



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	15
VAC Chapter Number:	20
Regulation Title:	Virginia Asbestos Licensing Regulations
Action Title:	Amending
Date:	November 8, 2001

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package .

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The Board was created to regulate through testing and evaluation, those individuals who work in the asbestos field.

The amended regulation updates the existing regulation by following current federal regulations. The amended regulation was reorganized to go from the general to the specific to make the regulations more clearly understandable.

Non-friable roofing, flooring and siding materials have been deregulated since House Bill 951 became effective July 1996 and therefore have been deleted.

Experience requirements for asbestos inspectors, management planners, and project designers now include five example reports for a Bachelor of Science degree, ten example reports for a

Associate of Science degree, and fifteen example reports for a High School Diploma to meet entry requirements.

Asbestos analytical laboratories providing Phase Contrast Microscopy (PCM) analysis may now use the Asbestos Analyst Registry (AAR) to meet their accreditation requirements.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The Board for Asbestos, Lead and Home Inspectors adopted the proposed Asbestos Licensing Regulations as a final regulation on August 15, 2001.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The proposed regulations are based on the EPA model accreditation plan (MAP). The MAP establishes the minimum requirements for licensure of asbestos professionals. The proposed regulations are no more stringent than the MAP. Project monitor licensure is suggested by the MAP and is required by the Code of Virginia.

To date, two federal agencies have been principally responsible for generating regulations for asbestos control. These two agencies are the U.S. Occupational Safety and Health Administration (OSHA) and U.S. Environmental Protection Agency (EPA).

A summary of OSHA and EPA regulations follows. Specifically covered are the OSHA Asbestos Standards; the EPA Worker Protection Rule; The National Emission Standards for Hazardous Air Pollutants (NESHAP); the Asbestos Hazard Emergency Response Act (AHERA); and the EPA Model Accreditation Plan (MAP).

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

The Occupational Safety and Health Administration has established these sets of regulations that address asbestos exposure:

- 29 CFR 1910.1001 - General Industry
- 29 CFR 1926.1101 - Construction Industry
- 29 CFR 1915.1001 - Shipyard Employment
- 29 CFR 1910.134 - Use of Respirators (General)

The construction industry standard (29 CFR 1926.1101) covers employees engaged in demolition and construction, and the following related activities likely to involve asbestos exposure:

- Removal;
- Encapsulation;
- Alteration;
- Repair;
- Maintenance;
- Insulation;
- Spill/emergency clean-up;
- Transportation;
- Disposal;
- Storage of Asbestos Containing Material.

The web site address for locating the text of 29 CFR 1926.1101 is: http://www.osha-slc.gov/OshStd_data/1926.1101.html

EPA WORKER PROTECTION RULE

This regulation extends the OSHA standards to state and local employees who perform asbestos work and who are not covered by the OSHA Asbestos Standards, or by a state OSHA plan. The Rule currently parallels 1986 OSHA requirements and requires medical examinations, air monitoring and reporting, protective equipment, work practices and recordkeeping.

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP)

EPA's rules concerning the application, removal, and disposal of asbestos-containing materials were issued under National Emission Standards For Hazardous Air Pollutants (NESHAP).

Bans on Asbestos Containing Materials

Three bans on asbestos-containing material were set forth by the NESHAP regulations. These bans occurred in the three years as indicated below:

- 1973 - Spray-applied insulating materials
- 1976 - Pre-molded insulation, if friable
- 1978 - Spray-applied decorative material

Notification

Specific notification to a regional or state NESHAP Coordinator is required before a building is demolished or renovated. This written notification must be delivered by U.S. Postal Service, commercial delivery service, or hand delivery.

ASBESTOS HAZARD EMERGENCY RESPONSE ACT (AHERA)

Final AHERA regulations became effective December 14, 1987. Included in this Act were provisions directing the EPA to establish rules and regulations addressing asbestos-containing materials (ACM) in schools. Specifically, EPA was directed to address the issues of: (1) identifying, (2) evaluating, and (3) controlling ACM in schools.

MODEL ACCREDITATION PLAN (MAP)

On February 3, 1994, the EPA Asbestos Model Accreditation Plan (MAP) was published in the Federal Register as 40 CFR Part 763 Appendix C to Subpart E. The MAP is the driving force behind the licensure of asbestos professionals and set forth the guidelines for the states' asbestos programs. The MAP for states has eight components:

- Definitions
- Initial Training
- Examinations
- Continuing Education
- Qualifications
- Recordkeeping Requirements for Training Providers
- Deaccreditation
- Reciprocity

EPA regulations web site addresses can be located at:<http://www.epa.gov/docs/epachfr40/chapt-l.info/subch-r/40p0763.pdf>

CODE OF VIRGINIA

The Board's authority to promulgate the proposed regulations is contained in Section 54.1-201 and Section 54.1-501 of the Code of Virginia.

Section 54.1-501 of the *Code of Virginia* mandates that the Board for Asbestos, Lead and Home Inspectors implement Chapter 5 of Title 54.1 of the *Code of Virginia*, by promulgating regulations that include requirements to:

- Carry out Section 54.1-501 of the *Code of Virginia* in compliance with the Administrative Process Act to include but not limited to the prescription of fees, procedures, and qualifications for the issuance and renewal and govern conflicts of interest of asbestos licenses;

Approve the criteria for accredited asbestos training programs, training managers and principal instructors;

Approve accredited asbestos training programs, examinations and the grading system for testing applicants for asbestos licensure;

Promulgate regulations governing the licensing of and establishing performance criteria applicable to asbestos analytical laboratories;

Promulgate regulations governing the functions and duties of project monitors on asbestos projects, and training requirements for project monitors.

The proposed regulations implement each of the above in a manner believed to be the least burdensome on the regulated industry while providing protection to the public against incompetent and unqualified persons working as asbestos professionals.

(For Code text, see: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-501>).

The imperative form of the verb "shall" is used in the statute making the rulemaking provisions mandatory rather than discretionary.

By memorandum dated ????, the Office of the Attorney General stated that the agency has the authority to promulgate the final regulation under the authority granted the Board under Section 54.1-501 of the Code of Virginia and that it comports with applicable state law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

These amended Virginia regulations are essential to continuing the implementation of federal mandates and to address a clear and imminent threat to the health, safety and welfare of the public. Various sources have estimated that upwards of 12,000 workers will die of asbestos-related diseases every year. Most of these workers will become ill ten to forty years after they started working with or around asbestos.

Asbestos is a naturally occurring mineral which breaks up into microscopic fibers. The fibers accumulate in the lungs and can lead to various diseases. After ten to forty years from the date of exposure asbestos can cause asbestosis, lung cancer, mesothelioma, and other cancers. There is no dose response to asbestos, so it is possible to die from mesothelioma after being exposed to a single fiber of asbestos.

Training is vital so that personnel in the asbestos field do not run the risk of exposing themselves, subsequent occupants and occupants in adjacent areas to a known carcinogen.

By requiring training and licensure of personnel in the asbestos abatement field, the amended regulations will help to protect the health, safety, and welfare of the public.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

18 VAC 15-20-10 has been amended to add the meanings of acronyms used throughout the regulation document.

18 VAC 15-20-20 has been amended to add, delete or modify the definitions of terms used throughout the regulation document.

18 VAC 15-20-21 has been added to make clear that the Board may waive regulation requirements only when no harm to the public will result and to explain that the burden of proof which demonstrates continued public protection rests with the party requesting the waiver.

18 VAC 15-20-30 has been revised for clarity and ease of use. Much of the revision reflects the relocation of language or requirements from other sections of the existing regulations. The result is a section that allows one to quickly determine the general requirements to obtain and renew licensure.

18 VAC 15-20-40 has been amended to change the name of the form required to document qualifying experience and to allow a letter from an employer to be substituted for the experience verification form.

18 VAC 15-20-50 has been amended to delete references to the deregulated RFS disciplines and to enhance clarity. The fee schedule has been established in compliance with §54.1-113 of the Code of Virginia.

18 VAC 15-20-60 has been amended to provide more specific information concerning license renewal and to add a renewal requirement for accredited asbestos training programs.

18 VAC 15-20-70 has been amended to reflect the renewal requirement for accredited asbestos training programs, to provide an additional refresher training option for project monitors, and to limit to one the number of times a single training certificate may be used to renew an individual license. Other revisions to the language have been made for clarity.

18 VAC 15-20-80 has been amended to extend the requirement to report name and address changes to accredited asbestos training programs.

18 VAC 15-20-90 has been amended to move the general requirements to qualify for a worker license to 18 VAC 15-20-30.

18 VAC 15-20-100 has been repealed in its entirety. The language now appears in 18 VAC 15-20-50.

18 VAC 15-20-101 is a new section containing the qualifications for licensure as an asbestos supervisor.

18 VAC 15-20-110 has been amended to specifically require an application and fee, and to state more specifically which occupational or professional licenses are required to qualify for an asbestos contractor license.

18 VAC 15-20-120, 18 VAC 15-20-130 and 18 VAC 15-20-140 have been repealed in their entirety. The standards established in the repealed sections have been moved to 18 VAC 15-20-451, 18 VAC 15-20-452 and 18 VAC 15-20-453.

18 VAC 15-20-150 has been amended to empower the Board to deny the asbestos contractor license application of any firm whose owners, officers or directors have a financial interest in an asbestos contractor whose asbestos license has been revoked, suspended or denied renewal.

18 VAC 15-20-160 has been repealed in its entirety. Its substance now appears as 18 VAC 15-20-454.

18 VAC 15-20-170, 18 VAC 15-20-180, 18 VAC 15-20-190, 18 VAC 15-20-200, 18 VAC 15-20-210, 18 VAC 15-20-220, 18 VAC 15-20-230 and 18 VAC 15-20-240 have been repealed in their entirety to implement the provisions of House Bill 951, passed by the 1996 Session of the Virginia General Assembly, which deregulated asbestos roofing, flooring and siding activities.

18 VAC 15-20-250 establishes the qualifications for inspector licensing and has been amended to reorganize the existing regulation provisions and to delete the references to qualifying experience that have been revised and included in 18 VAC 15-20-251.

18 VAC 15-20-251 is a new section drawn from 18 VAC 15-20-250 as a part of the reorganization of the sections.

18 VAC 15-20-260 has been repealed in its entirety. Its substance has been made a part of 18 VAC 15-20-459 and 18 VAC 15-20-459.1.

18 VAC 15-20-270 establishes entry standards for management planners and has been amended to reorganize the existing regulation provisions and to delete the references to qualifying experience that have been revised and included in 18 VAC 15-20-271. Obsolete and ineffective

language has been deleted and language has been added to allow one to qualify for a license after having completed a specific number of management plans.

18 VAC 15-20-271 is a new section drawn from 18 VAC 15-20-270 as a part of the reorganization of the sections and contains the substance of language referencing qualifying experience deleted from 18 VAC 15-20-270.

18 VAC 15-20-280 has been repealed in its entirety. Its substance now appears in 18 VAC 15-20-457.

18 VAC 15-20-290 establishes the entry standards for project designers, and has been amended to reorganize the existing regulation provisions, and to delete the references to qualifying experience that have been revised and included in 18 VAC 15-20-291.

18 VAC 15-20-291 is a new section drawn from 18 VAC 15-20-290 as a part of the reorganization of the sections and contains the substance referencing qualifying experience previously found in 18 VAC 15-20-290.

18 VAC 15-20-300 has been repealed in its entirety and moved to 18 VAC 15-20-455 under a new regulation part created for project monitor standards of conduct and practice.

18 VAC 15-20-310 has been repealed in its entirety. The substance has been revised and now appears in 18 VAC 15-20-455.1.

18 VAC 15-20-320 has been repealed in its entirety.

18 VAC 15-20-330 establishes the license qualifications for project monitors and has been revised and reorganized for clarity. The language establishing qualifying experience in subsection E has been rephrased and moved to subsection B. Subsections C and D have been deleted in their entirety, but the substance has been rephrased and moved to subsections A and B of 18 VAC 15-20-332. The substance of the first sentence of subsection F has been moved to 18 VAC 15-20-456 D, project monitor responsibilities, and the substance of the remainder of the subsection has been revised and moved to 18 VAC 15-20-331, qualifying experience.

18 VAC 15-20-331 and 18 VAC 15-20-332 are new sections and have been addressed under 18 VAC 15-20-330 above.

18 VAC 15-20-340 has been repealed and moved to 18 VAC 15-20-459.2 under Part XVII establishing standards of practice and conduct for asbestos analytical laboratories.

18 VAC 15-20-350 has been repealed in its entirety. The substance has been moved to 18 VAC 15-20-40.

18 VAC 15-20-360 has been repealed in its entirety. The substance has been moved to 18 VAC 15-20-361.

18 VAC 15-20-361 is a new section created to establish licensing qualifications for asbestos analytical laboratories and contains the substance of repealed 18 VAC 15-20-360 revised for clarity.

18 VAC 15-20-370 has been repealed in its entirety. The substance has been moved to 18 VAC 15-20-40.

18 VAC 15-20-380 and 18 VAC 15-20-390 have been repealed in their entirety and their substance moved to 18 VAC 15-20-459.4 and 18 VAC 15-20-459.5 as a part of the regulation reorganization.

18 VAC 15-20-400 establishes the responsibility of all licensees to the public and establishes performance standards in specific situations.

18 VAC 15-20-410 establishes performance standards for public statements made by regulants and contains language changes to add clarity.

18 VAC 15-20-420 establishes solicitation of work standards for regulants and contains language changes for clarity.

18 VAC 15-20-430 establishes professional responsibility standards for regulants and is substantively unchanged from the current regulation. Language has been added for clarity.

18 VAC 15-20-440 establishes a requirement for regulants to maintain good standing in other jurisdictions in which they may be regulated.

