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Periodic Review and Small Business Impact Review Report of Findings

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| Agency name | Department of Labor and Industry |
| Virginia Administrative Code (VAC) Chapter citation(s) | 16 VAC 25-30 |
| VAC Chapter title(s) | Regulations for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos Containing Construction Waste – Incorporation By Reference, 40 CFR 61.140 through 61.156 |
| Date this document prepared | August 24, 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*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

Department – Department of Labor and Industry

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 or 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.

Section 40.1-22(5) of the Code of Virginia mandates the Safety and Health Codes Board adopt standards that most adequately assure that no employee will suffer material impairment of health or functional capacity.

Chapter 541 of the 1992 Acts of Assembly transferred regulatory authority and enforcement responsibility for demolition and removal of asbestos facilities to the Department of Labor and Industry. Sections 40.1- 51.23 through 40.1-51.39 of the Code of Virginia mandate that the Department of Labor and Industry enforce EPA’s NESHAP regulations, 40 CFR 61.140 through 61.156

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The Department of Labor and Industry did not consider any alternatives because the requirements established by this regulation are mandated by § 40.1-51.20 of the Code of Virginia.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No public comments were received on this regulation during the public comment period that began on May 23, 2022, and ended on June 13, 2022. The Department and the Safety and Health Codes Board did not establish an informal advisory group for the purpose of assisting in the periodic review.

| Commenter | Comment | Agency response |
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation has two goals:

- Reduce the incidence of material impairment of the health of Virginians due to exposure to asbestos in the workplace or as an environmental pollutant.
- The protection of the public’s health, safety and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

Standards related to asbestos emission and disposal of asbestos-containing construction waste are necessary to protect the safety, health, and welfare of the workers from the health hazards associated with airborne pollutants. The regulation does so by adopting the federal requirements set forth in 40 CFR 61.140 through 61.156. The regulation is clearly written and not overly complex.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The Safety and Health Codes Board voted to retain the regulation without change. There is a continued need for this regulation as the requirements are mandated by federal law. The regulation, as written, continues to protect the safety, health, and welfare of the public by regulating the hazards associated with asbestos emission and disposal of asbestos-containing construction waste, with the least cost to citizens and businesses of the Commonwealth. No comments were received during this periodic review. The regulation is not overly complex and is clearly written. It does not duplicate, overlap, or conflict with state or federal laws or regulations, and there is no apparent negative impact on the regulated community.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

As a result of this periodic review, the Department has determined that the regulation has no negative economic impact on small business.

There is a continued need for this regulation as the requirements are mandated by federal law. The regulation, as written, continues to protect the safety, health, and welfare of the public by regulating the hazards associated with asbestos emission and disposal of asbestos-containing construction waste, with the least cost to citizens and businesses of the Commonwealth. No comments were received during this periodic review. The regulation is not overly complex and is clearly written. It does not duplicate, overlap, or conflict with state or federal laws or regulations, and there is no apparent negative impact on the regulated community.
