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Proposed Regulation 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)	Virginia Asbestos Licensing Regulations
Action title	Update regulations for asbestos labs and project monitors
Date this document prepared	May 11, 2017

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*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

The Board for Asbestos, Lead, and Home Inspectors (Board) proposes amending its regulation pertaining to scope (18 VAC 15-20-10) to clarify those entities required to obtain a license for asbestos-related work. The proposed amendment would make “persons”—defined as business entities generally, rather than “individuals and firms” as currently written—subject to licensure, as well as clarify licensure requirements for asbestos analytical laboratories with multiple locations.

The Board also proposes amending asbestos firm entry requirements for consistency with other similar regulations applicable to firms and clarifying for applicants the information needed to be licensed. This will entail revising 18 VAC 15-20-33 to outline qualifications applicable to all firms seeking a license from the Board, and adding two new regulations detailing specific entry requirements for asbestos contractors and asbestos analytical laboratories, respectively. The regulations will be amended to specify that firm licenses may not be transferred and are valid only so long as the business entity holding the license is in

existence. The proposed regulations include amendments to clarify when asbestos analytical laboratories must notify the Board of changes to responsible personnel and types of analysis performed at laboratory locations.

The Board further proposes regulatory amendments related to the responsibilities of asbestos project monitors to include changes to air sample reporting requirements, as well as a proposed new regulation pertaining to conduct during on-site analysis. Finally, the proposed action makes technical amendments and corrections.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

There are no acronyms or technical terms used in this document that are not defined in the regulations.

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.

Section 54.1-201(A)(5) of the Code of Virginia states the Board has the power and duty "[t]o 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."

Section 54.1-501 of the Code of Virginia provides the authority for the Board to promulgate regulations governing (1) the licensing of and establishment of performance criteria for asbestos contractors and asbestos analytical laboratories; and (2) the functions and duties of project monitors on asbestos projects. The content of the regulations is pursuant to the Board's discretion, but shall not be in conflict with the purposes of the statutory authority.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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 proposed amendments are designed to (1) clarify existing regulatory requirements, particularly for firms operating as asbestos contractors and asbestos analytical laboratories; and (2) enhance protection of the public's health, safety, and welfare by ensuring analytical laboratories and project monitors demonstrate minimum competency and adequate transparency.

The Board considered the need to amend existing asbestos analytical laboratory licensing requirements after receiving inquiries from laboratory applicants regarding the necessity to obtain a separate license for

each location. Upon reviewing § 54.1-503(B) of the Code of Virginia, it is clear that licensure of analytical laboratories applies to a “person,” defined in § 54.1-500 as “a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any other individual or entity.” The current regulatory requirement for each location of a laboratory (entity) to obtain a separate license does not align with the statutory provisions, causing confusion for asbestos analytical laboratories with branch offices in various sites, because all printed licenses bear the same name and address information as the main firm.

The Board reviewed licensing models utilized by other regulatory boards in developing the proposed requirements for laboratory licensing to include branch office locations. The proposed amendments will remove the requirement that each laboratory location be separately licensed, and instead require only the main office to be licensed. Each branch office location will need to be listed with the Board and provide documentation of its qualifications to perform analysis. The intent of the proposed action is to reduce the regulatory burden on analytical laboratories operating in multiple locations, while also protecting the public by ensuring that each laboratory location is qualified to perform asbestos analysis.

Project monitors who analyze air samples on site are already required to be employed by a licensed analytical laboratory. However, currently there is no related provision that final clearance reports prepared for clients include the laboratory results on the employing laboratory’s letterhead. The proposed amendments will put in place such a requirement so as to provide greater transparency and protection to the public.

During review of the current regulations, the Board identified areas pertaining to entry requirements that were ambiguous, needlessly complicated, and sometimes unnecessary. The proposed action makes amendments to ensure the Board’s regulations are clearly written, consistent, and easily understandable by applicants, licensees, and the public.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.