18 VAC 15-20-450 enumerates the grounds for disciplinary action that may be taken by the Board against regulants who fail to comply with the provisions of the regulations. The language has been amended for clarity and is substantially unchanged from the current regulation although two additional grounds for disciplinary action have been added.

18 VAC 15-20-451 is a new section created to establish the asbestos contractor responsibilities that were repealed as 18 VAC 15-20-120.

18 VAC 15-20-452 is a new section created to establish the requirement to maintain certain training and license records on asbestos abatement sites that was repealed as 18 VAC 15-20-130.

18 VAC 15-20-453 is a new section created to establish the conflict of interest provisions that was repealed as 18 VAC 15-20-140.

18 VAC 15-20-454 is a new section created to continue the prohibition against contractor license transfers that was repealed as 18 VAC 15-20-160.

18 VAC 15-20-455 is a new section created to establish the duties and functions of project monitors and contains the substance of repealed 18 VAC 15-20-300.

18 VAC 15-20-455.1 is a new section created to establish which abatement projects require project monitors and contains the substance of repealed 18 VAC 1-20-310.

18 VAC 15-20-456 is a new section created to establish the responsibilities of project monitors and is a new standard, except for subsection D, which is drawn from the first sentence of subsection F of 18 VAC 15-20-330 which was repealed.

18 VAC 15-20-457 is a new section created to establish the duties and functions of project designers and contains the language of repealed 18 VAC 15-20-280.

18 VAC 15-20-458 is a new section created to establish the responsibilities of project designers and contains minimum standards for the project design describing abatement work to be undertaken by a contractor.

18 VAC 15-20-459 is a new section created to establish the duties and functions of inspectors and management planners. Subsection A is new and simply sets out the objective of asbestos inspections, which is essentially to find suspect materials and determine if they contain asbestos. Subsection B is drawn from repealed 18 VAC 15-20-260 and has been rephrased to emphasize the objective of managing remaining asbestos containing materials in a building.

18 VAC 15-20-459.1 is a new section created to establish the responsibilities of inspectors and management planners. Subsections A and B are new and require that inspections be conducted in compliance with the Asbestos Hazard Emergency Response Act (AHERA) and provide minimum standards for inspection reports.

18 VAC 15-20-459.2 is a new section created to establish general standards of practice and conduct for asbestos analytical laboratories and is a new section. It is drawn from repealed 18 VAC 15-20-340.

18 VAC 15-20-459.3 is a new section created to establish laboratory responsibilities for the analysis they perform. Some of its substance was drawn from repealed 18 VAC 15-20-360.

18 VAC 15-20-459.4 and 18 VAC 15-20-459.5 are new sections created to establish change of status and license standards for laboratories. They have been drawn from repealed 18 VAC 15-20-380 and 18 VAC 15-20-390, respectively.

18 VAC 15-20-459.6 establishes the approval standards for accredited asbestos training programs and is the same as repealed 18 VAC 15-20-620, except for subdivision 7 of subsection A. Subdivision 7 has been changed to require a copy of the course examination and answer sheet rather than a detailed statement of how the examination was developed.

18 VAC 15-20-459.7 establishes the approval process used by the Department to process and approve training program applications. This new provision articulates the procedure that has been in use by the Department for many years.

18 VAC 15-20-459.8 establishes the examination requirement to be met by all training programs and is drawn, with minor language changes, from repealed 18 VAC 15-20-630.

18 VAC 15-20-459.9 describes how training programs are to handle letters of approval, and how records are to be maintained and made available to the Board or its representatives. The language is draw, with minor changes, from repealed 18 VAC 15-20-650.

18 VAC 15-20-459.10 establishes standards for approval of refresher training programs and is drawn, with minor changes, from repealed 18 VAC 15-20-650.

18 VAC 15-20-459.11 establishes a new renewal requirement for accredited asbestos training programs. The absence of a renewal requirement has created problems for the public and the Department. Renewal will allow the Department to track and regulate those programs continuing in operation.

18 VAC 15-20-459.12 establishes the procedure to be followed by training programs to have changes made to their approved programs and is drawn from repealed 18 VAC 15-20-660.

18 VAC 15-20-459.13 establishes the requirements to have a training program approval transferred and is drawn from repealed 18 VAC 15-20-670.

18 VAC 15-20-459.14 establishes the authority of the Department to obtain access to training activities for the purpose of assuring compliance and is drawn from repealed 18 VAC 15-20-680.

18 VAC 15-20-459.15 establishes the grounds for suspension or revocation of a training program's approval and is drawn from repealed 18 VAC 15-20-690.

18 VAC 15-20-460 establishes general record keeping requirements for those approved to perform asbestos training. Language concerning certain obsolete or superceded federal provisions was deleted.

18 VAC 15-20-470 establishes specific record keeping requirements for approved training programs. The requirement to submit a course participant list at the end of each course has been included.

18 VAC 15-20-480 establishes the course outline and syllabus standards for training programs and is substantially unchanged.

18 VAC 15-20-490 establishes the standards for certificates of course completion that shall be prepared and presented by the training program to each individual passing each course. The standards are substantially unchanged.

18 VAC 15-20-500 establishes the standards for course material and equipment to be used during training programs. The language describing the equipment list and how superseded equipment lists are to be maintained has been amended for clarity.

18 VAC 15-20-510 has been repealed in its entirety, revised substantially and now appears as 18 VAC 15-20-511.

18 VAC 15-20-511 is a new section and establishes the qualifications for asbestos training program instructors. It continues the substance of repealed 18 VAC 15-20-510.

18 VAC 15-20-520 establishes the standard for the number of instructors to be used in training programs and is unchanged except for a minor phrasing change.

18 VAC 15-20-530 establishes student to instructor ratios for training programs and remains unchanged except for language revisions that add clarity.

18 VAC 15-20-540 requires that all initial and refresher training programs be discipline specific. The language remains unchanged.

18 VAC 15-20-550 requires each training program to be completed within two weeks and has been amended for clarity.

18 VAC 15-20-560 limits the amount of training that an individual may receive in a single day. The section has been amended to allow more than four hours of training during the evening if it is conducted during the student's second or third shift.

18 VAC 15-20-570 requires all programs to be taught in English, with the single exception of asbestos worker programs. There is no change from current requirements except for minor language changes.

18 VAC 15-20-580 continues the standards for examinations used to test comprehension and learning at the end of each training program. There are some minor language revisions, but no change in substance.

18 VAC 15-20-590 continues a requirement to notify the Board of any change in address, telephone number or instructors within 30 days. There are some minor language revisions, but no change from current requirements.

18 VAC 15-20-600 continues a requirement for training providers to notify the Board if they cease training and give the Board the opportunity to take possession of their training records. There are only minor changes in phrasing.

18 VAC 15-20-610 requires training programs to comply with EPA, ASHARA and the EPA Model Accreditation Plan. There is no change from the current requirement, only minor language revisions.

18 VAC 15-20-620 through 18 VAC 15-20-690 have been repealed in their entirety and now appear as 18 VAC 15-20-459.6 through 18 VAC 15-20-459.15.

18 VAC 15-20-700 through 18 VAC 15-20-880 set the standards for asbestos training programs and contain only minor amendments to add clarity and language conformity with the rest of the regulations.

18 VAC 15-20-890 through 18 VAC 15-20-950 concern roofing, flooring and siding (RFS) training and are repealed in their entirety to implement House Bill 951, passed by the 1996 Session of the Virginia General Assembly.

18 VAC 15-20-960 enumerates the current fee structure, is redundant to 18 VAC 15-20-50 and has been repealed in its entirety.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 include a sentence to that effect.

Asbestos is a known carcinogen which kills thousands of people every year. Both federal and state regulation are necessary to protect the public and the asbestos workforce.

The primary advantage to the public of implementing the new regulatory provision is the continued protection to the public resulting from the availability of competent and trained personnel to work in the hazardous field of asbestos abatement. The primary advantage to the Commonwealth is to be able to regulate the workforce necessary to meet both federal and state asbestos regulations. The disadvantages to the public and the Commonwealth are the costs related to asbestos abatement and the administration of the regulatory program.

Given that one asbestos fiber in the human lung can cause mesothelioma, a cancer that results in death, and that much of the asbestos work is done in public schools, the advantages far outweigh the disadvantages.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

18 VAC 15-20-20 the definition of "OSHA Class III work" has been added to mean repair and maintenance operations, where asbestos containing material (ACM), including thermal system insulation and surfacing material, is likely to be disturbed.

18 VAC 15-20-20 the definition of "Small-scale, short duration" has been deleted, since it is now obsolete.

18 VAC 15-20-20 the definition of "Training Manager" has been added to mean the individual responsible for administering a training program and monitoring the performance of the instructors.

Throughout the Final Regulations, "Primary Instructor" has been replaced with "Principal Instructor" to conform with regulation definition.

Throughout the Final Regulations, "Training Director" has been replaced with "Training Manager" to conform with regulation definition.

Throughout the Final Regulations, "asbestos training course" has been replaced with "accredited asbestos training program" to conform with regulation definition.

18 VAC 15-20-50 B "individual" has been replaced with "asbestos worker, supervisor, inspector, management planner, project designer, or project monitor" to add clarity.

18 VAC 15-20-60 A has been changed to read " Each individual asbestos license issued under this chapter shall expire one year from the last day of the month in which it was issued."

18 VAC 15-20-60 C "in which it was approved" has been changed to "from the effective date of these regulations" in order to give an easily understood anchor date.

18 VAC 15-20-70 C has been changed to delete the requirement that asbestos refresher training programs must be both EPA/AHERA approved as well as board approved. The regulation now states asbestos refresher training programs will be accepted if approved by either EPA/AHERA or the board.

18 VAC 15-20-70 F "accreditation" has been replaced with "approval".

18 VAC 15-20-250 B1, 18 VAC 15-20-250 B2, 18 VAC 15-20-270 B1, 18 VAC 15-20-250 B2, the requirement for education has been changed from "science" to "physical science" to add clarity.

18 VAC 15-20-361 C1 the phrase "as approved by the AIHA" has been deleted.

18 VAC 15-20-361 C2 the phrase "or the applicant shall provide evidence that each analyst is listed" has been deleted. The phrase "or is accredited by AIHA or has been rated "proficient" in the PAT Program's most recent round of asbestos evaluations. The applicant shall also provide

evidence that each analyst has completed the NIOSH 582 training program or equivalent." has been added.

18 VAC 15-20-450 "accredited asbestos training program" has been added to paragraphs A, A2 and B. In subdivision A3, the phrase "falsifying or issuing a fraudulent certificate" after "Altering" has been added. The phrase "issued by the board" has been deleted. A new subdivision A11 has been added as follows: "Any unlawful act or violation of any provision of Title 54.1, Chapter 5 of the Code of Virginia or of any of the regulations of the board by any asbestos supervisor or asbestos worker may be cause for disciplinary action against the asbestos contractor for whom he works if it appears to the satisfaction of the board that the asbestos contractor knew or should have known of the unlawful act or violation."

A new section 18 VAC 15-20-455.1 has been added as follows:

18 VAC 15-20-455.1. Abatement projects that require a project monitor.

A project monitor is required on:

1. Asbestos projects, performed in buildings that are occupied or intended to be occupied upon completion of the asbestos project, exceeding 260 linear feet or 160 square feet or 35 cubic feet of asbestos containing material; or
2. Whenever the building or property owner deems it necessary to monitor asbestos projects.

18 VAC 15-20-456 A the phrase "each day abatement is performed" has been changed to "when the project monitor is present".

18 VAC 15-20-456 D added the phrase "and rated acceptable or is accredited by AIHA or has been rated "proficient" in the PAT Program's most recent round of asbestos evaluations."

18 VAC 15-20-458 A "Licensed asbestos project designers shall prepare a written project design for each asbestos abatement project, except projects conducted in residential buildings" has been deleted.

18 VAC 15-20-459.3 A ""Interim Method for the Determination of Asbestos in Bulk Insulation Samples" found in Appendix A to subpart F in 40 CFR Part 763" has been replaced with "EPA 600 R-93/116 Method of Determination of Bulk Asbestos."

18 VAC 15-20-459.11. 5. "Statement indicating that the accredited asbestos training program continues to meet the regulation requirements established in this chapter" has been added.

18 VAC 15-20-459.12.4 deleted the phrase "and work practice instructors".

18 VAC 15-20-460 the phrase "a provider" has been replaced with "an accredited asbestos training provider (training provider)".

18 VAC 15-20-470 D include the struck through subsection "D" but changed the language as follows: "The training provider shall provide to the board the training program participant list, as described in subsection A of this section, within 24 hours of training program completion."

18 VAC 15-20-470 F has been divided to form a new subsection 18 VAC 15-20-470 G and a new phrase has been added to the new subsection "or fail to provide a training program participant list."

