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## Final Regulation Agency Background Document

<b>Agency name</b>	Board for Asbestos, Lead, and Home Inspectors
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 15-20
<b>Regulation title</b>	Asbestos Licensing Regulations
<b>Action title</b>	Amend
<b>Date this document prepared</b>	May 30, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

In an effort to ensure the presence of a project monitor on asbestos projects, the Board proposed regulation amendments that would require a project monitor on asbestos job sites each day work is being performed and that would require asbestos contractors to notify building owners of the project monitor requirement. The final regulation kept the requirement for asbestos contractors to notify building owners and modified the project monitor provisions to require the project monitor to be present each day or in accordance with a contractual agreement with the building owner. The proposal to empower the Board to deny license and approval as well as to take disciplinary action against those "acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business" was adopted as a final regulation. The proposal to require training providers to submit data electronically was adopted as a final regulation.

The regulations have been reorganized to present the regulatory requirements in a format which is easier to understand. There are no substantive changes as a result of this reorganization. All DPOR boards are going through similar regulation reorganizations. This reorganization is an effort by the agency to make the regulations more consistent with other DPOR board regulations, benefiting from the experiences of all of regulatory boards.

## Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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The Board for Asbestos, Lead, and Home Inspectors amended the proposed regulations in response to public comment and adopted final Asbestos Licensing Regulations on May 10, 2006.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The Board for Asbestos, Lead and Home Inspectors is empowered to promulgate regulations under the legal authority found in Section 54.1-201 of the Code of Virginia, which empowers regulatory boards generally, and Section 54.1-501 of the Code of Virginia, which empowers the Board for Asbestos, Lead, and Home Inspectors specifically.

Section 54.1-501 uses the imperative form of the verb “shall,” thus making it mandatory that the Board promulgate regulations to administer and enforce the provisions of Chapter 5 of Title 54.1 of the Code of Virginia.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The intent of the final regulation amendments is to assure that project monitors are used on asbestos abatement projects. Project monitors are required on certain asbestos projects and must perform certain functions to assure that all asbestos fiber is removed before a project is completed. The amendments focus on assuring that property owners are aware of the requirement for the presence of a project monitor on asbestos projects, and requiring that asbestos contractors maintain evidence that they have notified property owners or agents of the requirement. Amendments have been made to the duties, responsibilities and functions of project monitors.

Also, the proposed amendments empower the Board to deny license and approval as well as to take disciplinary action against those acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensed or approved entity. The Board will be able to deny application to or take disciplinary action against individuals who are found to have become licensed on the behalf of an ineligible person.

Amending the requirements for recordkeeping by accredited training programs and requiring certain records to be submitted electronically will enable faster data processing and license issuance by the Board. The language allows manual reporting for those entities that lack the necessary software and hardware and for situations where electronic reporting will be impractical.

The intent of reorganizing the regulations is to present the regulatory requirements in a format which is easier to understand and to make them more consistent with other DPOR board regulations. This will further the efficient and economical performance of important government functions.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

The Board's current regulations require a licensed asbestos project monitor to be present on all asbestos projects in buildings that are occupied or intended to be occupied upon completion of an asbestos project exceeding 260 linear feet or 160 square feet or 35 cubic feet of asbestos-containing material or whenever the building or property owner deems it necessary to monitor asbestos projects. The Board has no regulatory authority over building or property owners and, therefore, cannot compel the presence of project monitors. Asbestos is a naturally occurring fiber with insulation and fire retardant characteristics that has been used for many years in building construction. Inhaling the fibers may cause a very serious form of cancer that can result in disability and death. For this reason, the project monitor's role in assuring that all aspects of an asbestos abatement project are properly executed and that all asbestos fiber has been removed and safely disposed of before a project is considered to be complete is vital to the health of those working on the asbestos abatement project, those in the nearby vicinity and those that may occupy the premises in the future. The amendments will assure that asbestos contractors make building owners aware of the requirement for project monitors on asbestos abatement projects and that asbestos contractors keep records of the notifications. The amendments also clarify when the project monitor is to be present on an asbestos abatement project and the functions to be performed to assure public protection from the hazards of asbestos fibers.

The Board has, from time to time, taken disciplinary action against certain firms and individuals or denied licensure or approval to those firms and individuals under its regulatory authority and its affirmative obligation to protect the public. The Board is concerned that those so disciplined or denied may find others who have not been so disciplined or denied to apply for and become licensed, thus becoming an ostensible licensee and rendering the Board's regulatory authority ineffective. The Board's proposed amendments empower the Board to deny the application of or take disciplinary action against anyone found to be an ostensible licensee acting on the behalf of a disqualified individual.

The keeping and submission to the Board of certain records by accredited training programs is the foundation of this program's protection to its regulants as well as to the public. Rapid and accurate reporting of information electronically will enable faster application processing. A provision is made for those entities that do not have the software and hardware to report electronically and for circumstances where electronic notification is not practical.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*  
1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;

- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
- 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

No disadvantages to the public or the Commonwealth have been identified.

Amendments that hold the Asbestos Contractor accountable for notifying the building owner that a licensed project monitor is required on asbestos projects and amendments that require the project monitor to be present will benefit the public by increasing the likelihood that all asbestos fiber is removed before a project is completed.

