



Proposed Regulation Agency Background Document

Agency name	Board for Asbestos, Lead, and Home Inspectors
Virginia Administrative Code (VAC) citation	18 VAC 15 -60
Regulation title	Mold Inspector and Remediator Regulations
Action title	Initial promulgation of Mold Inspector and Mold Remediator Licensing Regulation
Date this document prepared	October 12, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

HB 2032 of the 2009 Session of the Virginia General Assembly charged the Board with the creation of a licensure program for the regulation of mold inspectors and mold remediators. The proposed regulations create the licensure entry requirements, renewal requirements and standards of practice and conduct for this group of regulants as well as the disciplinary authority of the Board.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

No acronyms or technical terms are used in this document.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Created by Chapter 358 of the 2009 Acts of Assembly

§ 54.1-201.5 of the *Code of Virginia* (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-201>) states that the Board has the power and duty "To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

§ 54.1-501.9 of the *Code of Virginia* states that the Board shall "Promulgate regulations for licensing of mold inspectors and mold remediators not inconsistent with this chapter regarding the professional qualifications of such applicants, the requirements necessary for passing applicable examinations in whole or in part, the proper conduct of its examinations, the proper conduct of the mold inspectors and mold remediators licensed by the Board, the implementation of exemptions from licensure requirements, and the proper discharge of its duties. The Board shall have the discretion to impose different requirements for licensure for the performance of mold inspections and mold remediation."

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

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The new regulations are created as the result of the Chapter 358 of the 2009 Acts of Assembly, which require that the Board for Asbestos, Lead, and Home Inspectors create regulations for the licensure of mold inspectors and mold remediators.

The goals of the proposal include establishing effective requirements for entry to licensure and standards of practice and conduct for mold inspectors and mold remediators. The establishment of these requirements will ensure minimum competency for the performance of these tasks. Minimum competency of licensees will benefit the public by ensuring that licensed mold inspectors and mold remediators will have met established regulatory standards and thus be able to render the services for which they are hired. The mold inspection and remediation industry in Virginia is presently unregulated.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

The new regulations establish the scope, definitions, application requirements for licensure, licensure renewal requirements, and standards of practice and conduct for licensed mold inspectors and mold remediators. The regulations also establish the Board's disciplinary authority over this group of regulants.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantages to the public include the assurance of a universal standard of minimum competency for professionals so as to discourage the solicitation of unscrupulous work practices in the mold industry. A potential disadvantage to the public may be realized in an increase in fees for mold remediation and inspection services as individuals and contractors absorb training and licensure costs.

The primary advantage to DPOR and the Commonwealth is the implementation of a successful regulatory program where no program previously existed. As a state that is favorably viewed for its effectiveness in administering other occupational regulatory programs, this provides another opportunity for the Commonwealth to help establish an industry standard to be considered by other states and territories in the Union. No disadvantage has been identified.

Other pertinent matters of interest to the regulated community include the establishment of baseline standards in an industry that currently has none on the state or federal level. This will serve as the foundation for the continued improvement of an effective regulatory program which will be manifested in more effective services for the citizens of the Commonwealth who require mold inspection or remediation services.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

No existing federal requirements have been identified.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No particularly affected localities have been identified.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to:

Mail: Board for Asbestos, Lead, and Home Inspectors
9960 Mayland Drive, Suite 400
Richmond, VA 23233

Fax: (804) 527-4297
Email: 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 the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Summary:

New regulations are being proposed according to HB 2031 of the 2009 Session of the General Assembly. The regulations are required for the completely new program that the Board is creating that will regulate licensure and standards of practice and conduct for mold inspectors and remediators. The requirements are similar in nature to those pertaining to asbestos and lead individual licensees.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The board has no other source of income.

Fiscal Impact:

	FY 2011	FY 2012	FY2013	FY2014
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	14,261	0	0	0
Ongoing Costs	7,761	7,761	7,761	7,761
Total Fiscal Impact	22,022	7,761	7,761	7,761
FTE	0.00	0.00	0.00	0.00
Expected add'l revenue	18,750	18,750	18,750	18,750

Description of Costs:

One-Time: Expected one-time costs include \$1,500 for new regulations printing and mailing, \$1,000 for court reporters for public hearings, \$4,000 for exam development and \$,7,761 additional board meeting expenses.

