



COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

Gary G. Pan
COMMISSIONER

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AGENDA

SAFETY AND HEALTH CODES BOARD MEETING

In person location:

**Libbie Mill Public Library
2100 Libbie Lake E Street
Richmond, Virginia 23230**

**April 9, 2024
11:00 AM**

1. Call to Order and Introductions.
2. Approval of Agenda.
3. Approval of Minutes of the Board Meeting held on September 18, 2023.
4. Opportunity for the Public to Address the Board on issues pending before the Board today, as well as any other topics that may be of concern to the Board and within its scope of authority.

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.

5. Old Business.

a) Report on Periodic Reviews of Certain Regulations

1. **16 VAC 25-50:** Boiler and Pressure Vessel Regulation.

Presenter – Policy & Planning

2. **16 VAC 25-60:** Administrative Regulation for the Virginia Occupational Safety and Health Program.

Presenter – Jay Withrow

3. **16 VAC 25-145:** Safety Standards for Fall Protection in Steel Erection, Construction Industry.

Presenter – Jay Withrow

4. **16 VAC 25-200:** Virginia Voluntary Protection Program (VPP).

Presenter - Jennifer Rose

6. New Business.

a) Notice of Periodic Reviews of Certain Regulations

1. **16 VAC 25-35:** Regulations Concerning Certified lead Contractors Notification, Lead Project Permits and Permit Fees.
2. **16 VAC 25-55:** Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspector.
3. **16 VAC 25-73:** Regulation Applicable to Tree Trimming.
4. **16 VAC 25-75:** Telecommunications, General, Approach Distance.

Presenter - Cristin Bernhardt

b) Regulatory Advisory Panel Status

The Department is forming a Regulatory Advisory Panel (RAP) to assist in the development of proposed regulatory language amendments approved but the Board at the September 18, 2023 meeting.

1. **16VAC25-70:** Confined Space Standard for the Telecommunications Industry
2. **16VAC25-160:** Construction Industry Standard for Sanitation

Presenter – Policy & Planning

7. Items of Interest from the Department of Labor and Industry
VOSH Safety and Health Conference – June 11-13, 2024
The Founders Inn and Spa, Virginia Beach
8. Items of Interest from Members of the Board
9. Meeting Adjournment

DRAFT
SAFETY AND HEALTH CODES BOARD
PUBLIC MEETING MINUTES
Monday, September 18, 2023

On September 18, 2023, the Safety and Health Codes Board (“Board”) held a public meeting at Fairfield Public Library on 1401 N Laburnum Road, Richmond, VA 23223. The Board held a hybrid in person meeting with the option for the public to attend virtually, however the board members were required to attend in-person with a quorum.

Notice of the public meeting was provided to the public as required by VA Code §2.2-3708.2 and Executive Order 19 (2022). The notice invited the public to witness the meeting remotely via Microsoft Teams. Notice was provided on the Virginia Regulatory Town Hall’s website here:

[Virginia Regulatory Town Hall View Meeting](#)

BOARD MEMBERS PARTICIPATING:

Mr. Kelly Bundy, Acting Chair
Mr. Jay Abbott
Mr. Kevin Battle
Mr. Lee Biedrycki
Mr. Joel Canady (DEQ)
Mr. Michael Everett
Ms. Julie Henderson (VDH)
Mr. Larry James
Mr. Jeffrey Rowe
Ms. Lutheria Smith
Mr. James “Lou” Spencer

BOARD MEMBERS ABSENT:

Mr. Robert Buchler
Mr. Robert Smith

STAFF PRESENT:

Mr. Gary Pan, Commissioner of Dept. of Labor & Industry
Mr. Chuck Stiff, Assistant Commissioner
Mr. David Johnson, Deputy Commissioner
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, & OWB
Ms. Princy R. Doss, Director, Policy, and Planning
Ms. Cristin Bernhardt, Regulatory Coordinator
Mr. Ron Graham, Director of VOSH Health Compliance

OTHERS PARTICIPATING:

Mr. Joshua Laws, Assistant Attorney General
Ms. Lois Boyle, Court Reporter

CALL TO ORDER

Acting Chair Kelly Bundy called the meeting to order at 10:30 AM. A quorum was present. Acting Chair Ms. Bundy opening remarks informing the public that this meeting was being held in person for the participating board members with virtual attendance available through Microsoft Teams.