The public is further protected by empowering the Board to take disciplinary action against those acting as or being an ostensible licensee for ineligible persons who do or will control or direct the operations of the licensed entity.

The agency will benefit by requiring all training program notifications and rosters to be submitted in a uniform manner that will lead to streamlining the processing of applications and will ultimately get licenses to applicants sooner.

The agency’s Compliance and Investigations Division will benefit from reorganizing the regulations by making the regulations more consistent with other DPOR board regulations. The public, government officials and the industry will benefit by reorganizing the regulations in a format which is easier to understand.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
18 VAC 15-20- 451 E	Licensed asbestos contractors must notify, in writing, the building owner of the project monitor requirement and maintain documentation bearing both the signature of the contractor and the building owner.	The licensed asbestos contractor must maintain evidence that the building owner has received the notification. Signatures are no longer required.  Some housekeeping amendments were made as well to conform the language used throughout the subsection.	The Board received considerable public comment concerning the difficulties that may be encountered in getting the building owner’s signature on the notification. The Board decided that requiring only evidence that the building owner had received the notification would obtain the desired result (building owner notification) and lessen the impact on the licensed asbestos contractor.
18 VAC	Requires project monitors	The phrase “when project monitor is	The phrase was deleted

15-20-456 A	to conduct inspections, etc., when the project monitor is present.	present” was deleted.	in response to public comment. The nature of the duties described cannot be performed unless the project monitor is present. The deleted language was redundant.
18 VAC 15-20-456 B	Requires project monitors to be present each day an asbestos abatement activity is being performed.	<p>The term “asbestos abatement activities,” which is not a defined term, was changed to “response actions,” which is defined in the Board’s regulations.</p> <p>The proposed language required the project monitor to be present each day. The final language was modified to require the project monitor to be present daily or in accordance with the owner-approved contractual agreement with the project monitor.</p>	<p>The substitution of a term with a specific meaning will add to clarity and assure an understanding of when the project monitor must be present.</p> <p>The Board arrived at this amendment while considering public comment suggesting that some building owners may not want a project monitor or may want to limit the project monitor’s role. This should increase the likelihood that a project monitor will be present and allow the owner the flexibility to determine how closely the work is to be monitored.</p>

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

Commenter	Comment	Agency response
Veronica L. Spradlin, via e-mail on April 7, 2006	18 VAC 15-20-470 This proposed amendment creates a concern for me as a trainer and as a licensed worker who attends training. In the age of technology, it is more convenient to use a unique identifier such as a social security number to sort records and retrieve information from a database. However, it should	<b><i>Virtually all training providers have been submitting social security numbers (SSN) electronically since the Board’s current regulations went into effect on January 2, 2002 without any reported compromise. The proposed amendments to 18 VAC 15-20-470 do not create a new requirement to include SSNs rather create a new requirement that information be submitted electronically using a prescribed form. Section 54.1-116 of the Code of Virginia</i></b>

	<p>not be overlooked that this identifier is also used for very important and confidential records such as financial and employment records. In 1961, IRS began using social security numbers as taxpayer ID and this number is found on most banking, property or other financial transactions and employment records. Since social security numbers must be included on all of these sensitive financial documents, it is important to limit other uses of the number. Requiring submission of this information electronically exposes a risk for identity theft of those attending training. Training rosters must also include the signature and address and anyone possessing this information could potentially steal the identity of multiple people at one time. If required to submit electronically, some changes need to be made in the information submitted. It should not be necessary to submit the entire social security number for an individual who is just taking a refresher course; their social security number (or preferably an alternate ID number) should already be on file from their initial class. Where entire social security number needs to be reported, it should be filed in a secure and controlled method to prevent identity theft.</p>	<p><b><i>does allow the use of a control number issued by the Department of Motor Vehicles to be used instead of the SSN by those who may be concerned with information security.</i></b></p>
<p>Michael S. Lafon, via e-mail on February 14, 2006</p>	<p>18 VAC 15-20-470</p> <p>I do not find it very assuring that a training roster should be scanned and sent electronically. That electronic document can easily be taken and with the student's social security number, their signature and, in most cases, their address, all of their</p>	<p><b><i>Virtually all training providers have been submitting social security numbers (SSN) electronically since the Board's current regulations went into effect on January 2, 2002 without any reported compromise. The proposed amendments to 18 VAC 15-20-470 do not create a new requirement to include SSNs rather create a new requirement that information be submitted</i></b></p>

