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

<b>Agency name</b>	Virginia Board for Asbestos, Lead, and Home Inspectors
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18 VAC15-20
<b>VAC Chapter title(s)</b>	Virginia Asbestos Licensing Regulations
<b>Action title</b>	2023 General Review
<b>Date this document prepared</b>	January 23, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

The Virginia Board for Asbestos, Lead, and Home Inspectors (“the Board”) intends to undertake a general regulatory review of the Virginia Asbestos Licensing Regulations. The regulation establishes (i) the entry requirements for licensure of individuals as asbestos workers, supervisors, inspectors, management planners, project designers, and project monitors; (ii) the entry requirements for licensure of firms as asbestos contractors and analytical laboratories; (iii) requirements for maintaining and renewing licenses; (iv) requirements for approval of accredited asbestos training programs; and (v) standards of practice and conduct for licensees and accredited training programs.

The Board last undertook a significant review of the regulation in 2016, when it revised requirements pertaining to asbestos analytical laboratories and project monitors.

The goals of the planned regulatory action are to (i) repeal the existing regulation (18VAC15-20) and replace it with a new chapter (18VAC15-25); (ii) review to ensure the regulation complements current

Virginia law and meets applicable federal requirements; (iii) make the regulation more organized, clear, and understandable; (iv) ensure the regulation provides minimal burdens on regulants while still protecting the public; and (v) review for areas to reduce regulatory requirements. In addition, the review will ensure the regulation reflects current procedures and policies of the Department of Professional and Occupational Regulation (“the Department”), along with any other changes determined to be necessary and appropriate.

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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“AHERA” means The Asbestos Hazard Emergency Response Act (15 USC § 2641-2656).

“Asbestos-containing material” means any material or product which contains more than 1.0 percent asbestos or such other percentage as established by EPA final rule.

“ASHARA” means the Asbestos School Hazard Abatement Reauthorization Act of 1990.

“EPA” means the U.S. Environmental Protection Agency.

“MAP” means Model Accreditation Plan (Appendix C to Subpart E of 40 CFR Part 763).

“NESHAP” means National Emission Standards for Hazardous Air Pollutants (40 CFR, Part 61)

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

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The primary impetus for this regulatory change is agency staff review of the regulation, which has determined that replacing the current regulation is necessary and appropriate. Replacing the existing regulation would better ensure the regulation is (i) organized, clear, and understandable to regulants and the public; (ii) complements current Virginia law, and meets applicable federal requirements; and (iii) provides minimal burdens on regulants, while still protecting the public. The agency has also received feedback from members of the public, including individuals in the asbestos remediation and abatement industry. Sources of feedback have included comments made during meetings of the Board or committees of the Board, comments made to agency staff during public outreach events, and comments received by agency staff from licensees and applicants for licensure. Feedback received by the agency indicates a review of the regulation is appropriate.

The regulatory change is needed to better ensure the regulation achieves its intended purpose to protect the public welfare by ensuring only those individuals who are properly qualified engage in the profession, while reducing or mitigating regulatory burdens on applicants seeking to obtain a license and licensees who maintain a license.

This regulatory change is not the result of a mandate.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

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The agency is the Virginia Board for Asbestos, Lead, and Home Inspectors. Chapter 5 of Title 54.1 of the Code of Virginia enumerates the legal authority for the Board to administer the licensure program for those who engage in asbestos remediation or abatement, and to approve accredited asbestos training programs.

Section 54.1-501 of the Code of Virginia states, in part:

The Board shall administer and enforce this chapter. The Board shall:

1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to include but not be limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of asbestos, lead, and renovation licenses, and governing conflicts of interest among various categories of asbestos, lead, and renovation licenses;
2. Approve the criteria for accredited asbestos training programs, accredited lead training programs, accredited renovation training programs, training managers, and principal instructors;
3. Approve accredited asbestos training programs, accredited lead training programs, accredited renovation training programs, examinations and the grading system for testing applicants for asbestos, lead, and renovation licensure;
4. Promulgate regulations governing the licensing of and establishing performance criteria applicable to asbestos analytical laboratories;
5. Promulgate regulations governing the functions and duties of project monitors on asbestos projects, circumstances in which project monitors shall be required for asbestos projects, and training requirements for project monitors;

In addition, 15 USC § 2646 of AHERA, as amended by ASHARA, requires states to "...adopt a contractor accreditation plan at least as stringent as the model plan..." established by the EPA for asbestos abatement projects for all schools, and public and commercial buildings. This section of federal statute also requires that those who (i) inspect for asbestos-containing material in schools or in public or commercial buildings; (ii) design or conduct response actions with respect to friable asbestos-containing material in schools or public or commercial buildings; and (iii) who prepare management plans for schools, must be state accredited to perform such activities.

The MAP establishes the standards for accreditation of the following asbestos disciplines:

- Worker;
- Contractor/Supervisor
- Inspector;
- Management planner;
- Project designer; and
- Project monitor.

The MAP also establishes the standards for approval of asbestos training courses.

Further, 40 CFR § 61.145 of NESHAP prescribes standards for the demolition and renovation in facilities containing asbestos-containing material; and 40 CFR Part 763, Subpart E, prescribes standards for (i) identification of asbestos-containing materials; (ii) creation and implementation of management plans; (iii) conducting of response actions; and (iv) related recordkeeping.