Proposed substantive changes to existing sections:

1. Revise scope section (15-20-10), to reflect that persons (e.g., firms) are subject to licensure and that asbestos analytical laboratories with more than one location only need to obtain a license for the main office location. Branch offices of these laboratories will need to be listed with the Board.
2. Revise definitions section (15-20-20) to add definitions for “responsible individual” (the designated point-of-contact for a licensed firm’s regulatory compliance) as well as terms referring to various accrediting agencies in the field of asbestos testing/analysis.
3. Rewrite entry qualifications section (15-20-33) pertaining to all asbestos contractors and asbestos analytical laboratories. General qualifications for firms include requirements for applicant to disclose adverse criminal and disciplinary history, as well as information related to substantial identity of interest (i.e., same controlling principals/owners) with revoked licensees. (Qualifications specific to contractors and laboratories are proposed in new sections 15-20-33.1 and 15-20-33.2.)
4. Revised fee sections (15-20-52 and 15-20-53) to add application and renewal fees for asbestos analytical laboratory branch offices.
5. Revise section prohibiting transfer of asbestos contractor license (15-20-454) to specify that licenses are issued to firms; any change to the firm’s business entity type (e.g. conversion from corporation to a limited liability company) renders the license void; and the successor entity must obtain its own license.
6. Revise asbestos project monitor responsibilities section (15-20-456) to add requirement for air sample reports that are part of final clearance reports to be (a) on the letterhead of the employing asbestos analytical laboratory and (b) signed by project monitor. Also removes language

pertaining to performance of on-site analysis, which will be addressed in a new section (15-20-456.1).

7. Rewrite laboratory status change section (15-20-459.4) to require reporting of (a) any change to the lab’s responsible individual, rather than supervisors or signing officers; (b) loss of accreditation by an employed analyst or project monitor; and (c) any change in types of analysis performed by branch offices. Also adds language equivalent to proposed amendments to 15-20-454 regarding restrictions on license transfers, applicable to asbestos analytical laboratories.

Proposed new sections:

1. New sections 15-20-33.1 and 15-20-33.2 pertain to specific entry requirements for asbestos contractors and asbestos analytical laboratories, respectively. For asbestos analytical laboratories, the Board proposes to require that (a) laboratories designate a “responsible individual” at each location for regulatory compliance and (b) each branch office demonstrate minimum competency to perform the types of asbestos testing/analysis to be undertaken at that location.
2. New section 15-20-456.1 outlines professional responsibilities of project monitors who perform on-site analysis that previously appeared in 15-20-456). The proposed action also adds language regarding training and accreditation requirements for project monitors performing on-site analysis.

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.

Asbestos is a known human carcinogen that can cause chronic lung disease, as well as lung and other cancers. There is no “safe” level of asbestos exposure—any type of asbestos fiber can cause injury and may contribute to the risk of getting an asbestos-related disease. The Board’s regulatory program is designed to help protect the public, as well as the regulated community, from the risk of asbestos.

With regard to the Board’s proposed action, the primary advantage to the public is that the revisions will improve the clarity of the regulations, conform to current board practices and legal requirements, and better align with industry standards of practice, all to better protect the health, safety, and welfare of citizens of the Commonwealth. The proposed amendments benefit the regulated community by ensuring the regulations are clearly written, consistent, and easily understandable. The action offers the least burdensome compliance option available to applicants and licensees while providing much needed protection to citizens, striking the appropriate balance that should be attained when looking at regulations. No disadvantages to the public have been identified at this time.

The primary advantage to the Commonwealth is that the revisions reflect the importance Virginia places on ensuring regulations are the least burdensome but also provide protection to the citizens of the Commonwealth. There are no disadvantages posed by these proposed regulations to the Board, the Department of Professional and Occupational Regulation, or the Commonwealth.

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.

Current federal law and regulations require states to accredit asbestos contractors, project monitors, analytical laboratories, and other persons who inspect for, or design or conduct response actions for, asbestos-containing material in public and commercial buildings. The United States Environmental Protection Agency (EPA) Asbestos Model Accreditation Plan establishes minimum federal accreditation standards.

Although the EPA model plan outlines minimum requirements with respect to training programs and examinations, it provides that states “may require candidates for accreditation to meet other qualification and/or experience standards that the State considers appropriate for some or all disciplines.” (See 15 U.S.C. § 2646 and Appendix C to Subpart E of 40 CFR Part 763).