	<p>information is at risk. Classes in Southwest Virginia are often done in job site trailers or other types of training areas where there is no computer to submit the information in an electronic format. It is difficult sometimes to find a fax. These classes are very small and it becomes less cost effective to make this service available to clients outside of Richmond and Tidewater when electronic or computer technologies are required to fulfill the notification requirements. This would, however, be of least concern as more broadband services become available.</p>	<p><b><i>electronically using a prescribed form. The Board is assured that an individual satisfactorily completed training when the training provider provides a participant list bearing his name and identifying information.</i></b></p> <p><b><i>The Board understands that there will be circumstances that make electronic transmission difficult or even impossible. For this reason, language is included in the proposed amendment to allow the Board to approve variations to the required procedure.</i></b></p>
<p>Building Diagnostics Inc., via e-mail January 12, 2006</p>	<p>18 VAC 15-20-470</p> <p>Comment on amendment requiring training providers to submit social security numbers to speed up application should be changed to use "driver's license number instead.</p>	<p><b><i>Section 54.1-116 of the <u>Code of Virginia</u> allows the use of a control number issued by the Department of Motor Vehicles (DMV) to be used instead of the social security number by those who may be concerned with information security. The Board has always accepted the DMV control number instead of the social security number.</i></b></p>
<p>Henry A. Boyter, Jr., Institute of Textile Technology, via the Public Comment Forum on the Virginia Regulatory Town Hall on February 20, 2006</p>	<p>18 VAC 15-20-451 and 18 VAC 15-20-456</p> <p>In reading the changes regarding project monitors, one thing is not absolutely clear. What are the duties of the contractor and the individual asbestos license holders when the owner has been properly notified in writing that a project monitor (pm) is required and the owner does not hire a project monitor. The regulations should be clear in the requirements and results that the Board anticipates. For example if the contractor starts and the owner does not hire the project monitor, are the licenses of all in peril? Should the contractor notify an appropriate agency</p>	<p><b><i>Proposed is a requirement for asbestos contractors to notify building owners of the project monitor requirement and to maintain documentation that they did so. Once that is done, there is no further regulatory requirement. There is no language that would allow disciplinary action against the contractor should a project monitor not be hired or not show up. The contractor has no obligation to check the project monitor's license status but should report to the Board any person he believes may be involved in unlicensed activity. There is no agency for the contractor to notify in the event a project monitor is not hired as no agency has regulatory authority over owners.</i></b></p> <p><b><i>The Virginia Department of Labor and Industry (DOLI) is the agency that</i></b></p>

	<p>and what is that agency? What does the contractor do if the owner says they hired a pm and none shows on the job? Is it the responsibility of the contractor to confirm the license and training of the pm on each job? Before these situations happen (and they will), the Board should address them either in the regulation or in a directive to all people holding a license.</p> <p>My suggestion is that all notices submitted for abatement should be required to include the name and particulars of each pm or at least the information on the company that has been retained and a list of the pm's that may show on the job. It should NOT be the contractor's job to confirm license numbers.</p>	<p><b><i>regulates asbestos abatement notifications. The Board has no authority to require project monitors to be listed on asbestos abatement notifications; however, the DOLI form currently in use has a space for the project monitor.</i></b></p>
<p>Frank J. Dzupinka, Eastern Virginia Environmental, via the Public Comment Forum on the Virginia Regulatory Town Hall on March 17, 2006</p>	<p>18 VAC 15-20-450 A 12 On page 27, section H. Standing, delete the words "as a" after the word "standing" in the first line.</p> <p>This action against an "ostensible licensee", if I am interpreting it correctly, does not appear to make good legal or business sense. After all, you don't have to be a barber to own a barber shop. If I own an environmental company I am responsible for its operation. What concern is it of the Board's if I hire competent "undisclosed persons" to manage it for me? If my business conscientiously follows all the regulations and is profitable I am a happy owner and the Board should have no issues with me. Can the Board legally define who I can and can't hire? What kind of an "undisclosed person" could cause the licensee to be</p>	<p><b><i>The words have been deleted and the Board thanks Mr. Dzupinka for pointing it out.</i></b></p> <p><b><i>The Board cannot "legally define" who a licensed firm may or may not hire. However, the Board is mandated to set firm entry and conduct standards. The Board can take disciplinary action under proposed 18 VAC 15-20-450 A 12 should it be discovered that a licensed firm is being controlled or directed by someone other than those identified as owners, officers or directors on the license application, such as a person with a criminal conviction addressed under 18 VAC 15-20-33 F. Disciplinary action would be pursued in compliance with the Virginia Administrative Process Act and would be no more or less difficult than any other disciplinary action.</i></b></p>

	<p>disciplined? How difficult would enforcement of this be?</p> <p>18 VAC 15-20-456 A.</p> <p>Recommend deleting "when the project monitor is present". Obviously inspections can't be done unless the monitor is present.</p> <p>18 VAC 15-20-456</p> <p>Recommend adding "for the entire time" to the first line following the word "day"</p>	<p><i>The Board is deleting the phrase and thanks Mr. Dzupinka for pointing it out.</i></p> <p><i>The Board thanks Mr. Dzupinka for his comment but feels that the frequency of Project Monitor visits is a matter best left to the terms of an owner-approved contractual agreement with the Project Monitor. The Board has amended the final regulation to require the Project Monitor's presence each day or in accordance with the owner-approved contractual agreement with the Project Monitor.</i></p>
<p>David M. Wingfield, via the Public Comment Forum on the Virginia Regulatory Town Hall on February 10, 2006</p>	<p>18 VAC 15-20-456</p> <p>I work for an independently owned manufacturing facility in the state of Virginia. My job is the Asbestos and Lead Coordinator for the site, with my main priority being the awareness and protection of our site employees from exposure to asbestos and lead. I hold a license as an asbestos supervisor, lead supervisor, lead project designer, and lead inspector. I also have attended the accredited training as an asbestos inspector, asbestos project monitor, and lead risk assessor. My comment is why is the regulation different in regard to me performing asbestos project monitor work on my site as long as I have the accredited training, and am only performing such work on our property? Page 2 [18 VAC 15-20-10] of the regulations has the</p>	<p><b><i>Section 54.1-521 B of the <u>Code of Virginia</u> exempts employers and their employees from the licensure requirement for asbestos projects conducted on premises owned or leased by the employer. The Board's current regulation also exempts employees with OSHA and EPA training from the licensing requirement for inspections, management plans and project designs. The OSHA and EPA training adequately protects the public health, safety and welfare when such functions are performed by trained employees on premises owned or leased by their employers.</i></b></p> <p><b><i>Project monitor was not included because the Board feels it must maintain disciplinary authority over all project monitor activities. Inadequate performance by a project monitor at an exempt response action site would have the same impact on the public as it would at a non-exempt response action site.</i></b></p>

