COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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COMMISSIONER

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AGENDA

SAFETY AND HEALTH CODES BOARD

State Corporation Commission
1300 East Main Street, Court Room A
Second Floor
Richmond, Virginia

Thursday, July 9, 2015

10:00 a.m.

1. Call to Order

2. Approval of Agenda

3. Approval of Minutes for Board Meeting of December 11, 2014

4. Election of Officers

5. Opportunity for the Public to Address the Board on these issues pending before the Board today or on any other topics that may be of concern to the Board or within the scope of authority of the Board.

   This will be the only opportunity for public comment at this meeting. Please limit remarks to 5 minutes in consideration of others wishing to address the Board.

6. **Old Business**

None

7. **New Business**

a) Virginia Unique Regulations:

1) Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Revisions, 16VAC25-85-1904.2 and 16VAC25-85-1904.39

Presenter – Jay Withrow

2) Notice of Intended Regulatory Action (NOIRA): Request to Amend the Administrative Regulation for the VOSH Program;

Presenter – Jay Withrow

3) Notice of Intended Regulatory Action (NOIRA): Request to Adopt a Virginia Voluntary Protection Program (VPP) Regulation

Presenter – Jay Withrow

b) Notice of Periodic Review of Certain Existing Regulations

1) 16VAC25-55, Financial Responsibility of Boiler & Pressure Vessel Contract Fee Inspectors;

2) 16VAC25-73, Regulation Applicable to Tree Trimming Operations; and

3) 16VAC25-75, Telecommunications, General, Approach, Distances

Presenter – Reba O'Connor

8. Items of Interest from the Department of Labor and Industry

9. Items of Interest from Members of the Board

10. Meeting Adjournment

DRAFT

SAFETY AND HEALTH CODES BOARD
MEETING MINUTES
THURSDAY, December 11, 2014

BOARD MEMBERS PRESENT:

Mr. John Fulton
Mr. Travis Parsons
Ms. Rebecca LePrell
Mr. Courtney Malveaux
Mr. David Martinez
Mr. Kenneth Richardson, II
Mr. Chuck Stiff, Presiding Member
Mr. Tommy Thurston

BOARD MEMBERS ABSENT:

Mr. Jerome Brooks
Mr. Lou Cernak
Ms. Anna Jolly
Ms. Milagro Rodriguez
Mr. Danny Sutton

STAFF PRESENT:

Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry
Mr. Bill Burge, Assistant Commissioner
Mr. Paul Schilinski, Director, Occupational Safety Compliance
Mr. Ron Graham, Director, Occupational Health Compliance
Ms. Reba O'Connor, Regulatory Coordinator
Mr. John Crisanti, Manager, Office of Policy and Planning
Mr. Jay Withrow, Director, Legal Support, BLS, and VPP
Mr. Ed Hilton, Director, Boiler Safety
Ms. Regina Cobb, Senior Management Analyst

OTHERS PRESENT:

Ms. Marian G. Whitlow, Court Reporter, Halasz Reporting & Videoconference
Joshua E. Laws, Esq., Office of the Attorney General

ORDERING OF AGENDA

In the absence of a Chairman, Vice Chairman, and Secretary, Board members agreed that Mr. Chuck Stiff would preside over today's meeting which was called to order at 10:03 a.m. A quorum was present.

Mr. Stiff requested a motion to approve the Agenda. Mr. Courtney Malveaux moved to accept the Agenda, and Mr. Tommy Thurston properly seconded the motion. The Agenda was approved, as submitted, and the motion was carried by unanimous voice vote.

APPROVAL OF MINUTES

Mr. Stiff asked the Board for a motion to approve the Minutes from the June 5, 2014, Board meeting. On proper motion by Mr. John Fulton and seconded by Mr. Travis Parsons, the Minutes were approved by unanimous voice vote.

ELECTION OF OFFICERS

Mr. Stiff asked for clarification on how terms run. Mr. John Crisanti explained that terms expire 30 June, and that Elections are held during the first meeting after July 1 of each year. Mr. Stiff asked for nominations for the office of Chair. Mr. Tommy Thurston nominated Ms. Milly Rodriguez. The nomination was properly seconded. There were no other nominations. By voice vote, the Board unanimously elected Ms. Rodriguez, in absentia, as Chair.

Next, Mr. Stiff asked for nominations for Vice Chair. Mr. Thurston nominated Mr. Stiff. The nomination was properly seconded. There were no other nominations. Mr. Stiff was unanimously elected Vice Chair by voice vote.

PUBLIC COMMENTS

Mr. Stiff opened the floor for comments from the public, however, there were no comments.

OLD BUSINESS

None

NEW BUSINESS

Vehicle-Mounted Elevating and Rotating Work Platforms, §1910.67, and Logging Operations, §1910.266; Corrections

Mr. Paul Schilinski, Director of Occupational Safety Compliance for the Department of Labor and Industry, requested, on behalf of the Department, that the Board consider for adoption federal OSHA's Corrections to the Standards for Vehicle-Mounted Elevating and Rotating Work Platforms, §1910.67, and Logging Operations, §1910.266, as published in 79 FR 37189 on July 1, 2014.

Mr. Schilinski began by summarizing the corrections. He stated that federal OSHA corrected non-substantive typographical errors in its standards for Vehicle-Mounted Elevating and Rotating Work Platforms, §1910.67, and Logging Operations, §1910.266. He explained that the first typographical error corrected was in the title of a national consensus standards organization referenced in §1910.67(c)(5), which states that all welding done on vehicle-mounted elevating and rotating work platforms must conform to Automotive Welding Society Standards incorporated by reference in §1910.6. However, as §1910.6(i) specifies, the correct title of the organization is the American Welding Society Standards. In §1910.67(c)(5), federal OSHA replaced "Automotive" with "American".

He continued by stating that the second typographical error was in a reference in the Logging Operations Standard to another federal OSHA standard, specifically, in §1910.266(d)(1)(iv), which was adopted by the Safety and Health Codes Board on December 19, 1994. He explained that this

subparagraph, which establishes personal-protective-equipment requirements when logging employees operate chain saws, states that the requirement does not apply to employees who operate chain saws from a vehicle-mounted elevating and rotating work platform that meets the requirements of §1910.68. However, §1910.67, not §1910.68 (Manlifts), addresses vehicle-mounted elevating and rotating work platforms. Therefore, in §1910.266(d)(1)(iv), federal OSHA inserted "§1910.67" and removed "§1910.68".

He explained that the correction of the two typographical errors was needed because one section contained a title error and the other referenced a wrong standard. He added that there was no impact on Virginia employers, employees or the Department of Labor and Industry from the adoption of these non-substantive corrections.

He concluded by recommending that the Board adopt federal OSHA's Corrections to the Standards for Vehicle-Mounted Elevating and Rotating Work Platforms, §1910.67, and Logging Operations, §1910.266, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of February 15, 2015.

A motion was properly made by Mr. Parsons and seconded by Mr. Richardson. The Department's recommendation was approved unanimously by voice vote.

Electric Power Generation, Transmission, and Distribution, §1910.269; Electrical Protective Equipment; Correcting Amendments

Mr. Paul Schilinski, Director of Occupational Safety Compliance for the Department of Labor and Industry, requested the Board to consider for adoption federal OSHA's Final Rule for the Electric Power Generation, Transmission, and Distribution, §1910.269; and Electrical Protective Equipment, as published on September 24, 2014 in 79 FR 56955, with a proposed effective date of February 15, 2015.

Mr. Schilinski summarized the proposed amendments by stating that since federal OSHA published the final Rule for Electric Power Generation, Transmission, and Distribution; and Electrical Protective Equipment on April 11, 2014, federal OSHA has found and corrected numerous errors in the Final Rule's preamble and regulatory text. Rather than detailing the numerous corrections listed in the briefing package, Mr. Schilinski called the Board's attention to the correction concerning training "qualified and unqualified" employees. One of the errors involved an explanation of training requirements for unqualified employees. The preamble stated that unqualified employees who operate, but do not maintain circuit breakers must receive training in accordance with §1910.269(a)(2)(i) or §1926.950(b)(1); but, in other places in the preamble, in general, neither §1910.269 or Subpart V govern electrical safety-related work practices used by unqualified employees. Therefore, OSHA corrected the preamble to indicate that unqualified employees generally must receive training under §1910.332 or §1926.21(b) whichever is applicable.

