



Periodic Review / Retain Regulation Agency Background Document

Agency name	Board for Asbestos, Lead, Mold, and Home Inspectors
Virginia Administrative Code (VAC) citation	18 VAC 15-60
Regulation title	Virginia Board for Asbestos, Lead, Mold, and Home Inspectors Mold Inspector and Remediator Regulations
Document preparation date	November 21, 2011

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

Code of Virginia § 54.1-501 gives authority to the Board for Asbestos, Lead, Mold, and Home Inspectors (Board) to promulgate regulations.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

No viable alternatives for achieving the purpose of the existing regulation could be determined. The regulation enables the Board to fulfill the statutory requirements established in Chapter 5 of Title 54.1 of the *Code of Virginia*. Further, the regulation is necessary to ensure that the Board's statutory requirements are executed in the least burdensome, most efficient and cost effective manner possible while protecting the health, safety, and welfare of the citizens of Virginia.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Alan Neumann, Indoor Ecology Associates	<p>Supports the regulation of activities associated with mold assessment and remediation due to the health risks of those who are routinely exposed to microorganisms with inherent allergenic properties.</p> <p>States that the language of the regulations requires reconsideration and some revision.</p>	<p>The Board thanks Dr. Neumann for his support.</p> <p>Comment does not indicate specific language of the regulations that requires reconsideration and revision or how any amendments would lessen the hazard to the public.</p>
Bruce Sigurdson, Winchester Environmental Consults, Inc.	<p>Supports the regulations, specifically the licensing requirements.</p> <p>States that regulatory codes should be established for conducting mold inspections and remediations to allow for uniform application and enforcement by the Department of Labor and Industry.</p>	<p>The Board thanks Mr. Sigurdson for his support.</p> <p>Part IX of the regulations contains Standards for Conducting Mold Inspection and Remediation Activities. Complaints of violations of the Board's regulations are handled by the Department's Compliance and Investigations Division and, when appropriate, matured to the Board for disciplinary action. The Board has no authority to require the Department of Labor and Industry to enforce the Board's regulations.</p>
Daniel O. Chute	<p>States the regulations offer no measurable benefit to public health because there are no recognized standards to define what levels of mold represent a true hazard. Therefore, the regulations cannot prescribe any achievable level of control which may be defined as either safe or unsafe.</p> <p>There was no existing shortage of well credentialed professional expertise with knowledge in control of moisture, mold and sanitation concerns available to the citizens of Virginia. Professionals such as</p>	<p>Licensure of mold inspectors and mold remediators is required by the <i>Code of Virginia</i>. The Board repealing the regulation would cause the Board to be out of compliance with the enabling statute. The Board feels its current requirements are sufficient to protect the health, safety and welfare of the public.</p> <p>The Board feels its current requirements, including its training requirements, are sufficient to protect the health, safety and welfare of the public. The regulations do not prevent, or exclude, professionals such as PEs, CIHs and RSs from obtaining a license to</p>

	<p>PEs, CIHs and RSs have many years of practical experience and have met rigorous educational standards and are now excluded from their proven area of practice to require the use “experts” with a three day certificate.</p> <p>The regulations will create an economic drain on the Commonwealth. Since the need for the training and licensing services imposed by this regulation is artificially created, not meeting any recognized scientific standard or accepted enforcement limits, there will not be sufficient sustainable market demand to support the DPOR resources required for program administration.</p> <p>The regulations disproportionately target and penalize small businesses by requiring a three day training course for mold inspectors.</p> <p>The regulations are vague, unworkable and subject to selective and arbitrary enforcement. The term mold and mold inspector as broadly defined in the regulation could impose a regulatory trap.</p> <p>The regulations create an impression of collusionary intent to use government to endorse restriction of trade in the Commonwealth for the immediate benefit of DPOR and Board members. There is no standard or accepted training curriculum or universally recognized field testing protocol for the assessment or control of mold. The Board is compromised of training and testing firms which causes a conflict of interest when approving or denying</p>	<p>conduct mold inspections or mold remediations in the Commonwealth of Virginia.</p> <p>The comment provides no details that explain how the level of market demand will not support DPOR resources.</p> <p>Licensure of mold inspectors and mold remediators is required by the <i>Code of Virginia</i>. The comment does not specify how the regulation “target” and “penalize” small businesses. The Board feels its current requirements, including its training requirements, are the least restrictive requirements necessary to protect the health, safety and welfare of the public.</p> <p>The definitions of mold and mold inspector found in the regulations were taken directly from the <i>Code of Virginia</i>. The Board has no authority to alter the definition of either word. To require a license, the intent of the task must be mold remediation or mold inspection, as defined by the <i>Code of Virginia</i> and regulation.</p> <p>Licensure of mold inspectors and mold remediators is required by the <i>Code of Virginia</i>. In addition the make-up of the Board is determined by the <i>Code of Virginia</i> and Board members are appointed by the Governor of Virginia. The Board feels its standards of practice and conduct, as required by regulation, are sufficient to protect the health, safety and welfare of the public.</p>
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	<p>competitors' training programs and license applications.</p> <p>States that the regulations should be rescinded.</p>	<p>Licensure of mold inspectors and mold remediators is required by the <i>Code of Virginia</i>. The Board rescinding the regulation would cause the Board to be out of compliance with the enabling statute.</p>
<p>Victor D'Amato</p>	<p>States that the regulations are not necessary as mold is naturally occurring and can be found anywhere. There are no recognized standards for what is considered acceptable levels of mold. Therefore, the need for the regulation to protect public health, safety and welfare cannot be demonstrated.</p> <p>There were vast resources of well credentialed, highly educated public health professionals who engage in the assessment and control of potential health and safety hazards on a daily basis. Professionals such as PEs, CIHs and RSs have many years of practical experience and have met rigorous educational standards and are now excluded from practice and replaced by "experts" who attained their credentials by meeting the Board's requirements.</p> <p>There is a serious risk of adversely affecting important government functions. The regulations create the perception of controlling and restricting trade in the Commonwealth for the benefit of DPOR and Board members. There is no standard or accepted training curriculum or universally recognized field testing protocol for the assessment or control of mold. The Board is compromised of training and testing firms which causes a conflict of interest when approving or denying competitors' training programs and license applications.</p> <p>The regulations disproportionately target and penalize small</p>	<p>Licensure of mold inspectors and mold remediators is required by the <i>Code of Virginia</i>. The Board feels its current requirements are sufficient to protect the health, safety and welfare of the public.</p> <p>The Board feels its current requirements, including its training requirements, are sufficient to protect the health, safety and welfare of the public. The regulations do not prevent, or exclude, professionals such as PEs, CIHs and RSs from obtaining a license to conduct mold inspections or mold remediations in the Commonwealth of Virginia.</p> <p>The make-up on the Board is determined by the <i>Code of Virginia</i> and Board members are appointed by the Governor of Virginia. The Board feels its standards of practice and conduct, as required by regulation, are sufficient to protect the health, safety and welfare of the public.</p> <p>Licensure of mold inspectors and mold remediators is required by the <i>Code of Virginia</i>.</p>

