

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 25-60 Administrative Regulation for the Virginia Occupational Safety and Health Program

Department of Labor and Industry

Town Hall Action/Stage: 4468/7520

May 20, 2016

Summary of the Proposed Amendments to Regulation

The Safety and Health Codes Board proposes to allow the Department of Labor and Industry (DOLI) to enforce the requirements of the Virginia Department of Transportation (VDOT) Work Area Protection Manual in lieu of the federal Manual on Uniform Traffic Control Devices and make several clarifying changes.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

The employers in highway, street, and bridge construction are primarily engaged in construction, reconstruction, rehabilitation, and repairs of highways, streets, roads, airport runways, public sidewalks, or bridges. Employers in this industry are currently required to comply with the federal Manual on Uniform Traffic Control Devices which is adopted by reference to 29 CFR Part 1926. However, DOLI contends that the federal manual is permissive in general and consequently difficult to enforce. The proposed regulation will require employers to comply with the VDOT Work Area Protection Manual in any contract for construction, repair, or maintenance between either the Commonwealth or one of its local governments and an employer, where such contract stipulates employer compliance with the VDOT manual. Since

the VDOT manual will apply where an employer already agreed to comply with it through a contract, no additional compliance costs on employers is expected. However, the proposed change will allow DOLI to issue citations for violations of the VDOT manual and strengthen compliance. DOLI estimates an additional \$6,440 in penalties based on seven violations with an average penalty of \$920 as a result of this particular change.

In general, improved safety and health enforcement can create significant savings and cost avoidances associated with workplace injuries and illnesses for employers, while having no discernible damage to employers' ability to stay in business and to their sales or credit ratings.¹ In addition, the injury and illness rates for the construction industry as a whole are higher than those for the private sector for all industries both nationally and in Virginia; the incident rates for highway, street, and bridge construction are higher than the incident rates for general construction both nationally and in Virginia; and the incident rates for road construction in Virginia are lower than those nationally with the notable exception that the Virginia's Days Away, Restrictions and Transfers rate for highway, street and bridge construction, which is an indicator of more serious injuries, was significantly higher than the national average for two of the last three years.² Given the fact that road construction in Virginia is more prone to incidents relative to some other benchmarks, stronger enforcement in road construction industry appears to have potential to create net benefits.

The proposed changes will also clarify: 1) whistle blower anti-retaliation safeguards for public sector employees and the procedures to enforce such safeguards, 2) that the Commissioner can request penalties or fines for occupational discrimination or anti-retaliation cases at the litigation stage, 3) requirements of Virginia Freedom of Information Act in regard to the Voluntary Protection Program, 4) the Commissioner's authority to take and preserve testimony and administer oaths is an administrative subpoena, 5) that the burden of proof in court cases is by a preponderance of the evidence, and 6) that the burden for proving an affirmative defense to a citation lies with the employer. These proposed changes are not anticipated to create any significant economic impact other than improving the clarity of the regulation.

¹ Randomized Government Safety Inspections Reduce Worker Injuries with No Detectable Job Loss, David I. Levine, Haas School of Business, University of California, Berkeley, Prepared for the House of Representatives Subcommittee on Workforce Protections, Hearing on "Promoting Safe Workplaces through Voluntary Protection Programs" June 28, 2012.

² Source: Bureau of Labor Statistics

Businesses and Entities Affected

The proposed regulation applies to all public and private sector places of employment in the state, with the exception of federal workers, the United States Postal Service, private sector maritime, federal military facilities, and other federal enclaves where the state has ceded jurisdiction to the federal government. Based on data from 2014, approximately 234,644 establishments employing 3.6 million employees are subject to this regulation. There are 505 establishments and 20,849 employees in Virginia's highway, street, and bridge construction industry.³

Localities Particularly Affected

The proposed changes apply statewide.

Projected Impact on Employment

No significant impact on employment is expected.

Effects on the Use and Value of Private Property

No significant impact on the use and value of private property is expected.

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

Most of the affected employers are considered small businesses. The costs and other effects on them are the same as those discussed above.

Alternative Method that Minimizes Adverse Impact

As discussed above, compliance with the VDOT manual may increase citations issued to employers, some of which may be small businesses. There is no known

³ Source: Virginia Employment Commission

alternative to minimize adverse impact of penalties associated with enforcement while accomplishing the intended policy goal.

Adverse Impacts:**Businesses:**

Non-small businesses may be issued penalties if they contract to perform work according to the VDOT manual and do not comply with it.

Localities:

The proposed amendments will not adversely affect localities.

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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