BOARD MEMBER ROLE CALL

BOARD MEMBER	Present	Absent			
Mr. Jay Abbott	x				
Mr. Kevin Battle	x				
Mr. Lee Biedrycki	x				
Mr. Robert Buchler		x			
Ms. Kelly Bundy	x				
Mr. Joel Canady (DEQ)	x				
Mr. Michael Everett	x				
Ms. Julie Henderson (VDH)	x				
Mr. Larry James	x				
Mr. Jeffrey Rowe	x				
Ms. Lutheria Smith	x				
Mr. Robert Smith		x			
Mr. James “Lou” Spencer	x				
VACANT					
TOTALS	11	2			

Commissioner Pan welcomed the board members to the meeting and thanked them for their service to the safety and health of the Virginia workforce.

APPROVAL OF AGENDA

Acting Chair Bundy asked the Board if there was any discussion on the agenda. There was none. There was a motion to approve the agenda. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Approval of Agenda	Yes	No	Abstain	Absent	
Mr. Jay Abbott	x				
Mr. Kevin Battle	x				
Mr. Lee Biedrycki					
Mr. Robert Buchler				x	
Ms. Kelly Bundy	x				
Mr. Joel Canady (DEQ)	x				
Mr. Michael Everett	x				
Ms. Julie Henderson (VDH)	x				
Mr. Larry James	x				
Mr. Jeffrey Rowe	x				
Ms. Lutheria Smith	x				
Mr. Robert Smith	x			x	
Mr. James “Lou” Spencer	x				
VACANT					
TOTALS	11			2	

ELECTION OF OFFICERS

Acting Chair Bundy introduced Chuck Stiff, Assistant Commissioner, to address the board for election of officers. Mr. Stiff shared context of the Chair and Vice Chair roles and responsibilities and the process for the election of officers. The positions of Chair and Vice Chair will be before the board at this meeting and the Secretary will be appointed by the Chair in accordance with the bylaws at the next SHCB meeting.

Next, Acting Chair Bundy called for nominations for the Chair position. Board member Julie Henderson nominated Robert Smith (Boiler representative for Industry) and discussed his qualifications. Acting Chair Bundy called for any other Chair nominations. None were made. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Election of Chair – Robert Smith	Yes	No	Abstain	Absent	
Mr. Jay Abbott	x				
Mr. Kevin Battle	x				
Mr. Lee Biedrycki	x				
Mr. Robert Buchler				x	
Ms. Kelly Bundy	x				
Mr. Joel Canady (DEQ)	x				
Mr. Michael Everett	x				
Ms. Julie Henderson (VDH)	x				
Mr. Larry James	x				
Mr. Jeffrey Rowe	x				
Ms. Lutheria Smith	x				
Mr. Robert Smith				x	
Mr. James “Lou” Spencer	x				
VACANT					
TOTALS	11			2	

Next, Acting Chair Bundy called for nominations for the Vice Chair position. Board member Julie Henderson nominated Kelly Bundy (Construction representative for Industry) and discussed her qualifications. Acting Chair Bundy called for any other Vice Chair nominations. None were made. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Election of Vice Chair – Kelly Bundy	Yes	No	Abstain	Absent	
Mr. Jay Abbott	x				
Mr. Kevin Battle	x				
Mr. Lee Biedrycki	x				
Mr. Robert Buchler				x	
Ms. Kelly Bundy			x		
Mr. Joel Canady (DEQ)	x				
Mr. Michael Everett	x				
Ms. Julie Henderson (VDH)	x				
Mr. Larry James	x				
Mr. Jeffrey Rowe	x				
Ms. Lutheria Smith	x				
Mr. Robert Smith	x			x	
Mr. James “Lou” Spencer	x				
VACANT					
TOTALS	10		1	2	

APPROVAL OF MEETING MINUTES

Vice Chair Bundy then called for discussion and motion for approval of the June 27, 2023 meeting minutes. She asked the Board if there was any discussion on the June 27, 2023 minutes. There was

none. There was a request for a motion to approve the minutes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Approval of June 27, 2023 Minutes	Yes	No	Abstain	Absent	
Mr. Jay Abbott	x				
Mr. Kevin Battle	X				
Mr. Lee Biedrycki	X				
Mr. Robert Buchler				x	
Ms. Kelly Bundy	X				
Mr. Joel Canady (DEQ)	X				
Mr. Michael Everett	X				
Ms. Julie Henderson (VDH)	X				
Mr. Larry James	X				
Mr. Jeffrey Rowe	X				
Ms. Lutheria Smith	X				
Mr. Robert Smith				x	
Mr. James "Lou" Spencer	x				
VACANT					
TOTALS	11			2	

OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD

Vice Chair Bundy called the next item on the agenda, which was the opportunity for the public to address the Board. No members of the public registered to speak by the deadline of June 26, 2023.