	<p>following footnote: *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 OSHA and EPA training requirements. I was wondering if leaving project monitor work may have just been an oversight when this was written, and could possibly be included? We employ an independent contractor to perform our abatement work, so I have no affiliation or interest in the company. I would appreciate your consideration on this matter.</p>	
<p>P. K. Goel, Delaware Cornerstone Builders, via e-mail on January 19, 2006</p>	<p>18 VAC 15-20-456  Fundamentally, I disagree that it should be a contractor's responsibility to our clients regarding Virginia's project monitor requirements. As contractors, we are required to file notification with Virginia (20-day notice) and pay permit fees for asbestos abatement projects. These notifications include the contact information for each client (owner). Therefore, as Virginia wants clients to be informed of project monitor requirements, then Virginia should send the clients (owners) notifications directly.</p> <p>Again, as Virginia continues to derive revenue for asbestos permits, then Virginia should notify owners directly. This would eliminate any misinterpretations by contractors.</p> <p>Lastly, the industrial hygiene</p>	<p><b><i>The objective of the proposed amendment is limited to a requirement for asbestos contractors to notify building owners of the project monitor requirement and keep documentation of that notification. The 20-day notification goes to the Virginia Department of Labor and Industry and not to the Board. The asbestos contractor has direct contact with the building owner or his agent well before abatement is to begin allowing adequate time for the owner to decide on a project monitor.</i></b></p> <p><b><i>The Board has no statutory authority to regulate the asbestos consulting industry or certified industrial hygienists. To do so would require legislation to be passed by the Virginia General Assembly.</i></b></p>

	<p>contractor is unlicensed in Virginia. Why? You license VPMs, asbestos training providers, and even asbestos testing laboratories. But yet, no license is required for any <u>company</u> engaged in industrial hygiene. No <u>company</u> license is required to prepare an asbestos management plan or asbestos project design. No Virginia license is required to be a certified industrial hygienist. Why?</p> <p>Ultimately, the consulting businesses should be licensed in order to ensure compliance with Virginia regulations and hold consulting business accountable for misconduct.</p> <p>Stop placing the responsibility of the contractor only.</p> <ul style="list-style-type: none"> <li>a. Virginia should inform property owners directly of project monitor requirements.</li> <li>b. The asbestos consulting industry should be Virginia licensed.</li> <li>c. Certified Industrial Hygienists should be Virginia licensed (just like professional engineers).</li> </ul>	
<p>Bruce Sigurdson, President, Winchester Environmental Consultants, Inc., via e-mail</p>	<p>18 VAC 15-20-456</p> <p>The specific proposed amendments to the Asbestos Licensing Regulations are fully supported for positive change.</p>	<p><b><i>The Board thanks Mr. Sigurdson for his support of the proposed amendments. The 20-day notification is under the authority of the Virginia Department of Labor and Industry and the Board has no authority to require a space for the name of the project monitor; however,</i></b></p>

<p>on January 12, 2006</p>	<p>Too often, project monitors are not employed on NESHAP projects resulting in sloppy operations and lack of a professional procedure. The additional measure of having AB contractors notify their clients of this requirement would be very beneficial. The project monitor should also be listed on the state and federal notification when filed by the AB contractor.</p> <p>Adjoining states that already require these two items enjoy a more controlled operation with responsibilities being clearly defined.</p> <p>Again, I totally agree with the AB regulation proposals and strongly urge the board to enact them in order to eliminate existing gaps and increase the professional operations involved this regulated material.</p>	<p><b><i>the form currently in use has such a space provided.</i></b></p>
<p>James Sigurdson, Vice President, Winchester Environmental Consultants, Inc., via e-mails on January 13, 2006 and additional comment via e-mail on February 8, 2006</p>	<p>18 VAC 15-20-456</p> <p>As a licensed project monitor I often hear of jobs where no project monitor is present, either through omission or negligence, and I feel strong action should be taken to insure that all jobs requiring the presence of a project monitor have one onsite. For example, I would suggest amending the notice form to include a space where the name and license number of the project monitor to be involved in the abatement be placed. This way the contractor must ensure the monitor is onsite when required, and would also compel contractors to tell building owners of the project monitor requirements.</p>	<p><b><i>The Board appreciates your support for the proposed amendments. The 20-day notification is under the authority of the Virginia Department of Labor and Industry and the Board has no authority to require a space for the name of the project monitor; however, the form currently in use has such a space provided.</i></b></p> <p><b><i>Section 54.1-501 of the <u>Code of Virginia</u> mandates that the Board promulgate regulations governing the circumstances in which project monitors shall be required for asbestos projects. The Board has no authority to promulgate regulations governing circumstances in which a project design shall be required.</i></b></p>

