
Regulations

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Fast-Track Regulation

Title of Regulation: 18VAC15-20. Virginia Asbestos Licensing Regulations (amending 18VAC15-20-451).

Statutory Authority: §§54.1-201 and 54.1-501 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until June 27, 2008.

Effective Date: August 1, 2008.

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Basis: The Board for Asbestos, Lead and Home Inspectors is empowered to promulgate regulations under the legal authority found in §54.1-201 of the Code of Virginia, which empowers regulatory boards generally, and §54.1-501 of the Code of Virginia, which requires the Board for Asbestos, Lead, and Home Inspectors specifically to promulgate regulations to administer and enforce the provisions of Chapter 5 (§54.1-500 et seq.) of Title 54.1 of the Code of Virginia.

Purpose: Clarification is the sole purpose for the amendment. No substantive change in the regulation requirement is proposed.

The regulation is essential to protect the health, safety and welfare of citizens by assuring that building owners or their agents are aware that certain asbestos projects require a project monitor. A project monitor will make sure all individuals performing abatements are properly trained and licensed; that proper abatement methods are used; and that a laboratory analysis has found that asbestos hazards have been removed.

The board felt that the current language in 18VAC15-20-451 E 1 was insufficiently clear without a specific reference to the two regulation sections (18VAC15-20-455.1 and 18VAC15-20-456) that specified when a project monitor was necessary. The amendment adds a citation to those two sections of the current regulation.

The board felt that the current language in 18VAC15-20-451 E 2 did not specifically address situations involving a single contract to cover multiple asbestos projects undertaken over a

period of time. "Service" contracts often provide for the contractor's services during a period of time to address any asbestos abatement projects that may arise. The board felt that an amendment clarifying that a single notification and acknowledgement provided at the beginning of a multiple-project service contract term would be sufficient to assure that the building owner or his agent is aware of the project monitor requirement.

Rationale for Using Fast-Track Process: The amendment clarifies an existing requirement. No new requirement results. The amendment to 18VAC15-20-541 E 2 could save asbestos contractors the expense of multiple notifications and acknowledgements for multiple-project contracts by clarifying that a single initial notification and acknowledgement will comply.

Substance: There are no new substantive provisions or changes to the existing sections. The amendments clarify the regulation by adding a citation to the regulation sections that provide for a project monitor on asbestos abatement projects and adding a sentence to make clear that a single notification and acknowledgement is sufficient for a multiple-project service contract.

The amendments (i) amend the asbestos contractor responsibilities section (18VAC15-20-451) to add a citation to the regulation sections that describe asbestos abatement projects requiring a project monitor (18VAC15-20-455.1) and establish project monitor responsibilities (18VAC15-20-456) and (ii) amend the asbestos contractor responsibilities section (18VAC15-20-451) to clarify that the initial notification by the contractor to the building owner or agent of the owner and acknowledgement to the contractor by the building owner or agent of the owner is sufficient to comply with the regulation requirement for contracts that involve multiple asbestos projects to be performed on the building owner's property during the term of the contract.

Issues: The issue addressed by the proposal is one of clarification as to when a project monitor is necessary for an asbestos abatement project and clarification that a single notification to and acknowledgement from the building owner or owner's agent is sufficient for multiple-project service contracts.

Clarification of an existing regulation section is the primary advantage to the agency and the Commonwealth. No disadvantage has been identified.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Asbestos, Lead, and Home Inspectors (Board) proposes to amend its asbestos licensing regulation to add relevant Virginia Administrative Code citations. The Board also proposes to clarify that asbestos contractors need only notify building owners (or agents) of the owners' (or agents')

legal responsibility to hire an asbestos project monitor once at the beginning of a contractual relationship.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Current regulation requires asbestos contractors to inform building owners or agents, with whom they have contracted for asbestos removal services, that they (the owners/agents) are required by law to hire an asbestos monitor. Asbestos contractors are also currently required to obtain written acknowledgement that they have passed on the required information.

The Board proposes to amend this regulation to specify that contractors need only give the required information, and receive written acknowledgement, once at the beginning of a term of contract even if that contract covers multiple asbestos removal projects for the same owner/agent. Neither the Department of Professional and Occupational Regulation (DPOR) nor any regulated entity is likely to incur any costs on account of this regulatory change. To the extent that there may have been confusion about whether the same owner/agent needed to be informed of his responsibility multiple times, this regulatory change will provide the benefit of clarity.

Businesses and Entities Affected. These regulatory changes will affect all 176 asbestos contractors that are licensed by the Board.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no affect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no affect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the

projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Virginia Department of Professional and Occupational Regulation Board for Asbestos, Lead and Home Inspectors agrees with the Virginia Department of Planning and Budget's Economic Impact Analysis on 18VAC15-20, Asbestos Licensing Regulations dated February 26, 2008.

Summary:

The amendments clarify the regulation by (i) adding cross references to the regulation sections that provide for a project monitor on asbestos abatement projects and (ii) specifying that a single notification to, and acknowledgment by, the building or property owner or owner's agent is sufficient for a multiple project service contract.

Part VII

Standards of Practice and Conduct for Licensed Asbestos Contractors

18VAC15-20-451. Asbestos contractor responsibilities.

A. Licensed asbestos contractors shall comply with all requirements, procedures, standards and regulations covering any part of an asbestos project established by the U.S. Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, the Virginia Department of Labor and Industry, and the Divisions of Air Pollution and Waste Management of the Department of Environmental Quality (§54.1-517 of the Code of Virginia).

B. Licensed asbestos contractors shall comply with the requirements found in §54.1-1100 of the Code of Virginia governing the regulation of general contractors.

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C. A licensed asbestos contractor shall employ only licensed asbestos supervisors and workers to perform work on any asbestos project.

D. A licensed asbestos contractor shall ensure that a licensed asbestos supervisor is present at each job site while an asbestos project is in progress.

E. Prior to the start of any asbestos project, the licensed asbestos contractor shall:

1. Notify the building or property owner or agent of the owner that a licensed project monitor is required in accordance with the provisions of 18VAC15-20-455.1 and 18VAC15-20-456 to determine that proper work practices are used and compliance with all asbestos laws and regulations is maintained, to collect environmental air samples during the asbestos project, to perform visual inspections of the work area, and to grant final clearance upon completion of the asbestos project.

2. Obtain a written acknowledgment from the owner or agent of the owner that the owner or agent of the owner has been notified of the requirement to secure the services of a licensed asbestos project monitor. Such acknowledgment must include the address of the building where the asbestos project is to take place; the date the work is to be performed; the name, address, and license number of the licensed asbestos contractor performing the work; and evidence that the building or property owner or agent of the owner has received the notification. The initial notification and acknowledgment shall be sufficient for the term of multiple-project service contracts.

3. Conflict of interest situations and relationships between asbestos contractors and asbestos project monitors are set forth in subdivision 2 of 18VAC15-20-453.

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