Mr. Schilinski explained that in Appendix A-2 to §1910.269, there is a flow chart that inaccurately describes how to determine whether §1910.269 or Subpart S (Electrical §§1910.301-399) of Part 1910 contains the applicable safety requirements for electrical safety related work practices. The chart begins by asking if the employee is qualified as defined in §1910.269(x). He stated that in final Subpart V (Construction Electrical Generation and Transmission – §§1926.950-968), §1926.950(a)(1)(ii) states explicitly that Subpart V does not apply to electrical safety related work practices for unqualified employees. Thus, for purposes of Subpart V, if a worker is not a qualified employee, as defined in

1926.968, Subpart V does not address the electrical safety-related work practices that employees must use.

The exemption in final §1910.269(a)(1)(ii)(B) is less direct, excluding electrical safety-related work practices covered in Subpart S of Part 1910. Section 1910.331(b) of Subpart S provides that §§1910.332 through 1910.333, which address training, selection and use of work practices, use of equipment and safeguards for personnel protection, apply to work performed by unqualified persons on, near, or with electric power generation, transmission, or distribution installations. Consequently, electrical safety-related work practices for employees who are not qualified persons, as that term is defined in Subpart S (§1910.399), are in Subpart S, not §1910.269. Mr. Schilinski continued by explaining that §1910.269 does apply to electrical safety-related work practices for employees qualified under Subpart S, but not qualified under §1910.269. This class of employees includes, in particular, line clearance tree trimmers. He stated that, for this reason, OSHA changed the first question in the flow chart in Appendix A-2 to §1910.269 so that it refers to the definition of "qualified" employee in §1910.399, instead of §1910.269(x).

Mr. Schilinski explained that the next correction affects Table 1 to Appendix A-2 of §1910.269 which has separate columns to indicate when compliance with Subpart S would be considered to be compliance with certain paragraphs of §1910.269 and, conversely, when compliance with specified paragraphs of §1910.269 would be required, regardless of compliance with Subpart S. This table in the final rule inadvertently listed the paragraph numbers as they appeared in the previous version of §1910.269. OSHA corrected these references to match corresponding provisions of the final rule. OSHA also made additions and deletions to Table 1.

Mr. Schilinski informed the Board that OSHA added references to new provisions that had no counterpart in Subpart S to the list of provisions requiring compliance regardless of compliance with Subpart S. Those were the information transfer requirements in §1910.269(a)(3) and requirements on protection from flames and electric arcs in §1910.269(l)(8).

He added that OSHA also moved §1910.269(i)(3), related to portable and vehicle mounted generators, from the list of provisions that apply regardless of compliance with Subpart S to the list of provisions for which compliance with Subpart S is deemed to be compliant with §1910.269.

Another error was identified in the text of final §1910.269(h) which contains requirements for portable ladders and platforms. A strength requirement for ladders that was included in the previous version of §1910.269(h)(2)(iv) was inadvertently dropped when OSHA copied the language from final §1926.955(b)(1). This amendment corrects that oversight and restores the language from the previous version of the standard.

Mr. Schilinski informed the Board that these amendments corrected more than 70 errors found in the preamble and regulatory text of the recent Final Rule on Electric Power Generation, Transmission and Distribution. Some of the corrections were non-substantive, such as fixing typographical errors, while other changes corrected mistakes, such as references to the wrong OSHA standard.

He added that it is not anticipated that adopting these correcting amendments to the final rule will impose any burden on Virginia employers, employees or the Department of Labor and Industry; instead, these correcting amendments should increase the clarity of the final rule and, therefore, increase compliance with the final rule.

In conclusion, Mr. Schilinski recommended that the Safety and Health Codes Board adopt the Correcting Amendments to the Final Rule for Electric Power Generation, Transmission and Distribution, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of February 15, 2015.

A motion to accept the Department's recommendation was properly made by Mr. Fulton and seconded by Mr. Thurston. The motion was approved unanimously by voice vote.

Cranes and Derricks in Construction: Operator Certification, §1926.1427(k); Amendment

Mr. Schilinski requested, on behalf of the Department, that the Board adopt federal OSHA's Amendment to the Final Rule for Cranes and Derricks in Construction: Operator Certification, as published in 79 FR 57785 on September 26, 2014.

He began summarizing the proposed amendment by stating that it would extend for an additional three years the employer duty to ensure crane operator competency for construction work and also extended for three years the requirement for operator certification. Those dates are extended from November 10, 2014, until November 10, 2017.

He continued by stating that in January 2011, the Board set Virginia unique dates for compliance, but VOSH currently seeks to extend the deadline to November 10, 2017, to be consistent with federal OSHA implementation. VOSH believes that adopting the federal timetable and schedule will benefit employers who may operate in multiple states or jurisdictions. The requirement that employers continue with the Virginia unique implementation schedule would result in a shortfall of approximately three months; however, having federal identical enforcement dates outweighs any loss caused by the three month shortfall.

The crane standard went through a negotiated rulemaking process and the federal final rule was adopted on August 9, 2010. VOSH adopted the final rule on January 20, 2011. The final rule included four options for certifying operators which (with minor changes) had been recommended by the rulemaking committee. After publishing the final rule, OSHA was notified by several entities that certification was insufficient for determining whether an operator could operate their equipment safely on a construction site. OSHA held additional meetings and felt that an extension was needed in order to allow the agency to study and address the problem.

The Final Rule offered four options for certification:

1) Certification by an independent accredited testing organization. Only portable option, only one open to all employers. <u>It is the one that OSHA felt would be most relied upon;</u>
2) Employer's own independently audited qualification program;
3) U.S. military qualification includes federal DOD employees; and
4) Compliance with qualifying state/local licensing requirements

Additionally, the standard stated that for the purposes of compliance, an operator would only be deemed qualified to operate a particular piece of equipment if the operator is certified for that <u>type and capacity</u> of equipment or a higher capacity of that type of equipment.

Mr. Schilinski explained that OSHA delayed the operator certification requirement for four years until November 10, 2014, but during the phase-in period for certification, OSHA wanted to ensure that there was no reduction in worker protection so the employer has a duty to ensure the competency of operators.

He added that, as noted previously, OSHA continued to receive comments and also learned that, of the four accredited testing organizations, only two met the requirement for certifying by both type and capacity of crane. The other two only certified operators by type of crane. As a result of this finding, operators who received their certifications only by crane type and not including capacity would not have been able to operate on construction sites after Nov 10, 2014 and still remain in compliance with the standard.

He continued by stating that extending the certification requirement and the employer duty to ensure that operators are qualified by three years allows sufficient time for OSHA to determine whether changes are required while still ensuring operator competence through employer assessments. Also, without an extension, the construction industry would face a shortage of operators because of the time limitations for certification.

Mr. Schilinski noted that the total number of initial assessments and affected operators is difficult to estimate, but there are approximately 3,145 affected crane operators in Virginia. Annual assessments as a result of new operators, operators changing employers, or operators changing equipment types are expected to affect approximately 830 operators in Virginia. He stated that no impact is anticipated on the Department with the adoption of this amendment.

He added that OSHA estimated a cost savings of $21.4 million dollars nationally to employers for the three years of the deferment. In Virginia, this translates to an estimated cost savings of $575,000 per year for three years. Delaying operator certification should impose no new costs on employers. There will be continuing costs for the operator assessments but it is believed that those costs will be offset by a reduction in expenses that employers would incur to certify operators by the existing April 15 Virginia deadline. He referred to the unit assessment costs detailed in the briefing package.

Mr. Schilinski informed the Board that OSHA determined that compliance with these requirements is technologically feasible for all affected industries and that compliance with these requirements can be achieved with readily and widely available technologies. He noted that OSHA also believes that some businesses already implement the requirements of the standard to varying degrees.

He concluded by recommending, on behalf of the Department, that the Safety and Health Codes Board adopt the amendments to federal OSHA's standard for Cranes and Derricks in Construction: Operator Certification, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of February 15, 2015.

A motion to accept the recommendation was properly made by Mr. Richardson and seconded by Mr. Parsons, and the Department's recommendation was approved unanimously by voice vote.

Items of Interest from the Department of Labor and Industry

Commissioner Ray Davenport began by welcoming the newly appointed Board members (John Fulton, Employer Representative of the Boiler and Pressure Vessel Industry; David Martinez, Representative of

an Insurance Company; Travis Parsons, Representative from Labor in the Construction Industry; and Lou Cernak, Labor Representative of the Boiler and Pressure Vessel Industry). Commissioner Davenport stated that the Board members have been chosen based on your subject-matter expertise. He noted that some of the Board members have served for a long time on the Board. Commissioner Davenport stated that overall the Board works very well together. The goal is to make the workplace safer. On behalf of the Agency, he welcomed each new member and wished all members a Merry Christmas and a Happy New Year.

Items of Interest form the Board

Ms. Rebecca LePrell informed the Board that she attended a NIOSH partners meeting in Cincinnati, Ohio earlier during the week, and that she also attended a Council for State and Territorial Epidemiologist (CSTE) subcommittee meeting in which occupational safety and health was discussed. She noted that there was a lot of interesting occupational health work being done by state health departments in collaboration with their state OSHA programs. She asked if it would be alright with the Board if she shared a meeting summary, once it's available.