	<p>I think this would be a relatively easy solution to implement and would be low cost, although I am certainly not opposed to other methods which the board may decided to employ in assuring the presence of a project monitor where required. I eagerly anticipate future rulings on this subject.</p> <p>I would like to suggest one more addition to the proposed amendments, that would be the inclusion of project design requirements.</p> <p>To my knowledge, the state of Virginia defines a project designer, and specifies licensing requirements for one, but nowhere states when a job would require a project design by a licensed project designer.</p> <p>As a licensed project designer in multiple states, I often wondered why I seldom did any for VA-based jobs. Seeing as there is no requirement in VA for project designs, it is easy to see why now. As we are all aware, contractors and building owners will seldom have a project design due to the additional cost unless the law requires it, and I believe there should be a requirement for a project design on all jobs above a certain size (NESHAP for example).</p> <p>I just feel it is rather wasteful to continue to hold a license to design asbestos projects in Virginia when this skill is apparently never required, and this situation should be resolved if possible.</p>	
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<p>Joyce M. Walker, SaLUT, Inc., via e-mail on January 18, 2006</p>	<p>18 VAC 15-20-456</p> <p>I don't think that to "require asbestos contractors to notify their clients of the project monitor requirement" should be the asbestos contractor's responsibility.</p> <p>My primary purpose is that as an Industrial Hygiene company and training provider at SaLUT in Maryland, I have a problem with the difficulty in getting a license. I have submitted applications for IHs on numerous occasions and not received a license for one reason or another. My money was never returned either. It is sometimes difficult to obtain copies of original training certificates as well as those for every year after for people who may have been doing this for over 5 years. Some of my people have been doing this for over 10 years. Also, on one occasion, when the application asked for a description of their job duties, I attached a corporate resume. I was told that was too much information and just to scribble something down on the four lines provided. And sending their application to a college for a seal, forget about it. Could you make it any more difficult? Why not just send in a current training certificate, make sure the training provider is legit, take my money and give me a license? I know you got burned a few years ago, but you've made it WAY too hard. Not many states even ask for a project monitor at all. All of my IHs have at least a supervisors license and NIOSH 582. Not much more in the project monitor class...pretty much just a combination of the two. And I</p>	<p><b><i>The objective of the proposed amendment is limited to a requirement for asbestos contractors to notify building owners of the project monitor requirement and keep documentation of that notification. The asbestos contractor has direct contact with the building owner or his agent before abatement is to begin and can bring the project monitor requirement to the owner's attention.</i></b></p> <p><b><i>The Board proposed no amendment to the entry requirements for any individual license discipline. The current entry standards are the minimum necessary to protect the public health, safety and welfare.</i></b></p> <p><b><i>All application fees are non-refundable.</i></b></p> <p><b><i>Section 54.1-501 of the <u>Code of Virginia</u> mandates that the Board promulgate regulations governing project monitors. The Board has no authority to cease regulating project monitors.</i></b></p>
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	<p>don't even do much work in Virginia, but need it just in case.</p>	
<p>Cyrus O. Hall, Branch Manager, WACO, Inc., Christiansburg, VA, via written comment on April 13, 2006</p>	<p>18 VAC 15-20-456 and 18 VAC 15-20-451</p> <p>Regarding proposed regulation to assure the presence of licensed project monitors, this requirement would unnecessarily increase the cost of small home and industrial projects. Further, this requirement would greatly increase the costs related to medium and large abatement projects. Such increases could do great harm to the abatement industry and possibly limit the jobs placed out for bids due to funding issues. Another immediate impact would be the ability of monitoring firms to quickly man all abatement projects. The delay in starting projects or working seven day/multiple shifts due to lack of qualified Monitors could, again, significantly impact the industry.</p> <p>Regarding proposed regulation requiring asbestos contractors to notify their clients of the project monitor requirement, this is placing an unfair burden on the Contractor to become the regulatory police. Further, a Contractor can put forth time and money to secure a project only to find the Owner decline the work when told he needs to provide for a Monitor. What recourse would a Contractor have if the Owner says he has a Monitor, but the Contractor shows up and no such provisions have been made? Who, then, becomes responsible for the Contractors</p>	<p><b>Section 54.1-501 of the <u>Code of Virginia</u> mandates that the Board promulgate regulations governing the circumstances in which project monitors shall be required for asbestos projects but gives the Board no regulatory activity over building owners or managers. The Board's regulations establish the circumstances in which project monitors are required. The objective of the proposed amendment is limited to a requirement for asbestos contractors to notify building owners of the project monitor requirement and keep documentation of that notification. No other obligation or standard is proposed or intended and asbestos contractors are under no obligation whatsoever to assure the presence of a project monitor or to refuse to begin an asbestos project if the project monitor is not present. Building owners, once notified, will make their own decision as to whether or not they want to hire a project monitor. The costs will be limited to those resulting from making the notification and keeping a record of the notification.</b></p> <p><b>No amendment was proposed to require the same notification to be made by inspectors and project designers. The Board's final regulations will not require notifications by inspectors or project designers. Inspectors and project designers do not see every abatement job, but asbestos contractors do see every abatement job.</b></p>