Vice Chair Bundy moved to the next item on the agenda, which was Old Business. He introduced Cristin Bernhardt, Regulatory Coordinator for Department of Labor & Industry, to address the Board.

OLD BUSINESS

(a) Status of Periodic Reviews of Certain Regulations

Ms. Bernhardt addressed the Board to provide an update to the Board on the periodic reviews that were approved by the Board at the November 14, 2022 meeting to proceed with the periodic review process of the Board’s regulations listed below pursuant to the Administrative Process Act ([Va. Code § 2.2-4017](#)), [Executive Order 19 \(2022\)](#), “Development and Review of State Agency Regulations,” and the Office of Regulatory Management (ORM) [Procedures for the Review of State Agency Regulations](#).

(a) Notice of Periodic Reviews for 2022

5. [16VAC25-50](#): Boiler and Pressure Vessel Regulation
6. [16VAC25-60](#): Administrative Regulation for the Virginia Occupational Safety and Health Program
7. [16VAC25-145](#): Safety Standards for Fall Protection in Steel Erection, Construction Industry
8. [16VAC25-200](#): Virginia Voluntary Protection Program (VPP)

At this time, the Department is completing the Economic Analysis Forms for these four regulations that are now required by ORM in order to begin the periodic review process and open a public comment forum. These periodic review regulations will be completed by the Department and a report with recommendations presented to the Board at the next SHCM meeting.

Vice Chair Bundy moved to the next item on the agenda which was New Business. She introduced Princy Doss, Director, OPPPI to address the Board.

NEW BUSINESS

Ms. Doss requested the Board consider for adoption of federal OSHA’s final rule to Improve Tracking of Workplace Injuries and Illnesses, as published on July 21, 2023, in Volume 88 Federal Register (FR) No. 139,¹ And as authorized by Virginia Code §§ 40.1-22(5)² and 2.2-4006.A.4(c)³, with an effective date of January 1, 2024. The Virginia State Plan must adopt an identical standard with sufficient time for the effective date to be January 1, 2024, because employer recordkeeping obligations (e.g., OSHA 300 log use) begin on January 1st of each year.

Ms. Doss summarized the updates to existing recording and reporting requirements in Part 1904. The final rule outlines several changes to the recordkeeping requirements for employers listed under Part 1904. This rule further delineates the list of establishments that are required to report records to OSHA electronically once a year and builds on the types of OSHA records and employer information required for reporting:

1. Establishments with 250 or more employees that are currently required to keep OSHA injury and illness records must electronically submit information from OSHA Form 300A – *Log of Work-Related Injuries and Illnesses*, only.
2. Establishments with 20 to 249 employees that are classified in certain industries with historically high rates of occupational injuries and illnesses (identified in Appendix A) must electronically submit annually information from OSHA Form 300A only.
3. Establishments with 100 or more employees that are classified in certain industries with historically high rates of occupational injuries and illnesses (identified in Appendix B) must electronically submit annually information from OSHA Forms 300 and 301- *Injury and Illness Incident Report*.
4. The list of establishments in Appendix A has been updated to accurately reflect the 2017 edition of the North American Industry Classification System’s (NAICS) codes.
5. Establishments with fewer than 20 employees at all times during the year do not have to routinely submit information to OSHA. OSHA requires all employers who receive notification from OSHA, regardless of establishment size, to electronically submit the requested information from their injury and illness records to OSHA or OSHA’s designee.

¹ OSHA “Improve Tracking of Workplace Injuries and Illnesses” Federal Register Vol. 88, No. 139, Friday, July 21, 2023. www.osha.gov/sites/default/files/laws-regs/federalregister/2023-07-21.pdf

² § 40.1-22. Safety and Health Codes Commission continued as Safety and Health Codes Board.