	<p>businesses by requiring a three day training course for mold inspectors.</p> <p>States that the regulations should be rescinded.</p>	<p>The comment does not specify how the regulation “target” and “penalize” small businesses. The Board feels its current requirements, including its training requirements, are the least restrictive requirements necessary to protect the health, safety and welfare of the public.</p> <p>Licensure of mold inspectors and mold remediators is required by the <i>Code of Virginia</i>. The Board rescinding the regulation would cause the Board to be out of compliance with the enabling statute.</p>
Julie Sobelman	<p>Does not believe mold inspectors should be licensed unless the Commonwealth of Virginia can conclusively demonstrate the harm that would result from not licensing mold inspectors and the cost benefit to business and taxpayers with the Commonwealth.</p>	<p>Licensure of mold inspectors is required by the <i>Code of Virginia</i>. The Board rescinding the regulation would cause the Board to be out of compliance with the enabling statute.</p>
Alan Neumann, Indoor Ecology Associates	<p>In regard to 18 VAC 15-60-60, Training course approval by reciprocity, states that DPOR has no standard by which to assess substantial equivalency which leaves an opening for unfair assessment by the Board.</p> <p>Understands that a training provider must provide instruction on Virginia Mold Inspector and Remediator Regulations or the training cannot be considered substantially equivalent and therefore reciprocity not granted.</p>	<p>Substantial equivalency is determined by the Board and the Board may approve, through reciprocity, such training courses approved by other states that meet the standards established by regulation.</p> <p>A training provider applying for course approval through 18 VAC 15-60-60 would have to prove that the requirements of a state, in which they are approved, are substantially equivalent to the Board’s training provider and course requirements found at 18 VAC 15-60-50 and Part VII. The Board understands that Virginia Mold Inspector and Mold Remediator Regulations may not have been in the course curriculum for another state’s approval, but before granting approval to the course through reciprocity, the Board would require the course curriculum to contain the Virginia Mold Inspector and Mold Remediator Regulations per 18 VAC 15-60-220, 18 VAC 15-60-230 and 18 VAC 15-60-240.</p>
Alan Neumann, Indoor Ecology Associates	<p>In regard to 18 VAC 15-60-70, Licensure by reciprocity, states that DPOR has no standard by which to assess substantial equivalency which leaves an opening for unfair assessment by the Board.</p>	<p>Substantial equivalency is determined by the Board and the Board may approve, through reciprocity, such licenses approved by other states that meet the standards established by regulation.</p>

