



Economic Impact Analysis Virginia Department of Planning and Budget

16 VAC 25-73 – Regulations Applicable to Tree Trimming Operations
Department of Labor and Industry
September 12, 2008

Summary of the Proposed Amendments to Regulation

The Safety and Health Codes Board (Board) proposes to promulgate new safety regulations for employers who are in the business of arboriculture (the care, trimming or removal of trees).

Result of Analysis

As currently written, costs associated with these regulations would likely outweigh benefits. The Department of Labor and Industry (DOLI), however, has agreed to make changes to these regulations that would significantly lower associated costs. Once these changes are made, the benefits of promulgating these regulations will likely outweigh the costs.

Estimated Economic Impact

Currently, arboriculture employers must follow the safety requirements contained in the federal Occupational Safety and Health Administration's (OSHA's) regulations for logging operations when they are cutting down whole trees. Arboriculture activities that do not involve cutting down whole trees are currently governed by several of DOLI's general regulations (regulations that cover occupational noise, regulations that mandate personal protective equipment, regulations governing medical services and first aid, etc.).

The Board proposes to promulgate new regulations that are aimed at specifically reducing the risk of engaging in arboriculture activities. These regulations vary from the cumulative regulations that now govern this industry in several substantive ways that will likely reduce the costs borne by regulated employers and/or decrease safety risks for arboriculture employees. OSHA logging regulations require all employees on logging sites to be trained in first aid and

CPR; these proposed regulations incorporate by reference other proposed VOSH regulations that will only require work sites to have one employee who is trained in first aid and CPR present at all (working) times. Meeting the requirements of this proposed regulatory provision will likely cost less for all arboriculture employers who have more than one employee. Training in first aid/CPR is available through the Red Cross for a fee of \$65 (certification is good for one year before renewal is required). Using this figure, employers will save \$65 per year for each employee that will not need to be first aid/CPR certified. Employers may also save additional monies if they have been paying employee wages for time spent in first aid/CPR training. Employees who were not paid to attend required first aid/CPR classes, and who will not need to attend these classes under these proposed regulations, will save costs associated with lost wages or non-work hours that would have had to be spent in training. Having one first aid/CPR trained employee on a worksite at any given time will likely be adequate to ensure timely first aid for anyone who might become injured.

OSHA regulations also require loggers to wear cut resistant (steel-toed) boots even in situations where trees are cut and removed starting at the top and working to the bottom. This type of tree removal requires loggers (arborists) to be up in the trees where heavy, nonflexible footwear might make work more, rather than less, dangerous; these proposed regulations will require arborists to wear “clothing and footwear appropriate to the known job hazards”. This will allow arborists flexibility to wear footwear other than steel-toed boots when such footwear is more appropriate. This will likely decrease the risk inherent in climbing, and safely remaining in, trees. This, in turn, may reduce the costs associated with accidental falls that accrue to both employers and affected employees.

Both current regulations and these proposed regulation require employers to train their employees on the requirements of regulation as well as any tasks that they will be expected to safely perform. Although this proposed requirement does not differ in any significant way from that contained in current regulations, employers will likely incur extra costs for training current employee about these new regulations. For any employees hired after these regulations are promulgated, training on the new regulations will replace training on the old so no extra costs will be incurred. To the extent that imparting information about one set of regulations is less time consuming than imparting information about several, employers may see a reduction in training costs.

DOLI estimates that it will take approximately 10 hours to train each current arboriculture employee on the requirements of these proposed regulations. DOLI also reports that the median hourly wage for these employees is \$17. Using these figures, employers will incur a one time training cost of \$170 for each of their current employees. This cost will only be incurred for employees who are unfamiliar with the American National Standard's Institute (ANSI) guidelines on which these proposed regulations are based.

These proposed regulations currently contains language that, if left unedited, is likely to significantly increase the costs of regulatory compliance for both employers and employees and might act as a significant barrier to entry of this trade. Current language requires that certain tasks only be performed by "qualified arborists". Current language also states that a qualified arborist is "an individual who, by possession of a recognized degree, certification, or professional standing, or through related training and on-the-job experience" is competent to perform various arboriculture tasks safely. Because it is likely much easier for an individual to prove he is "qualified" by producing paperwork to prove degree or certification status than it would be to prove qualifications through "training and on-the-job experience" with no credentialing backup, this language could fairly be read as discouraging employers from hiring even highly qualified non-credentialed individuals.

A representative of the Tree Care Industry Association (TCIA) reports that the application fee to become a certified arborist is \$225. He reports that applicants will also incur "additional out-of-pocket expense to register for a preparation session and take the certification exam" as well as "expenses attendant with travel as well as lost revenue associated with time lost at work". Certificate holders are required to complete 30 continuing education units every three years to keep their certificate active. The cost of a four year degree in horticulture (using 2008-2009 tuition and fees for all four years) is \$29,600. DOLI has agreed to remove the language that references "possession of a recognized degree, certification, or professional status" from the proposed regulations; when this happens these certification and education costs will no longer be a concern.

DOLI has also agreed to amend provisions in these proposed regulations that contain pesticide application requirements to clarify that they are intended to only apply to tree care operations and are not intended to be more widely applicable to landscaping operations. If these

regulations were more widely applicable, costs accrued state-wide on account of their promulgation would obviously be far greater.

Finally, DOLI will be amending language that defines job briefings to clarify that these briefings are meant to provide information before work begins, about what tasks, equipment, etc will be required to complete a job.

Businesses and Entities Affected

These proposed regulations will affect all tree care businesses that operate in the Commonwealth. DOLI estimates that there are between 570 and 840 tree care businesses in the Commonwealth and that these businesses employ between 1,700 and 3,400 people.

Localities Particularly Affected

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

Projected Impact on Employment

Once revised, these proposed regulations will likely have a slight positive impact on employment in the Commonwealth. If the costs associated with complying with regulations decrease slightly for tree care businesses, and they pass those savings on to their customers, more people will likely choose to pay for tree care or removal (rather than doing this work themselves). An increased workload for these businesses would likely necessitate the hiring of additional employees.

Effects on the Use and Value of Private Property

Once revised, these proposed regulations will likely have a slight positive impact on the value of private property in the Commonwealth. If the costs associated with complying with regulations decrease slightly for tree care businesses, and they pass those savings on to their customers, more people will likely choose to pay for tree care or removal (rather than doing this work themselves). This will likely increase both revenue and profits for these businesses thus increasing their value.

Small Businesses: Costs and Other Effects

All affected businesses likely meet the statutory definition of small businesses. Because of this, all economic costs and benefits discussed above will be experienced by small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact

There are likely no other changes that the Board could make to these proposed regulations that would further minimize any adverse impact on affected small businesses.

Real Estate Development Costs

This regulatory action will likely have no effect 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 Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.H 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, Section 2.2-4007.H 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.