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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	General Regulatory Review
Date this document prepared	October 14, 2020

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 undertake a general regulatory review of the Home Inspector Licensing Regulations. The goals of the planned regulatory action are to review the existing regulation and propose any amendments the Board determines to be necessary and appropriate.

The Board last undertook a significant review and revision of the regulation in 2017, when the regulation was amended to transition the home inspector program from a voluntary certification program to a mandatory licensure program. The change to mandatory licensure was the result of legislation adopted by the General Assembly in 2016, and approved by the Governor (Chapters 161 and 436 of the 2016 Acts of Assembly). Following transition to licensure, members of the public, individuals in the home inspection industry, and agency staff identified several areas where the regulation would benefit from revision or clarification. A thorough review of the regulation is necessary to address these areas, ensure the regulation complements current Virginia law, provides minimal burdens on regulants while still

protecting the public, are clearly written and understandable, and reflect current procedures and policies of the Department of Professional and Occupational Regulation (“the Department”).

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

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

“Component” means a part of a system.

“Course of construction inspection” refers to an inspection conducted during construction of a residential structure to assess the status of any or all readily accessible components.

“CPE” means continuing professional education.

“NRS” means new residential structure.

"Solid fuel burning appliances" means a hearth and fire chamber or similarly prepared place in which a fire may be built and that is built in conjunction with a chimney, or a listed assembly of a fire chamber, its chimney and related factory-made parts designed for unit assembly without requiring field construction.

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 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.

This regulatory change is not the result of a mandate.

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

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 the regulation is developed, the Board will likely need to address issues surrounding (i) possible barriers to licensure encountered by individuals who are properly licensed as home inspectors in other states, (ii) how applicants can adequately demonstrate requisite knowledge and experience in order to qualify for licensure, and (iii) what should be the minimum standards for the practice of home inspections. These issues are not inclusive of all potential issues that may be addressed during development of the regulation.

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.

During its review of the regulation, the Board is expected to consider the following topics which have been raised at previous meetings of the Board and/or presented to staff:

1. General (18VAC15-40)
 - Exclude course of construction inspections.
 - Exclude inspections of specific components.
2. Definitions (18VAC15-40-10)
 - Amend definition for “solid fuel burning appliances.”
 - Add definition for “describe.”
 - Add definition for “direct supervision.”
3. Entry Requirements (18VAC15-40-30 through 18VAC15-40-50)
 - Verification of experience, including acceptable documentation, acceptable verifiers, out-of-state experience/reciprocity, and acceptable tasks to use toward gaining experience under a licensed home inspector.
 - Limitation on online education hours.
4. Renewal and Reinstatement Requirements (18VAC15-40-60 through 18VAC15-40-108)
 - Requirement for NRS CPE if initial NRS training taken within one year.
5. Home Inspection Contract Requirements (18VAC15-40-120)
 - Clarify that both home inspector and consumer must sign home inspection contract before work is to commence.

The above list is not inclusive of all items that may be presented for amendment. Draft regulatory text is not available at this time.

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.

Home inspector licenses are issued to individuals; however, many home inspection firms would likely qualify as small business as defined in § 2.2-4007.1 of the Code of Virginia. 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 will be to identify areas where the regulation can be changed to reduce or mitigate regulatory burdens on applicants and licensees.

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. In addition, notification of this action will be posted on the agency's website.

The Board has formed a committee of subject matter experts with representation including licensed home inspectors, a licensed real estate professional, a residential building contractor, and other citizens 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.