



Economic Impact Analysis Virginia Department of Planning and Budget

16 VAC 25-60 – Administrative Rules for the Virginia Occupational Safety and Health Program

Department of Labor and Industry

September 10, 2008

Summary of the Proposed Amendments to Regulation

The Safety and Health Codes Board (Board) proposes to amend its Administrative Rules for the Virginia Occupational Safety and Health (VOSH) Program to note the Department of Labor and Industry (DOLI) Commissioner's statutory power to take and preserve testimony, examine witnesses and administer oaths, either personally or through appointed representatives. The Board also proposes to set procedures for investigations conducted by the Commissioner.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Currently, DOLI does not have regulatory language that lays out the DOLI Commissioner's rights and responsibilities for collecting and preserving testimony related to VOSH hearings. Virginia statute does, however, list the powers and responsibilities of Commissioner, including the power to "take and preserve testimony, examine witnesses and administer oaths and file a written or printed list of relevant interrogatories and require full and complete answers to the same to be returned under oath within thirty days of the receipt (of interrogatories)". The Board proposes to amend these regulations so that the Commissioner's statutory power in this regard is laid out in administrative code as well as statute. This proposed amendment will not allow additional power for the Commissioner, or alter how investigations are conducted, so affected entities are very unlikely to incur any costs on account of this regulatory change. To the extent that any interested party has, in the past, had to search through two sets of rules (the Code of Virginia and the Virginia Administrative Code) to ascertain the

role of the Commissioner in the hearing process, this amendment should provide the benefit of clarity.

The Board also proposes to add new regulatory language that will:

- Specify the wording of the oath the Commissioner (or his representative) can administer,
- Specify that the Commissioner may appoint, in writing, a representative and that such a written appointment must include the representative's name, the length of the appointment, how the appointment will be withdrawn (if necessary) and which of Commissioner's duties the representative will fulfill,
- Specify that any testimony given under oath must be recorded by a court reporter and
- Reiterate the Commissioner's statutory authority to seek a court order to compel cooperation in VOSH investigations and list the statutory penalties that may accrue should such a court order be ignored.

All of the changes will tend to explain the investigative process for affected entities and interested parties without requiring anything additional from those entities. Accordingly, these changes will likely provide clarity without imposing additional costs.

Businesses and Entities Affected

DOLI estimates that the Commissioner has to assert his authority to take and preserve testimony in five or fewer cases annually.

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 effect 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 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.