Ongoing: The Board is expected to meet an additional 4 times per year at a cost of \$7,761 annually.

Both One-Time and Ongoing Expenses are expected to be absorbed within the current funding levels.

Cost to Localities: No change anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: The new regulations will apply to individuals that practice mold remediation or mold inspection who will be required to be licensed as mold remediation workers or mold remediation supervisors.

Estimated Number of Regulants: It is difficult to determine the number of individuals performing this work, however, there 23,000 licensed contractors that perform home improvement or commercial improvement. Each of these contracting firms has the potential to employ a mold remediator or inspector. The actual number of individuals is expected to be substantially less than 23,000 since not all these contractors will perform mold remediation or inspection. The expected number of regulants is in the 500 to 1,000 range.

Projected Cost to Regulants: Application and annual renewal fees are expected to similar to asbestos and lead workers which are \$25.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The promulgation of these regulations is mandated by Virginia statute. No viable alternative has been identified.

Rationale used by the agency to select the least burdensome requirements that meet the essential purpose of this action was considered in all areas. For example, current certifications available by industrial hygiene organizations include mold training. However, these certifications go far beyond mold and would be superfluous to the requirements for a mold inspector or remediator. With this rationale, the Board decided to simplify training requirements for entry to include only a two or three-day course rather than require certifications such as a Certified Industrial Hygienist (CIH) which are lengthy and expensive to obtain. Public comments made during the NOIRA stage were also considered by the Board when creating the proposed regulations.

The proposed regulations do not directly affect small businesses. The statutory authority of the proposed regulations is limited strictly to individuals.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

- 1) Reporting requirements for the proposed regulations include documentation which must be submitted to verify experience, education, and training upon initial application for licensure. Also, an individual renewing a license must verify completion of training by submitting a copy of a training course certificate. Any other reporting requirement is limited to those isolated instances when the Board may request documentation. No other standard reporting requirements are created by the proposed regulations.
- 2) Any schedule of the requirements mentioned above is directly related to the processing of an application for initial or renewal licensure.
- 3) Existing reporting requirements are minimal and do not require consolidation.
- 4) The Board has no regulatory authority over businesses of any size.
- 5) The Board has no regulatory authority over businesses of any size.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

#	COMMENTS	REG #	COMMENTOR	DRAFT RESPONSE
1	<p>There should be no proposal that any type of mold concentrations are “safe” or “unsafe” as there is no science to back any proposed concentrations and trying to set one standard for every situation would be very problematic.</p> <p>Applicants already holding an asbestos worker or supervisor license could be trained with a one day course on particular hazards of mold – this would not be applicable to applicants in need of training for mold inspections and recommendations for control and applicants without any type of asbestos training would need more extensive training.</p> <p>DPOR should carefully assess each training program to ensure they meet state requirements and the individuals conducting such assessment should have training and experience in mold investigations.</p>	All.	Vicky Harlow Colleen Becker	<p>The Board will consider the comment as it drafts its regulations for mold licensure.</p> <p>The Board has determined that the variety in the training material covered by asbestos and lead courses, in comparison to what would be required by training in mold remediation and inspection courses, would be too vast to regulate effectively. Due to this complexity, along with the need to ensure that the training completed by each prospective licensee is complete, the Board will mandate the same training requirements for all applicants regardless of previous training or certification.</p> <p>The Board will consider the comment as it drafts its regulations for mold licensure.</p> <p>To ensure consistency, the Board will require the same training for all applicants regardless of previous training or certifications.</p>