Adjournment

There being no further business, Mr. Malveaux made the motion to adjourn the meeting. Mr. Fulton properly seconded the motion which was carried unanimously by voice vote. The meeting adjourned at 10:36 a.m.

COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

For July 9, 2015

Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Revisions, 16VAC25-85-1904.2 and 16VAC25-85-1904.39

I. Action Requested

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to consider for adoption federal OSHA's amendments to the Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Revisions, 16VAC25-85-1904.2 and 16VAC25-85-1904.39, as published on September 18, 2014 in 79 FR 56186 and 79 FR 56187.

The proposed effective date is September 15, 2015.

II. Summary of the Amendments

The revised federal final rule makes several changes to the recording and reporting requirements in 29 CFR Part 1904:

A. Update to Non-Mandatory Appendix A to Subpart B of Part 1904 – Partially Exempt Industries

Appendix A to Subpart B of Part 1904 contains a list of industries that are partially exempt from requirements to keep records of work-related injuries and illnesses due to relatively low occupational injury and illness rates.

The updated appendix is based on more recent injury and illness data and lists industry groups classified by the North American Industry Classification System (NAICS). Prior to this recent change, the appendix listed industries classified by Standard Industrial Classification (SIC). The affected establishments are only partially exempt from keeping these records because, while they are exempt from routine OSHA injury and illness recordkeeping requirements, the Bureau of Labor Statistics (BLS) may require any establishment to respond to its Survey of Occupational Injuries and Illnesses (SOII), and OSHA may require any establishment to respond to its annual injury and illness survey.

B. Change in Reportable Work Related Injury and Illness Events

NOTE: Due to a legislative drafting error by the Department in the recently adopted revision to §40.1-51.1.D, the VOSH proposed regulation is not identical to the federal OSHA requirement to report in-patient hospitalizations, amputations and loss of an eye within 24 hours. The Virginia statute mistakenly requires an 8 hour reporting period.

The VOSH proposed regulation is required by law to be no less stringent then the statutory provision. The Department will be seeking to amend §40.1-51.1.D during the 2016 Session of the Virginia General Assembly to bring the statute into conformity with the OSHA regulation. Once the statute is amended, VOSH will file another proposed regulation with the Board to bring the VOSH regulation into conformity as well.

What is required to be reported has been expanded and certain reporting intervals for such reporting have changed. The current VOSH regulation requires all employers to report all work-related fatalities and in-patient hospitalizations of three or more employees to OSHA within eight hours of the event.

The new federal amendments retain the requirement for employers to report all work-related fatalities within eight hours of the event. Additionally, as modified by Virginia statute, employers are now required to report:

1. Each fatality resulting from a work-related incident within eight (8) hours of the death, as before, but this requirement now applies only to fatalities occurring within 30 days of a work-related incident;

2. Every in-patient hospitalization, not a minimum 3 or more as is required in the current regulation, resulting from a work-related incident and do so within eight (8) hours of the hospitalization;

3. All amputations resulting from work-related incidents, within eight (8) hours of the incident;

4. Each loss of an eye from a work-related incident within eight (8) hours of the incident;

C. Update to Include a Third Method of Reporting

The existing VOSH regulation allows employers to report covered incidents either by:

- telephone or in person to the VOSH Office that is nearest to the site of the incident, or
- using the central toll-free telephone number of either federal OSHA or the Virginia State Police.

In addition to these methods, the new federal revised final rule Section 1904.39(a)(3) now also allows employers a third way to report such incidents by:

- electronic submission using the fatality/injury/illness reporting application located on OSHA's public Web site at www.osha.gov. If the revised regulation is adopted by the Board, DOLI also plans to allow reporting on its website as well.

D. Other Significant Changes

1. Under §1904.39(b)(7) of the revised final rule, if the employer does not immediately learn about a reportable event, i.e., fatality, in-patient hospitalization, amputation, or loss of an eye, the employer must make the report within eight (8) hours for a fatality, as well as for an in-patient hospitalization, amputation, or loss of an eye, from the time the event is reported to the employer.

2. The amended federal regulatory text now provides an explicit definition for "in-patient hospitalization" to be used, specified at §§1904.39(b)(9) and 1904.39(b)(10)). The final rule defines "in-patient hospitalization" as a formal admission to the in-patient service of a hospital or clinic for care or treatment. Employers do not have to report in-patient hospitalizations that involve only observation and/or diagnostic testing. *[79 FR 56156];*

3. Section 1904.39(b)(11) of the revised federal final rule adds a specific definition of "amputation" as the traumatic loss of a limb or other external body part. An amputation includes a part, such as a limb or appendage that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached. *[79 FR 56188]*

E. VOSH Enforcement Policy

Due to the legislative drafting error discussed above, no citations or penalties will be issued in instances where an in-patient hospitalization, amputation or loss of an eye are reported within OSHA's requirement of 24 hours, but not within the 8 hours required by §40.1-51.1.D. Instead, a "de minimis" violation will be noted in the case file in accordance with §40.1-49.4.A.2. A "de minimis" violation is defined as one that has no direct or immediate relationship to safety and health.

III. Action by the 2015 Virginia General Assembly

The current VOSH regulations, 16VAC25-85-1904, are identical to what were the federal requirements prior to the September 18, 2014 adoption by federal OSHA of these amendments which called for employers with more than ten employees in most industries to keep records of occupational injuries and illnesses at their establishments and report all work-related fatalities and work-related incidents involving three or more hospitalizations to VOSH within eight hours of the event.

However, unlike the vast majority of other regulatory adoptions by the Board of identical federal OSHA standards, these current reporting requirements have also been statutorily enacted in §40.1-51.1.D. of the *Code of Virginia*. As regulation is subordinate to statutory law, action by the General Assembly during the 2015 Session was first necessary to change the language in the existing statute to remove this potential conflict, clearing the way for the Board to act on the new federal amendments to Part 1904, should it chose to do so. On March 17, 2015, a statutory change approved by the General Assembly was signed by Governor McAuliffe with an effective date of July 1, 2015. *[Attachment-1 to this package].*

Due to a legislative drafting error, this revision of §40.1-51.1.D. of the *Code of Virginia*, differs from the federal regulation in that it requires eight 8 hour reporting for all covered incidents instead of 24 hours for all inpatient hospitalizations, amputations, and losses of an eye. Except for this eight (8) hour reporting in all cases, this statutory change facilitates the Board's adoption of all other portions of the new federal Part 1904 regulatory amendments allowing the VOSH Program to continue to maintain regulations which are "as effective as" those adopted by federal OSHA.

IV. Basis, Purpose and Impact of the Amendment

A. Basis

In 1971, the Part 1904 recording and reporting of occupational injuries and illness was first issued by OSHA. Subsequently in 1982, OSHA amended these regulations to partially exempt establishments in certain lower-hazard industries from the requirement to record occupational injuries and illnesses.

Fderal OSHA comprehensively revised these requirements in 1994, to require the reporting of report work-related fatalities and certain work-related hospitalizations to OSHA. On January 19, 2001, OSHA again comprehensively revised its Part 1904 recordkeeping regulations including updating the list of industries eligible for partial exemption at §1904.2, and amended the requirements for reporting work-related fatalities and certain hospitalizations to OSHA at §1904.39. *[79 FR 56131]*

The 2001 rulemaking also addressed changes in industry classification and coding, i.e., the issue of converting from Standard Industrial Classification (SIC) used previously to the then new North American Industry Classification System (NAICS). Although the first version of NAICS was adopted in 1997, BLS had not yet converted to NAICS for the collection of occupational injury

and illness data when the 2001 final rule was issued. OSHA therefore based the partially-exempt industry groups on the SIC system. However, in the preamble to the 2001 final rule, OSHA stated its intention to conduct a future rulemaking to update the industry classifications to NAICS when BLS had published the injury and illness data required for making appropriate industry-by-industry decisions. *[79 FR 56132]*

These 2001 changes were adopted by the Safety and Health Codes Board adopted on October 18, 2001, with an effective date of January 1, 2002, for §§1904.0 through 1904.9, 1904.11, and 1904.13 through 1904.46; with an effective date of January 1, 2003, for §§1904.10(a), 1904.10(b), 1904.12(a), and 1904.12(b).

B. Purpose

The process of keeping and certifying accurate records will make employers more aware of their safety and health problems and provide them with a basis for benchmarking themselves against others in their industry. Utilizing their recordkeeping data will allow employers to take steps to prevent such injuries and illnesses in their workplaces from occurring in the same manner.