<https://law.lis.virginia.gov/vacode/40.1-22/>

³ § 2.2-4006. Exemptions from requirements of this article. <https://law.lis.virginia.gov/vacode/2.2-4006/>

6. OSHA intends to post the data from these submissions on its secure, publicly accessible website at www.osha.gov. It will also remove any Personally Identifiable Information (PII) on the website before the data are released to the public.
7. All of the eligible employers listed above are required to include their legal company name alongside their establishment name and Employer Identification Number (EIN)⁴ on each submission.
8. Implementation Schedule - VOSH would comply with OSHA's new reporting requirements by January 21, 2024. Virginia will match federal OSHA's timeline:
 - a. January 1, 2024 – Rule becomes effective
 - b. January 2, 2024 – Data collection begins
 - c. January 21, 2024 – Rule becomes effective for States
 - d. March 2, 2024 – First annual deadline for timely, electronic submission of data from OSHA Form 300 Log and OSHA Form 301 Incident Report

Ms. Doss discussed the impacts and benefits on employers, employees, DOLI, and other interested parties that was included in the Briefing Package given to the Board and posted on Virginia Regulatory Town Hall [Virginia Regulatory Town Hall View Meeting](#).

Ms., Doss presented the recommendation by the Staff of the Department of Labor and Industry that the Safety and Health Codes Board adopt federal OSHA's Final Rule to Improve Tracking of Workplace Injuries and Illnesses, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 21, 2024*. This recommendation will allow DOLI to proceed with the regulatory action to amend 16VAC 25-85 Federal Identical; Recording and Reporting Occupational Injuries and Illnesses.

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 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.

*Jay Withrow, Senior Fellow of the Department addressed the Board to correct the effective date of the federal standard in Virginia. The briefing package and recommendation incorrectly indicate a January 21, 2024 effective date, however, the correct effective date would be January 1, 2024.

Vice Chair Bundy then called for discussion on the recommendation by DOLI for the Board to adopt federal OSHA's Final Rule to Improve Tracking of Workplace Injuries and Illnesses with the corrected effective date of January 1, 2024. There was none. There was a request for a motion to approve the recommendation. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Approve recommendation by DOLI for the Board to adopt federal OSHA's Final Rule to Improve					
	Yes	No	Abstain	Absent	

⁴ Employer ID Numbers (EIN). <https://www.irs.gov/businesses/small-businesses-self-employed/employer-id-numbers>

Tracking of Workplace Injuries and Illnesses					
Mr. Jay Abbott	x				
Mr. Kevin Battle	x				
Mr. Lee Biedrycki	x				
Mr. Robert Buchler				x	
Ms. Kelly Bundy	x				
Mr. Joel Canady (DEQ)	x				
Mr. Michael Everett	x				
Ms. Julie Henderson (VDH)	x				
Mr. Larry James	x				
Mr. Jeffrey Rowe	x				
Ms. Lutheria Smith	x				
Mr. Robert Smith				x	
Mr. James "Lou" Spencer	x				
VACANT					
TOTALS	11			2	

Vice Chair Bundy moved to the next item on the agenda, which was Items of Interest from the Department of Labor and Industry.

ITEMS OF INTEREST FROM THE DEPARTMENT OF LABOR AND INDUSTRY

Vice Chair Bundy asked for items of interest from the Department. There was none.

ITEMS OF INTEREST FROM MEMBERS OF THE BOARD

Vice Chair Bundy asked for items of interest from the Members of the Board. Ms. Bundy had a question for the Department regarding the regulatory advisory panel (RAP) schedule for the construction industry sanitation regulatory review discussed at the June 27, 2023 meeting. Mr. Doss indicated that there is not currently a schedule but the Department is working on it.

MEETING ADJOURNMENT

Vice Chair Bundy adjourned the meeting at 10:52 am.



COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

Gary G. Pan
COMMISSIONER

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DRAFT April 2, 2024

VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

For April 9, 2024

**Report of Periodic Review of Certain Existing Regulations
Departmental Review and Findings**

I. Background and Basis

In accordance with the Administrative Process Act (§2.2-4017 of the *Code of Virginia*), Governor Youngkin's Executive Order 19 (2022), "Development and Review of State Agency Regulations," governs the periodic review of existing regulations. State agencies are required to conduct a periodic review of regulations every four years. Four (4) regulations of the Safety and Health Codes Board (Board) were identified for review in 2023:

- 1. 16 VAC 25-50, Boiler Pressure Vessel Regulations.**
- 2. 16 VAC 25-60, Administrative Regulation for the Virginia Occupational Safety and Health Program.**
- 3. 16 VAC 25-145, Safety Standards for Fall Protection in Steel Erection, Construction Industry.**
- 4. 16 VAC 25-200, Virginia Voluntary Protection Program (VPP).**

II. Current Status and Process

The Safety and Health Codes Board authorized the Department of Labor and Industry (“Department”) to begin reviewing the above-noted regulations at the November 14, 2022, meeting. In accordance with §§ 2.2-4006 through 2.2-4017 of the *Code of Virginia*, the Department filed a Notice of Periodic Review in the *Virginia Register* on March 11, 2024.

