



Fast Track Proposed Regulation Agency Background Document

Agency name	Virginia Department of Labor and Industry/Safety and Health Codes Board
Virginia Administrative Code (VAC) citation	16VAC25-20
Regulation title	Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees
Action title	Amendments to the Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees
Date this document prepared	March 21, 2013

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*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

Pursuant to the Executive Regulatory Reform Initiative, the Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20, was identified for amendment after an in-depth review by the Department of Labor and Industry (“the Department”). As currently enacted, this regulation provides the procedure for notifying the Department of certain asbestos abatement projects to be undertaken and sets permit fees for those projects. Licensed asbestos contractors who undertake affected projects must notify the Department of Labor and Industry, obtain a permit and pay a fee as required by Va. Code §40.1-51.20. A. and B. The notification and permit requirements enable the Department to conduct onsite inspection of asbestos projects to monitor asbestos contractors’ compliance with state and federal requirements for safe removal and disposal of asbestos.

While “residential buildings” are covered under this program, the procedure required for such structures does not include payment of a fee. “Residential buildings” means site-built homes, modular homes, condominium units, mobile homes, manufactured housing, and duplexes, or other multi-unit dwellings consisting of four units or less which are currently in use or intended for use only for residential purposes. However, demolition of any of the above structures which are to be replaced by other than a residential building shall not fall within this definition and would be subject to payment of a fee.

The Safety and Health Codes Board seeks to discontinue the requirement for notification of such residential building asbestos projects and amends 16VAC25-20-40, Exemption, to eliminate the notification requirements to the Department for such residential buildings. This will minimize the paperwork burden for asbestos contractors and also for homeowners. In addition, the Code of Virginia does not require a permit fee for asbestos projects in such residential buildings. (See Va. Code §40.1-51.20.B.)

Amending the regulation is non-controversial, and no individual or entity will be adversely affected by this regulatory change.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On March 14, 2013, the Safety and Health Codes Board approved the Department's request to amend the Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20, pursuant to the Virginia Code §2.2-4012.1.

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.

Pursuant to §40.1-22(5), "The Board, with the advice of the Commissioner, is hereby authorized to adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction.... All such rules and regulations shall be designed to protect and promote the safety and health of such employees. This amendment supports that statutory mandate.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this regulatory action is to delete the requirement in 16VAC25-20-40, necessitating notification to the Department of residential asbestos projects because the Virginia Code does not require a permit fee for such asbestos projects in residential buildings. New regulatory language has been inserted stating that "... no notification to the Department or payment of asbestos project fees are required for asbestos projects in residential buildings as defined under 16VAC25-20-10."

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Since most residential asbestos projects now fall within the minimum reporting amount (10 square or 10 linear feet up to 260 linear feet or 160 square feet), jobs of this size present a small risk to the public, require fewer inspections, and are of short duration. Therefore, eliminating the notification requirements for

residential buildings will minimize the paperwork burden for asbestos contractors and also for homeowners. As such, amending the regulation is non-controversial and no individual or entity will be adversely affected.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.) Please be sure to define any acronyms.

In 16VAC25-20-40, Exemption, the language, “No asbestos project fees will be required for residential buildings. Notification for asbestos projects in residential buildings shall otherwise be in accordance with applicable portions of this chapter” was replaced with “No notification to the Department or payment of asbestos project fees is required for asbestos projects in residential buildings as defined under 16VAC25-20-10.” While “residential buildings” are covered under this Virginia Occupational Safety and Health (VOSH) program, the procedure required for such structures does not include payment of a fee; therefore, the Board approved the discontinuance of the requirement for notification of residential asbestos project by replacing the regulatory language requiring it.

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 there are no disadvantages to the public or the Commonwealth, please indicate.*

- 1) The Department does not anticipate any disadvantages to Virginia employers or Virginia employees. Most residential asbestos projects fall with the minimum reporting amount (10 square or 10 linear feet up to 260 linear feet or 160 square feet). Jobs of this size present a small risk to the public, require fewer inspections, and are of short duration. Advantages to the public, private citizens or businesses from the elimination of the notification requirements for residential buildings will include minimizing the paperwork burden for asbestos contractors and also for homeowners.
- 2) The Department does not anticipate any disadvantages to the Department with the adoption of these changes. Eliminating the notification requirements for residential buildings will reduce the number of applications the Department will have to process.
- 3) There are no disadvantages to the public or to the Commonwealth.

The Department believes that these amendments are non-controversial and no individual or entity will be adversely affected.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is 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.

There are no applicable federal requirements.

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.

There are no localities particularly affected by the proposed regulatory revision.

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.

By eliminating the notification requirements for residential buildings, the Board has established less stringent compliance requirements which, in turn, reduce the paperwork burden for asbestos contractors, homeowners, and the Department.

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.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures.	No additional cost to the state is anticipated.
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	There are no projected costs associated with changes to existing regulations on localities.
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	Asbestos contractors and homeowners.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	The Department estimates that there are 180 licensed asbestos contractors in Virginia.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting,	No projected costs of the amended regulation are anticipated for affected individuals, businesses, or other entities.

<p>recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Eliminating the notification requirements for residential buildings will reduce the paperwork burden for asbestos contractors and homeowners, as well as reducing the number of applications to be processed by the Department.</p>

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 action by the Board to remove the notification requirements for residential buildings provided no other alternatives. While “residential buildings” are covered under this program, the procedure required for such structures does not include payment of a fee. (See Va. Code §40.1-51.20.B.) “Residential buildings” means site-built homes, modular homes, condominium units, mobile homes, manufactured housing, and duplexes, or other multi-unit dwellings consisting of four units or less which are currently in use or intended for use only for residential purposes. However, demolition of any of the above structures which are to be replaced by other than a residential building shall not fall within this definition and would then be subject to payment of a fee.

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.

This proposed regulatory action will not impact the institution of the family and family stability.

Detail of changes

Please list 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. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

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

See the chart below.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
16VAC25-20-40		<p>“No asbestos project fees will be required for residential buildings. Notification for asbestos projects in residential buildings shall otherwise be in accordance with applicable portions of this chapter.”</p>	<p>“No asbestos project fees will be required for residential buildings. Notification for asbestos projects in residential buildings shall otherwise be in accordance with applicable portions of this chapter.” <u>“No notification to the Department or payment of asbestos project fees is required for asbestos projects in residential buildings as defined under 16VAC25-20-10.”</u></p> <p><u>Rationale:</u> Discontinuance of the requirement for notification of residential asbestos projects and deletion of the regulatory language of 16VAC25-20-40 is necessary because eliminating the notification requirements for residential buildings will minimize the paperwork burden for asbestos contractors and homeowners. Additionally, the Code of Virginia does not require a permit fee for asbestos projects in residential buildings (See Va. Code 40.1-51.20.B.)</p>

Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20; Amendment

As Adopted by the
Safety and Health Codes Board

Date: March 14, 2013



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

16VAC25-20, Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees.

CHAPTER 20
REGULATION CONCERNING LICENSED ASBESTOS CONTRACTOR NOTIFICATION, ASBESTOS
PROJECT PERMITS, AND PERMIT FEES

16VAC25-20-40. Exemption.

~~No asbestos project fees will be required for residential buildings. Notification for asbestos projects in residential buildings shall otherwise be in accordance with applicable portions of this chapter.~~ No notification to the Department or payment of asbestos project fees is required for asbestos projects in residential buildings as defined under 16VAC25-20-10.