	<p>compensation? Will Inspectors and Designers be required to make the same notification? Shouldn't the burden be placed on Inspectors and Designers as they will potentially be the first point of contact for Owners?</p> <p>It seem as though these regulations, although thought out, will in fact only increase not only the duration, but the cost of projects, either of which are conditions that, in my opinion, negatively impact the abatement industry.</p>	
<p>Joseph W. Crockett, Vice President, WACO, Inc. at the Public Hearing on March 30, 2006</p>	<p>18 VAC 15-20-450 and 18 VAC-15-20-456 and 18 VAC 15-20-470</p> <p>We are in favor of empowering the board to be able to take disciplinary action against those who act as an ostensible licensee for others that actually control the licensee's business.</p> <p>We are in favor of electronic submission of documents by training providers. Any measures that streamline the license issuance process are beneficial. Given the current identity theft concerns, we wonder if it is not time for review of the need to obtain licensee's full social security numbers. We acknowledge that this type of review may be beyond the practical authority of the DPOR.</p> <p>We are very concerned over the requirement for project monitors on projects where the facility owner does not want (or need) a project monitor. This concern extends to both the existing rules as well as those that are proposed. The USEPA has no such requirement for project</p>	<p><b>1. The Board thanks Mr. Crockett for his support of the proposed amendment to take disciplinary action against ostensible licensees.</b></p> <p><b>2. The Board thanks Mr. Crockett for his support of the proposed amendment to require electronic submission of documents by training providers.</b></p> <p><b>3. Section 54.1-501 of the <u>Code of Virginia</u> mandates that the Board promulgate regulations governing the circumstances in which project monitors shall be required for asbestos projects but gives the Board no regulatory authority over building owners or managers. The Board's regulations establish the circumstances in which project monitors are required. The objective of the proposed amendment is limited to a requirement for asbestos contractors to notify building owners of the project monitor requirement and keep documentation of that notification. No other obligation or standard is proposed or intended and asbestos contractors are under no obligation whatsoever to assure the presence of a project monitor or to refuse to begin an asbestos project if the project monitor is not present.</b></p>

	<p>monitors (except for school work). Why does Virginia need to exceed the EPA requirements?</p> <p>We have particular concern over the requirement that the licensed abatement contractor be required to advise a facility owner of the requirement for a project monitor. This requirement puts a reputable contractor in a variety of difficult positions.</p> <ol style="list-style-type: none"> <li>1. An owner may be offended when being forced by a contractor to acknowledge that he (the owner) is required to obtain and pay for the services of a project monitor. If the contractor has an agreement to perform the work, normally on the owner's contract form, the owner can tell the contractor that he has no interest in signing such an acknowledgement. Why should he? He already has a signed agreement by the contractor to perform the work. We see no provision for a refusal situation in the proposed regulation. Alternatively, the owner may instead simply shop for another contractor that doesn't demand the acknowledgement.</li> <li>2. This requirement puts the contractor in the position of being a default enforcement agent for a regulation that the DPOR itself cannot enforce on a non-</li> </ol>	<p><b><i>Building owners, once notified, will make their own decision as to whether or not they want to hire a project monitor.</i></b></p> <p><b><i>The Board thanks Mr. Crockett for his comments and points out that the reason for the proposed amendment is to attempt to educate the property owner. The final regulation adopted has been amended to require evidence that the owner has received the notification and no longer requires the signature of the owner and contractor.</i></b></p>
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	<p>regulated owner.</p> <ol style="list-style-type: none"><li>3. How will the DPOR enforce this requirement on the contractor? How will a contractor be disciplined for an owner's unwillingness to sign the acknowledgement? Will enforcement/referral of this requirement be delegated to the Department of Labor and Industry?</li><li>4. Given the difficulty that we currently have when attempting to schedule project monitors on our jobs, either when requested by the owner or placed for our own benefit, we are concerned that there are enough project monitors available to cover every medium to large job that is underway at any given time.</li><li>5. We would ask what is a contractor to do if the project monitor fails to show up on a project that is in progress? Now that the contractor has told the owner to employ a monitor, can the contractor work without one? Does the contractor simply shut down the project if the monitor fails to come to work? How will the contractor recover lost time costs for this situation? Does he bill the owner, the project monitor, or the DPOR for this lost time? This failure to show and accompanying shutdown</li></ol>	
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	<p>will also require the contractor to amend the notifications to DLI and EPA. Will this type of amendment be acceptable to these agencies? Who will pay for these processing costs? If the proposed change is enacted and the contractor meets his obligation, there will still be no way for the DPOR to enforce the requirement for a monitor on the owner. The net result of the proposed change is that we have added an additional piece of paper to the file that attempts to force the unenforceable on the unregulated. Ultimately, this piece of paper will just be thrown away at the end of the job.</p> <p>Granted, the existing requirement for a project monitor is unenforceable. Approval of the proposed change will still not make a project monitor's presence enforceable. If the intent is to require monitors on site, the agency needs to be able to <u>require the owner to have the monitor on site</u>, not merely have the contractor tell the owner of the requirement.</p>	
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**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18 VAC 15-20-20	Same	Definitions	Definitions for “firm” and “licensee” have been added.
18 VAC 15-20-30 A	18 VAC 15-20-31	Shall use form provided by the department.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-30 B	18 VAC 15-20-32 C	18 years of age.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-30 C	18 VAC 15-20-32 E 2, E 3 a, E 4 a, E 5 a, and E 6 a	Completed appropriate training for Supervisor, Inspector, Management Planner, Project Designer, and Project Monitor.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-30 D	18 VAC 15-20-32 E 1	Completed appropriate training for Worker.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-30 E, F, and G	18 VAC 15-20-31	Application required for Contractor, Laboratory, and Training Program.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-30 H	18 VAC 15-20-32 I and 18 VAC 15-20-39	Good standing. Application must be signed.	Reorganized to present the regulations in an easier to understand format.