The Office of the Attorney General (“OAG”) certified the statutory authority for the four regulations on February 21, 2024. A public comment period of 21 days began on March 11, 2024 and closed on April 1, 2024. The Department received no comments on any of the regulations. Following the comment period, the Department staff reviewed the regulations and prepared recommendations for the Board’s consideration at this meeting.

Based on the decision of the Board, the Department will post a report on the Town Hall website indicating for each regulation either that (1) the Board will retain the regulation as is, or (2) the Board will begin a regulatory action to amend the regulation.

III. Review and Analysis

Pursuant to § 2.2-4007.1 D and E of the *Code of Virginia*, a periodic review of an existing regulation shall consider the following factors:

- the continued need for the regulation;
- the complexity of the regulation;
- the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and
- the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Section 40.1-22(5) of the *Code of Virginia* states that “...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 Occupational Safety and Health Act of 1970 (P.L. 01-596).”

1. 16 VAC 25- 50, Boiler and Pressure Vessel Regulation.

Section 40.1-51.6.A. of the Code of Virginia authorizes the Safety and Health Codes Board "...to formulate definitions, rules, regulations and standards which shall be designed for the protection of human life and property from the unsafe or dangerous construction, installation, inspection, operation, maintenance and repair of boilers and pressure vessels in this Commonwealth." In promulgating such rules, the Board shall consider "Standards, formulae and practices generally accepted by recognized engineering and safety authorities and bodies...."

The Boiler and Pressure Vessel regulations are intended to protect life and property through regular inspections of boiler and pressure vessel equipment and to ensure compliance with state laws, rules, and regulations governing the construction, installation, operation, maintenance, and repair of boilers and pressure vessels. Rules and practices codified elsewhere are included within 16 VAC 25-50 via the "Documents Incorporated by Reference" (DIBR). The documents included in the DIBR section are occasionally updated by the boiler and pressure vessel industry to take advantage of the latest technical advance in safety. DOLI intends to take the time needed to review these documents to identify those boiler and pressure vessel industry documents that need to be updated into this regulation. DOLI will bring a complete package back to the board at a later date with recommendations for updating those documents and seek approval to begin the regulatory process required to update DIBR.

This regulation is not overly complex, is clearly written, and does not overlap, duplicate, or conflict with federal or state law or regulation. As a result of this periodic review, the agency determines that the regulation has no negative economic impact on small business.

During the Public Comment Period, the Department received no comments on the Periodic Review of this Regulation.

Recommended Action:

At this time, the Department of Labor and Industry recommends to the Safety and Health Codes Board that this regulation be retained as is. The Department requests that the Safety and Health Codes Board vote to retain with no changes.

2. 16 VAC 25-60, Administrative Regulation for the Virginia Occupational

Safety

and Health Program.

This regulation provides an operational framework of rules and procedures for the administration of the VOSH program such as program jurisdiction, notification and posting requirements, required reporting by employers, access to information, and complaint and discrimination procedures. Also covered are occupational safety and health standards, variances to the standards, inspections, citations and penalties, abatement procedures, and inspection case review and settlement.

This regulation is mandated by state and federal law. The Code of Virginia, section 40.1-22.5, authorizes the Board to adopt, amend, or repeal rules or 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 Occupational Safety and Health Act of 1970.

Section 18 of the Federal Occupational Safety and Health Act (P.L. 91-596) requires the state agency to have a State Plan for the development of occupational safety and health standards and their enforcement. These standards shall be as effective and stringent as the federal OSHA standards. This regulation does not exceed the minimum regulations of the state and federal mandates.

The goals of the regulation are:

- Provide and publish a fair process for enforcing Title 40.1 of the Code of Virginia and the federal Occupational Safety and Health Act.
- Protect the public's health, safety and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

This regulation is effective in achieving the goals in that it provides a clearly written and easily understandable framework for the operation of the Virginia Occupational Safety and Health Program. It includes the Federal OSHA operational requirements for a State Plan state. The regulation provides employers with processes for responding to citations and penalties; requesting variances; and, abating hazardous conditions. It provides employees with processes to provide information on their rights and to file complaints about hazardous work conditions. The regulation has no impact on the institution of the family and family stability.

Since this regulation is mandated by state and federal law, there are no alternatives for achieving the purpose of the regulation.

During the Public Comment Period, the Department received no comments on the Periodic Review of this Regulation.