OSHA believes there is value in updating these recordkeeping and reporting regulations. It has found extensive evidence that many work-related injuries and illnesses are currently not being recorded on the Part 1904 Injury and Illness logs that are required to be maintained by employers. In addition, OSHA and academic research studies have long recognized that most work-related illnesses, particularly chronic diseases which do not appear until years after first exposure, are not recorded on these logs. *[79 FR 56138]*

The updating to NAICS also fulfilled a longstanding commitment that federal OSHA made to the federal Government Accountability Office (GAO) to update the industry coverage of the recordkeeping rule from SIC to NAICS. *[79 FR 56132]*

C. Other Impacts on Recording and Reporting Activity

There is not a simple one-to-one translation for industry classification codes between the obsolete SIC system and NAICS which replaced it. Some SIC industries were divided among several NAICS industries while other SIC industries were combined to for a single NAICS Industry.

The change from SIC To NAICS slightly increases the number of establishments required to record injury and illness to approximately 1,592,000 nationally, which equates to approximately 42,750 establishments in Virginia. In addition, this amendment will results in a 4% increase in the number of all establishments engaged in recordkeeping and a 2% increase from 54% to 56% for all establishments with more than 10 employees. *[79 FR 56158 & 79 FR 56160]*

	Current VOSH Regulation	Federal Changes*
Fatalities	Employers are required to report each fatality within 8 hours of the death, for all fatalities.	Employers are required to report each fatality within 8 hours of the death, for all fatalities occurring within 30 days of the incident.
Hospitalizations	Employers are required to report 3 or more in-patient hospitalization within 8 hours of the hospitalization. No definition of in-patient hospitalization.	Employers are required to report each in-patient hospitalization within 8 hours of the hospitalization, for all hospitalizations occurring within 8 hours of the work-related incident. In-patient hospitalization defined as a formal admission to the in-patient service of a hospital or clinic for care or treatment.
Amputations	No requirement to report.	Employers are required to report each amputation within 8 hours of the amputation, for all amputations occurring within 8 hours of the work-related incident. Definition comes from BLS OIICS Manual 2010.
Losses of an eye	No requirement to report.	Employers are required to report each loss of an eye within 8 hours of the loss of an eye, for all losses of an eye occurring within 8 hours of the work-related incident.
Reporting options	Two options: by telephone to VOSH or Virginia State Police hotline, or in person to VOSH Office	Three options: by telephone or in person to the VOSH Regional Office or Virginia State Police hotline; by telephone to 1-800-321-OSHA hotline; and also by electronic submission to OSHA.gov or DOLI websites.
Knowledge of event	Employer required to report if event (fatality or 3 or more in-patient hospitalizations,) is reported to employer, employer's agent(s), or employee(s)	Employers are required to report if event (fatality, in-patient hospitalization, amputation, loss of an eye) is reported to employer or employers.
Recordkeeping Exemptions	Exemption for any firm with 10 or fewer employees regardless of their industry classification, from the requirement to routinely keep records	Retains the exemption.

* *As would be implemented for VOSH if the federal amendments are adopted by the Board within the mandated changes required by the 2015 statutory changes to §40.1-51.1.D of the Code of Virginia.*

D. Impact on Employers

If adopted, employers would still be required to report all work-related fatalities. They would now also be required to report all amputations and losses of an eye. Additionally, they would now be required to report one or more in-patient hospitalizations of workers rather than the current minimum of three such hospitalizations. Further, the change will affect all industries and all employers covered under the OSH Act. This is an estimated 7.5 million establishments nationally, of which approximately 201,500 establishments are in Virginia. The number of reportable events, i.e., fatalities, in-patient hospitalizations, amputations, and losses of an eye, reported by employers are anticipated to increase by approximately 117,000 reports nationally, of which an estimated 3,140 would be in Virginia. *[79 FR 56162]*

These amendments also provide employers a new third reporting option, i.e., electronic submission using a reporting application for a fatality/injury/illness located on both VOSH's and OSHA's public websites. This information will be obtained cost-effectively, with a relatively minimal estimated average burden on employers of 30 minutes per reported incident. This is an increase over the approximately 15 minutes per report being expended currently.

As noted previously, these amendments retain the longstanding partial-exemption from the recordkeeping requirements in Part 1904 to reduce the paperwork burden for certain lower hazard industry groups. However, it would now apply to fewer firms in a smaller number of groups comprised what are predominantly small to very small size firms in terms of number of employees.

Certain industry sectors which are generally considered to involve greater occupational hazards would remain ineligible for partial-exemption from recordkeeping. These sectors are:

- agriculture, forestry, fishing and hunting (NAICS 11);
- mining, quarrying, and oil and gas extraction (NAICS 12);
- utilities (NAICS 22);
- construction (NAICS 23);
- manufacturing (NAICS 31-33); and
- wholesale trade (NAICS 42). *[79 FR 56134]*

The recordkeeping burden for the first year is estimated to be greater because all newly-covered establishments must learn the basics of the recordkeeping system for the first time upon the implementation of the amended final rule. It is estimated that this would result in a one-time 13.2% increase in time required, but only for the first year. In subsequent years, given employer experience with the reporting changes, the increase in time expended is estimated to be significantly less, at 5.8% over present levels. *[79 FR 56183]*

Estimated Impact of Revised Recordkeeping Rule on Industries that Include Partially-Exempt Establishments

	Number of Establishments Impacted					
	Nationally			Virginia		
	Establishments	Employees	Injuries/ Illnesses	Establishments	Employees	Injuries/ Illnesses
New Industries That Would Be Required to Keep Records	220,000	5,500,000	153,000	5,900	148,000	4,100
Industries That Would Become Partially-Exempt	160,000	4,100,000	56,000	4,300	110,000	1,500
Net change	+60,000	+1,400,000	+97,000	+1,600	+38,000	+2,600

[79 FR 56159 & 79 FR 56160]

E. Impact on Employees.

Greater employee safety and health should result from these changes. OSHA and VOSH have not always been aware of incidents in which a worker suffered an amputation or loss of an eye. It is anticipated that the addition of the new data reporting to what is already being collected will provide indicators of heretofore unrecognized dangerous workplace practices or situations for VOSH inspection. The recordkeeping changes will provide employers greater insight into safety and long-term chronic or other health problems present in their workplaces that will allow them to institute proactive corrective measures.

F. Impact on the Department of Labor and Industry.

The adoption of these amendments by the Board will allow VOSH to focus its inspection efforts more effectively to prevent fatalities or severe work-related injuries and illnesses. OSHA has estimated that continued reporting of all work-related fatalities, plus the addition of reporting all in-patient hospitalizations, and the new collection of data on all amputations and losses of eyes is anticipated to add an estimated 30 times as many serious events being reported to VOSH. *[79 FR 56170]*

The adoption of these amendments will provide VOSH with more information about serious workplace injuries and illnesses that will allow more focused and timely investigations of these events as appropriate, leading to the mitigation of related hazards and the prevention of further events at the workplaces where the events occurred. VOSH will also be able to better target facilities that are more likely to have violations that result in citations, which will, in turn, have some positive effect on the rates of injuries and illnesses at those facilities. This information will also help establish a comprehensive database that VOSH, federal OSHA, researchers, and the public can use to identify hazards related to reportable events and to identify industries and processes where these hazards are prevalent. *[79 FR 56171]*

NOTE: The Department has received First Report of Injuries and Illnesses (FRI) reports of selected injuries and illnesses, including all amputations, on a weekly basis from the Virginia Workers' Compensation Commission (VWC) for several decades. VOSH uses these reports to schedule onsite inspections under the FRI Local Emphasis Program, VOSH Program Directive 14-005C.

The requirements in this final rule will not result in additional VOSH enforcement activities. Instead, they will assist VOSH in maximizing scarce program resources by facilitating more precise targeting of inspections it currently performs and to take other corrective measures in regard to worksites with greater injury or illness rates. The number of inspections may increase at some facilities based on the type and number of incidences in their reporting, and may decrease at other facilities.

Federal regulations 29 CFR 1953.23(a) and (b) require that Virginia, within six months of the occurrence of a federal program change, adopt identical changes or promulgate equivalent changes which are at least as effective as the federal change. The Virginia Code reiterates this requirement in § 40.1-22(5). Adopting these revisions will allow Virginia to conform to the federal program change.

G. Benefits

OSHA believes this revised final rule addresses a number of the previous Part 1904 shortfalls by expanding the range of data that is collected to now include all in-patient hospitalizations, and adding all amputations, and losses of an eye, and by readjusting the scope of the regulation to cover industries that will benefit from the availability and use of the injury and illness information captured on the recordkeeping forms.

