

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

16 VAC 25-200 Virginia Voluntary Protection Program
Department of Labor and Industry
Town Hall Action/Stage: 4406/7521
May 25, 2016

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 339 of the 2015 Acts of Assembly, the Safety and Health Codes Board (Board) proposes to promulgate regulations for the Voluntary Protection Program (VPP).

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Chapter 339 of the 2015 Acts of Assembly codified VPP and required the Board to adopt regulations necessary for the program.¹ Pursuant to the statutory mandate, the Board proposes to promulgate regulations addressing the operation and administration of the program. VPP promotes effective worksite-based safety and health. In VPP, management, labor, and the Department of Labor and Industry (DOLI) establish cooperative relationships at workplaces that have implemented a comprehensive safety and health management system. Participants may terminate VPP status at any time for any reason.

VPP is not new in Virginia. According to DOLI, it was instituted in 1996 and is patterned after the federal VPP model, which was originally created in 1982. An employer's membership in VPP is recognized as the nation's and Virginia's highest award that can be bestowed by a

¹ <http://lis.virginia.gov/cgi-bin/legp604.exe?151+ful+CHAP0339>

government agency to an employer for excellence in occupational safety and health management systems. Virginia VPP currently recognizes 46 VPP sites employing over 11,000 employees. VPP sites also directly impact numerous qualified subcontractors and their employees that work at VPP sites as those companies are required to provide safety and health protections to their employees that are the equivalent to the protections provided to VPP site employees.

The traditional site-based VPP has two levels of participation, Star worksite and Merit worksite. Star participants are a select group of worksites that have designed and implemented outstanding safety and health programs, including full and meaningful employee involvement. Merit participants are those that have demonstrated the potential and willingness to achieve Star status and are implementing planned actions to fully meet the VPP Star requirements. VPP also encompasses the following programs which provide interested employers and employees the opportunity to develop and implement exemplary safety and health management systems: Challenge – where employers are guided by challenge administrators through a three stage process, which can prepare a company to achieve VPP Star status; Site-based Construction – for long term construction sites; Mobile Workforce – for employers that move from site to site; and Corporate - designed for corporate applicants.

While VPP participants do incur costs associated with developing and implementing safety and health management systems that often exceed mandatory requirements in laws, standards and regulations, these costs are incurred on a voluntary basis in anticipation of the expected benefits. In general, employers that take proactive steps to improve safety and health protections for employees can realize significant savings and avoided costs associated with workplace injuries and illnesses. According to DOLI, VPP sites' recordable injury and illness rates for VPP sites have averaged 50 % below that of other worksites in their industry nationally. Virginia VPP participating worksites average more than 60% lower injury and illness rates than their non-participating counterparts in their respective industries. DOLI further notes that VPP Star sites regularly report decreased bottom line expenditures, which are associated with both drastically reduced injury and illness rates, and improved productivity and employee morale which enhances a company's economic viability and competitiveness, and increases available capital for reinvestment, expansion and new hiring. These claims are supported by results from specific VPP sites including state correctional facilities. Additionally, there is consensus among

the stakeholders as to the success of the program at the national level.² In short, the success of VPP appears uncontroverted. Attributing the entire benefits of VPP to the proposed regulation would be inaccurate, however.

The proposed regulation adopts rules for the operation and administration of the program which has been in existence since 1996. The proposed action promulgates the rules and procedures which have been followed in practice for quite some time. Thus, the main economic effect of this regulation is to supplement the recent codification of the program in the statute signaling Virginia's long term commitment to VPP. Without the code and regulation it would have remained largely as a discretionary program, subject to be terminated at any time. With the statutory and regulatory language, employers are assured that if they choose to participate in the program and incur significant costs, the program will not be terminated absent a legislative action. In that sense, the main economic effect of the proposed regulation is to enhance already existing incentives for employers to participate in VPP.

Businesses and Entities Affected

According to DOLI, based on data from 2014, approximately 234,644 establishments employing 3.6 million employees are subject to the Board's jurisdiction. Of these, all qualified public and private sector places of employment may participate in the program. Virginia VPP currently recognizes 46 VPP sites employing over 11,000 employees.

Localities Particularly Affected

The proposed changes apply statewide.

Projected Impact on Employment

To the extent the proposed regulation increases participation in VPP, compliance with voluntarily agreed upon more stringent health and safety standards and the likely improvements in productivity should have a positive impact on employment.

Effects on the Use and Value of Private Property

To the extent the proposed regulation increases participation in VPP, compliance with voluntarily agreed upon more stringent health and safety standards and the likely reductions in

² Promoting Safe Workplaces through Voluntary Protection Programs, Hearing Before the Subcommittee on Workforce Protections Committee on Education and the Workforce, U.S. House of Representatives, June 28, 2012.

work place injuries or illnesses should have positive impact on asset values of participating companies.

Real Estate Development Costs

No significant impact on real estate development costs is expected.

Small Businesses:

Definition

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

Costs and Other Effects

Less than twenty percent of the employers who may choose to participate in VPP are considered small businesses. The costs and other effects on them are the same as those discussed above.

Alternative Method that Minimizes Adverse Impact

Participation in VPP program is voluntary and is not likely to impose net adverse effects on participating employers.

Adverse Impacts:

Businesses:

More than eighty percent of the employers who may choose to participate in VPP are considered non-small businesses. Participation in VPP program is voluntary and is not likely to impose net adverse effects on participating employers.

Localities:

Some of the employers who may choose to participate in VPP may be localities. Participation in VPP program is voluntary and is not likely to impose net adverse effects on participating employers.

Other Entities:

The proposed amendments will not adversely affect other entities.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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