Recommended Action:

At this time, the Department of Labor and Industry recommends to the Safety and Health Codes Board that this regulation be retained as is. The Department requests that the Safety and Health Codes Board vote to retain with no changes.

3. 16 VAC 25-145, Safety Standards for Fall Protection in Steel Erection, Construction Industry.

The Board adopted **16 VAC 25-145, Safety Standards for Fall Protection in Steel Erection, Construction Industry**, in 2004 as a Virginia unique regulation. While the regulation closely mirrors the federal OSHA requirements, there are two material differences:

1. Virginia requires fall protection at heights of 10 or more feet above a lower-level. The federal regulation requires fall protection at 15 or more feet above a lower-level, and in certain instances up to 30 feet above a lower-level (controlled decking zones (CDZ)).

The Board determined that a more stringent requirement for fall protection in steel erection operations was imperative to protect the health, safety, and welfare of Virginia workers. Prior to OSHA's adoption of the Steel Erection Standard, VOSH cited §§1926.28(a) and 1926.105(a), to require steel erection employers to provide protection for steel erection workers from falls at or above 10 feet. The 10 foot fall protection requirement adopted by the Board provided an equivalent level of protection to steelworkers as is provided to other construction employees working from scaffolds (10 foot fall protection requirement).

NOTE: General fall protection requirements in the construction industry contained in 29 CFR 1926.500-503 require fall protection for employees at 6 feet or more below a lower level. In 2004, the Department considered but did not recommend a 6 foot requirement for steel erection, instead opting for the 10 foot requirement for scaffolds. The 10 foot requirement was also consistent with VOSH longstanding enforcement of §§1926.28(a) and 1926.105(a) in the steel erection industry at the 10 foot level.

Between 2014 and 2023, Virginia investigated at least 26 fatalities in the construction industry caused by falls under 15 feet. Between 2014 and 2023, over 75% of VOSH inspections of steel erection operations resulted in serious, repeat or willful violations and less than 1% resulted in violations cited under §1926.28(a) fall protection, and §1926.105(a) safety nets,, or working from an elevated work platform would have prevented the victim's head from hitting the ground. Between 1983 and 2003, over 50% of VOSH inspections of steel erection operations resulted in serious, repeat, or willful violations and 20% resulted in violations cited under §1926.28(a) fall protection, and §1926.105(a) safety nets.

An exception to the 10-foot fall protection requirement is provided for employees working as “Connectors.” A “Connector” is defined in § 1926.751 as “...an employee who, working with hoisting equipment, is placing and connecting structural members and/or components.” The exception for Connectors is based on VOSH’s determination that during the interval when structural steel beams are in the air being hoisted into position for assembly and joining, a greater hazard may exist if Connectors are tied off rather than giving them freedom of movement to avoid accidental contact with the steel structural pieces as they are hoisted into position for assembly. This exception provides Connectors with the option of utilizing a personal fall arrest system or not when steel is being lifted in the air, if they determine that a greater hazard of injury exists from the swinging steel.

2. Virginia prohibits the use of controlled decking zones (CDZ).

A controlled decking zone, as defined by federal OSHA, allows certain steel workers to be exposed to fall hazards without fall protection up to 2 stories or 30 feet above a lower level, whichever is less (29 CFR 1926.760(c)).

The controlled decking zone (CDZ) provisions in 29 CFR §1926.760(c)), provide no fall protection at the 2 floor or 30 foot height for leading edge decking workers other than training on how to avoid falls. The training of decking workers and limiting access to a work area does not provide equivalent protection to an engineering control or a personal fall arrest system when an employee actually does fall for whatever reason. Although steel erectors may be generally better trained, than the average construction worker to work at heights, when they do fall, the hazard and risk of serious injury or death are exactly the same for a steel erector as for any other construction worker.

Virginia has experienced a number of fatalities and injuries related to decking operations in such work zones (5 fatal accidents between 1995 and 2008 with fall distances of 2 stories, 24.5’, 28’, 28’ and 30’). In 4 of the inspections, fall protection was not provided by the employer and citations were issued. In the 5th inspection, the employer had a 100% fall protection requirement for steelworkers and the victim failed to tie off to a lifeline when returning from lunch and fell through a decking hole.

Determination: The Safety Standards for Fall Protection in Steel Erection, Construction Industry, protect the safety, health, and welfare of the public by limiting worker exposure to hazards. This regulation is not overly complex and is clearly written. There is no negative impact on the regulated community and the regulation does not overlap, duplicate, or conflict with federal or state law. The regulation is more stringent in two respects than the OSHA regulation. As a result of this periodic review, the agency determines that the regulation has no negative economic impact on small business.