The Board’s proposed amendments to the regulations fall within the scope of “other qualification and/or experience standards” for which there do not appear to be any 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.

No localities that would be particularly affected by the proposed action have been identified at this time.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Trisha Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233; email to ALHI@dpor.virginia.gov, or fax to 866-350-5354. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 p.m. on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

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.

All costs incurred in support of board activities and regulatory operations are paid by the Department of Professional and Occupational Regulation and funded through fees paid by applicants and regulants. All boards within the Department 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.

<p>Projected cost to the state to implement and enforce the proposed regulation, including:</p> <p>a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>There are no projected costs to the state to implement and enforce the specifics of this proposed regulatory action.</p> <p>Additional revenue is likely from the fees collected for registering the branch offices of licensed analytical laboratories. Based on the \$100 application fee and the \$55 annual renewal fee, additional revenue may total \$1,000 to \$2,000 per year. The clarified regulations could result in a small number of additional applicants and minimal additional revenue.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no projected costs to localities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Current licensees and potential applicants operating as asbestos contractors, asbestos analytical laboratories, or asbestos project monitors are likely to be affected by the amended regulations.</p>
<p>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:</p> <p>a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>As of May 1, 2017, the Board licensed 186 asbestos contractors, 313 asbestos project monitors, and 89 asbestos analytical laboratories. The number of potential applicants is indeterminate.</p> <p>Most applicants and currently licensed firms would be considered small businesses, although an accurate count is not available.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:</p> <p>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</p>	<p>Analytical laboratories required to register any branch office location with the Board would incur the \$100 initial application fee and \$55 annual renewal fee. Minimal administrative costs would be incurred to complete and submit the branch registration application.</p> <p>Analytical laboratories would be required to</p>

<p>b) 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>designate a “responsible individual” for the main office and each branch office. A responsible individual may be an employee of the firm, or an officer, manager, owner, or other principal. This requirement could impose minimal additional administrative and/or personnel costs on affected licensees.</p> <p>Analytical laboratories will also assume additional reporting requirements including notification to the Board regarding any change to the responsible individual at laboratory locations, loss of credentialing by any analyst or project monitor, and changes in the type of analysis being performed at a laboratory location. Analytical laboratories may incur minimal additional administrative costs to comply with these new reporting requirements.</p> <p>Asbestos project monitors who conduct PCM analysis of air samples on site will now be required to have completed the NIOSH 582 course or equivalent. Project monitors who have not taken this course would incur the cost of the course, which varies by the training provider.</p> <p>The amended regulations would not affect the development of real estate for commercial or residential purposes.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The Board’s regulatory program is intended to help protect the public, as well as the regulated community, from the risk of asbestos.</p> <p>The proposed regulations are designed to (1) clarify existing licensing requirements, particularly for firms operating as asbestos contractors and asbestos analytical laboratories; and (2) protect the public’s health, safety, and welfare by ensuring that (i) analytical laboratories and project monitors are minimally competent and (ii) with respect to air sample reporting, there is adequate transparency.</p> <p>The proposed amendments benefit the regulated community by ensuring the regulations are clearly written, consistent, and easily understandable.</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.

No viable alternatives to the proposed amendments have been identified. One objective of the proposed action is to reduce the regulatory burden on licensees and potential applicants, while still meeting the Board's overall objective of protecting the public's health, safety, and welfare. However, alternatives may be identified during the regulatory review process and after review of any submissions during public comment.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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 considered the potential adverse effects of the proposed amendments on applicants and licensees, including small businesses, during the development process. Toward that end, some of the proposed amendments serve to reduce reporting requirements, including elimination of the current requirement for asbestos analytical laboratories to report personnel changes "immediately." The Board determined the remaining compliance and reporting requirements in the proposed amendments are necessary to protect the public's health, safety, and welfare from the significant risks posed by asbestos exposure, and do not pose an unreasonable administrative or financial burden. The enabling statute establishing the asbestos-related licensing program provides no exemption for small business; therefore there are no such exemptions in the proposed regulations.

