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Regulatory
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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board for Asbestos, Lead and Home Inspectors
Virginia Administrative Code (VAC) citation	18 VAC 15-20
Regulation title	Asbestos Licensing Regulations
Action title	Amend
Document preparation date	April 9, 2004

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The intent of the planned regulatory action is to review the Board's regulation of Asbestos Project Monitors to identify any amendments that should be matured to public comment. Project Monitors are required on certain asbestos projects and must perform certain functions to assure that all asbestos fiber is removed before a project is completed. The review will focus on amendments that assure the presence of a project monitor on asbestos projects and examine whether the existing duties, responsibilities and functions should be amended to assure public protection.

Also, the intent of the planned regulatory action is to review the existing regulations and propose amendments to empower the Board to deny license and approval as well as to take disciplinary action against those acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensed or approved entity.

In addition, the Board will carefully evaluate its existing regulations for effectiveness and continued need, and will propose any amendments necessary to protect the public health, safety, and welfare, or to further the efficient and economical performance of important government functions.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, 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.

The Board for Asbestos, Lead and Home Inspectors is empowered to promulgate regulations under the legal authority found in Section 54.1-201 of the Code of Virginia, which empowers regulatory boards generally, and Section 54.1-501 of the Code of Virginia, which empowers the Board for Asbestos, Lead, and Home Inspectors specifically.

Section 54.1-501 uses the imperative form of the verb “shall,” thus making it mandatory that the Board promulgate regulations to administer and enforce the provisions of Chapter 5 of Title 54.1 of the Code of Virginia.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

Licensed Asbestos Project Monitors are required on all asbestos projects in buildings that are occupied or intended to be occupied upon completion of an asbestos project exceeding 260 linear feet or 35 cubic feet of asbestos-containing material or whenever the building or property owner deems it necessary to monitor asbestos projects. Asbestos is a naturally occurring fiber with insulation and fire retardant characteristics that has been used for many years in building construction. Inhaling the fibers may cause a very serious form of cancer that can result in disability and death. For this reason, the Project Monitor's role in assuring that all aspects of an asbestos abatement project are properly executed and that all asbestos fiber has been removed and safely disposed of before a project is considered to be complete is vital to the health of those working on the asbestos abatement project, those in the nearby vicinity and those that may occupy the premises in the future. The review will examine the current role of Project Monitors and determine what amendments, if any, may be necessary to assure that this function vital to public health and safety is performed as effectively as possible.

The Board has, from time to time, taken disciplinary action against certain firms and individuals or denied licensure or approval to those firms and individuals under its regulatory authority and its affirmative obligation to protect the public. The Board is concerned that those so disciplined or denied may find others who have not been so disciplined or denied to apply for and become licensed or approved. Those disciplined or denied will then operate as the ostensible licensee, or approved entity or individual, thus rendering the Board's regulatory authority ineffective. The Board's review will examine this issue and propose for public comment amendments that assure that the Board can take appropriate action to protect the public from those disciplined or denied licensure or approval.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

No alternatives have been identified to date.

The Board is concerned that those individuals managing firms that have had their license or approval revoked or who are otherwise found unfit for licensure will induce others to obtain licensure or approval and allow the revoked individuals to operate the firm. The Board can find no authority in its existing regulations to address this concern and, therefore, is proposing this regulatory action.

Impact on family

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

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