18 VAC 15-20-820 A changed the phrasing in the subsection to add clarity.

18 VAC 15-20-880 A changed phrasing in the first sentence to add clarity.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

COMMENT SENT BY:	COMMENT	DRAFT RESPONSE
<p>Tony Nicolo Director of Facilities Services New River Community College P.O. Box 1127 5251 College Drive Dublin, Virginia 24084 (540) 674-3600 ext 4278 Fax: (540) 674-3672 EMAIL: NRNICOA@nr.cc.va.us</p>	<p>I would like to comment on the proposed changes to the asbestos regulations. I have been licensed as an asbestos supervisor for close to Twenty years. Needless to say I have had to endure Twenty years of redundant training in order to renew my license. I've heard all sorts of comments about the reason for this training and it always ends up with the State just wanting our money. I don't mind renewing my license and paying a fee. I can't stand those dull and repetitive classes, not to mention the lost day from work.</p> <p>I understand that we need to know about changes in the regulations. Why not tack that on the renewal process. Send us a "simple" description of the change. Then have us return an affidavit that we read and understand the change. Then send us the approved license.</p> <p>By requiring us to attend</p>	<p>Thank you for your comment regarding the proposed asbestos licensing regulations.</p> <p>Continuing education to maintain your EPA/AHERA accreditation is mandated by the EPA Model Accreditation Plan. Virginia's asbestos licensing regulations follow these EPA requirements. Annual Virginia-approved asbestos refresher training courses are part of these EPA requirements to which Virginia is required to uphold.</p>

	<p>repetitive training classes, you quadruple the cost of licensing on the employer. The employer must pay the training agency, pay the employee for his/her time on the day of training, the cost of lost asbestos removal work for that day, and the cost of the license. Put the burden of education on the asbestos abatement contractor.</p> <p>I hope the Board of Asbestos and Lead will take a bold step forward in helping the employers of these licensed workers to realize a savings in the cost of licensing their workers by eliminating the repetitive training.</p>	
<p>Colleen Becker, CIH, CSP Marine Chemist Service, Inc. 11850 Tug Boat Lane Newport News, Virginia 23606-2527 (757) 873-0933 fax: (757) 873-1074 www.marinechemist.com e:mail: marchem@visi.net</p>	<p>18 VAC 15-20-361 Qualifications for licensure.</p> <p>C. For authorization to analyze airborne fibers using PCM: There was some question about requiring AAR for on site analysis or allowing AAR instead of PAT for licensing when the AHERA regulations require PAT participation. Conversations with Harry Voyer at EPA Region III indicated that EPA would not have a problem with the AAR since they are looking for compliance with the AHERA regulations only on those jobs exceeding the NESHAP threshold quantities (260 linear feet, 160 square feet and 35 cubic feet). PCM is not allowed for clearance</p>	<p>Thank you for your comments regarding the proposed asbestos licensing regulations.</p> <p>In the asbestos licensing regulations adopted by the Board, laboratories conducting on-site PCM analysis shall have the option of being listed in the AAR. The Board decided to include having the AIHA accreditation or the "proficient" rating in the PAT program as well.</p>

	<p>testing over the NESHAP threshold quantities.</p> <p>18 VAC 15-20-459.3 Responsibilities</p> <p>A. The correct method of PLM analysis is “EPA 600/R-93/116 Method for the Determination of Bulk Asbestos.”</p>	<p>Thank you for including the correct PLM analysis method.</p>
<p>Andrew F. Oberta, MPH, CIH The Environmental Consultancy Andyobe@aol.com</p>	<p>In the Virginia asbestos regulations, § 1.1 Scope states:</p> <p>"Asbestos Management Planner's License: Required for those who prepare or update an asbestos management plan.* * Employees who conduct asbestos response actions, inspections, prepare management plans or project designs for their employer, on property owned or leased by the employer, are exempt from Virginia asbestos licensure; however, they are required to meet all EPA training requirements."</p> <p>The owner and operator of an industrial facility in Virginia has found asbestos-containing materials in their building and desires to prepare an Operations & Maintenance (O&M) Plan, which for all practical purposes is synonymous with an asbestos management plan as defined in your regulations. I read the above asterisked statement to mean that one of their employees could prepare the O&M Plan without being licensed by your state as a management Planner.</p>	<p>Thank you for your comments regarding the proposed asbestos licensing regulations.</p> <p>You are correct in the statement from the Virginia Asbestos Licensing Regulations that "Employees who conduct asbestos response actions, inspections, prepare management plans or project designs for their employer, on property owned or leased by the employer, are exempt from Virginia asbestos licensure; however, they are required to meet all EPA training requirements."</p> <p>As to your comments concerning ASHARA and MAP, I do not believe that they relieve you of meeting all EPA training requirements to write an O & M Plan.</p>

	<p>Inasmuch as ASHARA does not extend the management planner accreditation requirement to industrial facilities, the EPA Model Accreditation Plan does not impose any training requirements on those who prepare management plans for industrial facilities. Therefore, the employee would not have to have taken a management planner training course to prepare the O&M Plan.</p> <p>Do you agree with both of my conclusions?</p>	
<p>Joe Baker Janiceandjoe@prodigy.net</p>	<p>Dear Sir, I am a supervisor in asbestos and lead removal. My question is, why do we need to take a refresher course and test every year. I can understand that we MUST be up on any new laws but that information can be sent to us. We could take a test, every three years or so. I realize that there are always new things to learn. Something can change right after the test is given and then that person would not be aware of the new law.</p> <p>Another concern that I have is how do we know that the person giving the course is actually qualified to give the course? People that have been in the field many years are wasting time and money. We lose a days wages, the course has a fee, and then we have to pay to get the license. It doesn't seem fair to the average worker. We are listed as skilled workers but we are paid as</p>	<p>Thank you for your comment regarding the proposed asbestos licensing regulations.</p> <p>Continuing education to maintain your EPA/AHERA accreditation is mandated by the EPA Model Accreditation Plan. Virginia's asbestos licensing regulations follow these EPA requirements. Annual Virginia-approved asbestos refresher training courses are part of these EPA requirements to which Virginia is required to uphold.</p>

	<p>unskilled workers. It seems the license should give us a better status.</p>	
<p>Billie Jo Pritt TRIAD Environmental Consulting, Inc. Corporate Office 309 3rd Avenue Huntington, West Virginia 25701 (304) 523-2195 fax (304) 523-2197</p>	<p>I am writing in concern about the regulations for the Asbestos Laboratory Licenses. Currently, our lab is licensed in the state of Virginia under NVLAP for PLM samples, and AIHA PAT program proficiency for PCM samples. The proposed regulations for PCM that you have outlined concern me. If I understand the new regulations correctly, our laboratory would be required to have each of our analysts listed or have applied for listing in the AAR for on-site analysis.</p> <p>Currently, we participate in the AIHA PAT program for our PCM samples in order to continue our licensing. Each of our analysts is required to participate in every round we receive, however, only one submission is allowed. Our laboratory maintains a list of the results of the individual analyst for future questions.</p> <p>Should this regulation be approved as stated, our laboratory would be required to pay another fee for each of our analysts in order to stay proficient for your license requirements involving on-site analysis. In the past, we have always analyzed PCM samples on the job site.</p>	<p>Thank you for your comment regarding the proposed asbestos licensing regulations.</p> <p>In the asbestos licensing regulations adopted by the Board, laboratories conducting on-site PCM analysis shall have the option of being listed in the AAR. The Board decided to include having the AIHA accreditation or the "proficient" rating in the PAT program as well.</p>
<p>Neil Talbert P. O. Box 5009 Christiansburg, VA 24068 (540) 382-6532 (540) 382-3715 FAX</p>	<p>I have a couple of specific comments. I appreciate the opportunity to address these comments in this forum.</p>	<p>Thank you for your comment regarding the proposed asbestos licensing regulations.</p>

<p>hico@usit.net www.public.usit.net/hico</p> <p>Public Hearing Comment July 9, 2001</p>	<p>In general, I am concerned that we are creating some regulations that may be more stringent than federal regulations, which as I recall under the Governor's executive order this Board was not entitled to do or was directed not to do. Specifically, requiring the design on all projects, which I believe is found on page 40, 18 VAC 15-20-380. Project design for each asbestos project except residential. I think that is more stringent and not necessary.</p> <p>The second item that I feel falls under this same category is requiring the project monitor each day abatement is performed, 18 VAC 15-20-360, responsibilities on page 18 I believe or page 35. I'm sorry. This presents a lot of problems. In addition to being more stringent than the current regulations, it would be a burden on the facility owner/property owner. It could cause scheduling problems and so forth.</p> <p>So I think those are the two major points that I would like to see addressed or actually deleted or modified to fall under the Governor's direction that nothing be more stringent than federal regulations.</p> <p>The only other item I would like to mention would be the definition of a "project." Exceeds ten linear square feet. Currently, AHERA is three feet. Would this permit non-licensed contractors or entities or persons to perform work without a license and training? I believe it would.</p>	<p>The actual sites referred to are 18 VAC 15-20-457 and 18 VAC 15-20-458. The Board has decided to eliminate 18 VAC 15-20-458 A which states " Licensed asbestos project designers shall prepare a written project design for each asbestos abatement project, except projects conducted in residential buildings".</p> <p>The actual sites referred to are 18 VAC 15-20-455 and 18 VAC 15-20-456. The Board decided to change requiring a project monitor each day abatement is performed to when the project monitor is present.</p> <p>In the current proposed regulations, "asbestos project" or "asbestos abatement project" means an activity involving job set-up for containment, removal, encapsulation, enclosure, encasement, renovation, repair, construction or alteration of asbestos-containing materials. An asbestos project or asbestos abatement project shall not include nonfriable asbestos containing roofing, flooring and siding material which when installed, encapsulated or removed does not become friable. There is no mention of size restrictions.</p>
--	---	--

<p>Steven M. Gilbert Assistant superintendent for Operations Chesapeake Public Schools School Administration Building Post Office Box 16496 Chesapeake, Virginia 23328 (757) 547-1321 fax (757) 547-0196</p>	<p>I am in receipt of information regarding the proposed revisions to Asbestos Licensing Regulation (18 VAC 15-20-10 et seq.). It is my understanding that a licensed project monitor can take either a supervisor or project designer refresher course and receive credit toward the renewal of the project monitor license. However, having taken either the supervisor or project designer refresher course, if applied to the project monitor’s license, the refresher course could not be used to renew either the supervisor or project designer license. What purpose is served by making an individual sit through a second supervisor or project designer refresher course other than to say they received a certain number of hours? If the issue is the number of project monitor refresher courses being offered and their timeliness, then an exception should be given to the number of hours of refresher training that license needs-not make an individual sit through two refresher courses for the supervisor or project designer license in order to renew their project monitor and supervisor/project designer license. I know there is a prescribed period of time required for the refresher work, but this process is neither a productive use of the licensee’s time or money. I highly recommend that this matter be revisited and a different course of action developed.</p>	<p>Thank you for your comment regarding the proposed asbestos licensing regulations</p> <p>The EPA model accreditation plan (MAP) requires annual asbestos refresher training courses for supervisors and project designers. As project monitors are not required under the MAP, but are required under the Virginia Asbestos Licensing Regulations, asbestos project monitor refresher training requirements can be less burdensome.</p> <p>Section 18 VAC 15-20-60 D does not require two asbestos refresher training courses. Project monitors who also hold a valid Virginia asbestos supervisor or project designer license may meet the renewal training requirements by completing the supervisor refresher or project designer refresher, whichever is applicable.</p>
<p>Suzanne Lowman, Principal Work Environment</p>	<p>Thank you for the opportunity to comment on the proposed</p>	<p>Thank you for your comment regarding the proposed asbestos</p>

<p>Associates Post Office Box 14703 Richmond, Virginia 23221</p> <p>4905 Radford Avenue, Suite 110 Richmond, Virginia 23230 (804) 358-3357 fax (804) 358-3363 wrkenv@att.net</p>	<p>asbestos licensing regulations (18 VAC 15-20-10 et seq.).</p> <p>Work Environment Associates, Inc. is an environmental consulting firm located in Richmond, Virginia. Our personnel are licensees of your department, holding licenses as asbestos inspectors, management planners, project monitors and project designers. Work Environment is also licensed as an asbestos laboratory providing PCM analysis of airborne fibers. We have been in business since 1987.</p> <p>Except for one area dealing with analytical laboratory licenses, overall we support your proposed changes and clarifications to the asbestos licensing regulations. In the proposed regulations dealing with training programs and training providers we are particularly supportive. Given the events in recent months in the Virginia Beach area with fraudulent training certificates and improperly conducted training programs, the changes you have made should help the Asbestos Board enforce proper training. We would like to see the Board increase its random audits to check up on training courses and providers <u>after</u> initial approval is given to assure program quality and proper issuance of training certificates. It is very important to have high quality training programs to assure the safety of workers and building occupants.</p>	<p>licensing regulations.</p> <p>Thank you for your support of the proposed Asbestos Licensing Regulations.</p> <p>Though we are limited by the amount of staff. It is our intent to increase random audits.</p> <p>In the asbestos licensing regulations adopted by the Board, laboratories conducting on-site PCM analysis shall have the option of being listed in the</p>
--	---	---

	<p>We also support the option for project monitors to take refresher training as project designers or supervisors since much of the refresher training is similar across the designer, supervisor and monitor licensing categories.</p> <p>It is our view that the Board has no evidence supporting the deletion of this option for “on site” labs while keeping it as an option for “fixed” labs. We are not aware of any problems with on-site laboratories with a proper QA/QC program which would warrant a revocation of the PAT option. If PAT proficiency is allowed for fixed labs, it should be allowed for on-site labs.</p> <p>Based on the forgoing, we would suggest that the language in section 18 VAC 15-20-361C 2 read as follows:</p> <p>For fixed laboratory sites, the applicant shall provide evidence that each facility is accredited by AIHA or that each facility has been rated “proficient” in the PAT program’s most recent round (and for which each analyst has successfully analyzed the PAT round as part of a QA/QC program) or provide evidence that each analyst is listed in the AAR or applied for listing in the AAR.</p> <p>For laboratories that will be conducting on-site analysis, the applicant shall provide evidence that the laboratory has been rated as proficient in the PAT program’s most recent round of asbestos evaluations (and for</p>	<p>AAR. The Board decided to include having the AIHA accreditation or the "proficient" rating in the PAT program as well.</p>
--	---	---

