**

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the*

*alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

*Please also indicate, to the extent known, if standing or ad hoc advisory panels (also known as regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate whether 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

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The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to David E. Dick, Executive Director, 9960 Mayland Drive, Suite 400, Richmond, VA, 23233, fax (866) 350-5354 or [alhi@dpor.virginia.gov](mailto:alhi@dpor.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

## Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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