OSHA believes more useful injury and illness data will be available by the conversion from SIC to NAICS because NAICS, initiated in 1997, is the accepted industry classification system for North America and is finally in use by BLS. This long overdue conversion will enable both affected employers and OSHA/VOSH to achieve consistency and comparability with other North American data collection efforts conducted by both public and private entities.

The reduction in the number of firms covered by partial-exemption also reduces the paperwork burden for a greater number of employers in establishments in lower-hazard industries and allows VOSH to concentrate recordkeeping requirements in higher-hazard sectors and industry groups that will provide the most useful data.

This change would allow VOSH to use its resources more effectively. It will enable the identification of workplaces where workers are generally at greatest risk, as well as from newly recognized specific hazards, and target its compliance assistance and enforcement efforts accordingly. The establishments that VOSH is most likely to inspect, i.e., higher hazard industries with eleven or more employees will already have a record of injuries and illnesses available at the time of the inspection. The improved efficiency of such inspection targeting, will enable VOSH to abate a greater number of hazards, and these abatements have benefits that exceed the costs. Both VOSH and OSHA conduct their enforcement and consultation programs

based on the belief that abatement of more occupational hazards is a reasonable goal for the Program. *[79 FR 56170]*

The final rule also includes a new option that will allow employers to report fatalities and other reportable events via the internet to the Department's or OSHA's website, which should make it easier for employers to fulfill reporting obligations under the regulation.

H. Costs

The final rule has net annualized costs of approximately $9 million nationally ($242,500 for Virginia), with associated total annualized new costs of approximately $2.6 million to employers, total estimate annualized cost savings of $11.5 million for employers who no longer have to meet certain recordkeeping requirements, and average estimated annualized costs of $82 per year for the most-affected firms (those newly required to keep records every year).

Estimated annualized costs and (cost savings) for major elements of the rule		
	National	Virginia
Costs to Employers Newly Required to keep Records	$17,921,000	$ 481,000
Costs of Additional Reporting of Hospitalizations, Amputations and Losses of an Eye	$ 2,640,000	$ 71,000
Cost Savings to Employers Newly Exempt from Keeping Records	($11,532,000)	($310,000)
Net Costs	$ 9,028,000	$ 242,500

[79 FR 56168]

I. Technology Feasibility

A large number of all establishments are already recording injuries and illnesses in compliance with the existing VOSH Part 1904 regulations. OSHA has determined that the requirement to report in-patient hospitalizations of fewer than three employees is feasible and practicable and will not impose an undue burden on employers. Each year, some firms that were partially exempt from routinely keeping records under the existing regulation have had to report injury and illness data to BLS, which demonstrates that such firms are capable of keeping the required records. OSHA reasons that, since nearly 18% of all establishments are already required to report single in-patient hospitalizations and have been successfully doing so, there is no reason that employers who are newly required to report single in-patient hospitalizations would have difficulty complying with this final rule. *[79 FR 56145 & 79 FR 56171]*

J. Economic Feasibility

This revision is more cost-effective than the original rule in the sense that the revision adds employers with a lower average cost of recording injuries and illnesses and removes employers with a higher average cost. This serves to lower the average cost of recording injuries and illnesses for the rule as a whole. OSHA determined that the costs per establishment for six-digit

per establishment to a maximum of just under $150 per year per establishment across six-digit NAICS industries. Even when considering the mix of small and large firms covered by this final rule, the average cost per establishment is well under $100 per year per establishment. OSHA believes that costs of this magnitude could not possibly affect the viability of a firm and are thus economically feasible. Employers have had to meet these recordkeeping requirements in many industries for years with no reported impact on the economic viability of those industries.

[79 FR 56169 -79 FR 56172]

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2015 SESSION

CHAPTER 270

An Act to amend and reenact § 40.1-51.1 of the Code of Virginia, relating to workplace safety; employer reporting requirements.

[H 1681]
Approved March 17, 2015

Be it enacted by the General Assembly of Virginia:

1. That § 40.1-51.1 of the Code of Virginia is amended and reenacted as follows:

§ 40.1-51.1. Duties of employers.

A. It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, and to comply with all applicable occupational safety and health rules and regulations promulgated under this title.

B. Every employer shall provide to employees by such suitable means as shall be prescribed in rules and regulations of the Safety and Health Codes Board, information regarding their exposure to toxic materials or harmful physical agents and prompt information when they are exposed to concentration or levels of toxic materials or harmful physical agents in excess of those prescribed by the applicable safety and health standards and shall provide employees or their representatives with the opportunity to observe monitoring or measuring of exposures. Every employer shall also inform any employee who is being exposed of the corrective action being taken and shall provide former employees with access to information about their exposure to toxic materials or harmful physical agents.

C. Every employer cited for a violation of any safety and health provisions of this title or standards, rules and regulations promulgated thereunder shall post a copy of such citation at the site of the violations so noted as prescribed in the rules and regulations of the Safety and Health Codes Board.

D. Every employer shall report to the Virginia Department of Labor and Industry within eight hours any work-related incident resulting in *(i)* a fatality ~~or in~~, *(ii)* the ~~in patient~~ *inpatient* hospitalization of ~~three~~ *one* or more persons, *(iii) an amputation, or (iv) the loss of an eye,* as prescribed in the rules and regulations of the Safety and Health Codes Board.

E. Every employer, through posting of notices or other appropriate means, shall keep his employees informed of their rights and responsibilities under this title and of specific safety and health standards applicable to his business establishment.

F. An employer representative shall be given the opportunity to accompany the safety and health inspectors on safety or health inspections.

G. Nothing in this section shall be construed to limit the authority of the Commissioner pursuant to § 40.1-6 or the Board pursuant to § 40.1-22 to promulgate necessary rules and regulations to protect and promote the safety and health of employees.

RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt the amendments to Occupational Injury and Illness Recording and Reporting Requirements - NAICS Update and Reporting Revisions, 16VAC25-85-1904.2 and 16VAC25-85-1904.39, as authorized by Virginia Code §§ 40.1-22(5), 40.1-51.1.D., and 2.2-4006.A.4(c), with an effective date of September 15, 2015.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation which has been adopted in accordance with the above-cited subsection A.4(c) of the Administrative Process Act.

Occupational Injury and Illness Recording and Reporting Requirements –
NAICS Update and Reporting Revisions, 16VAC25-85-1904.2 and 16VAC25-85-1904.39

As Adopted by the

Safety and Health Codes Board

Date: _____

VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

Occupational Injury and Illness Recording and Reporting Requirements –
NAICS Update and Reporting Revisions, 16VAC25-85-1904.2 and 16VAC25-85-1904.39

When the regulations, as set forth in the amendment to Regulation for Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Revisions, 16VAC25-85-1904.2 and 16VAC25-85-1904.39, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms	VOSH Equivalent
OSHA	VOSH
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Area Office	Regional Director
Agency	Department
January 1, 2015	September 15, 2015

Final Rule

Part 1904 of Title 29 of the Code of Federal Regulations is hereby amended as follows:

PART 1904—[AMENDED]

■ 1. The authority citation for part 1904 continues to read as follows:

Authority: 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 3–2000 (65 FR 50017), and 5 U.S.C. 533.

■ 2. Amend § 1904.2 by revising paragraphs (a)(1) and (b) to read as follows:

§ 1904.2 Partial exemption for establishments in certain industries.

(a) *Basic requirement.* (1) If your business establishment is classified in a specific industry group listed in appendix A to this subpart, you do not need to keep OSHA injury and illness records unless the government asks you to keep the records under §§ 1904.41 or1904.42. However, all employers must report to OSHA any workplace incident that results in an employee's fatality, inpatient hospitalization, amputation, or loss of an eye (see § 1904.39).

* * * * *

(b) *Implementation*—(1) *Is the partial industry classification exemption based on the industry classification of my entire company or on the classification of individual business establishments operated by my company?* The partial industry classification exemption applies to individual business establishments. If a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records, while others may be partially exempt.

(2) *How do I determine the correct NAICS code for my company or for individual establishments?* You can determine your NAICS code by using one of three methods, or you may contact your nearest OSHA office or State agency for help in determining your NAICS code:

(i) You can use the search feature at the U.S. Census Bureau NAICS main Web page: *http://www.census.gov/eos/www/naics/*. In the search box for the most recent NAICS, enter a keyword that describes your kind of business. A list of primary business activities containing that keyword and the corresponding NAICS codes will appear. Choose the one that most closely corresponds to your primary business activity, or refine your search to obtain other choices.

(ii) Rather than searching through a list of primary business activities, you may also view the most recent complete NAICS structure with codes and titles by clicking on the link for the most recent NAICS on the U.S. Census Bureau NAICS main Web page: *http://www.census.gov/eos/www/naics/*. Then click on the two-digit Sector code to see all the NAICS codes under that Sector. Then choose the six-digit code of your interest to see the corresponding definition, as well as cross-references and index items, when available.