	<p>which each analyst has successfully analyzed the PAT round as part of a QA/QC program) OR each on site analyst is listed or has applied for listing in the AAR or that each analyst has applied for listing in the AAR.</p> <p>Also, please note that section 18 VAC 15-20-456 will also need changing, accordingly.</p>	
<p>C. R. Sledge 3613 Deerfield Drive Suffolk, Virginia 23435-2214 (757) 484-2308 fax (757) 483-3012</p>	<p>Comments on Proposed Asbestos Regulations that appeared in the Virginia Register on May 1, 2001.</p> <p>1. 18 VAC 15-20-10. Scope (Page 6) – this should be changed to read as follows:</p> <p>The purpose of this section is to identify those in the asbestos industry individuals and firms who need specific Virginia asbestos license <i>to be licensed to conduct asbestos abatement operations</i>.</p> <p>Reason: while it is understood that the intent of the regulations are to govern personnel involved in the asbestos abatement industry, it needs to spell it out.</p> <p>2. Definition of <i>Asbestos Supervisor’s License</i> (Page 6) – This definition should be expanded to recognize the fact that an individual licensed as an “Asbestos Supervisor” can perform all of tasks authorized for an “Asbestos Worker” to perform as well as functioning as a “Competent Person”.</p>	<p>Thank you for your comments received concerning the proposed asbestos regulations. The Board carefully considered your suggestions before adopting their final regulations.</p> <p>The Board does offer the following specific responses:</p> <ul style="list-style-type: none"> • The definition of an Asbestos Supervisor License found in 18 VAC 15-20-20 permits an individual to supervise and work on an asbestos project. • The information regarding Project Monitor requirements is found in the laboratory requirements in section 18 VAC 15-20-361, subsection C, second paragraph. • Section 18 VAC 15-20-30 has a separate paragraph for workers because individuals with either worker or supervisor training may obtain a worker license. • The precedent for requiring separate renewal fees for

	<p>Reason: An accredited “Supervisor”, under the AHERA regulations, can perform all of the functions of the “Worker” as well as those of the “Supervisor”.</p> <p>3. The definition of “Asbestos Project Monitor” (Page 6) should be revised to include the requirement that persons reading asbestos air samples away from the laboratory (reading on site) must be enrolled in the AAR and be judged proficient.</p> <p>4. The clarifying language concerning the fact that persons performing asbestos work only on property owned or leased by their employer must meet the EPA requirements but do not have to have a Virginia license should include the requirement that they must also meet the OSHA requirements. (Page 7)</p> <p>5. The definition of the <i>Asbestos Inspectors License</i> includes the statement that the inspector will prioritize by exposure potential asbestos containing materials. The determination of exposure potential is the responsibility of the Management Planner and the subject of hazard assessment is not taught to inspectors.</p> <p>6. The definition of <i>Asbestos Abatement or Asbestos Abatement Project</i> excludes</p>	<p>each training course was set by the Board’s Lead-Based Paint Activities regulation. This is similar to an individual who holds multiple licenses having to renew each license separately.</p> <p>Your suggestion would be too restrictive as the role of asbestos project monitor is broader.</p> <p>This suggestion regarding OSHA is good and will be added to the Asbestos Licensing Regulation.</p> <p>The task of the asbestos inspector to prioritize by exposure is contained in the EPA Model Accreditation Plan.</p> <p>The definition of Asbestos Abatement Project is verbatim to the definition in the Statute. House Bill 951 deregulated roofing, flooring and siding materials which are not friable and do not become friable during abatement.</p>
--	--	--

	<p>the removal of roofing, flooring, or siding that does not become friable. The removal of this material is covered under the OSHA regulations as a Class II removal and requires an Asbestos Supervisor, as defined in these regulations. It also requires Asbestos Worker Training.</p> <p>7. The definition <i>Person</i> excludes all governmental agencies.</p> <p>8. The definition of <i>Small Scale Short Duration</i> should be changed to the OSHA definition for Class III asbestos removals. This is especially true since the Worker Protection Rule, 40 CFR 763 Subpart G, now requires following the OSHA regulations.</p> <p>9. The definition of <i>visual Inspection</i> should include the requirement to conduct the inspection in accordance with the ASTM Standard E 1368. This would greatly standardize the inspection process.</p> <p>10. 18 VAC 15-20-30 D – What is the rationale for having a separate paragraph for workers? It appears to be the same as C.</p> <p>11. 18 VAC 15-20-50 H – This appears to state that there will be a \$50 renewal fee per accredited training course per</p>	<p>Federal Government agencies are not governed by Virginia Asbestos Licensing Regulations. The Board decided to include the OSHA definition for Class III asbestos removals in place of Small Scale Short Duration..</p> <p>Definition of visual inspection can be no more stringent than federal regulations.</p> <p>There are different requirements between 18 VAC 15-20-30 D and 18 VAC 15-20-30 C.</p> <p>We approve asbestos training programs not asbestos training providers, so the fee reflects the training program accreditation.</p> <p>The Board decided to keep the old language regarding individual licensure.</p>
--	--	--

	<p>training provider. The stated reason for the fee is to enable the Department to keep track of the training providers. If this is true the fee should be limited to \$50 per training provider, regardless of the number of training courses they have approved. The precedent was set for this in the area of laboratory licensing. They pay the same fee if they are licensed to analyze air samples or bulks or TEM or all three.</p> <p>12. 18 VAC 15-20-60 A – How will this be implemented? Will it mean that the first year it is implemented the license will be for less than 12 months, thereby causing the licensing fee to be more than stated?</p> <p>13. 18 VAC 15-20-101 – It is felt that individuals applying for an Asbestos Supervisor License should be able to demonstrate some level of experience. As currently configured, an individual who knows nothing about asbestos abatement can take a 40 hour course, make a 70 on the exam and immediately go out and oversee a major asbestos removal. 40 hours of training does not give an individual “experience”. It is recommended that an individual applying for a Supervisor license that cannot demonstrate at least one year of experience be given a Worker license that will be</p>	<p>The training requirements are governed by the EPA Model Accreditation Plan (MAP). Virginia licensure can be no more stringent for an Asbestos Supervisor license.</p> <p>This is a good point. In the asbestos licensing regulations adopted by the Board, laboratories conducting on-site PCM analysis shall have the option of being listed in the AAR. The Board decided to include having the AIHA accreditation or the "proficient" rating in the PAT program as well.</p> <p>This change in the proposed Asbestos Licensing Regulations was dropped by the Board.</p>
--	--	--

	<p>changed to Supervisor upon renewal. This would allow individuals to take the Supervisor course and be licensed to gain the needed experience.</p> <p>14. 18 VAC 15-20-456 D. – The fact that an individual has applied for listing in the AAR does not mean that they are proficient at reading samples. It is recommended that the requirement be that they are listed as proficient in the AAR. This would also eliminate those persons that may be listed as non-proficient.</p> <p>15. 18 VAC 15-20-458 A – Does this change the regulations to require all asbestos removals, other than those in residential buildings, to have a written Project Design? If so it should be stated somewhere else in the regulations.</p>	
<p>D. Neil Talbert, President HICO, Inc. Post Office Box 5009 Christiansburg, Virginia 24068 (540) 382-6532 fax (540) 382-3715</p>	<p>I would like to offer the following comments on the proposed regulations.</p> <p>18 VAC 15-20-456 Responsibilities. A. this item goes way above and beyond any existing regulation either state or federal by requiring a project monitor to be on site each day abatement is performed. I believe this is contradictory to the executive order that no regulation be more stringent than the current or proposed federal regulations. In addition, this will cause a dramatic increase</p>	<p>Thank you for your comments received concerning the proposed asbestos regulations. The Board carefully considered your suggestions before adopting their final regulations.</p> <p>Regarding you references to an executive order “that no regulation be more stringent than the current or proposed federal regulations,” I believe that you are confusing this with state statute 54.1-501 that relates to lead-based paint activities. I am not aware of any such executive order</p>

	<p>in cost to the end consumer that is not necessary. The amount of time a project monitor is on site should be a contractual matter between the monitor and the owner.</p> <p>18 VAC 15-20-458 Responsibilities A. this item should be changed to state “if or when a project design is required” rather than the proposed language. As in the comment above, I feel this change is contradictory to the executive order requiring no state regulation more stringent than the federal regulations. It is ridiculous to have a project design for all projects. Many projects are identical to numerous others performed by facility owners and many small projects do not need a design. This item would also increase the costs to the consumer.</p>	<p>relating to asbestos licensing.</p> <p>This change in the proposed Asbestos Licensing Regulations was dropped by the Board.</p>
<p>John R. Hart, President Industrial Training Company 10821 Trade Road Richmond, Virginia 23236 (804) 378-9033 fax (804) 378-9039 www.itctraining.com</p>	<p>The Industrial Training Company (ITC) would like to recommend the following changes to the proposed 18 VAC 15-210-10 et seq. Asbestos Licensing Regulations.</p> <p>Recommendations are as follows:</p> <ul style="list-style-type: none"> • In “Basis” paragraph, it should be noted that OSHA Standard 29 CFR 1920.134 is not as asbestos standard, but rather a Respirator standard that regulates use of respirators when dealing with asbestos containing materials (ACM). • 15 20-459.1 requires that 	<p>Thank you for your comments received concerning the proposed asbestos regulations. The Board carefully considered your suggestions before adopting their final regulations.</p> <p>The Board does offer the following specific responses:</p> <p>The “Basis” paragraph will not be included in the final regulations.</p> <p>18 VAC 15-20-459.1 Sampling should be left up to the licensed asbestos inspector’s discretion for materials not covered by</p>

	<p>inspections be conducted in compliance with the Asbestos Hazard Emergency Response Act (AHERA), but this regulation specifically excludes many exterior building materials such as roofs, siding (unless part of a covered walkway), etc. Suggest that an additional sentence be added: “Bulk sampling of materials not specifically covered by the AHERA protocol, such as roofing products and siding, shall include sufficient samples to determine asbestos content. Siding and other similar, non-friable materials shall be sampled consistent with the requirement sampling “miscellaneous” materials under AHERA. Built up roofing and other layered materials shall be sampled consistent with the requirement for sampling “surfacing” materials AHERA.”</p> <ul style="list-style-type: none"> • 18 VAC 15-20-20 Change definition of “Asbestos Management Plan” to state that it is “A <i>written document</i> outlining a program....” <p>No amount is specified in the definition of an “Asbestos Project”. Historically, removals of amounts not exceeding 10 square or linear feet of ACM were not reportable to the Virginia Department of Labor, though the entity removing materials</p>	<p>AHERA.</p> <p>18 VAC 15-20-20 The Board agrees that an “Asbestos Management Plan” should be a “written document”, however the definition is verbatim from the statute governing asbestos.</p> <p>Any amount of asbestos should be regulated under the definition of “Asbestos Project.”</p> <p>“Guest Instructors” are limited to two hours per day since they</p>
--	---	---

	<p>was required to maintain records of the removal. As OSHA requires Operations and Maintenance (Class III) training for amounts that can be removed using a single glove-bag or waste-bag, removals of amounts smaller than 10 feet should require only the OSHA required training and not a state license. Is this the intent?</p> <p>“Guest Instructors” are defined as instructors limited to two hours per day. This amount should be eliminated in lieu of “other than principle instructor” or expanded “Understanding Building Systems/building engineering” in the Project Designers course, often take more than two hours to cover effectively. This same suggestions applies similarly to section 18 VAC 15-20-511.</p> <p>“Removal” definition includes no size limit, implying that an O&M related removal requires a state license. The 10 foot size limit mentioned earlier would correct this.</p> <p>The “Small-scale, short-duration (SSSD)” term was dropped from the OSHA standard and replaced with “Class III/Maintenance-related removal”. What is the benefit of re-applying it here? Recommend aligning this definition with the Class III definition found in 29 CFR 1926.1101.</p>	<p>do not go through accreditation process for asbestos training programs.</p> <p>As asbestos has no dose response limit “Removal” should have no size limit.</p> <p>The Board decided to include the OSHA definition for Class III asbestos removals in place of Small Scale Short Duration.</p> <p>18 VAC 15-20-60 A, the Board decided to use the language in the current Asbestos Licensing Regulations for renewals.</p> <p>Yes this does allow individuals to take a single refresher to be licensed as a project monitor</p>
--	--	---

	<ul style="list-style-type: none"> • 18 VAC 15-20-60 A requires that “an individual asbestos license shall expire one year from the last day of the month wherein the applicants initial training or most recent refresher training was completed”. Though this eliminates the possibility of an individual possessing a license with an expiration date far beyond the annual training date, it does not go far enough. As AHERA requires “annual” refresher training, valid to the day of the month in which training occurred. If not, there is still a possibility that an individual could perform asbestos related activities with a valid license but an out-of-date training certification. • 18 VAC 15-20-70 D allows project monitors who also hold a valid Supervisor or Designer license to meet refresher training requirements by completing a supervisor refresher or designer refresher. There are many instances in which an individual holds both a supervisor and monitor license. Does this section allow the individual to take only one refresher and apply it towards both licenses? Does it allow the person to take two supervisor 	<p>and supervisor or designer.</p>
--	---	------------------------------------