	Applicants with nationally recognized credentials such as Certified Industrial Hygienists should not have to attend a mold training course to acquire licensure.			
2	<p>Any industry, agency, company or individual allowed to both identify and need for action or service, and provide the solution identified will be perceived as a conflict of interest.</p> <p>Licensure for mold remediators and inspectors should be a mandatory requirement for any individual or business in the field.</p> <p>In addition to the requirement for education and experience mandatory continuing education should also be a requirement of licensure.</p>	All.	Kenn Shrader	<p>As it drafts its regulations, the Board will be addressing potential conflict of interest situations as suggested by the comment.</p> <p>The Board's statutory authority is limited to the licensure of individuals only, not businesses.</p> <p>The Board will be requiring continuing education and is in the process of drafting its regulations to specify what those requirements will be.</p>
3	<p>Suggests training requirements need to consider the nature of the work and urges not to make a simple task into a complex task.</p> <p>States that safe mold abatement requires basic protective measures that are already practiced by asbestos and lead abatement workers and allows them to currently perform safe mold hazard abatement and states the existing training and education should be considered when</p>	All	Joseph W. Crockett	<p>The Board will consider this comment as it drafts its regulations.</p> <p>The Board has determined that the variety in the training material covered by asbestos and lead courses, in comparison to what would be required by training in mold remediation and inspection courses, would be too vast to regulate effectively. Due to this complexity, along with the need to ensure that the training completed by each prospective licensee is complete, the Board will mandate the same training requirements for all applicants regardless of previous training or certification.</p>

	<p>developing the training and licensure requirements. Current asbestos and lead license holders should be able to obtain a comparable mold license with little or no extra training. States that training for current license holders should be a one-half to a one day course and first time license holders should be able to receive the appropriate training with a maximum two to three day course.</p>			
<p>4</p>	<p>Suggests that training courses should be one to two days and an apprenticeship program be implemented for mold inspectors such as the program for asbestos inspectors and suggests along with the one to two day training course a six month period with at least six projects documented should be requirement for licensure.</p> <p>Suggests mold remediators should be limited to a one to two day course.</p> <p>Suggests continuing education be a three year requirement as exists for lead paint licensees.</p> <p>Requests that individuals who have been in the field for at least five years be initially grandfathered as mold inspectors or remediators with proof</p>		<p>Suzanne Lowman</p>	<p>The Board will consider the comments pertaining to the specific education requirements as it develops the entry requirements for the regulations.</p> <p>The Board will consider experience when drafting its requirements for entry into licensure but will still require the requisite training course for all applicants.</p>

	of experience.			
5	<p>Recommends that the new Board member for mold be an expert on science-based approaches to water restoration.</p> <p>Suggests that the Board carefully consider the identification of mold labeled as "toxic" as it is not backed by current science.</p> <p>Because of differences between asbestos & lead versus mold, Mr. Light asks that the Board not make the mold licensure requirement mandatory.</p> <p>Suggests that applicants for mold licensure who have qualifications equal to or better than a Certified Industrial Hygienist should not have to take an additional exam for mold licensure.</p> <p>States that the Board should not create a "one-size-fits-all" program for mold remediation but should allow for flexibility in the discretion exercised by the mold licensee when determining how to negotiate mold remediation.</p>	All	Ed Light	<p>The selection of the new Board member is determined by the §54.1-500.1 of the <i>Code of Virginia</i> and not the Board.</p> <p>The Board will consider this comment as it drafts its regulations for mold licensure.</p> <p>The licensure of mold remediators and mold inspectors is mandated by Virginia statute. It is not in the Board's authority whether or not to make this licensure mandatory.</p> <p>The Board will require the same training for all applicants for mold licensure. The initial training course will include an examination which must be passed by the student in order to complete the training.</p> <p>The Board will carefully consider this comment when drafting its regulations for mold remediation licensure.</p>

Family impact

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

No family impact has been identified.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For new chapters, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10	Scope		Defines the group of individuals whom the regulations are applicable to.
20	Exemptions	<u>Virginia Pesticide Control Act (3.2-3900 et seq. of the Code of Virginia)</u>	Specifies the individuals which are not required to possess a license as a mold inspector or remediator based on specific circumstances including those individuals operating in compliance with the Virginia Pesticide Control Act.
100	Definitions		Includes definitions established in statute as well as those relevant to the regulations
200	Application Procedures		Specifies the process by which individuals submit license applications to the Department for approval including the Board's authority to make further inquiry into an applicant's eligibility for licensure.