(iii) If you know your old SIC code, you can also find the appropriate 2002 NAICS code by using the detailed conversion (concordance) between the 1987 SIC and 2002 NAICS available in Excel format for download at the ''Concordances'' link at the U.S. Census Bureau NAICS main Web page: *http://www.census.gov/eos/www/naics/*.

■ 3. Revise Non-Mandatory Appendix A to Subpart B of Part 1904 to read as follows:

Non-Mandatory Appendix A to Subpart B of Part 1904—Partially Exempt Industries

Employers are not required to keep OSHA injury and illness records for any establishment classified in the following North American Industry Classification System (NAICS) codes, unless they are asked in writing to do so by OSHA, the Bureau of Labor Statistics (BLS), or a state agency operating under the authority of OSHA or the BLS. All employers, including those partially exempted by reason of company size or industry classification, must report to OSHA any employee's fatality, in-patient hospitalization, amputation, or loss of an eye (see § 1904.39).

NAICS Code	Industry
4412	Other Motor Vehicle Dealers.
4431	Electronics and Appliance Stores.
4461	Health and Personal Care Stores.
4471	Gasoline Stations.

NAICS Code	Industry
4481	Clothing Stores.
4482	Shoe Stores.
4483	Jewelry, Luggage, and Leather Goods Stores.
4511	Sporting Goods, Hobby, and Musical Instrument Stores.
4512	Book, Periodical, and Music Stores.
4531	Florists.
4532	Office Supplies, Stationery,and Gift Stores.
4812	Nonscheduled Air Transportation.
4861	Pipeline Transportation of Crude Oil.
4862	Pipeline Transportation Natural Gas.
4869	Other Pipeline Transportation.
4879	Scenic and Sightseeing Transportation, Other.
4885	Freight Transportation Arangement.
5111	Newspaper, Periodical, Book, and Directory Publishers.
5112	Software Publishers.
5121	Motion Picture and Video Industries.
5122	Sound Recording Industries.
5151	Radio and Television Broadcasting.
5172	Wireless Telecommunications Carriers (except Satellite).
5173	Telecommunications Resellers.
5179	Other Telecommunications.
5181	Internet Service Providers and Web Search Portals.
5182	Data Processing, Hosting, and Related Services.
5191	Other Information Services.
5211	Monetary Authorities—Central Bank.
5221	Depository Credit Intermediation.
5222	Nondepository Credit Intermediation.
5223	Activities Related to Credit Intermediation.
5231	Securities and Commodity Contracts Intermediation and Brokerage.
5232	Securities and Commodity Exchanges.
5239	Other Financial Investment Activities.
5241	Insurance Carriers.
5242	Agencies, Brokerages, and Other Insurance Related Activities.
5251	Insurance and Employee Benefit Funds.
5259	Other Investment Pools and Funds.
5312	Offices of Real Estate Agents and Brokers.
5331	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works).
5411	Legal Services.
5412	Accounting, Tax Preparation, Bookkeeping, and Payroll Services.
5413	Architectural, Engineering, and Related Services.
5414	Specialized Design Services.
5415	Computer Systems Design and Related Services.
5416	Management, Scientific, and Technical Consulting Services.
5417	Scientific Research and Development Services.
5418	Advertising and Related Services.
5511	Management of Companies and Enterprises.
5611	Office Administrative Services.
5614	Business Support Services.
5615	Travel Arrangement and Reservation Services.
5616	Investigation and Security Services.
6111	Elementary and Secondary Schools.
6112	Junior Colleges.
6113	Colleges, Universities, and Professional Schools.
6114	Business Schools and Computer and Management Training.
6115	Technical and Trade Schools.
6116	Other Schools and Instruction.
6117	Educational Support Services.
6211	Offices of Physicians.
6212	Offices of Dentists.
6213	Offices of Other Health Practitioners.
6214	Outpatient Care Centers.
6215	Medical and Diagnostic Laboratories.
6244	Child Day Care Services.
7114	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures.
7115	Independent Artists, Writers, and Performers.
7213	Rooming and Boarding Houses.
7221	Full-Service Restaurants.
7222	Limited-Service Eating Places.
7224	Drinking Places (Alcoholic Beverages).
8112	Electronic and Precision Equipment Repair and Maintenance.
8114	Personal and Household Goods Repair and Maintenance.
8121	Personal Care Services.
8122	Death Care Services.
8131	Religious Organizations.
8132	Grantmaking and Giving Services.
8133	Social Advocacy Organizations.
8134	Civic and Social Organizations.
8139	Business, Professional, Labor, Political, and Similar Organizations.

■ 4. Revise § 1904.39 to read as follows:

§ 1904.39 Reporting fatalities, hospitalizations, amputations, and losses of an eye as a result of work-related incidents to OSHA.

(a) *Basic requirement.* (1) Within eight (8) hours after the death of any employee as a result of a work-related incident, you must report the fatality to the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

(2) Within ~~twenty-four (24)~~ eight (8) hours after the in-patient hospitalization of one or more employees or an employee's amputation or an employee's loss of an eye, as a result of a work-related incident, you must report the in-patient hospitalization, amputation, or loss of an eye to OSHA.

(3) You must report the fatality, inpatient hospitalization, amputation, or loss of an eye using one of the following methods:

(i) By telephone or in person to the OSHA Area Office that is nearest to the site of the incident.

(ii) By telephone to the OSHA toll-free central telephone number, 1–800–321–OSHA (1–800–321–6742).

(iii) By electronic submission using the reporting application located on OSHA's public Web site at www.osha.gov.

(b) *Implementation*—(1) *If the Area Office is closed, may I report the fatality, in-patient hospitalization, amputation, or loss of an eye by leaving a message on OSHA's answering machine, faxing the Area Office, or sending an email?* No, if the Area Office is closed, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye using either the 800 number or the reporting application located on OSHA's public Web site at www.osha.gov.

(2) *What information do I need to give to OSHA about the in-patient hospitalization, amputation, or loss of an eye?* You must give OSHA the following information for each fatality, in-patient hospitalization, amputation, or loss of an eye:

(i) The establishment name;

(ii) The location of the work-related incident;

(iii) The time of the work-related incident;

(iv) The type of reportable event (i.e., fatality, in-patient hospitalization, amputation, or loss of an eye);

(v) The number of employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;

(vi) The names of the employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;

(vii) Your contact person and his or her phone number; and

(viii) A brief description of the work related incident.

(3) *Do I have to report the fatality, inpatient hospitalization, amputation, orloss of an eye if it resulted from a motor vehicle accident on a public street or highway?* If the motor vehicle accident occurred in a construction work zone, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye. If the motor vehicle accident occurred on a public street or highway,

but not in a construction work zone, you do not have to report the fatality, inpatient hospitalization, amputation, or loss of an eye to OSHA. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(4) *Do I have to report the fatality, inpatient hospitalization, amputation, or loss of an eye if it occurred on a commercial or public transportation system?* No, you do not have to report the fatality, in-patient hospitalization, amputation, or loss of an eye to OSHA if it occurred on a commercial or public transportation system (e.g., airplane, train, subway, or bus). However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(5) *Do I have to report a work-related fatality or in-patient hospitalization caused by a heart attack?* Yes, your local OSHA Area Office director will decide whether to investigate the event, depending on the circumstances of the heart attack.

(6) *What if the fatality, in-patient hospitalization, amputation, or loss of an eye does not occur during or right after the work-related incident?* You must only report a fatality to OSHA if the fatality occurs within thirty (30) days of the work-related incident. For an in-patient hospitalization, amputation, or loss of an eye, you must only report the event to OSHA if it occurs within ~~twenty-four (24)~~ eight (8) hours of the work-related incident. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(7) *What if I don't learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye right away?* If you do not learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye at the time it takes place, you must make the report to OSHA within the following time period after the fatality, in-patient hospitalization, amputation, or loss of an eye is reported to you or to any of your agent(s): Eight (8) hours for a fatality, and ~~twenty-four (24)~~ eight (8) hours for an in-patient hospitalization, an amputation, or a loss of an eye.

(8) *What if I don't learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident?* If you do not learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident, you must make the report to OSHA within the following time period after you or any of your agent(s) learn that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident: Eight (8) hours for a fatality, and ~~twenty-four (24)~~ eight (8) hours for an inpatient hospitalization, an amputation,or a loss of an eye.

(9) *How does OSHA define ''in-patient hospitalization''?* OSHA defines inpatient hospitalization as a formal admission to the in-patient service of a hospital or clinic for care or treatment.