	<p>refreshers? If not, these examples will serve as loopholes and should be removed.</p>	
<p>David L. Violette SEAS, Inc. Post Office Box 600 Blacksburg, Virginia 24063-0660 (540) 951-9283 fax (540) 951-9282 e-mail: seas@swva.net</p>	<p>Please consider the following as my written comments. I am writing as the owner of SEAS, Inc. and hold Virginia DPOR asbestos licenses as an Inspector, Management Planner, Project Monitor, and Project Designer. Furthermore, we have our own asbestos laboratory, licensed in Virginia for PLM and PCM analysis, and we are an approved training provider. We have been providing asbestos testing and consulting services to private, public, and corporate citizens of the Commonwealth since 1988.</p> <p>As I read the proposed changes regarding laboratories conducting on-site PCM analysis, it seems that you are <u>adding on an additional requirement for each analyst</u> to be a successful participant in the AAR/AAT program (18 VAC 15-20-361 C 2), as Paragraph D under 18 VAC 15-20-456 states that monitors are to be employed by a licensed lab <u>AND</u> be listed with AAR. As a professional with a background and formal training in science and lab work, I am not at all opposed to a provision enabling individuals to qualify to analyze PCM samples. The existing requirements for lab licensing, which include adherence to the NIOSH 7400 Method and successful participation in the PAT Round, sufficiently cover the pertinent and significant aspects of providing accurate</p>	<p>Thank you for your comments received concerning the proposed asbestos regulations.</p> <p>The Board considered how to best accreditate on-site analysts to make sure that they are competent to read PCM samples in the field.</p> <p>This is a good point. In the asbestos licensing regulations adopted by the Board, laboratories conducting on-site PCM analysis shall have the option of being listed in the AAR. The Board decided to include having the AIHA accreditation or the "proficient" rating in the PAT program as well.</p>

	<p>PCM analyses. To require those labs to then add the AAR for each analyst (monitor) adds an unnecessary burden in both direct costs and loss time, that must either be absorbed by the business or passed on to the public, without adding any additional benefit. Subsequently, this additional burden lacks technical merit and provides no additional protection to public consumers.</p> <p>I would suggest that the regulation permit on-site PCM analysis by either analyst from a licensed laboratory, or by a listed AAR analyst. I would also argue against following on-site analysis by someone not employed by a licensed lab, nor listed with AAR (such as someone who has only <i>applied</i> for listing, but has not yet actually been accepted or listed).</p>	
<p>Thomas L. Stokes, Jr., President Stokes Environmental Associates, Ltd. 4101 Granby Street, suite 404 Norfolk, Virginia 23504 (757) 623-0777 fax (757) 623-2785</p>	<p>This letter represents a response to the proposed regulations as part of Section 54.1-501 of the Code of Virginia, title 18 VAC 15-20-10 et seq., on behalf of Applied Laboratory Services (ALS) LLC.</p> <p>1. Laboratory accreditations.</p> <p>On page 5 of the proposed regulations, there is the statement “Currently, asbestos analytical laboratories providing Phase Contrast Microscopy (PCM) analysis must meet certain accreditation requirements.” It is our understanding that DPOR accepts accreditation of laboratories by the</p>	<p>Thank you for your comments received concerning the proposed asbestos regulations.</p> <p>The Board carefully considered your suggestions before adopting their final regulations.</p>

	<p>American Industrial Hygiene Association (AIHA) or by providing documentation that the laboratory has performed satisfactorily on the NIOSH-sponsored AIHA proficiency analytical tests (PAT). The latter does not constitute accreditation by an organization or agency since no certificate of accreditation is issued and the Quality Assurance program of the laboratory is not evaluated.</p> <p>Fees are charged by AIHA for both accreditation of a laboratory, which includes PAT evaluation, and individual PAT administration without accreditation. If a laboratory is accredited for airborne fiber analysis under the AIHA Industrial Laboratory Accreditation Program, the fees average \$2,245.00 per annum with an additional \$800 (plus travel expenses for the inspector) for the on-site inspection/evaluation that are part of the accreditation program. The AIHA also charges laboratories for the PAT samples and evaluations under the auspices of NIOSH. These fees are around \$1,600 per year for the proficiency tests required for state licensure under the current and proposed regulations. In our opinion, these costs are justifiable because they provide a major portion of the Quality Assurance Program for laboratories licensed to</p>	
--	---	--

	<p>perform analyses in this state.</p> <p>The requirements specified in 18 VAC 15-20-10. Scope, for Asbestos Project Monitors states that monitors who perform PCM analyses on-site shall be employed by a licensed laboratory. This implies that anyone serving as a laboratory analyst has successfully completed the NIOSH 582 course of instruction, participates in the AIHA PAT and inter-laboratory quality control programs, and meets the requirements of the Quality Assurance Programs within the laboratory. Section 18 VAC 15-20-361.C.2. proposes that any analyst performing PCM analyses on-site must be listed (or has applied for listing) by the AIHA's Asbestos Analyst Registry (AAR). Section 18 VAC 15-20-456.D. reiterates the same requirement for the AAR listing.</p> <p>AIHA administers the Asbestos Analyst Registry (AAR); thereby., making the AIHA a monopoly on PAT and accreditation for fiber count analyses by PCM. There is no flexibility in this situation. Initial costs for entry into the AAR (for one analyst) would be:</p> <ul style="list-style-type: none"> • Initial Application fee \$400 • Annual Fee (Organization) \$700 	<p>This is a good point. In the proposed asbestos licensing regulations, laboratories conducting on-site PCM analysis shall have the option of being listed in the AAR. The Board decided to include having the AIHA accreditation or the "proficient" rating in the PAT program as well.</p>
--	---	---

	<ul style="list-style-type: none"> • Enrollment fee \$110 • Annual fee (Analyst) \$110 • PAT samples <u>\$900</u> <p style="text-align: right;">Total \$2220</p> <p>The annual fees thereafter would be:</p> <ul style="list-style-type: none"> • Annual fee (Organization) \$700 • Annual fee (Analyst) \$110 • PAT samples <u>\$900</u> <p style="text-align: right;">Total \$1810</p> <p>We consider the proposal for analyst, employed by a laboratory licensed by the department to offer airborne fiber analyses by Phase Contrast Microscopy, to also be listed in the AAR, to be redundant and an additional expense that is not justifiable. Laboratories licensed by the department must already provide documentation of satisfactory participation in the PAT program or AIHA accreditation. The AAR duplicates the lab accreditation process, but ONLY for the individual analyst; hence, the parent organization (i.e., the licensed laboratory) AND/OR the Monitors must pay the AIHA twice for the same basic privilege.</p> <p>If the intent of the proposal is</p>	<p>“Asbestos Inspectors License” is a distinct license from “Asbestos Project Monitor” according to the Virginia Code.</p>
--	--	--

	<p>to ensure that Quality Assurance Programs and Quality Control procedures are being rigorously employed, then we recommend that the department propose that laboratories be accredited by the AIHA in order to obtain a license to operate in Virginia, or develop and implement a laboratory review procedure for the department. If an analyst is qualified to perform analyses on-site for asbestos projects.</p> <p>2. 18 VAC 15-20-10. Scope Asbestos Project Monitor’s License: Required for....abatement sites. <u>Project monitors who perform analyses of airborne dust/fiber samples by Phase Contrast Microscopy (PCM) at an abatement site shall be employed....., or equivalent, as approved by AIHA.</u> Does the reference refer to the AAR? This statement does not agree with other proposals to require registry in the AAR for on-site analytical protocols.</p> <p>Asbestos Analytical Laboratory License: Required for....or analytical electron microscopy (aka TEM). (Comment: The analysis is performed by three apparati, the transmission electron microscope (TEM), the selected area electron diffraction (SAED)</p>	<p>The Board feels the definition of “Direct Supervision” is adequate.</p> <p>The Board feels the language in 18 VAC 15-20-30 C is adequate.</p> <p>The Board feels the language in 18 VAC 15-20-30 D is adequate.</p> <p>The Board feels the language in 18 VAC 15-20-40 is adequate.</p>
--	--	--

	<p>spectrometer, and the energy-dispersive X-ray (EDX) spectrometer, not just the TEM.)</p> <p>3. 18 VAC 15-20-20. Definitions. “Asbestos Inspector’s License” means...(the following definition should match the definition on page 6 of this document.)</p> <p>“Asbestos Project Monitor” means any person hired by a building owner, lessee, or his agent, to monitor an asbestos abatement project, provide visual clearance of the project, and collect environmental samples to ensure regulatory compliance before, during, and after the project.</p> <p>“Direct supervision”...(the statement ‘a licensed or accredited inspector, etc’ should be modified to <u>‘licensed, accredited’</u>. The intent is to have someone trained, experienced, and licensed as the mentor/supervisor of those in training to meet the requirements necessary to obtain their licensure.)</p> <p>4. 18 VAC 15-20-30 C.</p> <p>In the last sentence of the paragraph, should the wording read “The date of training completion shall <i>not be more than</i> 12 calendar months prior to the date the department</p>	
--	---	--

	<p>receives the application?”</p> <p>5. 18 VAC 15-20-30 D.</p> <p>In the last sentence of the paragraph, should the wording read “The date of training completion shall <i>not be more than</i> 12 calendar months prior to the date the department receives the application?”</p> <p>6. 18 VAC 15-20-40.</p> <p>It is assumed from the proposed wording that there are now two different forms covering job experience and education. This should be clarified in the final regulation wording; perhaps by splitting the paragraph into A and B sections for Experience and Education respectively.</p> <p>The last sentence of the paragraph is out-of-place and should be moved to coincide with the caveats for experience.</p> <p>The Education Form should be clarified in the narrative of the regulation. In reference to applicable collegiate degrees, I recommend that the sentence be changed to “<i>If the applicant claims a college degree on the Education Form, a Degree Verification Form shall be submitted directly from the college/university administration/registrar to the department in support of the application.</i>”</p>	<p>Lists are used during the inspection of asbestos analytic laboratories.</p>
--	--	--

	<p>7. 18 VAC 15-20-361. Qualifications for licensure. (Laboratories)</p> <p>Section C delineates the requirements for analysis of airborne fibers using PCM methodologies. The direction between “fixed sites” and “on-site work” should be made on the basis of licensing a laboratory facility as a single entity and not include any sub-facilities (i.e., on-site analyses).</p> <p>The OSHA Reference Method and the NIOSH 7400 methodology both provide for Quality Control procedures. Unless AAR accreditation includes all interlaboratory requirements as in NIOSH and AIHA specifications, AAR should not be used by the department as the basis for sanctioning a laboratory for licensure.</p> <p>If a laboratory performs the quality control prescribed by the various analytical protocols or the AIHA, I consider AAR registry to be redundant; therefore, an unnecessary expense on the laboratories. If the department desires to ensure and enforce measurable Quality Assurance Programs, then labs should be required to obtain AIHA accreditation, as a laboratory. This ploy will force the issue of having AAR for analyses not performed in</p>	
--	---	--

	<p>the laboratory facility itself.</p> <p>8. 18 VAC 15-20-456. Responsibilities.</p> <p>Paragraph D indicates that Project Monitors may perform PCM analyses on-site. This paragraph should be expanded to indicate that a Project Monitor (PM) may perform on-site analyses ONLY if the <i>PM is an accredited analyst</i> and is employed by a licensed laboratory. Does this preclude accredited analysts from a laboratory from performing analyses on-site? Why is AAR registry necessary, except for the concept that AIHA does not allow sub-facilities (i.e., on-site analyses without participation in AIHA programs for additional fees?</p> <p>9. 18 VAC 15-20-459.5. License certificate.</p> <p>Paragraph D indicates that the <i>department</i> maintains the right to inspect any licensed laboratory facility. I consider the entitlement valid providing that the department provide an inspection checklist for anyone conducting said inspections and that anyone allowed to perform such inspection be knowledgeable of analytical protocols and QC requirements. A procedure for conducting inspections and presenting a Report of Finding to both the laboratory and the</p>	
--	--	--

	<p>department should be promulgated prior to implementing said inspections. Also, procedures for remediation of discrepancies and suspension/revocation of a laboratory license must be in place before inspections are permitted.</p>	
<p>Alan J. Neumann, Ph.D. 880 Melrose Terrace Newport News, Virginia 23608</p>	<p>1. The second paragraph under <u>Purpose</u> is not technically correct. I recommend the following wording:</p> <p style="padding-left: 40px;">The term asbestos refers to the crystalline fibrous forms several naturally occurring species of minerals. The microscopic crystalline fibers can become aerosolized and be trap in the human lungs through inhalation. Accumulation of these mineral fibers are know to be casual factors in several diseases of the lungs, including asbestosis, emphysema, lung cancer, and mesothelioma. There is no definitive dose-response to asbestos fibers; therefore, it is theoretically possible to develop disease and die from inhalation of a single asbestos fiber. These diseases may have latency periods of 10 to 40 years.</p> <p style="padding-left: 40px;">Training is vital to all personnel who work with asbestos and asbestos-</p>	<p>Thank you for your comments received concerning the proposed asbestos regulations. The Board carefully considered your suggestions before adopting their final regulations.</p> <p>The Board does offer the following specific responses:</p> <ul style="list-style-type: none"> • In reference to 18 VAC 15-20-30, subsections C and D, training is valid for only 12 months. <p>The “Issues” section will not be included in the final regulations.</p>

	<p>containing materials in order to protect the worker from exposure to a recognized health hazard, as well as protect families and the general public from unwarranted exposure to these hazardous minerals.</p> <p>2. The first three paragraphs under Issues: should be re-worded to present accurate information concerning asbestos and public health. The following suggestions are offered:</p> <p>Asbestos is recognized as a pathogenic and carcinogenic substances that result in fatalities among individuals exposed to the hazardous materials yearly. Both federal and state regulations have been enacted to protect the general public and workers exposed to aerosolized asbestos fibers in the course of their work duties.</p> <p>The primary advantage of implementing these new regulatory provisions is the continued protection of the general public as the direct result of ensuring that trained and competent personnel are available to work with these hazardous materials. The primary advantage to the Commonwealth...and the administration of the regulatory program.</p> <p>3. The headings ‘summary of the</p>	<p>The Purpose, Issues, Summary of the Proposed Regulation, Estimated Economic Impact, Businesses and Entities affected and Localities particularly affected sections will not be contained in the Asbestos Licensing Regulations.</p> <p>This is a good point. In the asbestos licensing regulations adopted by the Board, laboratories conducting on-site PCM analysis shall have the option of being listed in the AAR. The Board decided to include having the AIHA accreditation or the "proficient" rating in the PAT program as well.</p>
--	---	--

