



Fast Track Proposed Regulation Agency Background Document

Agency name	Board for Asbestos, Lead, and Home Inspectors
Virginia Administrative Code (VAC) citation	18 VAC15-20
Regulation title	Asbestos Licensing Regulations
Action title	Clarification of when asbestos contractors must notify building owners of the project monitor requirement.
Date this document prepared	January 23, 2008

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

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

Amend the asbestos contractor responsibilities section (18VAC15-20-451) to add a citation to the regulation sections that describe asbestos abatement projects requiring a project monitor (18VAC15-20-455.1) and establish project monitor responsibilities (18VAC15-20-456).

Amend the asbestos contractor responsibilities section (18VAC15-20-451) to clarify that the initial notification by the contractor to the building owner or agent of the owner and acknowledgement to the contractor by the building owner or agent of the owner is sufficient to comply with the regulation requirement for contracts that involve multiple asbestos projects to be performed on the building owner's property during the term of the contract.

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.

The Board for Asbestos, Lead, and Home Inspectors voted to amend Section 18VAC15-20-451 of the Asbestos Licensing Regulations via the fast-track exemption found in Section 2.2-4012.1 of the Administrative Process Act during its meeting on August 22, 2007. The amendment language was approved during the Board's meeting on November 7, 2007.

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 General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of 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.

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.

Clarification is the sole purpose for the amendment. No substantive change in the regulation requirement is proposed.

The regulation is essential to protect the health, safety and welfare of citizens by assuring that building owners or their agents are aware that certain asbestos projects require a project monitor. A project monitor will make sure all individuals performing abatements are properly trained and licensed; that proper abatement methods are used; and that a laboratory analysis has found that asbestos hazards have been removed.

The Board felt that the current language in 18VAC15-20-451 E 1 was insufficiently clear without a specific reference to the two regulation sections (18VAC15-20-455.1 and 18VAC15-20-456) that specified when a project monitor was necessary. The amendment adds a citation to those two sections of the current regulation.

The Board felt that the current language in 18VAC15-20-451 E 2 did not specifically address situations involving a single contract to cover multiple asbestos projects undertaken over a period of time. "Service" contracts often provide for the contractor's services during a period of time to address any asbestos

abatement projects that may arise. The Board felt that an amendment clarifying that a single notification and acknowledgement provided at the beginning of a multiple-project service contract term would be sufficient to assure that the building owner or his agent is aware of the project monitor requirement.

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 60-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 objection 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.

The amendment clarifies an existing requirement. No new requirement results. The amendment to 18VAC15-20-541 E 2 could save asbestos contractors the expense of multiple notifications and acknowledgements for multiple-project contracts by clarifying that a single initial notification and acknowledgement will comply.

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.)

There are no new substantive provisions or changes to the existing sections. The amendments clarify the regulation by adding a citation to the regulation sections that provide for a project monitor on asbestos abatement projects and adding a sentence to make clear that a single notification and acknowledgement is sufficient for a multiple-project service contract.

Amend the asbestos contractor responsibilities section (18VAC15-20-451) to add a citation to the regulation sections that describe asbestos abatement projects requiring a project monitor (18VAC15-20-455.1) and establish project monitor responsibilities (18VAC15-20-456).

Amend the asbestos contractor responsibilities section (18VAC15-20-451) to clarify that the initial notification by the contractor to the building owner or agent of the owner and acknowledgement to the contractor by the building owner or agent of the owner is sufficient to comply with the regulation requirement for contracts that involve multiple asbestos projects to be performed on the building owner’s property during the term of the contract.

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.

The issue addressed by the proposal is one of clarification as to when a project monitor is necessary for an asbestos abatement project and clarification that a single notification to and acknowledgement from the building owner or owner’s agent is sufficient for multiple-project service contracts.

Clarification of an existing regulation section is the primary advantage to the agency and the Commonwealth. No disadvantage has been identified.

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.

The federal regulation (40 CFR Part 763, Asbestos Model Accreditation Plan) recommends but does not compel the regulation of project monitors by states in order to obtain and maintain EPA state accreditation. For this reason, the federal regulation is silent on the issue of requiring asbestos contractors to notify and receive acknowledgement from their clients concerning the project monitor requirement.

Section 54.1-501 5 of the Code of Virginia mandates that the Board promulgate regulations governing the functions and duties of project monitors on asbestos projects, circumstances in which project monitors shall be required for asbestos projects, and training requirements for project monitors.

The existing regulation requires the notification and acknowledgement. The amendments clarify the requirement.

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.

None have been identified.

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.

The Board determined that the current regulation lacked clarity and would benefit from minor amendments.

The amendment concerning multiple-project contracts could save regulants and their clients some expense without diminishing the protection to the public.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Summary:

This proposed regulatory change clarifies the responsibilities of an asbestos contractor. Specifically, the change clarifies the circumstances when the contractor must notify the building/property owner that a project monitor is required. The change also specifies how the notification shall be handled under multiple-project service contracts.

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.

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	(a) Fund source – NGF Fund detail – 0900 (b) No one-time or ongoing costs are associated with the proposed regulation amendments.
Projected cost of the regulation on localities	None anticipated.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Asbestos Contractors and building owners will be affected by ensuring the presence of a licensed project monitor on asbestos projects.
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.	As of January 1, 2008, there are 176 licensed asbestos contractors that will be affected by the regulation. There is no data available upon which to base an estimate of the number of building owners there are that may require project monitors on asbestos projects.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the	No additional costs are anticipated.

<p>projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	
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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 Board considered advising its licensed asbestos contractors of the Board's interpretation of the regulation section's requirement. Such an interpretation would not result in a regulation language clarification. The Board, therefore, decided to use the fast-track amendment process to amend the regulation language. Thereafter, everyone who reads the regulation section will be aware of the Board's compliance expectation, not just those who happen to have received a copy of the Board's interpretation of its current regulation.

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. Detail all new provisions and/or all changes to existing sections.

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

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18VAC15-20-451 E	N/A	Requires asbestos contractor to notify the	The amendment adds the words "in accordance with the provisions of 18VAC15-

1		property owner or agent of the owner that a project monitor is required.	20-455.1 and 18VAC15-20-456” to bring the reader’s attention to the regulation sections that specify when a project monitor is required for an asbestos project.
18VAC15-20-451 E 2	N/A	Requires an asbestos contractor to obtain a written acknowledgement from the owner or the owner’s agent that the project monitor notification has been received.	The amendment adds “The initial notification and acknowledgement shall be sufficient for the term of multiple-project service contracts” as a separate sentence at the end of the subdivision. This clarifies that a single notification and acknowledgement will suffice for full term of multiple-project service contracts.