Periodic review and small business impact review report of findings

If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include 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.

This regulatory action is not the result of a periodic review or small business impact review.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

No public comments were received during the comment period following the publication of the NOIRA.

Family impact

Please assess the impact of this 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 impact on the institution of the family or family stability has been identified.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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 follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
15-20-10		Outlines those individuals and firms that need to be licensed by the Board.	<p>Proposed change specifies “persons” as defined in the Board’s regulations that need to be licensed by the Board. This change occurs in conjunction with a change in the definition of person under 15-20-20. The intent of the change is to have the regulation more closely conform to statutory language.</p> <p>The definition of accredited asbestos training program is clarified to reflect that approval from the Board is required, as training programs are not licensed.</p>

		Licensure is required for asbestos analytical laboratories. Under current practice, laboratories with multiple locations are required to obtain a license for each location.	Proposed change will add language to specify that a laboratory with multiple locations is to obtain a license for its main office only, and register its branch offices with the Board. The intent of the change is to help resolve confusion regarding licensure requirements and reduce regulatory burdens on laboratories with more than one location.
15-20-20		Outlines definitions used in the chapter.	Proposed change includes adding several definitions for terms that refer to various accrediting agencies in the area of asbestos testing/analysis. The definition of "person" will be revised to simplify and clarify its meaning. A new definition, "responsible individual," will be added. The term refers to an individual designated by a firm to ensure compliance with the Board's regulations and relevant statutes. The individual would also be responsible for receiving communications and notices from the Board.
15-20-52		Outlines application fees for initial licensure.	Adds a fee for registering asbestos analytical laboratory branch office.
15-20-53		Outlines application fees for license renewal and late renewal.	Adds renewal and late renewal fees for asbestos analytical laboratory branch offices.
15-20-454		Prohibits the transfer of an asbestos contractor license.	Revised language expands upon existing requirement by specifying that the license is issued to the firm and is not transferrable. Also imposes new requirement that when the firm holding the license changes its form of legal business entity (e.g. converting from a corporation to a limited liability company), that the license issued to the firm is no longer valid and must be returned to the Board. The successor entity must obtain a license from the Board. This language mirrors the requirement under the Virginia Board for Contractors regulations (18 VAC 50-22-210) which imposes substantially the same restrictions regarding transfer of a license. The Board for Contractors regulation only applies to the contractor license issued by the Board for Contractors, not to the

			<p>asbestos contractor license issued by the Board for Asbestos, Lead, and Home Inspectors. Having a parallel requirement will help ensure that whenever a licensee changes its form of business entity, that it will also obtain a new asbestos contractor license.</p>
<p>15-20-459.4</p>		<p>Outlines notification requirements for asbestos analytical laboratories when laboratories experience change in their qualified personnel, lose accreditation, or seek to change the type of analysis they will undertake.</p> <p>Laboratories must “immediately” notify the Board of any “addition or deletion” regarding the employment of “trained and experienced supervisors” or changes in the “signing officer’s relationship” with the licensee. Laboratories must also notify the Board within 10 business days if a laboratory location loses accreditation. Laboratories must also notify the Board when changing the type of analysis they perform, and submit an application and demonstrate their qualifications to perform the new analysis type.</p>	<p>Revises existing requirement regarding personnel changes to only require the Board be notified when there are changes to the responsible individual for a laboratory location. Such notification is to be made within 10 days of the change. The change serves to simplify the requirement.</p> <p>The proposed change adds a requirement that laboratories notify the Board if an analyst or project monitor under their employ loses accreditation from the AAR. This requirement will help ensure that any laboratory which qualifies for licensure on the basis that its analysts are listed in the AAR notifies the Board of a change in its qualification to hold a license.</p> <p>The proposed change adds language to require that branch offices submit an application to the Board when changing the type of analysis that will be performed at a laboratory branch office.</p> <p>The proposed change also clarifies that a licensee must receive approval from the Board prior to performing a new type of analysis. Current language only required submission of information to the Board prior to performing a new type of analysis.</p> <p>The proposed change adds new requirements that licensees notify the Board of any change in a laboratory’s location within 10 days of the change. This change will help ensure that a laboratory’s address information is timely updated whenever there is a change.</p> <p>It also adds language specifying that licenses are issued to firms, and are not transferable; and that whenever the firm holding the license changes its form of business entity, that the license is no longer valid and must be returned to the Board within 30 days. The successor entity must obtain a new license.</p>