	<p>Proposed Regulation’ and ‘Estimated Economic Impact’, ‘Businesses and Entities Affected’, and Localities Particularly Affected’ should be underlined, italicized, or denoted by indentation.</p> <p>4. On page 5 of the proposed regulations, there is a statement “Currently, asbestos analytical laboratories providing Phase Contrast Microscopy (PCM) analysis must meet certain accreditation requirements.” It is my understanding that DPOR accepts accreditation of laboratories by the American Industrial Hygiene Association (AIHA) or by providing documentation that the laboratory has performed satisfactorily on the NIOSH-sponsored AIHA proficiency analytical tests (PAT). The latter does not constitute accreditation by an organization or agency since no certificate of accreditation is issued and the Quality Assurance program of the laboratory is not evaluated. Fees are charged by AIHA for both accreditation of a laboratory , which includes PAT evaluation and individual PAT administration without accreditation. AIHA also administers the Asbestos Analyst Registry (AAR); thereby, making the AIHA a monopoly on PAT and accreditation for fiber count analyses by PCM. There is</p>	
--	---	--

	<p>no flexibility in this situation. Initial costs for entry into the AAR (for one analyst) would be:</p> <ul style="list-style-type: none"> • Initial Application fee \$400 • Annual Fee (Organization) \$700 • Enrollment fee \$110 • Annual fee (Analyst) \$110 • PAT samples <u>\$900</u> <p style="text-align: right;">Total \$2220</p> <p>The annual fees thereafter would be:</p> <ul style="list-style-type: none"> • Annual fee (Organization) \$700 • Annual fee (Analyst) \$110 • PAT samples <u>\$900</u> <p style="text-align: right;">Total \$1810</p> <p>The requirements specified in 18 VAC 15-20-10. Scope, for Asbestos Project Monitors states that monitors who perform PCM analyses on-site shall be employed by a licensed laboratory. The laboratory must already provide documentation of satisfactory participation in the PAT program or AIHA accreditation. The AAR duplicates the lab accreditation process, but for the individual; hence, the parent organization of the lab AND the Monitors must pay the AIHA twice for the same basic privilege.</p>	<p>Under 18 VAC 15-20-10 “Asbestos Inspector’s License” is required for individuals who inspect buildings to identify asbestos containing material. Inspector takes samples to labs for analysis.</p> <p>Transmission Electron Microscopy is the state of the art of analysis and is addressed specifically in AHERA.</p>
--	--	---

	<p>basic privilege.</p> <p>If a laboratory is accredited for airborne fiber analysis under the AIHA Industrial Laboratory Accreditation Program, the fees average \$2,245.00 PER ANNUM with an additional \$800 (plus travel expenses for the inspector) for the on-site inspection/evaluation that are part of the accreditation program. These fees would be in addition to those for analysts required to participate in the AAR.</p> <p>The only other actual accrediting agency is the National Voluntary Laboratory Accreditation Program (NVLAP) under the auspices of the National Institute for Standards and Technology, U.S. Department of Commerce. NVLAP accredits laboratories performing analyses of bulk building materials for asbestos content by polarized light microscopy or analytical electron microscopy, not airborne fiber counts. It is my understanding that NVLAP accreditation is required for state licensure, as well as performance of analyses of building materials from public schools under AHERA. AIHA accreditation is not accepted for AHERA purposes at this time.</p> <p>5. 18 VAC 15-20-10. Scope. Asbestos Inspector’s License: Required for individual who inspect buildings to identify <i>and characterize potential</i> asbestos-containing materials. (Comment: Inspector’s cannot identify ACM, only lab</p>	<p>Definitions were thoroughly discussed by the Board and meet their approval.</p> <p>The Board felt the language was adequate in reference to training completion.</p>
--	--	---

	<p>analysis can identify ACM).</p> <p>Asbestos Project Monitor’s License: Required for....abatement sites. <u>Project monitors who perform analyses of airborne dust/fiber samples by Phase Contrast Microscopy (PCM) at an abatement site shall be....</u></p> <p>Asbestos Analytical Laboratory License: Required for....or analytical electron microscopy (aka TEM). (Comment: The analysis is performed by three apparati, the transmission electron microscope (TEM), the selected area electron diffraction (SAED) spectrometer, and the energy-dispersive X-ray (EDX) spectrometer, not just the TEM.)</p> <p>18 VAC 15-20-20.1 Definitions.</p> <p>“Asbestos Contractor” ...into contracts to perform <u>construction, demolition, or renovations projects that involve ACM.</u></p> <p>“Asbestos Inspector’s License” means...(the following definition should match the definition on page 6 of this document.)</p> <p>“Asbestos Project Monitor” means any person hired by a building owner, lessee, or his agent, to monitor an asbestos abatement project, provide</p>	<p>The proposed language for “Experience and Education Verification Forms” covers both in one paragraph for reasons of clarity.</p> <p>This has been rewritten for clarity.</p> <p>This is a good point. In the asbestos licensing regulations adopted by the Board, laboratories conducting on-site PCM analysis shall have the option of being listed in the AAR. The Board decided to include having the AIHA</p>
--	---	--

	<p>visual clearance of the project, and collect environmental samples to ensure regulatory compliance before, during, and after the project.</p> <p>“Direct supervision”....(the statement ‘a licensed or accredited inspector, etc’ should be modified to ‘<u>licensed, accredited</u>’. The intent is to have someone trained, experienced, and licensed as the mentor/supervisor of those in training to meet the requirements necessary to obtain their licensure.)</p> <p>18 VAC 15-20-30 C.</p> <p>In the last sentence of the paragraph, should the wording read “The date of training completion shall <i>not be more than</i> 12 calendar months prior to the date the department receives the application?”</p> <p>18 VAC 15-20-30 D.</p> <p>In the last sentence of the paragraph, should the wording read “The date of training completion shall <i>not be more than</i> 12 calendar months prior to the date the department receives the application?”</p> <p>18 VAC 15-20-40.</p> <p>It is assumed from the proposed wording that there are now two different forms covering job experience and education. This should be</p>	<p>accreditation or the "proficient" rating in the PAT program as well.</p> <p>The Board felt the language was appropriate.</p> <p>18 VAC 15-20-456 D addresses your concern.</p>
--	---	---

	<p>clarified in the final regulation wording; perhaps by splitting the paragraph into A and B sections for Experience and Education respectively.</p> <p>The last sentence of the paragraph is out-of-place and should be moved to coincide with the caveats for experience.</p> <p>The Education Form should be clarified in the narrative of the regulation. In reference to applicable collegiate degrees, I recommend that the sentence be changed to <i>“If the applicant claims a college degree on the Education Form, a Degree Verification Form shall be submitted directly from the college/university administration/registrar to the department in support of the application.”</i></p> <p>18 VAC 15-20-361. Qualifications for licensure. (Laboratories)</p> <p>Section C delineates the requirements for analysis of airborne fibers using PCM methodologies. The direction between “fixed sites” and “on-site work” should be made on the basis of licensing a laboratory facility as a single entity and not include any sub-facilities (i.e., on-site analyses).</p> <p>The OSHA Reference Method and the NIOSH 7400</p>	<p>A checklist is bought along when a representative of the department visits an accredited laboratory.</p>
--	---	---

	<p>methodology both provide for Quality Control procedures. Unless AAR accreditation includes all interlaboratory requirements as in NIOSH and AIHA specifications, AAR should not be used by the department as the basis for sanctioning a laboratory for licensure.</p> <p>If a laboratory performs the quality control prescribed by the various analytical protocols or the AIHA, I consider AAR registry to be redundant; therefore, an unnecessary expense on the laboratories. If the department desires to ensure and enforce measurable Quality Assurance Programs, then labs should be required to obtain AIHA accreditation, as a laboratory. This ploy will force the issue of having AAR for analyses not performed in the laboratory facility itself.</p> <p>18 VAC 15-20-420. Solicitation of Work.</p> <p>The legalese wording of paragraph 2 should be re-considered to clarify the specifics of what topic shall not be falsified or misrepresented.</p> <p>18 VAC 15-20-456. Responsibilities.</p> <p>Paragraph D indicates that Project Monitors may perform PCM analyses on-site. This paragraph should be expanded</p>	
--	--	--

	<p>to indicate that a Project Monitor (PM) may perform on-site analyses ONLY if the <i>PM is an accredited analyst</i> and is employed by a licensed laboratory. Does this preclude accredited analysts from a laboratory from performing analyses on-site? Why is AAR registry necessary, except for the concept that AIHA does not allow sub-facilities (i.e., on-site analyses without participation in AIHA programs for additional fees?</p> <p>18 VAC 15-20-459.5. License certificate.</p> <p>Paragraph D indicates that the <i>department</i> maintains the right to inspect any licensed laboratory facility. I consider the entitlement valid providing that the department provide an inspection checklist for anyone conducting said inspections and that anyone allowed to perform such inspection be knowledgeable of analytical protocols and QC requirements. A procedure for conducting inspections and presenting a Report of Finding to both the laboratory and the department should be promulgated prior to implementing said inspections. Also, procedures for remediation of discrepancies and suspension/revocation of a laboratory license must be in place before inspections are permitted.</p>	
<p>Zack Adams, PE, CSP Occupational Safety</p>	<p>In reviewing the proposed revisions to the asbestos licensing</p>	<p>Thank you for your comments received concerning the</p>

<p>Programs Manager Co-Director, Environmental Health and Safety Services Virginia Tech Phone: (540) 231-5985 Fax: (540) 231-3944 http://www.ehss.vt.edu</p>	<p>regulations, we had the following questions and/or comments:</p> <p>(1) Page 1 of the basis of this proposed regulation states that "training is vital so that personnel in the asbestos field do not run the risk of exposing themselves, subsequent occupants and occupants in adjacent areas to a known carcinogen". We absolutely support this statement. On page 6 of the proposed regulation, however, an asbestos contractor's license is indicated to only be needed for work exceeding 10 linear or 10 square feet. It is our opinion that this change increases the risk that small scale removal will be performed by poorly trained personnel who may be unaware of proper removal and disposal requirements, and who may lack the skills and equipment to remove friable asbestos safely. It is our recommendation that an asbestos contractors license be required whenever a person contracts for compensation to perform an asbestos abatement project of any size.</p> <p>(2) In the description of 'asbestos inspector's license', is the use of the word 'inspect' tied closely enough to the definition of 'inspection' to clearly define the scope of work performed by this individual?</p> <p>(3) The exclusion on page 7 states that employees who</p>	<p>proposed asbestos regulations. The Board carefully considered your suggestions before adopting their final regulations.</p> <p>The limit of 10 linear or 10 square feet for an asbestos contractors license is derived from the Virginia's Department of Labor and Industry's limit for notifications on asbestos projects.</p> <p>By definition, an "Asbestos Project" is not limited to any size requirement.</p> <p>The Board felt the language was adequate.</p> <p>The exemption is taken directly from the Virginia Code. Employees must follow all OSHA and EPA guidelines.</p>
---	---	---

	<p>conduct response actions, inspections, etc. for their employer, on property owned or leased by the employer, are exempt from Virginia asbestos licensure; however, they are required to meet all EPA requirements. The EPA does not, however, establish an on-the-job training or field experience component for asbestos personnel. This change increases the risk that inadequately trained personnel may: conduct inspections that would expose themselves or others to asbestos or that may fail to fully identify the location of asbestos in a work area; develop inadequate management plans or project designs that do not adequately protect the occupants or workers or that could create environmental contamination. We are opposed to this change, and feel that on-the-job training is a vital component in assuring that asbestos personnel have the skills and knowledge to conduct their work safely and competently. Employees of an employer should have the same skills and experience as licensed individuals, even if these employees are not required to be licensed.</p> <p>(4) "Small-scale, short-duration" is defined on page 9. What is the purpose of this definition, and where is it used in this proposed regulation?</p> <p>(5) 18 VAC 15-20-30 I. (page 10): Will the Board retain right of</p>	<p>The Board decided to remove the Definition of Small-scale, Short Duration and to include the Definition of OSHA Class III work where appropriate.</p> <p>The Board, can deny licensure based upon prior disciplinary actions.</p> <p>The Board likes the idea of five inspections, five management plans or project designs as it facilitates experience more quickly.</p>
--	--	---

	<p>refusal for applications based upon prior disciplinary actions. If not, what is the purpose of the submittal requirement? We feel that the Board should retain the right to refuse licensure (in all disciplines) where prior disciplinary action (for any environmentally-related incident) indicates the individual/firm may not adequately protect public health, safety and welfare.</p> <p>(6) 18 VAC 15-20-250 B.1. (page 13): In our view, five inspections are not necessarily comparable to 6 months experience; also, five inspections can be conducted that are so limited in scope that the inspector does not gain useful skill in conducting inspections and assessments. Though the six month criteria imposes a financial burden on consultants, we feel that this criteria should be maintained and the "five inspection" criteria removed. Similar concerns exist related to parts B.2. and B.3.</p> <p>(7) 18 VAC 15-20-270 B. Is it the intent of the Board that the applicant for management planner will provide a description of the scope and character of each management plan prepared by the applicant (e.g., how will the adequacy of the 'five management plans' work experience indicated in B1, for example, be validated)?</p> <p>(8) 18 VAC 15-20-290 B. Is it the intent of the Board that the</p>	<p>18 VAC 15-20-456 C Any amount of asbestos is hazardous and clearance air samples should be done.</p> <p>See previous Board response.</p>
--	---	---

	<p>applicant for project designer will provide a description of the scope and character of each project design prepared by the applicant (e.g., how will the adequacy of the 'five project designs' work experience indicated in B1, for example, be validated)?</p> <p>18 VAC 15-20-456 C imposes an unreasonable burden on facilities owners where small-scale removal is performed as a part of maintenance and repair activities, and where work performed is less than 10 square or linear feet. Given that SSSD are defined in 18 VAC 15-20-20, it is recommended that, at a minimum, SSSD projects be exempted from the final air sample criteria. Conversely, if an asbestos contractors license is not required for projects less than 10 square or linear feet as indicated in 18 VAC 15-20-10, it seems contradictory to require that a project monitor be retained to perform final air samples for this scale work.</p> <p>18 VAC 15-20-458 A imposes an unreasonable burden on facilities owners where SSSD is performed as a part of maintenance and repair activities, and where work performed is less than 10 square or linear feet. Given that SSSD are defined in 18 VAC 15-20-20, it is recommended that, at a minimum, SSSD projects be exempted from the project design requirement.</p>	
--	---	--

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

The word "Department" has been changed to "Board" throughout the proposed regulation, where applicable, at the suggestion of the Attorney General's Office.