210	Qualifications for Licensure-Individuals		Specifies the requirements of experience, education, and training for initial licensure. The language also specifies procedures related to applicants with prior disciplinary or criminal history.
230	Qualifications for Approval as a Mold Training Provider		The Board is authorized to approve specific examinations which an applicant must pass for licensure. It achieves this through the approval of any person that submits a complete application to become a mold training provider. This section outlines the requirements for a person to become an approved mold training provider that may train and examine applicants.
250	Licensure or Training Course Approval by Reciprocity		This section specifies the Board's procedure for granting a reciprocal license to those that are licensed through a comparable national or state mold association.
260	Licensure by Comity		This section specifies the Board's requirements for licensing an individual by recognizing that individual's satisfaction of the requirements in another state that were similar to Virginia's requirements at the time the license was issued in the other state.
270	Application Denial		This section specifies the Board's authority to deny an application.
300	General Fee Requirements		This section establishes the Board's determination of the timely payment of a fee, to whom the fee should be paid, and that all fees are non-refundable.
310	Application Fees		This section specifies the fees for an initial application for licensure.
320	Renewal Fees		This section establishes the fees for renewed licenses.
400	Renewal Required		This section establishes the expiration date of a license.
410	Procedures for Renewal		This section establishes renewal procedures including notification of the licensee, address maintenance, and the establishment of time frames for determining late renewal.

420	Qualifications for Renewal		This section establishes the criteria for a license to be renewed.
460	Board Discretion to Deny Renewal		This section establishes the Board's authority to deny a license renewal.
500	Grounds for Disciplinary Action		This section specifies the Board's authority for refusing to issue a license to an applicant, disciplining a licensee, and withdrawing approval as a training provider.
520	Maintenance of a License		This section specifies a regulant's responsibility to inform the Board of a change in name or address and that a license may not be transferred.
540	Notice of Adverse Action		This section specifies a regulant's requirement to notify the Board in the instance of any adverse action taken against the regulant.
560	Response to Inquiry and Provision of Records		This section specifies a regulant's responsibility to comply with the Board's request for information.
600	Training Provider Personnel		This section specifies requirements that individuals must meet in order to conduct training as an approved mold training provider.
610	Training Course General Requirements		This section outlines the general requirements that must be met by all mold training courses.
620	Worker Course Requirements		This section specifies the curriculum requirements of a mold remediator worker training course.
620	Worker Course Requirements		Length of refresher training requirement changed at board meeting 10/12/10.
630	Supervisor Course Requirements		This section specifies the curriculum requirements of a mold remediator supervisor course.
630	Supervisor Course Requirements		Length of refresher training requirement changed at board meeting 10/12/10.
640	Inspector Course Requirements		This section specifies the curriculum requirements of a mold inspector course.
640	Inspector Course Requirements		Length of refresher training requirement changed at board meeting 10/12/10.
650	Examinations		This section specifies the criteria

			for all examinations given at the conclusion of any mold training course.
660	Recordkeeping		This section specifies the recordkeeping requirements that approved mold training course providers must meet to maintain approval by the Board.
670	Changes to Approved Training Providers		This section specifies the procedures that an approved training provider must follow in the event of a change to a training course.
680	Status of Approval		This section establishes the authority by which the Board may withdraw approval of a mold training course provider.
700	General Standards of Practice and Conduct		This section establishes general standards of practice and conduct for licensed mold individuals.
710	Mold Remediation Workers		This section establishes the standards of practice and conduct for mold remediation workers.
720	Mold Remediation Supervisors		This section establishes the standards of practice and conduct for mold remediation supervisors.
730	Mold Inspectors		This section establishes the standards of practice and conduct for mold inspectors.
740	Responsibility to the Public		This section establishes that the primary obligation of the licensee is to the public.
750	Public Statements		This section establishes a licensee's responsibilities when making public statements.
760	Solicitation of Work		This section specifies acts which the licensee is prohibited from performing.
770	Professional Responsibility		This section establishes conduct for licensees and training providers with regard to responding to the Board, using the product of another licensee, disclosing of information, and the admittance of Board representatives for the purpose of ensuring that a training provider is conducting its courses properly.
780	Good Standing in Other Jurisdictions		This section establishes that licensees must be in good standing in other jurisdictions,

			procedures for notifying the Board of violations, and potential disciplinary actions for failing to maintain good standing.
790	Conflict of Interest		This section establishes the parameters of potential conflict of interest situations and prohibits specific actions of licensees which may create these situations.
800	Responsibilities of a Licensee		This section establishes general responsibilities of an individual licensed by the Board.