18 VAC 15-20-30 I	18 VAC 15- 20-32 G	Convictions.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-30 J	18 VAC 15- 20-31 and 18 VAC 15-20-51	Application must be complete and fees nonrefundable.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-40	18 VAC 15- 20-32 F	Experience and education verification forms.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-50 A, C, E, and G	18 VAC 15- 20-52	Application fees.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-50 A, B, C, D, E, F, H, and I	18 VAC 15- 20-53	Renewal and late fees.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-50 J	Repealed	Cannot renew after six months expired.	Redundant to 18 VAC 15-20-70 H (formerly G)
18 VAC 15-20-50 K and L	18 VAC 15- 20-51	Checks made payable to Treasurer of VA and fees are nonrefundable.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-60 A and B	Same	Renewal required.	Section renamed, substance not changed.
18 VAC 15-20-60 C	Same	Training program renewal.	Outdated language deleted.

N/A	18 VAC 15-20-60 D	Renewal fee required.	Language added requiring fee as part of the renewal.
18 VAC 15-20-70 A	Same	Renewal procedure.	Section renamed, substance not changed.
18 VAC 15-20-70 B	Same	Renewal procedure.	Language regarding renewal procedures for training programs removed and placed in new subsection D.
18 VAC 15-20-70 C	Same	Renewal procedure.	Language added for clarification.
N/A	18 VAC 15-20-70 D	Renewal procedure for training programs.	Language regarding renewal procedures for training programs moved from 18 VAC 15-20-70 B and 18 VAC 15-20-459 11.
18 VAC 15-20-70 D, E, and G	18 VAC 15-20-70 E, F, H	Renewal procedure.	Subsections renumbered.
18 VAC 15-20-70 F	18 VAC 15-20-70 G	Renewal procedure.	Subsection renumbered and "renewal" was inserted before "fees as established" for clarity.
18 VAC 15-20-80	18 VAC 15-20-450 A 11	Change of address or name.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-90	18 VAC 15-20-32 E 1	Worker entry requirements.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-101	18 VAC 15-20-32 E 2	Supervisor entry requirements.	Reorganized to present the regulations in an easier to understand format.
18 VAC	18 VAC 15-	Contractor entry	Reorganized to present the regulations in an

15-20-110	20-33 E 1	requirements.	easier to understand format.
18 VAC 15-20-150	18 VAC 15-20-33 I	Denial of contractor license.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-250	18 VAC 15-20-32 E 3 b	Inspector entry requirements.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-251	18 VAC 15-20-32 E 3 c	Inspector entry requirements.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-270	18 VAC 15-20-32 E 4 b	Management Planner entry requirements.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-271	18 VAC 15-20-32 E 4 c	Management Planner entry requirements.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-290	18 VAC 15-20-32 E 5 b	Project Designer entry requirements.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-291	18 VAC 15-20-32 E 5 c	Project Designer entry requirements.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-330	18 VAC 15-20-32 E 6 b	Project Monitor entry requirements.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-331	18 VAC 15-20-32 E 6 c	Project Monitor entry requirements.	Reorganized to present the regulations in an easier to understand format.

18 VAC 15-20- 332	18 VAC 15- 20-32 E 6 a	Project Monitor training requirements.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20- 361 A	18 VAC 15- 20-31	Laboratory application required.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20- 361 B, C, and D	18 VAC 15- 20-33 E 2 a, E 2 b, and E 2 c	Laboratory entry requirements.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20- 400	Same	Responsibility to the public.	To use more accurate terminology, all references to “regulant” have been changed to “licensee.”
18 VAC 15-20- 410	Same	Public statements.	To use more accurate terminology, all references to “regulant” have been changed to “licensee.”
18 VAC 15-20- 420	Same	Solicitation of work.	To use more accurate terminology, all references to “regulant” have been changed to “licensee.”
18 VAC 15-20- 430	Same	Professional responsibility.	To use more accurate terminology, all references to “approved entity” have been changed to “accredited asbestos training provider.”
18 VAC 15-20- 440	Same	Good standing in other jurisdictions.	To use more accurate terminology, all references to “regulants” have been appropriately changed to “licensee,” “accredited asbestos training providers,” “training managers,” and “principal instructors.”
18 VAC	Same	Prohibits altering or	Rephrased for clarity

15-20-450 A 3		falsifying licenses and training certificates.	
N/A	18 VAC 15-20-450 A 12	Silent	Added ostensible ownership language: "Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business."
N/A	18 VAC 15-20-451 E	Silent	Language has been added to make the asbestos contractor responsible for notifying the building owner that a project monitor is required on the asbestos project and to obtain written acknowledgment of such notification from the building owner.
18 VAC 15-20-453	Same	Conflict of interest.	Replaced "these regulations" with the more appropriate phrase "this chapter."
18 VAC 15-20-456	Same	Project monitor responsibilities.	Subsection B has been modified to require a project monitor's presence on the job site each day that asbestos response actions are being conducted or in accordance with the owner-approved contractual agreement with the project monitor.
18 VAC 15-20-459.6	18 VAC 15-20-34 A, B, and C	Qualifications for training programs.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-459.7	18 VAC 15-20-34 D and E	Approval procedures for training programs.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20-459.8	18 VAC 15-20-34 F	Examinations for training programs.	Reorganized to present the regulations in an easier to understand format.

