



Virginia Department of Planning and Budget **Economic Impact Analysis**

6 VAC 20-70 Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections
Department of Criminal Justice Services
Town Hall Action/Stage: 5721 / 9262
July 1, 2021

Summary of the Proposed Amendments to Regulation

The Criminal Justice Services Board (Board) proposes to repeal 6 VAC 20-70 *Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections* (regulation).

Background

According to the Department of Criminal Justice Services (DCJS), these regulations have been in place since 1987. However, both the Attorney General's Office and DCJS currently believe the agency does not have statutory authority for the regulation. Thus, the Board proposes the repeal.

As the title of the regulation indicates, it contains the compulsory minimum training standards for noncustodial employees of the Department of Corrections (DOC). Noncustodial employees are DOC employees who are not correctional officers, but nevertheless are required by the DOC Director to carry a weapon. Examples of noncustodial employees would include the DOC director, chief of correctional operations, deputy director, wardens, regional administrators, etc.¹ The compulsory minimum training standards for noncustodial employees consist of: 1) firearms training and evaluation, 2) training on corrections and related law, and 3) training on legal responsibility and authority of employees.²

¹ Source: DOC

² See <https://law.lis.virginia.gov/admincode/title6/agency20/chapter70/section20/>

Estimated Benefits and Costs

Code of Virginia § 53.1-29,³ allows noncustodial employees who complete the basic course in firearms for correctional officers “to carry and use sufficient weapons to prevent escapes, suppress rebellion, and defend or protect himself or others in the course of his assigned duties.”⁴ This statute applies regardless of whether or not the regulation is repealed. Moreover, DOC reports that the agency plans to continue to use internal training to meet or exceed all requirements currently found in the compulsory minimum training standards, including the non-firearms training, and would not change any of their training if the regulation is repealed. To the extent that noncustodial employees continue to be required to receive training that is at or above the current standards, the proposed repeal of the regulation does not appear to have substantive impact on training of noncustodial employees.

In repealing the regulation, however, there would be less transparency for the public to be knowledgeable about the training of noncustodial employees. Although the firearms training required by § 53.1-29 is available online,⁵ DOC reports that the internal training they require of noncustodial officers is not publicly available. In addition, by repealing the regulation there would be less opportunity for public participation in determining the training requirements. The Administrative Process Act requires public notice of proposed changes to regulations and the opportunity for public comment; these requirements would not apply to internal training. Similarly, the Executive Order on Rulemaking⁶ requires all regulations to be reviewed every four years, a process that would not be applicable to internal training. Thus, to the extent that the Board’s review of the training undertaken by DOC has been beneficial, the repeal of the regulation would diminish the external oversight of the training taken by noncustodial officers.

Businesses and Other Entities Affected

The regulation affects the Department of Corrections.

³ See <https://law.lis.virginia.gov/vacode/53.1-29/>

⁴ See the following for correctional officers’ firearms training:
<https://law.lis.virginia.gov/admincode/title6/agency20/chapter30/section80/>

⁵ See <https://www.dcjs.virginia.gov/law-enforcement/manual/standards-performance-outcomes/basic-corrections-officer/basic-corrections-officer-firearms-training>

⁶ See <https://townhall.virginia.gov/EO-14.pdf>

Small Businesses⁷ Affected:

The proposal does not appear to adversely affect small businesses.

Localities⁸ Affected⁹

The proposed repeal of the regulation does not disproportionately affect particular localities or affect costs for localities.

Projected Impact on Employment

The proposed repeal of the regulation does not appear to affect total employment.

Effects on the Use and Value of Private Property

The proposed repeal of the regulation does not appear to affect the use and value of private property or real estate development costs.

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 14 (as amended, July 16, 2018). 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(D): 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.

⁷ 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.”

⁸ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁹ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.