(10) *Do I have to report an in-patient hospitalization that involves only observation or diagnostic testing?* No, you do not have to report an in-patient hospitalization that involves only observation or diagnostic testing. You must only report to OSHA each inpatient hospitalization that involves care or treatment.

(11) *How does OSHA define ''amputation''?* An amputation is the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached. Amputations do not include avulsions, enucleations, deglovings, scalpings, severed ears, or broken or chipped teeth.

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COMMONWEALTH of VIRGINIA

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VIRGINIA SAFETY AND HEALTH CODES BOARD

Briefing Package

July 9, 2015

Request to Initiate Notice of Intended Regulatory Action (NOIRA)
To Amend the Administrative Regulation for the
Virginia Occupational Safety and Health (VOSH) Program

I. Action Requested

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to authorize the Department to initiate the regulatory process to amend the Administrative Regulation for the VOSH Program by filing a Notice of Intended Regulatory Action (NOIRA), pursuant to the Virginia Administrative Process Act, § 2.2-4007 of the *Code of Virginia*.

II. Summary of the Issues Under Consideration for Amendment

This request to authorize a NOIRA is to accommodate several issues in regard to the Administrative Regulation of the VOSH Program. Such sections to be considered for review include, but based on any comments from the public should this request go forward, may not be limited to, the following:

- Applicability of anti-retaliation safeguards to public sector employees, *16VAC-60-30.*
- Application of Commonwealth's Attorney to act on behalf of the Commissioner for public sector employers, *16VAC-60-30.*

- Allowance for the Commissioner to petition the Cabinet Secretary and then the Executive regarding resolution of anti-retaliation violations with a state agency, *16VAC-60-30.G.*
- Virginia Freedom of Information Act requirements in regard to the Voluntary Protection Program, *16VAC-60-90.*
- Change of section title(s) to reflect recent terminology changes in occupational discrimination or anti-retaliation cases, *16VAC-60-110.*
- Provision of penalties for occupational discrimination or anti-retaliation cases at the litigation stage, *16VAC-60-110.*
- Title update to reflect prior statutory changes, *16VAC-60-245*.
- "Burden of Proof" in VOSH court cases to be specified as "preponderance of the evidence", *16VAC-60-260*.
- Burden for proving an affirmative defense to a citation lies with the defendant, *16VAC-60-260*.

III. Basis, Purpose and Impact of the Proposed Rulemaking.

A. Basis.

The Safety and Health Codes Board is authorized by Title 40.1-22(5) to: "... adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal OSH Act of 1970...as may be necessary to carry out its functions established under this title".

"In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity".

"However, such standards shall be at least as stringent as the standards promulgated by the federal OSH Act of 1970 (P.L.91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws."

B. Purpose

The purpose of amending the Administrative Regulation is to accommodate statutory changes to the Code of Virginia, strengthen anti-retaliation or "whistleblower" protections for both public and private sector employees, and to specify the burden of proof threshold for VOSH cases which go to Circuit Court.

C. Impact on Employers

At this stage in the regulatory process, the potential impact on employers from suggested areas for amendment are as yet undefined. Specific language covering the scope and range of each proposed change has yet to be developed and will be based on further review and analysis by VOSH staff as well as the input from the public during the initial 30-day public comment period.

D. Impact on Employees

At this stage in the regulatory process, the potential impact on employees from suggested areas for amendment are as yet undefined. Specific language covering the scope and range of each proposed change has yet to be developed and will be based on further review and analysis by VOSH staff as well as the input from the public during the initial 30-day public comment period.

E. Impact on the Department of Labor and Industry.

As specific regulatory language has not yet been developed, the potential impact on the Department from suggested areas for amendment are as yet undefined.

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RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board direct the Department to initiate a Notice of Intended Regulatory Action (NOIRA) to amend the Administrative Regulation for the VOSH Program by filing a Notice of Intended Regulatory Action (NOIRA), pursuant to the Virginia Administrative Process Act, § 2.2-4007 of the *Code of Virginia*.

The Department also recommends that the Board state in any motion it may make that it will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of any regulation under the purview of the Board.

COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE FOR

July 9, 2015

Request to Initiate Notice of Intended Regulatory Action (NOIRA)
to Adopt a Virginia Voluntary Protection Program (VPP) Regulation

I. Action Requested

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to authorize the Department of Labor and Industry to initiate the regulatory process to adopt a Virginia Voluntary Protection Program (VPP) regulation by filing a Notice of Intended Regulatory Action (NOIRA), pursuant to the Virginia Administrative Process Act (§2.2-4007).

II. Summary of Intended Regulatory Action

On March 19, 2015, the Virginia General Assembly approved the adoption of §40.1-49.13 of the *Code of Virginia* (*see Attachment 1*) which codifies the VOSH Voluntary Protection Program (VPP). Subsection B. of §40.1-49.13 requires the Safety and Health Codes Board to adopt a VPP regulation and provides for the following:

> B. The Safety and Health Codes Board shall adopt definitions, rules, regulations, and standards necessary for the operation of the Voluntary Protection Program in a manner that will promote safe and healthy workplaces throughout the Commonwealth. The standards for the VPP shall include the following requirements for VPP participation:

1. Upper management leadership and active and meaningful employee involvement;

2. Systematic assessment of occupational hazards;

3. Comprehensive hazard prevention, mitigation, and control programs;

4. Employee safety and health training; and

5. Safety and health program evaluation.

Subsection B. of §40.1-49.13 also provides that current participants may continue as such, but on and after July 1, 2016, their continued participation is conditional upon complying with the standards for participation ultimately adopted by the Safety and Health Codes Board.

The issues the regulation must address include, but are not limited to:

- Categories of participation (STAR, MERIT, CHALLENGE);
- Ways to participate (site-based in both general industry and construction, mobile workforce, VPP corporate);
- Application requirements;
- Comprehensive safety and health management system requirements;
- Certification process;
- On-site evaluations;
- Annual submissions;
- Re-certification process; and
- Withdrawal or termination

III. Basis, Purpose and Impact of the Proposed Rulemaking

A. Basis

In Virginia, the Voluntary Protection Program was instituted in 1996 and is patterned after federal OSHA's VPP, which was originally created in 1982. The VOSH Program adopted VPP as a component of DOLI's larger mission to "make Virginia a better place in which to work." An employer's membership in VPP is recognized as the nation's highest award that can be bestowed by a government agency to an employer for excellence in occupational safety and health management systems.

The program 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.

On March 19, 2015, the Virginia General Assembly approved the amendment of the *Code of Virginia* by adding §40.1-49.13, which codifies the VPP.

B. Purpose

The purpose of this request to initiate the regulatory process is to adopt those definitions, rules, regulations, and standards required by §40.1-49.13 of the *Code of Virginia*, and necessary for the operation of the Virginia VPP in a manner that will promote and recognize employer implementation of exceptional safety and health management systems throughout the Commonwealth. Employer adoption of the VPP concepts has consistently resulted in injury and illness rates 50 percent or more below that of the employer's industry as a whole.

C. Impact on Employers

VPP is a voluntary program so there is no impact on Virginia's employers who are not program participants. Virginia VPP helps employers identify and correct occupational hazards in a proactive and cooperative approach that will reduce or eliminate debilitating injuries, illnesses and fatal accidents suffered by Virginia's employees. Nationally, VPP sites' recordable injury and illness rates have averaged 50 percent or more below that of other worksites in their industry. The Department VPP tracks injury and illness rates for each VPP site on an annual basis. Virginia VPP participating worksites average 65 percent lower injury and illness rates than their non-participating counterparts in their respective industries. [*Virginia Capitol Connections, Winter 2015, p.12*]

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. Reducing private sector employer costs associated with injuries, illnesses and fatal accidents enhances a company's economic viability and competitiveness, and increases available capital for reinvestment, expansion and new hiring.

Virginia VPP focuses its resources on encouraging and recognizing employers to implement exemplary safety and health management systems. Virginia VPP worksites have demonstrated over many years that VPP participation will:

- substantially reduce workplace injuries and illnesses;
- reduce workers compensation costs;
- improve company productivity; and
- promote competiveness.

VPP is available to private and public sector employers of all sizes, for example, from the Dominion Power North Anna facility, which has almost 1,000 employees to Veritiv-Lynchburg with approximately 21 employees. A small sample of other participants in the Virginia VPP include: Delta Airlines, Miller Coors, Raytheon, Eastman Kodak, and International Paper.

Virginia was the first VPP in the country to welcome state correctional institutions as VPP members – Augusta and Lunenburg Correctional Facilities of the Virginia Department of Corrections (VADOC). Both facilities have consistently incurred lower workers' compensation costs than other comparable Virginia Department of Corrections (VADOC) sites and have significantly lower injury and illness rates than the national rates for correctional facilities.

