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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(s)	18 VAC 15-20
Regulation title(s)	Asbestos Licensing Regulations
Action title	Amendment of regulations for asbestos analytical laboratory licensing and project monitor reporting
Date this document prepared	August 18, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

This regulatory action will amend the Board's Asbestos Licensing Regulations regarding asbestos analytical laboratories and their branch/firm locations; simplify the requirements for entities that change their organizational status (e.g., corporation to limited liability company); and clarify requirements for final clearance reporting by project monitors. The Board may make other changes it identifies as necessary during the regulatory review process.

The Board has found it necessary to amend the regulations to better align its regulatory requirements for asbestos analytical laboratories with the statutory definition, so as to clarify the manner in which labs and their affiliated locations are licensed as well as reduce regulatory burdens on those entities that maintain more than one laboratory location. The project monitor provisions relating to final clearance reporting will also be clarified to ensure transparency in the labs used for analysis of final clearance samples.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

As a regulatory board within the Department, pursuant to subsection A.5 of § 54.1-201 of the Code of Virginia (<http://law.lis.virginia.gov/vacode/title54.1/chapter2/section54.1-201/>), the Board has the power and duty, "To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board."

§ 54.1-501 (<http://law.lis.virginia.gov/vacode/title54.1/chapter5/section54.1-501/>) grants authority for the Board to promulgate regulations governing the licensing of asbestos analytical laboratories as well as the functions and duties of project monitors on asbestos projects, and to establish performance criteria applicable to asbestos analytical laboratories. The content of the regulations is pursuant to the Board's discretion, but shall not be in conflict with the purposes of its statutory authority.

Purpose

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The Board considered the current asbestos analytical laboratory licensing requirements after receiving inquiries from lab applicants regarding the necessity to obtain a separate license for each location. Upon reviewing subsection B of § 54.1-503 of the Code of Virginia, it is clear that licensure of analytical laboratories applies to a "person." Further, § 54.1-500 defines a person as "a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any other individual or entity."

The current requirement for each location of a laboratory (entity) to obtain a separate license does not align with the statutory provisions. This has caused confusion for asbestos analytical laboratories that have branch offices in various sites, because all printed licenses currently bear the same name and address information as the main firm. Amending requirements to include branch office locations are necessary to protect the public by making clear which specific entities and locations are qualified to perform asbestos analysis, while also reducing regulatory burdens on licensees.

Project monitors who analyze air samples on site are required to be employed by a licensed analytical laboratory; however, there is no related provision that the final clearance reports prepared for the client include the laboratory results on the employing laboratory's letterhead. The Board seeks to amend the regulation to clarify the presentation of final clearance reports in order to provide greater transparency and protection to the public.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The Board considered the current asbestos analytical laboratory licensing requirements after receiving inquiries from lab applicants regarding the necessity to obtain a separate license for each location. Upon reviewing subsection B of § 54.1-503 of the Code of Virginia, it is clear that licensure of analytical laboratories applies to a “person.” Further, § 54.1-500 defines a person as “a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any other individual or entity.” The current requirement for each location of a laboratory (entity) to obtain a separate license does not align with the statutory provisions.

This has caused confusion for asbestos analytical laboratories that have branch offices in various sites, because all printed licenses currently bear the same name and address information as the main firm. Therefore, the Board will review similar licensing models utilized by other boards within the Department in developing requirements for laboratory licensing to include branch office locations.

Project monitors who analyze air samples on site are required to be employed by a licensed analytical laboratory. However, there is no related provision that the final clearance reports prepared for the client include the laboratory results on the employing laboratory’s letterhead. The Board seeks to amend the regulation to clarify the presentation of final clearance reports in order to provide greater transparency and protection to the public.

These substantive provisions under consideration are necessary for the Board to administer the asbestos program in accordance with its statutory mandate, and to align the regulations with current industry practices while protecting the safety, health and welfare of the public.

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.

Although no alternatives have been identified at this time, the Board may make other changes to the regulatory action under consideration if alternative proposals are identified during the regulatory review process and after consideration of any submissions during the public comment period.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency’s contact if you’re interested in serving on the panel is _____; 2) a panel will not be used; or

3) *public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

The Board has formed a committee of subject matter experts with representation including an asbestos analytical laboratory, project monitor, other asbestos professionals, and a citizen member. The Committee is charged with developing amendments for recommendation to the Board.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of any alternatives to this regulatory action, and the potential impacts of the regulation.

The agency is also seeking information specific to any impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Such information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so by one of the following methods:

- Via the **REGULATORY TOWN HALL website** at <http://townhall.virginia.gov/>

OR send to the attention of:

Trisha L. Henshaw, Executive Director
Asbestos, Lead, and Home Inspectors Board

By E-MAIL to:

ALHI@dpor.virginia.gov

By FAX to:

(866) 490-2723

By U.S. Mail to:

9960 Mayland Drive, Suite 400
Richmond, VA 23233

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.