			<p>This new requirement parallels the proposed new requirement for asbestos contractor licensees. Having a parallel requirement will help ensure that whenever a licensee changes its form of business entity, that it will also obtain a new asbestos analytical laboratory license.</p>
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If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

Current chapter-section number	Proposed new chapter-section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
15-20-33		<p>Outlines the qualifications for licensure of business entities to include asbestos contractors and asbestos analytical laboratories. Subsection E of the regulation provides the specific entry qualifications for asbestos contractor and asbestos analytical laboratories.</p>	<p>Under the proposed change, the existing subsection E would be repealed. New, separate regulations (15-20-33.1 and 15-20-33.2) would be created to address specific qualifications for asbestos contractors and asbestos analytical laboratories.</p> <p>The section, as revised, would outline general requirements that are applicable to firms – as opposed to business entities. The change in terminology would make the regulation more consistent with the terminology used by 15-20-20, which defines “firm” but does not include a definition for “business entity.”</p> <p>Subsection B is revised to clarify that firms must register trade or fictitious names with the State Corporation Commission or clerk of the circuit court where firm conducts business.</p> <p>Specific references to Virginia Code sections pertaining to the requirement for businesses to record trade or fictitious names with the circuit court are removed in favor of more general language that firms comply with applicable Virginia Code requirements. Similarly, specific references to Virginia Code sections pertaining to registration requirements for corporations and limited liability companies are removed, in favor of general language that firms comply with applicable law.</p>

			<p>Subdivision 4 of subsection D is repealed as the language is duplicative of requirements outlined in subsection B.</p>
		<p>Subsection F addresses the criminal history of applicants. Under current language, it imposes a requirement that the firm, owners, officers, or directors not have been convicted of a felony or misdemeanor involving lying, cheating, or stealing; and outlines the Board's authority to deny licensure on this basis.</p>	<p>The subsection pertaining to an applicant's criminal history will be revised to require an applicant disclose the criminal history of the firm and its principals, rather than prohibit their being convicted. The revised language will also more clearly outline what information needs to be disclosed, the Board's authority to deny a license based on an applicant's criminal history, and the applicant's right to an informal conference for the Board to further review the application in face of possible denial of licensure.</p> <p>As presently written, the subsection arguably reflects a presumption that a criminal history will result in denial of licensure by the Board. This might potentially deter applicants, who might otherwise be qualified, from seeking licensure. Further, under § 54.1-204 of the Code of Virginia, a license may not be refused solely due to a criminal conviction unless, in the determination of the board, the conviction directly relates to the practice of the occupation/profession or demonstrates the applicant is unfit for licensure. Further, the existing language is unnecessarily complicated and confusing. The revisions will help to resolve these concerns.</p>
		<p>Subsection G requires asbestos contractor and asbestos analytical laboratory applicants to adhere to the respective standards of conduct for each license type while application is pending.</p>	<p>The language is being repealed as it is unnecessary. During the pendency of an application, the applicant cannot lawfully engage in asbestos contracting or asbestos testing/analysis.</p>