18 VAC 15-20-10 has been amended to add the meanings of acronyms used throughout the regulation document.

18 VAC 15-20-20 has been amended to add, delete or modify the definitions of terms used throughout the regulation document.

The definition of "AAR" has been added to clarify that "AAR" means Asbestos Analyst Registry, which is one of the organizations which sets standards for field phase contrast microscopy.

The definition of "AAT" has been added to clarify that "AAT" means Asbestos Analyst Testing which is one of the testing organizations that certifies field phase contrast microscopy.

The definition of "accredited asbestos training program" has been added to differentiate the program of training from an organization, which provides training (accredited asbestos training provider).

The definition of "accredited asbestos training provider" has been added to differentiate between a training provider and a training program.

The definition of "AIHA" has been added to mean American Industrial Hygiene Association, which is one of the testing organizations that certifies field phase contrast microscopy.

The definition of "approval letter" has been added to more clearly describe the instrument issued to training providers as evidence of approval.

The definition of "asbestos" has been modified to mean the mineral definition of asbestos, which is more specific and scientifically correct.

The definition of "asbestos contractor" has been added to make clear that it applies to those who have been issued an asbestos contractor's license by the board and are authorized by law to enter into contracts to perform asbestos projects.

The definition of "demolition" has been deleted as it is not used.

The definition of "environmental remediation activity" has been added to specify those activities planned or carried out for the purpose of reducing or eliminating any environmental hazard addressed in the proposed regulation. It makes clear that training is included as well as actual abatement.

The definition of "EPA" has been added to mean the United States Environmental Protection Agency. This term is used throughout the regulations and will eliminate any possible confusion.

The definition of "guest instructor" has been added to mean a person who is invited to instruct a specific topic and whose instruction is limited to two hours per day.

The definition of "inspection" has been added to specify those activities encompassed by the use of the term throughout the regulation.

The definition of "instructor" has been added to mean a person who instructs one or more accredited asbestos training programs, to include the principal instructor, but excluding guest instructors.

The definition of "local education agency" or "LEA" has been deleted since the "LEA" is no longer used in the document.

The definition of "NVLAP" has been added to mean National Voluntary Laboratory Accreditation Program.

The definition of "officer" has been deleted since "officer" is no longer used in the document.

The definition of "OSHA Class III work" has been added by the Board for reasons of clarity.

The definition of "PAT" has been added to clarify that "PAT" means Proficiency Analytical Testing which is one of the testing organizations that accredits laboratories to analyze air samples for asbestos by phase contrast microscopy.

The term "primary instructor" has been changed to "principal instructor" to be consistent with the Lead-Based Activities Regulation. The phrasing has been revised to replace "courses" with "accredited asbestos training programs," reflecting the term created to refer to the course of study provided by "accredited asbestos training providers."

The definition of "RFS contractor's license" has been deleted to implement House Bill 951(1996), which deregulated roofing, flooring and siding.

The definition of "RFS inspector" has been deleted to implement House Bill 951(1996), which deregulated roofing, flooring and siding.

The definition of “RFS inspector’s license” has been deleted to implement House Bill 951(1996), which deregulated roofing, flooring and siding.

The definition of "response action" has been changed to reflect the current EPA definition.

The definition of “site” has been deleted since "site" is no longer used in the document.

The definition of “small-scale, short duration” has been deleted and replaced with the term “OSHA Class III work”.

The definition of “structure” has been deleted since “structure” is no longer used in the document.

The definition of “training manager” has been added to mean the individual responsible for administering a training program and monitoring the performance of the instructors.

The definition of "USEPA" has been deleted and replaced with the term "EPA" (addressed above), which is a more recognizable term.

18 VAC 15-20-21 has been added to make clear that the Board may waive regulation requirements only when no harm to the public will result and to explain that the burden of proof which demonstrates continued public protection rests with the party requesting the waiver.

18 VAC 15-20-30 has been revised for clarity and ease of use. Much of the revisions reflect the relocation of language or requirements from other sections of the existing regulations. The result is a section that allows one to quickly determine the general requirements to obtain and renew licensure.

Subsection A has been amended to delete the Department’s mailing address, which is subject to change, appears on the printed regulation booklet and is available from the Department’s web site (www.state.va.us/dpor). The instructions are simplified to require applications to be made on a form provided by the Department.

Subsection B has been added to require all applicants to be 18 years old before becoming eligible for licensure in any of the disciplines. This requirement was moved from the sections dealing with each individual discipline.

Subsection C (formerly subsection B) has been amended to specify the nature of the training required for all individual license disciplines except worker, which is covered in subsection D. In addition, the Board revised the language to reflect the EPA regulation requirement. Virginia’s current regulation allows as much as 24 months after the date of the initial training for an individual to complete the refresher training before being required to again complete the initial training. EPA only allows 12 months. Virginia’s refresher training requirement is based on the date of license issuance while the EPA refresher requirement is based on the date of training completion. EPA accreditation is required for any asbestos abatement project

under federal jurisdiction, such as those on military bases and federal buildings. A Virginia license is required for all other work in Virginia.

Subsection D serves the same function for workers as subsection C serves for the other individual disciplines. Workers are allowed to qualify for a license by completing the supervision discipline training rather than the worker discipline training, if they desire. The rationale is the same.

Subsections E, F and G require submission of an application on forms provided by the Department to become licensed as an asbestos contractor, or as an asbestos analytical laboratory or for approval as an accredited asbestos training program.

Subsection H is the former subsection C with a clarifying amendment.

Subsection I is the former subsection D that has been amended to delete language redundant to 18 VAC 15-20-450.

Subsection J is the former subsection E that has been amended for clarity and to delete language redundant to 18 VAC 15-20-50 L.

18 VAC 15-20-40 has been amended to change the name of the form required to document qualifying experience and to allow a letter from an employer to be substituted for the experience verification form. This will lessen the burden for applicants who have difficulty getting the form completed or who may need to have experience verified by an individual no longer employed by the firm where the experience was obtained.

18 VAC 15-20-50 has been amended to delete references to the deregulated RFS disciplines and to enhance clarity. Several fees have been moved to this section from other sections in the current regulations. The fees reflected are those currently in effect except for the renewal fee for accredited asbestos training programs. The accredited asbestos training program renewal fee is new. Its rationale is addressed under 18 VAC 15-20-60, below.

18 VAC 15-20-60 has been amended to provide more specific information concerning license renewal and to add a renewal requirement for accredited asbestos training programs.

Subsection B is a new subsection made necessary by the change in the method used for expiration and renewal of individual licenses. Contractor and analytical laboratory licenses continue to expire annually based on the date of initial license issuance. There is no change from the requirements of the current regulations.

Subsection C is a new subsection that creates a renewal requirement for accredited asbestos training programs. This requirement has been added to address the difficulty of determining who is currently an active training provider and to generate revenue to cover the costs of regulation. The current regulations require an initial application fee. As time passes, it becomes more and more difficult to determine which of the approved programs remain active and their current locations and telephone numbers. A list of approved

programs is maintained and provided to those seeking training. Feedback from those individuals using the list to find training indicates they often encounter difficulty contacting those on the list. No mechanism exists under the current regulations to remove approved programs from the list.

18 VAC 15-20-70 has been amended to reflect the addition of renewal requirements for accredited asbestos training programs, to permit asbestos refresher training programs approved by both the Virginia Board and EPA/AHERA, to provide an additional refresher training option for project monitors, and to limit to one the number of times a single training certificate may be used to renew an individual license. Other revisions to the language have been made for clarity.

18 VAC 15-20-80 has been amended to extend the requirement to report name and address changes to accredited asbestos training programs.

18 VAC 15-20-90 has been amended to move the general requirements to qualify for a worker license to 18 VAC 15-20-30. This is a part of a reorganization to place general entry requirements in one section (18 VAC 15-20-30) and discipline specific entry requirements in their own unique sections. The remaining language requires a completed application with fee and cites the general requirements in 18 VAC 15-20-30 and 18 VAC 15-20-50.

18 VAC 15-20-100 has been repealed in its entirety. The language now appears in 18 VAC 15-20-50.

18 VAC 15-20-101 is a new section containing the qualifications for licensure as an asbestos supervisor. The general entry requirements are contained in 18-VAC 15-20-30.

18 VAC 15-20-110 has been amended to specifically require an application and fee, and to state more specifically which occupational or professional licenses are required to qualify for an asbestos contractor license.

18 VAC 15-20-120, 18 VAC 15-20-130 and 18 VAC 15-20-140 have been repealed in their entirety. The standards established in the repealed sections have been moved to 18 VAC 15-20-451, 18 VAC 15-20-452 and 18-15-20-453, respectively.

18 VAC 15-20-150 has been amended to empower the Board to deny the asbestos contractor license application of any firm whose owners, officers or directors have a financial interest in an asbestos contractor whose asbestos license has been revoked, suspended or denied renewal. This will give the Board control over individuals who attempt to avoid the impact of disciplinary action by creating another business entity and applying for licensure.

18 VAC 15-20-160 has been repealed in its entirety. Its substance now appears as 18 VAC 15-20-454.

18 VAC 15-20-170, 18 VAC 15-20-180, 18 VAC 15-20-190, 18 VAC 15-20-200, 18 VAC 15-20-210, 18 VAC 15-20-220, 18 VAC 15-20-230 and 18 VAC 15-20-240 have been repealed in

their entirety to implement the provisions of House Bill 951, passed by the 1996 Session of the Virginia General Assembly, which deregulated asbestos roofing, flooring and siding activities.

18 VAC 15-20-250 establishes the qualifications for licensure of inspectors and has been amended to reorganize the existing regulation provisions and to delete the references to qualifying experience that have been revised and included in 18 VAC 15-20-251. Two provisions have been deleted. One refers to AHERA or Virginia accreditation as an inspector after December 17, 1987, which is obsolete. The other repeals the existing option for experience to be obtained by being in responsible charge of inspectors; experience that is unlikely to assure one develops the skills needed by asbestos inspectors. Language has been added to allow one to qualify for a license if he can show evidence of having completed a certain number of inspections. 18 VAC 15-20-251 specifies how the qualifying experience must be obtained. Individuals who have worked under inspectors and have completed a number of inspections can now qualify for a license. Completing the specified number of inspections demonstrates a minimum competency and protects the public.

18 VAC 15-20-251 is a new section drawn from 18 VAC 15-20-250 as a part of the reorganization of the sections. The language amendments are addressed above.

18 VAC 15-20-260 has been repealed in its entirety. Its substance has been made a part of 18 VAC 15-20-459 and 18 VAC 15-20-459.1 dealing with standards of conduct and practice of management planners.

18 VAC 15-20-270 establishes the qualifications for licensure of management planners and has been amended to reorganize the existing regulation provisions and to delete the references to qualifying experience that have been revised and included in 18 VAC 15-20-271. As with inspectors addressed under 18 VAC 15-20-250 above, obsolete and ineffective language has been deleted and language has been added to allow one to qualify for a license after having completed a specific number of management plans. Completing the specified number of management plans demonstrates a minimum competency and protects the public.

18 VAC 15-20-271 is a new section drawn from 18 VAC 15-20-270 as a part of the reorganization of the sections. It continues the substance of language deleted from 18 VAC 15-20-270 by specifying how one may obtain qualifying experience to become a management planner. The reference to December 17, 1987 (mentioned above) is deleted as obsolete while allowing the substance of the qualifying experience to remain.

18 VAC 15-20-280 has been repealed in its entirety. Its substance now appears in 18 VAC 15-20-457 under standards of practice and conduct for project designers.

18 VAC 15-20-290 establishes the qualifications for licensure of project designers and has been amended to reorganize the existing regulation provisions, and to delete the references to qualifying experience that have been revised and included in 18 VAC 15-20-291. As with inspectors addressed under 18 VAC 15-20-250 above, obsolete and ineffective language has been deleted and language has been added to allow one to qualify for a license after having

completed a specific number of project designs. Completing the specified number of project designs demonstrates a minimum competency and protects the public.

18 VAC 15-20-291 is a new section drawn from 18 VAC 15-20-290 as a part of the reorganization of the sections. It continues the substance of language deleted from 18 VAC 15-20-290 by specifying how one may obtain qualifying experience to become a project designer. The reference to December 17, 1987 (mentioned above) is deleted as obsolete while allowing the substance of the qualifying experience to remain.

18 VAC 15-20-300 has been repealed in its entirety and moved to 18 VAC 15-20-455 under a new regulation part created for project monitor standards of conduct and practice. The last sentence contains a conduct standard that applies to all licensees, is already contained in 18 VAC 15-20-400 and, for this reason, has been deleted. This is a part of the reorganization of the regulation document.