18 VAC 15-20- 459.9	18 VAC 15- 20-34 G	Approval letters for training programs.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20- 459.10	Repealed	Refresher training program approval.	Language in section is redundant to Part XIII, Accredited Asbestos Training Program Standards.
18 VAC 15-20- 459.11	18 VAC 15- 20-70 D	Renewal procedures for training programs.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20- 459.12	18 VAC 15- 20-461	Changes to a training program.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20- 459.13	18 VAC 15- 20-462	Transfer of approval of a training program.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20- 459.14	18 VAC 15- 20-463	Access by the department to training provider.	Reorganized to present the regulations in an easier to understand format.
18 VAC 15-20- 459.15	18 VAC 15- 20-464	Disciplinary action against a training program.	Reorganized to present the regulations in an easier to understand format. The terms "suspension" and "revocation" have been replaced with "withdrawal" since this section speaks only to the Board's authority to withdraw approval of an asbestos training program, not suspension or revocation.
18 VAC 15-20- 460	Repealed	General standards of practice and conduct for accredited asbestos training programs.	This section has been more appropriately incorporated into Section 18 VAC 15-20-463.
18 VAC	Same	Record keeping and	This section has been completely rewritten to

15-20-470		provision of records to the board by asbestos training providers.	outline specific procedures for asbestos training providers when submitting course notifications and class rosters, as well as listing specific information that these notifications and rosters must contain. Subsection J requires that all notifications and rosters be submitted in a uniform manner that will lead to streamlining the processing of applications.
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The amendments reorganize the regulations to make them more consistent with other DPOR board regulations and to benefit from the experiences of all of our regulatory boards. All DPOR boards are going through this sort of regulation reorganization. The reorganization presents the regulatory requirements in a different and easier to understand format.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

In an effort to ensure the presence of a project monitor on asbestos projects, the Board explored the possibility of requiring the project monitor to be present on the asbestos job site the entire time that asbestos abatement activities are being conducted. This idea was rejected because the Board felt that it was not necessary for the project monitor to be present the entire time. The Board concluded that a project monitor could effectively monitor multiple job sites on the same day when it proposed amendments for public comment. In response to public comment, the Board considered, again, requiring the project monitor to be present the entire time that asbestos work was being performed, leaving the amount of time the project monitor must be present up to the discretion of the project monitor and, finally, requiring the project monitor to be present daily or in accordance with an owner-approved contractual agreement. The last option was adopted as final regulation because the Board felt it assured the presence of a project monitor each day or at an interval that the building owner agreed to. This should assure the presence of a project monitor and allow the building owner to determine how closely the work is to be monitored. The Board also amended the language to require the project monitor to be present during the “response action” rather than during “asbestos abatement activities.” “Response action” is a term defined in the regulations and this amendment clarifies what activities need a project monitor.

In consultation with the Department of Labor and Industry (DOLI), the Board concurred that it is the responsibility of the building or property owner to engage a project monitor on asbestos abatement projects. However, since neither DOLI nor the Board has statutory authority over the building or property owner, the Board’s regulations could not require the building or property owner to secure a Project

Monitor. The problem remains that many building or property owners are not aware of the need for a project monitor or the potential liability resulting from poorly-performed abatement work. The Board, therefore, proposed to require the Asbestos Contractor to notify the building owner of the project monitor requirements established in the Board's regulations and to obtain written acknowledgement of this notification. The Board adopted this requirement in its final regulations.

The Board is concerned that those individuals managing firms that have had their license or approval revoked or who are otherwise found unfit for licensure will induce others to obtain licensure or approval and allow the revoked individuals to operate the firm. The Board could find no authority in its existing regulations to address this concern and, therefore, proposed language allowing the Board to discipline or deny licensure to those that are unqualified for a license that are found acting as an ostensible licensee on behalf of someone not qualified for a license. The Board adopted this requirement in its final regulations.

The Board proposed and adopted as a final regulation a requirement that training providers send the required training program notices and training program participant lists to the Board by electronic means. Language is provided to allow reporting by other means when electronic reporting is not available or practical. The public comment expressed concern that social security numbers and other personal data transmitted electronically may result in identity theft or other adverse impact against the individual. The Board has received virtually all of the required data by electronic means since the current regulations became effective on January 2, 2002 and has had no reported problems with the security of the social security number of any person. Those concerned with the security of their social security number may use the control number issued by the Virginia Department of Motor Vehicles rather than the social security number.

### Family impact

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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No impact on the institution of the family or family stability has been identified.