VADOC, a participant in the VPP program since 2001, estimates that the Commonwealth saved approximately $1.5 million at Lunenburg Correctional Center (LCC) between 2002 and 2006. VADOC further estimates that since 2001, based on a 2009 comparative analysis, the five other medium security dormitory-design Virginia correctional centers achieved similar results in VPP to that of LCC. The potential savings may have been approximately $3 million in direct (insured) costs and $10.4 million in indirect costs, for a total savings of $13.4 million. With the program's continued expansion into other state facilities, the Commonwealth could expect increased savings. Other state agencies, as well as local governments, could also experience these benefits from participating in VPP.

Virginia's VPP has included as many as 59 STAR worksites since the program began in 1996. Currently, there are a total of 44 active STAR sites providing exceptional worksite safety and health protections for more than 11,000 employees through Virginia's VPP. [*Virginia Capitol Connections*, *Winter 2015*, p.12] The number of STAR worksites in the program has decreased for a variety of reasons, including withdrawal because injury and illness rates become too high; a business gets downgraded; a business goes out-of-business; or business sites close.

D. Impact on Employees

VPP participation benefits employees by enhancing workplace safety and health practices; reducing workplace injuries and illnesses and the associated workers' compensation and medical costs; and improving employee morale. VPP participation encourages active employee involvement in safety and health, which can lead to higher quality production, better general housekeeping. Employee suggestions translate into improved efficiency and other exceptional business metrics. [*Virginia Capitol Connections, Winter 2015*, p. 13]

The Virginia VPP tracks injury and illness rates at each VPP site on an annual basis. Virginia VPP participating worksites average 65 percent lower injury and illness rates than their counterparts in their respective industries.

E. Impact on the Department of Labor and Industry

Expanding Virginia's VPP will promote safer and healthier work places in Virginia by using a proactive, cooperative approach between employers, employees and Virginia government, rather than a punitive one. The Department benefits from this cooperative relationship by having exemplary sites to lead and guide other employers to improve their occupational safety and health performance.

Adopting a regulation for the operation of VPP and establishing a formal and permanent structure for VPP will also assist DOLI in its pursuit of several bold initiatives it hopes will greatly enhance safety and health protections for Virginia's workers. First, DOLI is using VPP staffing resources to work cooperatively with the Virginia Associated General Contractors (AGC) to establish a pilot strategic partnership, known as Virginia BEST (**B**uilding **E**xcellence in **S**afety and **H**ealth **T**raining) to encourage and recognize construction contractors who voluntarily implement extensive safety and health management systems to benefit construction workers.

Second, DOLI is developing a pilot strategic partnership with the Virginia Department of Corrections (VADOC) to substantially increase VADOC participation in VPP. Finally, DOLI is working to expand the scope of VPP by implementing a Virginia unique version of the OSHA Challenge Program which would establish three levels of participation for employers wishing to enhance their safety and health management systems.

Once a site has qualified and successfully submitted an application for consideration in the VPP STAR program, final approval requires an intensive weeklong onsite evaluation by a VOSH VPP team. Final approval is determined by DOLI's Commissioner. VPP participants are exempt from regular VOSH programmed compliance inspections while they maintain their VPP status. Each VPP member site is required to be re-certified by an onsite evaluation team of safety and health professionals every 3-4 years to remain in VPP.

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RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board direct the Department to initiate a Notice of Intended Regulatory Action (NOIRA) to develop a regulation that provides for the operation of Virginia's Voluntary Protection Program (VPP), as required by §40.1-49.13 of the *Code of Virginia*, and pursuant to the Virginia Administrative Process Act (§2.2-4007).

The Department also recommends that the Board state in any motion it may make that it will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of any regulation under the purview of the Board.

VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

CHAPTER 339

An Act to amend the Code of Virginia by adding a section numbered 40.1-49.13, relating to Safety and Health Codes Board; establishment of a Voluntary Protection Program.

[H 1768]

Approved March 19, 2015

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 40.1-49.13 as follows:

§ 40.1-49.13. Voluntary Protection Program.

A. As used in this section:

"Model system" means an exemplary, voluntarily implemented worker safety and health management system that (i) implements comprehensive safety and health programs that exceed basic compliance with occupational safety and health laws and regulations and (ii) meets the VPP standards adopted by the Safety and Health Codes Board pursuant to subsection B.

"Voluntary Protection Program" or "VPP" means a program under which the Commissioner recognizes and partners with workplaces in which a model system has been implemented.

B. The Safety and Health Codes Board shall adopt definitions, rules, regulations, and standards necessary for the operation of the Voluntary Protection Program in a manner that will promote safe and healthy workplaces throughout the Commonwealth. The standards for the VPP shall include the following requirements for VPP participation:

1. Upper management leadership and active and meaningful employee involvement;

2. Systematic assessment of occupational hazards;

3. Comprehensive hazard prevention, mitigation, and control programs;

4. Employee safety and health training; and

5. Safety and health program evaluation.

C. Applications for participation in the VPP shall be submitted by the workplace's management. Applications shall include documentation establishing to the satisfaction of the Commissioner that the employer meets all standards for VPP participation.

D. The Department shall provide for onsite evaluations by VPP evaluation teams of each workplace that has applied to participate in the VPP to determine that the applicant's workplace complies with the standards for VPP participation.

E. A workplace's continued participation in the VPP shall be conditioned on compliance with the standards for VPP participation, as determined by periodic onsite evaluations by VPP evaluation teams.

F. During periods in which a workplace is a participant in the VPP, the workplace shall be exempt from inspections or investigations under § 40.1-49.4; however, this exception shall not apply to inspections or investigations of the workplace arising from complaints, referrals, fatalities, catastrophes, nonfatal accidents, or significant toxic chemical releases.

2. That any workplace that was a participant in the uncodified voluntary protection program conducted by the Department of Labor and Industry prior to July 1, 2015, may continue as a participant in the Voluntary Protection Program established pursuant to § 40.1-49.13 of the Code of Virginia, as created by this act. On and after July 1, 2016, the continued participation by such a workplace in the Voluntary Protection Program shall be conditioned upon the workplace's compliance with the standards for participation in the Voluntary Protection Program adopted by the Safety and Health Codes Board pursuant to subsection B of § 40.1-49.13.

COMMONWEALTH of VIRGINIA

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VIRGINIA SAFETY AND HEALTH CODES BOARD
BRIEFING PACKAGE
FOR JULY 9, 2015

NOTICE OF PERIODIC REVIEW OF CERTAIN EXISTING REGULATIONS

I. Action Requested

The Department requests the permission of the Board to proceed with the periodic review process of two of the Board's regulations listed in Section II, below.

II. Background and Basis

The Administrative Process Act (§2.2-4017 of the Code of Virginia) and Executive Order 17 (2014), "Development and Review of State Agency Regulations," governs the periodic review of existing regulations. This Executive Order requires that state agencies conduct a periodic review of regulations every four years. Two regulations of the Safety and Health Codes Board have been identified for review in 2014. They are as follows:

1. 16VAC25-55, Financial Responsibility of Boiler & Pressure Vessel Contract Fee Inspectors;

2. 16VAC25-73, Regulation Applicable to Tree Trimming Operations; and

3. 16VAC25-75, Telecommunications, General, Approach, Distances.

III. Current Status and Process

These three regulations of the Safety and Health Codes Board have been identified for review in 2015. If approval to proceed is granted by the Board, the process of periodic review begins with publication of a Notice of Periodic Review in the Virginia Register. With publication of this Notice of Periodic Review, a public comment period of at least 21 days, but not longer than 90 days, begins. Subsequently, the Department will review these regulations and related public comments, then prepare a brief with recommendations to be presented for the Board's consideration at the next meeting. Based on the decision of the Board, the Department of Labor and Industry will post a report on the Virginia Regulatory Town Hall website indicating for each regulation that the Board will either retain the regulation as is, or will begin a regulatory action to amend or repeal the regulation.

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RECOMMENDED ACTION

The Department of Labor and Industry recommends that the Safety and Health Codes Board approve the publication of a Notice of Periodic Review in the Virginia Register for 16VAC25-55, Financial Responsibility of Boiler & Pressure Vessel Contract Fee Inspectors; 16VAC25-73, Regulation Applicable to Tree Trimming Operations; and 16VAC25-75, Telecommunications, General, Approach, Distances.

The Department also recommends that the Board state in any motion it may make regarding the periodic review of these regulations that it will receive, consider and respond to petitions by any interested person at any time with respect to the periodic review which will be conducted in accordance with the above-cited § 2.2-4017 of the Administrative Process Act and Executive Order 17 (2014), "Development and Review of State Agency Regulations".