18 VAC 15-20-310 has been repealed in its entirety. The substance has been moved to new section 18 VAC 15-20-455.1 as part of the regulation reorganization.

18 VAC 15-20-320 has been repealed in its entirety. The Board found the regulation section was unenforceable.

18 VAC 15-20-330 establishes the qualifications for licensure of project monitors and has been revised and reorganized for clarity. The language establishing qualifying experience in subsection E has been rephrased and moved to subsection B. Subsections C and D have been rephrased, deleted in their entirety and moved to subsections A and B of 18 VAC 15-20-332, project monitor training requirements. The substance of the first sentence of subsection F has been moved to 18 VAC 15-20-456 D, [project monitor] responsibilities, and the substance of the remainder of the subsection have been revised and moved to 18 VAC 15-20-331, qualifying experience. The qualifying experience has been changed to focus on lawfully gained experience either in another jurisdiction or under the responsible supervision of a licensed project monitor.

18 VAC 15-20-331 and 18 VAC 15-20-332 are new sections and have been addressed under 18 VAC 15-20-330 above.

18 VAC 15-20-340 has been repealed and moved to 18 VAC 15-20-459.2 under Part XVII establishing standards of practice and conduct for asbestos analytical laboratories.

18 VAC 15-20-350 has been repealed in its entirety. The substance has been moved to 18 VAC 15-20-40 as a part of the regulation reorganization.

18 VAC 15-20-360 has been repealed in its entirety. The substance has been rephrased for clarity and moved to new section 18 VAC 15-20-361.

18 VAC 15-20-361 is a new section establishing the qualifications for licensure of laboratories. The Board considered the alternative of allowing laboratories accredited by the American Industrial Hygiene Association (AIHA) to become licensed. That alternative was adopted and is

reflected in the language. The Board has determined that AIHA accredited laboratories may perform asbestos analysis without creating a hazard to the public.

18 VAC 15-20-370 has been repealed in its entirety. The substance of this requirement has been moved to 18 VAC 15-20-40 as a part of the regulation reorganization mentioned earlier.

18 VAC 15-20-380 and 18 VAC 15-20-390 have been repealed in their entirety and their substance moved to 18 VAC 15-20-459.4 and 18 VAC 15-20-459.5 as a part of the regulation reorganization.

18 VAC 15-20-400 establishes the responsibility of all licensees to the public and establishes performance standards in specific situations. There is no substantive change from the existing regulation.

18 VAC 15-20-410 establishes performance standards for public statements made by regulants and there is no substantive change from the current regulation.

18 VAC 15-20-420 establishes solicitation of work standards for regulants. The organization of the section has been changed for clarity.

18 VAC 15-20-430 establishes professional responsibility standards for regulants. A new subsection C has been added to address accredited asbestos training providers.

18 VAC 15-20-440 establishes a requirement for regulants to maintain good standing in other jurisdictions in which they may be regulated. Subsections B and C have been added to ensure that all disciplinary action taken against a regulant must be reported to the Board.

18 VAC 15-20-450 enumerates the grounds for disciplinary action that may be taken by the Board against regulants who fail to comply with the provisions of the regulations. The language has been amended for clarity and is substantially unchanged from the current regulation. Two new subdivisions 10 and 11 have been added to address situations which have occurred in the past and the present.

18 VAC 15-20-451 is a new section created to continue the asbestos contractor responsibilities that were repealed as 18 VAC 15-20-120. The requirement of repealed 18 VAC 15-20-120 C that contractors designate a licensed supervisor to serve as his agent for the purpose of meeting the training requirements was not included in 18 VAC 15-20-451. The subsection was originally included to assure that a competent person was available to be assigned to abatement project sites. The requirement of 18 VAC 15-20-451 D (formerly 18 VAC 15-20-120 E) is sufficient to assure a competent person is on site.

18 VAC 15-20-452 is a new section created to continue the requirement to maintain certain training and license records on asbestos abatement sites that was repealed as 18 VAC 15-20-130.

18 VAC 15-20-453 is a new section created to continue the conflict of interest provisions that were repealed as 18 VAC 15-20-140.

18 VAC 15-20-454 is a new section created to continue the prohibition against contractor license transfers that was repealed as 18 VAC 15-20-160.

18 VAC 15-20-455 is a new section created to establish the duties and functions of project monitors and contains the substance of repealed 18 VAC 15-20-300. This revision is a part of the reorganization of the regulation document.

18 VAC 15-20-455.1 is a new section created to establish quantities of asbestos containing materials for which a project monitor is required and contains the substance of repealed section 18 VAC 15-20-310.

18 VAC 15-20-456 is a new section created to establish the responsibilities of project monitors and is a new standard, except for Subsection D, which is drawn from first sentence of repealed subsection F of 18 VAC 15-20-330. These new standards represent responsible practice and are the least restrictive alternative considered. The Board had concern that project monitors play a pivotal role in assuring compliance with proper practice requirements on job sites and that their responsibilities should be more specifically enumerated to assure the public protection.

18 VAC 15-20-457 is a new section created to establish the duties and functions of project designers and contains the language of repealed 18 VAC 15-20-280. This revision is a part of the reorganization of the regulation document.

18 VAC 15-20-458 is a new section created to establish the responsibilities of project designers and is a new requirement proposed by the Board to document the project designs by describing abatement work to be undertaken by a contractor. The federal Asbestos Hazard Emergency Response Act (AHERA) requires written project designs.

18 VAC 15-20-459 is a new section created to establish the duties and functions of inspectors and management planners. Subsection A is new and simply sets out the objective of asbestos inspections; essentially to find suspect materials and determine if they contain asbestos. Subsection B is drawn from repealed 18 VAC 15-20-260 and has been rephrased to emphasize the objective of managing remaining asbestos containing materials in a building. The details contained in the repealed language are addressed in 18 VAC 15-20-459.1 C, which requires management plans to be prepared in accordance with the federal Asbestos Hazard Emergency Response Act (AHERA).

18 VAC 15-20-459.1 is a new section created to establish the responsibilities of inspectors and management planners. Subsections A and B are new and require that inspections be conducted in compliance with the Asbestos Hazard Emergency Response Act (AHERA) and provide minimum standards for inspection reports. Subsection C concerns management planners and was discussed under 18 VAC 15-20-459 above.

18 VAC 15-20-459.2 establishes general standards of practice and conduct for asbestos analytical laboratories and is a new section. Its substance is drawn from repealed 18 VAC 15-20-340 with no change in language. This is a part of the reorganization of the regulation document.

18 VAC 15-20-459.3 is a new section created to establish laboratory responsibilities for the analysis they perform. Some of its substance was drawn from 18 VAC 15-20-360, which established entry standards and specified the type of analysis the licensees were authorized to perform. The substance of those provisions has been grouped into this section as specific standards for completing each type of laboratory analysis. The standards cited are from federal standards and are the accepted standard in the industry.

18 VAC 15-20-459.4 and 18 VAC 15-20-459.5 are new sections created to establish change of status and license certificate standards for laboratories. They have been drawn from repealed 18 VAC 15-20-380 and 18 VAC 15-20-390, respectively. The requirement for laboratories to notify the Department of the receipt of certain proficiency evaluation results has been deleted in favor of the requirement that the Department be notified when a proficiency rating is lost. There is no benefit to the public from the notifications of continued approval or proficiency.

18 VAC 15-20-459.6 establishes the approval standards for accredited asbestos training programs and is the same as repealed 18 VAC 15-20-620, except for subdivision 7 of subsection A. Subdivision 7 has been changed to require a copy of the course examination and answer sheet rather than a detailed statement of how the examination was developed. Board attention can be focused on the quality of the examination itself rather than the procedure used to develop the examination, which is of little relevance to the effectiveness of the end product examination. Subsection B is a new requirement that requires an application to be submitted to the Department at least 45 days before the date of the requested audit. Applications often arrive just before the desired audit date and create an impossible situation for staff, especially when numerous applications are received in a short time frame. Those preparing to submit an application will now be aware of the time frames and can make their business plans accordingly.

18 VAC 15-20-459.7 establishes the approval process used by the Department to process and approve training program applications. This new provision articulates the procedure that has been in use by the Department for many years and allows the potential applicant to know what to expect when his application is received.

18 VAC 15-20-459.8 establishes the examination requirement to be met by all training programs and is drawn, with minor language changes, from deleted 18 VAC 15-20-630.

18 VAC 15-20-459.9 describes how training programs are to handle letters of approval, and how records are to be maintained and made available to the Board or its representatives. The language is drawn, with minor changes, from repealed 18 VAC 15-20-650.

18 VAC 15-20-459.10 establishes standards for refresher training program approval and is drawn, with minor changes, from repealed 18 VAC 15-20-650.

18 VAC 15-20-459.11 establishes a new renewal requirement for accredited asbestos training programs. The absence of a renewal requirement has created difficulties for the Department and for those in the public desiring to be trained by accredited programs. Once approved under the current regulations, training programs remain approved forever, unless suspended or revoked for failure to comply. The list of approved training programs is often found to contain outdated information because there is no mechanism to periodically determine which programs are viable businesses that desire to continue operation. The fee associated with the renewal will offset the Department's costs to monitor the training programs for compliance.

18 VAC 15-20-459.12 establishes the procedure to be followed by training programs to have changes made to their approved programs and is drawn from repealed 18 VAC 15-20-660.

18 VAC 15-20-459.13 establishes the requirements to have a training program approval transferred and is drawn from repealed 18 VAC 15-20-670.

18 VAC 15-20-459.14 establishes the authority of the Department to obtain access to training activities for the purpose of assuring compliance and is drawn from repealed 18 VAC 15-20-680.

18 VAC 15-20-459.15 establishes the grounds for suspension or revocation of a training program's approval and is drawn from repealed 18 VAC 15-20-690. The language has been changed to delete the reference to notification of revocation or suspension by the Board and replaced with language specifying that all such decisions shall be made by the Board in full compliance with the Virginia Administrative Process Act.

18 VAC 15-20-460 establishes general record keeping requirements for those approved to perform asbestos training. Language concerning certain obsolete or superceded federal provisions was deleted. Failure to comply with applicable federal requirements is grounds for disciplinary action under 18 VAC 15-20-450 A 3.

18 VAC 15-20-470 establishes specific record keeping requirements for approved training programs and has been amended in two places. The requirement to submit a course participant list at the end of each course has been amended. Programs will also be required to notify the Department no less than 48 hours before conducting training. This, along with the renewal requirement mentioned above, will considerably aid the Department in monitoring training programs for continued compliance with the regulations.

18 VAC 15-20-480 establishes the course outline and syllabus standards for training programs and is substantially unchanged.

18 VAC 15-20-490 establishes the standards for certificates of course completion that must be prepared and presented by the training program to each individual passing each course. The standards are substantially unchanged.

18 VAC 15-20-500 establishes the standards for material and equipment to be used during training programs. Provisions requiring prior approval and eligibility are deleted because they are addressed in an earlier section dealing with training program approval. The language

describing the equipment list and how superceded equipment lists are to be maintained has been amended for clarity.

18 VAC 15-20-510 has been repealed in its entirety, revised substantially and now appears as 18 VAC 15-20-511.

18 VAC 15-20-511 is a new section and establishes the qualifications for asbestos training program instructors. It continues the substance of repealed 18 VAC 15-20-510 and adds specific minimum requirements for training managers and principal instructors. It also limits the use of guest instructors, for which there are no qualifications enumerated, to two hours of training per day. The former language concerning the use of guest instructors was so vague as to invite abuse, resulting in instruction by individuals who were less than minimally qualified.

18 VAC 15-20-520 establishes the standard for the number of instructors to be used in training programs and is unchanged except for a minor phrasing change.

18 VAC 15-20-530 establishes student to instructor ratios for training programs and remains unchanged except for language revisions that add to clarity.

18 VAC 15-20-540 requires that all initial and refresher training programs be discipline specific. There is no change.

18 VAC 15-20-550 requires each training program to be completed within two weeks and has been amended for clarity.

18 VAC 15-20-560 limits the amount of training that an individual may receive in a single day. The objective is to prevent employers from sending their employees to training immediately after finishing an eight hour shift, resulting in poor learning on the part of the student. The section has been amended to allow no more than four hours of training during the evening if it is conducted during the student's second or third shift.

18 VAC 15-20-570 requires all programs to be taught in English, with the single exception of asbestos worker programs. There is no change from the current requirement except for minor language changes.

18 VAC 15-20-580 continues the standards for examinations used to test comprehension and learning at the end of each training program. There are some minor language revisions, but no change in substance.

18 VAC 15-20-590 continues a requirement to notify the Board of any change in address, telephone number or instructors within 30 days.

18 VAC 15-20-600 continues a requirement for training providers to notify the Board if they cease training and to give the Board the opportunity to take possession of their training records. There are only minor changes in phrasing.

18 VAC 15-20-610 requires training programs to comply with EPA ASHARA and the EPA Model Accreditation Plan. There is no change from the current regulation except minor phrasing changes.

18 VAC 15-20-620 through 18 VAC 15-20-690 have been repealed in their entirety and now appear as 18 VAC 15-20-459.6 through 18 VAC 15-20.459.15. The substance of the change and the impact are addressed above.

18 VAC 15-20-700 through 18 VAC 880 set the standards for asbestos training programs and contain only minor amendments to ensure consistency with the rest of the regulation document.

18 VAC 15-20-890 through 18 VAC 15-20-950 concern roofing, flooring and siding (RFS) training and are repealed in their entirety to implement House Bill 951, passed by the 1996 Session of the Virginia General Assembly.

18 VAC 15-20-960 enumerates the current fee structure, is redundant to 18 VAC 15-20-50 and has been repealed in its entirety.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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 families in Virginia has been identified as resulting from the regulation.