During the Public Comment Period, the Department received no comments on the Periodic Review of this Regulation.

Recommended Action:

At this time, the Department of Labor and Industry recommends to the Safety and Health Codes Board that this regulation be retained as is. The Department requests that the Safety and Health Codes Board vote to retain with no changes.

4. 16 VAC 25 –200, Virginia Voluntary Protection Program (VPP)

This is the first Periodic Review of this regulation to be reviewed by DOLI since the regulation' effective date on January 25, 2018.

This regulation is voluntary and outlines the definitions, rules, regulations, and standards required by §40.1-49.13 of the *Code of Virginia*, and necessary for the operation of the Virginia Voluntary Protection Program (VPP) in a manner that will promote and recognize employer implementation of exceptional safety and health management systems throughout the Commonwealth. Historically, employer adoption of the VPP concepts has consistently resulted in injury and illness rates 50-60 % or more below that of the employer's industry as a whole.

This regulation provides requirements for traditional site-based VPP, which 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.

The standards for the VPP include the following requirements for 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."

This regulation addresses the following issues:

- Scope, purpose, and applicability
- Definitions
- Categories of participation (STAR, MERIT, Challenge, etc.);
- 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 and re-certification processes;
- On-site evaluations;
- Annual submissions;
- Other participation requirements;
- Enforcement activity at VPP sites; and
- Withdrawal or termination

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, live and conduct business...by promoting safe, healthful workplaces, best employment practices..." An employer's membership in VPP is recognized as the nation's and Virginia's highest award that can be bestowed by a government agency to an employer for excellence in occupational safety and health management systems.

Virginia VPP currently recognizes 37 VPP sites employing approximately 12,600 employees and 2,100 contractor employees who enjoy the protections and benefits of working in some of the safest and healthiest working conditions in the country. VPP sites also directly impact numerous qualified subcontractors and their employees that work at VPP sites as those companies are required to provide safety and health protections to their employees that are the equivalent to the protections provided to VPP site employees.

VPP also encompasses the following programs which provide interested employers and employees the opportunity to develop and implement exemplary safety and health management systems:

- Challenge – where employers guided by Challenge Administrators through a three stage process, which can prepare a company to achieve VPP STAR status;
- Site-based Construction – for long term construction sites;
- Mobile Workforce – for employers that move from site to site; and
- Corporate - designed for corporate applicants.

This regulation applies to Virginia employers and employees that volunteer to

participate in Virginia VPP. As such, there is no negative impact on Virginia's employers that are not program participants.

Program participants do incur costs associated with developing and implementing safety and health management systems that often exceed current requirements in VOSH laws, standards and regulations; however, the costs are incurred on a voluntary basis.

Employers that take proactive steps to improve safety and health protections for employees can realize significant savings and avoided costs associated with workplace injuries and illnesses. In 2015, the National Safety Council reported that the average cost of a medically consulted occupational injury in 2013 was \$42,000. In 2013, the Washington Post reported that the average net profit margin for all U.S. companies was 8.2 percent. With a net profit margin of 8.2%, a business would need to generate \$512,195 in new revenues to simply pay for the costs of that single injury.

DOLI tracks injury and illness rates for each VPP site on an annual basis. Virginia VPP participating worksites average more than 60% lower injury and illness rates than their non-participating counterparts in their respective industries. 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 for VPP sites have averaged 50 % below that of other worksites in their industry.

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 worksites have demonstrated over many years that VPP participation will:

- substantially reduce workplace injuries and illnesses;
- reduce workers' compensation costs;
- result in a more highly trained and experienced workforce;
- improve company productivity; and
- promote competitiveness in the marketplace.

VPP is available to private and public sector employers of all sizes. For example, it includes the Dominion Power North Anna nuclear facility, which has almost 1,000 employees as well as Veritiv-Lynchburg with approximately ten employees. A

small sample of other participants in the Virginia VPP include: Delta Airlines, Miller Coors, Raytheon, Eastman Chemical Company, and International Paper.

Virginia was the first VPP in the country to recognize 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.

This regulation expands Virginia's VPP to promote safer and healthier workplaces 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.

Once a site has qualified and successfully submitted an application for consideration in the VPP STAR program, final approval requires an intensive weeklong on-site 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 on-site evaluation team of safety and health professionals every 3-4 years to remain in VPP.