	<p>Feels that the training requirements to obtain Texas' Mold Assessment Technician are equivalent, if not more stringent than those of Virginia. Feels the training requirements to obtain Texas' Mold Assessment Consultant is more stringent than those of Virginia.</p> <p>States that both the Texas Mold Assessment Technician and Mold Assessment Consultant should not be substantially equivalent because the Virginia Mold Inspector and Remediator Regulations are not topics in the training courses required to obtain either Texas license type.</p> <p>Suggest that those licensed for mold work in other states be considered if they provide evidence of satisfactory participation in, and examination score on, a DPOR approved course on Virginia Mold Inspector and Remediator Regulations.</p>	<p>18 VAC 15-60-70 allows an applicant holding a license in another state to qualify for a license provided the requirements of that state are substantially equivalent to Virginia's regulation. Texas regulation requires that individuals applying for the Mold Assessment Technician license type to complete 24 hours of training and the Mold Assessment Consultant license type to complete 40 hours of training, however, Texas does not require a set amount of hands-on training for either. To be substantially equivalent, the same amount of hands-on training must be required by Texas as is required by Virginia.</p> <p>At this time, the Virginia Mold Inspector and Remediator Regulations are not required in order for another state's license type to be deemed substantially equivalent to the Board's license type. The Virginia Mold Inspector and Remediator Regulations are required to be a course topic in any training provider course approved by the Board.</p> <p>The Board feels its current requirements are sufficient to protect the health, safety and welfare of the public. Creating a course on Virginia law and regulations would require the regulations to be amended.</p>
<p>Alan Neumann, Indoor Ecology Associates</p>	<p>States that 18 VAC 15-60-50 should be revised to include specific requirements for training instructors such as level of experience as an instructor, level of experience in the industry and level of education for the instructor. States that instructors for Mold Inspector courses should have a BS in engineering or the biological sciences.</p>	<p>Specific requirements for training instructors, including experience and training, are found at 18 VAC 15-60-200, Training provider personnel. The Board feels its training instructor requirements are sufficient to provide the course attendee adequate training and to protect the health, safety and welfare of the public.</p>
<p>Alan Neumann, Indoor Ecology Associates</p>	<p>Supports the regulation of activities associated with mold assessment and remediation.</p> <p>States that those with licenses from other states or certifications from ABIH or ACAC should be accepted</p>	<p>The Board thanks Dr. Neumann for his support.</p> <p>The Board feels its current requirements, including training course requirements, are sufficient to protect the health, safety and</p>

	<p>by DPOR, with instruction on the state regulations. Feels the current mechanism of training is inept and the cost for training unjustified for the quality of current instruction, but can be rectified.</p>	<p>welfare of the public. The Board does not have the authority to control the price charged by training providers to complete the training provider's course. Does not specify how the training is inept or how to rectify it.</p>
<p>Evelyn W. Woolf, Etc. Inc.</p>	<p>States that the regulations are not necessary for the protection of public health, safety and welfare or the economic performance of important government functions. There are no health or safety standards for acceptable levels of mold from the EPA or CDC or any other federal or nationally recognized institution.</p> <p>States that DPOR has excluded professionals who hold other Board certifications such as CIHs, CSPs, PEs, RSs, and the like, should not be required to take a three-day mold inspector course.</p> <p>States that the economic impact on small businesses can be astounding and that to recap the financial loss of attending a training course, would have to raise rates. In turn, the raised rates would impact clients' bottom line as well.</p> <p>States that the Commonwealth of Virginia has, in the past, operated under Executive Order 25 (98) and 58 (99) by not promulgating environmental safety and health regulations more stringent than federal regulations and given that there are no federal regulations regarding mold the Virginia Mold Inspector and Remediator Regulations should be rescinded.</p>	<p>Licensure of mold inspectors and mold remediators is required by the <i>Code of Virginia</i>.</p> <p>The Board feels its current requirements, including training course requirements, are necessary to protect the health, safety and welfare of the public. The regulations do not prevent, or exclude, professionals such as PEs, CIHs and RSs from obtaining a license to conduct mold inspections or mold remediations in the Commonwealth of Virginia.</p> <p>The comment provided no information explaining how the cost was arrived at. Nor is there any specifically recommended amendment that could reduce the impact on small businesses. The Board feels its current requirements, including training course requirements, are the minimum necessary to protect the health, safety and welfare of the public.</p> <p>Licensure of mold inspectors and mold remediators is required by the <i>Code of Virginia</i>. The Board rescinding the regulation would cause the Board to be out of compliance with the enabling statute.</p>

An informal advisory group was not formed for purposes of assisting in the period review.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulation meets the criteria set forth in Executive Order 14 (2010). The regulation establishes the minimum education, examination and experience requirements to become a Virginia licensed mold remediator worker, remediator supervisor and inspector.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

The agency is recommending that the regulation stay in effect without change.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

Section 54.1-501 mandates the Board to promulgate regulations and standards for the training and licensing of mold remediator workers, remediator supervisors and inspectors. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety and welfare and ensure that individuals licensed as mold remediator workers, remediator supervisors and inspectors in Virginia have met minimum competencies. Ten comments were received during the public comment period. Comments included support of the regulation as well as support for the repeal of the regulation. Given that licensure of mold inspectors and mold remediators is required by the *Code of Virginia*, the Board rescinding the regulation would cause the Board to be out of compliance with the enabling statute. Other comments received are addressed by the current regulations or are outside of the Board's authority. A number of the comments were general and did not provide a specific way to address the expressed concern through regulation. Therefore, the Board did not find a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate or conflict with federal or state law or regulation. The regulation was first effective July 1, 2011, and this periodic and small business review is the only periodic review of

the regulation. The Board discussed and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in their current form.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

No impact on the institution of the family and family stability has been identified.