



townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Board 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	SB 607 Amendment
Date this document prepared	July 21, 2022

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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Virginia Board for Asbestos, Lead, and Home Inspectors (“the Board”) intends to amend the Home Inspector Licensing Regulations to comply with the requirements of [Chapter 398](#) of the 2022 Acts of Assembly (SB 607).

The legislation requires the Board to “...update the regulations in 18VAC15-40-130 to require that a home inspection and the report on its findings include a determination of whether the home's smoke detectors are in ‘good working order,’ as defined by the Board.”

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

There are no acronyms or technical definitions used in this form.

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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."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 the result of a mandate. During the 2022 General Assembly Session, the Assembly passed, and the Governor approved, SB 607 which directs the Board to "...update the regulations in 18VAC15-40-130 to require that a home inspection and the report on its findings include a determination of whether the home's smoke detectors are in 'good working order,' as defined by the Board."

In consideration of the above, the Board voted on May 12, 2022, to initiate a regulatory action to amend this 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;

In addition, [Chapter 398](#) of the 2022 Acts of Assembly directs the Board to amend its regulation to "...update the regulations in 18VAC15-40-130 to require that a home inspection and the report on its findings include a determination of whether the home's smoke detectors are in 'good working order,' as defined by the Board."

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

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 being purchased. 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 home 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 being purchased.

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.

As this amendment is developed, the Board will need to address, at a minimum, the meaning of the term “good working order” as it relates to smoke detectors, and how “good working order” is to be determined during the course of a home inspection.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

At minimum, the Board will amend (i) 18VAC15-40-10 to create a definition for the term “good working order;” and (ii) 18VAC15-40-130 to require that a home inspection and home inspection report include a determination on whether the smoke detectors in an inspected home are in “good working order.”

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.

As this action is the result of a legislative mandate from the General Assembly to amend the Home Inspector Regulations to add regulatory requirements, no alternatives to this action were considered.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

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. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

In accordance with the Board's Public Participation Guidelines (18VAC15-11), notification of this regulatory action will be made to persons on the agency's notification list.

The Board has formed a committee of subject matter experts with representation including licensed home inspectors, a representative of the Department of Housing and Community Development, a representative of home builders, and other individuals involved in the building industry. The committee is charged with developing amendments for recommendation to the Board. Members of the public may attend and offer public comment during any meetings of the committee.

The Board 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, and (iii) the potential impacts of the regulation.

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:

Joseph C. Haughwout, Jr.
Regulatory Administrator
9960 Mayland Drive
Perimeter Center, Suite 400
Richmond, VA 23233
ALHI@dpor.virginia.gov
(866) 350-5354 (fax)

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 the proposed 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.