This regulation establishes a formal and permanent structure for VPP to assist DOLI in its pursuit of several bold initiatives it hopes will greatly enhance safety and health protections for Virginia's workers.

In 2016, Virginia VPP established a strategic partnership with the Associated General Contractors of Virginia (AGCVA) for the construction industry. Known as Virginia BEST (Building Excellence in Safety, Health and Training), this new recognition program is based on OSHA Challenge concepts and allows for recognition of construction contractors as they progress through three levels of

safety and health management system development. There are currently 12 Virginia BEST participants.

In 2018, the VOSH program established Virginia CHALLENGE, which is a first-of-its-kind program in a state plan which is a step-by-step three-stage process that provides businesses a road map to making a participating worksite one of the safest and healthiest in the country. When a participating site completes the three stages of Virginia CHALLENGE, it will have established an exemplary safety and health management system (SHMS) that will also prepare it to apply for Virginia STAR recognition. There are currently 12 Virginia CHALLENGE participants and 8 VADOC Challenge sites.

In 2018, Virginia VPP established a strategic partnership with the Virginia Department of Corrections (VADOC) based on OSHA Challenge concepts. Virginia is the only VPP program in the country that has two public sector correctional facility STAR sites (Augusta and Lunenburg Correctional Facilities). The goal of the new strategic partnership is to work with and encourage more VADOC worksites to become members of VVPP. Eight correctional facilities are currently participating in VADOC Challenge.

The following correctional facilities/operations are actively participating :

- Baskerville Correctional Center
- Caroline Correctional Unit 2
- Dillwyn Correctional Center
- Green Rock Correctional Center
- Greensville Work Center
- Harrisonburg Men's Community Corrections Alternative Program
- Red Onion State Prison
- Virginia Correctional Enterprises HQ

In 2020 VOSH established a Strategic Partnership with ABCVA to combine Challenge concepts with the ABCVA's STEP (Safety Evaluation and Training Process) program to recognize commercial construction contractors that develop and implement exemplary safety and health management systems. The new partnership, known as Virginia BUILT, Virginia BUILT is designed to encourage and recognize ABC-VA members who voluntarily implement highly effective safety and health management systems to benefit construction workers and reduce or eliminate injuries, illnesses, and fatalities on construction sites in Virginia.

Virginia BUILT's unique approach to workplace safety and health incorporates a "mentorship" program as a key component. The Mentorship Tier is the introductory tier of participation in the partnership for those employers actively working with the ABC-VA Virginia BUILT Council (VBC) to improve their safety and

health management systems to meet VOSH requirements, with the goal of becoming a Tier One participant. Safety and health experts from Tier Two and Tier Three participants serve as the mentors. There are currently 2 Virginia BUILT participants.

During the Public Comment Period, the Department received no comments on the Periodic Review of this Regulation.

Recommended Action

At this time, the Department of Labor and Industry recommends to the Safety and Health Codes Board that this regulation be retained as is. The Department requests that the Safety and Health Codes Board vote to retain with no changes.

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VIRGINIA SAFETY AND HEALTH CODES BOARD
BRIEFING PACKAGE FOR April 9, 2024

DRAFT 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 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 Governor Youngkin's Executive Order 19 (2022), "Development and Review of State Agency Regulations," govern the periodic review of existing regulations. State agencies are required to conduct a periodic review of regulations every four years. Four regulations of the Safety and Health Codes Board have been identified for review in 2024. They are as follows:

1. **16 VAC 25-35:** Regulations Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees.
History: <https://townhall.virginia.gov/L/ViewChapter.cfm?chapterid=2224>
2. **16 VAC 25-55:** Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspector.
History: <https://townhall.virginia.gov/L/ViewChapter.cfm?chapterid=2403>
3. **16 VAC 25-73:** Regulation Applicable to Tree Trimming.
History: <https://townhall.virginia.gov/L/ViewChapter.cfm?chapterid=2517>
4. **16 VAC 25-75:** Telecommunications, General, Approach Distance
History: <https://townhall.virginia.gov/L/ViewChapter.cfm?chapterid=2421>

III. Current Status and Process

These four regulations of the Safety and Health Codes Board have been identified for review in 2024. 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 briefing package 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

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 16 VA 25-35: Regulations Concerning Lead Contractors Notification, Lead Project Permits and Permit Fees; 16 VAC 25-55: Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspector; 16 VAC 25-73: Regulation Applicable to Tree Trimming; 16 VAC 25-75: Telecommunications, General, Approach Distance.

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 14 (2018), "Development and Review of State Agency Regulations".