



COMMONWEALTH of VIRGINIA
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December 21, 2004

Ann Jolly, Chair
Safety and Health Codes Board
c/o C. Ray Davenport, Commissioner
Virginia Department of Labor & Industry
13 South Thirteenth Street
Richmond, Virginia 23219

Re: Authority to Promulgate Respiratory Protection Standard, § 1910.134

Dear Ms. Jolly:

I have reviewed the above-referenced regulation. It is my opinion that the Safety and Health Codes Board has authority to promulgate such amendments under applicable law, including Chapter 3 of Title 40.1 of the Code of Virginia. Based upon your agency's representations, it is my opinion that under Va. Code § 2.2-4006.A.4(c) the regulations are excluded from Article 2 of the Virginia Administrative Process Act because they are necessary to meet the requirements of federal law or regulations.

If I may be of any further assistance to you relating to this matter, please do not hesitate to contact me.

Sincerely,

Cathie F. Hutchins
Assistant Attorney General
Environmental Unit

cc: Regina P. Cobb