**Purpose**

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

The regulation is necessary to comply with the applicable requirements of AHERA, ASHARA, NESHAP, and 40 CFR Part 763, Subpart E.

Asbestos is a mineral fiber that occurs in rock and soil. Because of its fiber strength and heat resistance asbestos has been used in a variety of building construction materials for insulation and as a fire retardant. Asbestos has also been used in a wide range of manufactured goods, mostly in building materials (roofing shingles, ceiling and floor tiles, paper products, and asbestos cement products), friction products (automobile clutch, brake, and transmission parts), heat-resistant fabrics, packaging, gaskets, and coatings. Asbestos fibers may be released into the air by the disturbance of asbestos-containing material during product use, demolition work, building or home maintenance, repair, and remodeling. In general, exposure may occur only when the asbestos-containing material is disturbed or damaged in some way to release particles and fibers into the air.<sup>1</sup>

Exposure to asbestos increases the risk of developing lung disease, including:

- asbestosis, a serious progressive, long-term, non-cancer disease of the lungs;
- mesothelioma, a rare form of cancer that is found in the thin lining of the lung, chest and the abdomen and heart; and
- lung cancer.<sup>2</sup>

The goal of the regulation is to ensure that individuals and businesses conducting asbestos abatement or remediation are properly trained and licensed so as to enhance the Commonwealth’s ability to protect the health, safety, and welfare of Virginia citizens from the hazard of asbestos exposure.

As the regulation is developed, the Board will likely need to address issues surrounding (i) the regulation’s conformance with applicable federal regulation; (ii) ensuring the regulation is not more stringent than federal requirements; (iii) possible barriers to entry; and (iv) minimum standards for asbestos abatement and remediation, to include inspection, project monitoring, and laboratory analysis. These issues are not inclusive of all potential issues that may be addressed during development of the regulation.

<sup>1</sup> Source: Learn About Asbestos, EPA, (<https://www.epa.gov/asbestos/learn-about-asbestos#asbestos>). Accessed 9/20/22.

<sup>2</sup> Source: Learn About Asbestos.

## Substance

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

The Board is expected to repeal the current regulation (18VAC15-20) and replace it with a new chapter (18VAC15-25).

During its review of the regulation, the Board is expected to consider the following topics:

1. General
  - Review to ensure the regulation comports with statute and applicable federal requirements.
  - Focus on making the regulation organized and clear.
  - Incorporate the Board's interpretive guidance where appropriate.
  - Review for areas to reduce regulatory burdens.
2. Definitions
  - Review definitions, revise and update where appropriate.
3. Entry Requirements
  - Review entry requirements for both individuals and firms.
  - Update procedures to reflect current agency practice.
4. Renewal and Reinstatement Requirements
  - Review requirements and procedures for renewal and reinstatement of licenses.
5. Standards of Conduct and Practice
  - Review responsibilities for each of the licensed disciplines.
  - Review standards for asbestos abatement projects.
6. Training Programs
  - Review requirements for training program approval.
  - Review requirements for renewal of training programs.
  - Review standards of conduct and practice for training programs.

The above list is not inclusive of all items that may be considered. Draft regulatory text is not available at this time.

## Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

Asbestos contractor and analytical laboratory licenses are issued to firms. Some of these firms would likely qualify as small businesses as defined in § 2.2-4007.1 of the Code of Virginia. In addition, many firms that are approved by the Board to provide accredited training programs would likely qualify as small businesses as defined in § 2.2-4007.1 of the Code of Virginia.

Asbestos worker, supervisor, project monitor, project designer, management planner, and inspector licenses are issued to individuals.

The regulation is necessary to comply with the applicable requirements of AHERA, ASHARA, NESHAP, and 40 CFR Part 763, Subpart E.

An alternative to the regulatory change would be to keep the regulation in its current form. However, this is not seen as a viable alternative. Replacing the existing regulation would better ensure the regulation is (i) organized, clear, and understandable to regulants and the public; (ii) complements current Virginia law, and meets applicable federal requirements; and (iii) provides minimal burdens on regulants, while still protecting the public.

Prior to undertaking this regulatory action, the Board has attempted to address some concerns brought to its attention through issuing interpretive guidance. However, these efforts are insufficient to adequately address these concerns on a long-term basis, as interpretive guidance cannot be a substitute for amending a regulation. No other viable alternatives to a regulatory change have been identified.

One of the objectives of the regulatory review will be to identify areas where the regulation can be changed to reduce or mitigate regulatory burdens on applicants and licensees.

### Periodic Review and Small Business Impact Review Announcement

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”*

This NOIRA is not being used to announce a periodic review or a small business impact review.

### Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

In accordance with the Board’s Public Participation Guidelines (18VAC15-11), notification of this regulatory action will be made to persons on the agency’s notification list.

The Board has formed a committee of subject matter experts with representation from Board members involved in the asbestos abatement industry, and representatives from the Department of Housing and Community Development and the Department of Labor and Industry. The committee is charged with developing recommended amendments to the Board. Members of the public may attend and offer public comment during any meetings of the committee.

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>.

Comments may also be submitted by mail, email or fax to:

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Regulatory Administrator  
9960 Mayland Drive  
Perimeter Center, Suite 400  
Richmond, VA 23233  
[ALHI@dpor.virginia.gov](mailto:ALHI@dpor.virginia.gov)  
(866) 350-5354 (fax)

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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