		<p>Subsection H addresses the standing of the applicant with respect to other regulatory bodies and any disciplinary history.</p> <p>Under current language, it imposes a requirement that the firm, owners, officers, or directors be in good standing, and not have had a license suspended, revoked, or surrendered in connection with a disciplinary action; and outlines the Board’s authority to deny licensure on this basis.</p>	<p>The subsection pertaining to an applicant’s disciplinary history will be revised to require an applicant disclose any suspension, revocation, or surrender of a license, or disclose any license that has been subject to discipline.</p> <p>Similar to the concern regarding criminal history, the current language in the subsection suggests a presumption that any previous disciplinary action taken against an applicant will result in denial of licensure. In addition, the existing language is ambiguous as to whether disciplinary action that did not result in license suspension, revocation, or surrender could be basis for denial of a license. The revised regulation would clarify this.</p>
		<p>Subsection I provides that the Board has the authority to deny licensure to an asbestos contractor or asbestos analytical laboratory applicant that has a financial interest in an asbestos contractor whose licensed was previously revoked, suspended, or not renewed.</p>	<p>The language is being repealed and reformulated in a new subsection that provides that the board has the authority to deny an applicant licensure based on “substantial identity of interest.” Substantial identity of interest includes those applicants who have a controlling financial interest in a contractor or laboratory whose license was previously suspended, revoked, or denied renewal, but also includes common owners and/or principals between the same.</p> <p>As contractor and laboratory licenses are issued to firms (as opposed to individuals), the new language will help ensure that firms which controlled or operated by individuals who are unfit for licensure, as evidenced by a previous revocation, suspension, or nonrenewal, will not be issued a new license. This provision helps to prevent a “revolving door” problem caused when unfit persons seek to obtain a new (clean) license after a previous license was sanctioned.</p>
		<p>N/A</p>	<p>A new subsection will be added that requires an applicant not to knowingly make a materially false statement, submit false documentation, or fail to disclose a material fact to the Board in connection with submitting an application.</p> <p>This new language helps to guard against fraud during the license application process. The Board often encounters situations where applicants attempt to</p>

			provide false information, including fabricated identity documentation, in order to obtain a license.
15-20-33.E	15-20-33.1	Requires that asbestos contractor applicants hold a valid license issued by the Virginia Board for Contractors, and hold the asbestos specialty.	New section created to address specific licensure requirements for an asbestos contractor license. Substantively, the requirements are unchanged from those currently in place.
15-20-33.E	15-20-33.2	Outlines entry requirements specific to asbestos analytical laboratories, based on the type(s) of analysis the laboratory seeks to perform (PLM, PCM, and/or TEM).	<p>New section created to address specific licensure requirements for asbestos analytical laboratories. Clarifies the criteria by which an analytical laboratory can qualify for licensure by updating terminology for accrediting agencies, and by structuring the regulatory language so that it is easier to read.</p> <p>In addition, the new section adds a requirement that laboratories designate a “responsible individual” and that any branch office of a laboratory complete an application with the Board, designate a responsible individual for the branch office, and provide documentation necessary to demonstrate qualification to undertake PLM, PCM, and/or TEM analysis it seeks to perform.</p> <p>Adds requirement that the training and quality control documentation a licensee is required to maintain be provided to the Board upon request.</p>
15-20-456		<p>Outlines professional responsibilities of asbestos project monitors, including requirement to inspect contractor’s work and containment, and keep a log of work performed.</p> <p>Subsection D of the regulation requires project monitors performing PCM analysis onsite to be employed by a properly licensed analytical laboratory and possess designated accreditation.</p>	<p>Under the proposed change, the existing subsection D would be repealed. A new separate regulation (15-20-456.1) would be created to address onsite analysis performed by project monitors.</p> <p>A new subsection D would be added. The new subsection imposes a new requirement that the air sample report in a final clearance report be on the letterhead of the asbestos analytical laboratory that employs the project monitor. Also requires the air sample report contain the signature of the project monitor.</p> <p>The new language is being added in order to provide greater transparency to the public.</p>

<p>15-20-456.D</p>	<p>15-20-456.1</p>	<p>Requires project monitors performing PCM analysis onsite to be employed by a properly licensed analytical laboratory and possess designated accreditation.</p>	<p>Keeps existing requirement that project monitors performing PCM analysis onsite be employed by a licensed asbestos analytical laboratory. Adds additional requirement that monitor have completed the NIOSH 582 course or equivalent. Expands accreditation criteria to qualify as onsite project monitor for PCM analysis. Project monitor may be listed in AAR with an "acceptable" rating; or may be employed by a laboratory that meets certain accreditation requirements.</p> <p>The purpose behind these changes is to ensure that project monitors who perform PCM analysis onsite are properly qualified.</p>
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