



COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

Gary G. Pan
COMMISSIONER

Main Street Centre
600 East Main Street, Suite 207
Richmond, Virginia 23219
PHONE (804) 371-2327
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DRAFT AGENDA

SAFETY AND HEALTH CODES BOARD MEETING

In person location:

**Fairfield Public Library
1401 N. Laburnum Avenue
Richmond, Virginia 23223**

Virtual Access for public participation:

**Refer to the Third Page of the Agenda for Instructions
on Registering to Make Public Comment and Meeting Access Information**

**September 18, 2023
10:30 AM**

1. Call to Order and Introductions.
2. Approval of Agenda.
3. Election of Officers.
4. Approval of Minutes for Board Meeting held on June 27, 2023.
5. 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.

6. Old Business.

Status of Periodic Reviews of Certain Regulations

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

Presenter - Cristin Bernhardt

7. New Business.

16VAC 25-85 Federal Identical; Recording and Reporting Occupational Injuries and Illnesses.

- a. Federal Standard 29 CFR Part 1904 2023 1488.
Adopt federal changes by January 1, 2024 through the exempt regulatory process to amend Virginia standard.

Presenter – Princy Doss

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

9. Items of Interest from Members of the Board

10. Meeting Adjournment

PUBLIC PARTICIPATION

This meeting will be held *in person* with the option for the public to attend *virtually*.

If you wish to make an Oral Public Comment during the “Opportunity for the Public to Address the Board” period of this meeting, you must follow the instructions below:

- Oral public comments will be received from those persons who have submitted an email to **Princy.Doss@doli.virginia.gov** no later than **12:00 PM (NOON)** on **September 15, 2023** indicating that they wish to offer either in person or electronic oral comments. Comments may be offered by these individuals when their name is announced by Ms. Doss. Oral comments will be **restricted to 5 minutes** each.
- **For oral comments received electronically:**
 - When logging onto Microsoft Teams each person must register prior to the meeting.
 - If you wish to make an oral comment and will be utilizing the “audio conference only” option to witness the hearing, ***you must provide the phone number you will be calling in from in your email to Ms. Doss*** so that the administrator will know whom to unmute at the appropriate time.
 - Other important information:
 - All parties will be muted until Ms. Doss announces the name of the person who is next to provide an oral comment.
 - All public participation connections will be muted following the public comment periods.
 - Please login from a location without background noise.

Individuals who offer both in person and virtual comments during the Safety and Health Codes Board Meeting on **September 18, 2023** are encouraged to submit a written version of any comments by email to **Princy.Doss@doli.virginia.gov** no later than **5:00 PM** on **September 19, 2023**.

INSTRUCTIONS FOR ATTENDING THE SHCB MEETING VIRTUALLY:

Event registration for attendee: <https://bit.ly/3ZgPwPY>

FOIA Council Electronic Meetings Public Comment form for submitting feedback on this electronic meeting may be accessed at:

<http://foiacouncil.dls.virginia.gov/sample%20letters/welcome.htm>

DRAFT

**SAFETY AND HEALTH CODES BOARD
PUBLIC MEETING MINUTES
Monday, June 27, 2023**

On June 27, 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](#)

A recording of the meeting in its entirety is available on the Virginia Department of Labor and Industry website: [DOLI Virginia Safety and Health Codes Board](#)

BOARD MEMBERS PARTICIPATING:

Mr. Travis Parsons, Acting Vice-Chair
Mr. Lee Biedrycki
Mr. Robert Buchler
Ms. Kelly Bundy
Ms. Julie Henderson (VDH)
Mr. John Giese (DEQ)
Mr. Robert Smith

BOARD MEMBERS ABSENT:

Mr. Jay Abbott
Ms. Lutheria Smith
Mr. Thomas Thurston

STAFF PRESENT:

Mr. Brian Slater, Secretary of Labor
Mr. Gary Pan, Commissioner of Dept. of Labor & Industry
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, & OWB
Ms. Princy R. Doss, Director, Policy, Planning, & Public Information
Mr. Richard White, IT Project Manager
Ms. Cristin Bernhardt, Regulatory Coordinator
Mr. Alex West, Director Litigation
Mr. Ron Graham, Director of VOSH Health Compliance

OTHERS PARTICIPATING:

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

CALL TO ORDER

Vice-Chair Travis Parsons called the meeting to order at 10:30 AM. A quorum was present. Vice-Chair Parsons made 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. Secretary Slater and Commissioner Pan welcomed the board members to the meeting and thanked them for their service to the safety and health of the Virginia workforce.

BOARD MEMBER ROLE CALL

BOARD MEMBER	Present	Absent			
Mr. Jay Abbott		X			
Mr. Lee Biedrycki	X				
Mr. Robert Buchler	X				
Ms. Kelly Bundy	X				
Ms. Julie Henderson (VDH)	X				
Mr. John Giese (DEQ)	X				
Mr. Travis Parsons	X				
Ms. Lutheria Smith		X			
Mr. Robert Smith	X				
Mr. Thomas Thurston		X			
VACANT					
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VACANT					
VACANT					
TOTALS	7	3			

APPROVAL OF AGENDA

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

Motion: Approval of Agenda	Yea	Nay	Abstain	Absent	Other
Mr. Jay Abbott				X	
Mr. Lee Biedrycki					
Mr. Robert Buchler	X				
Ms. Kelly Bundy	X				
Mr. John Giese	X				
Ms. Julie Henderson (VDH)	X				
Mr. Travis Parsons					
Ms. Lutheria Smith	X			X	
Mr. Robert Smith	X				
Mr. Thomas Thurston	X			X	
VACANT					
VACANT					
VACANT					
VACANT					
TOTALS	7			3	

APPROVAL OF MEETING MINUTES

Vice-Chair Parsons then called for discussion and motion for approval of the March 21, 2022 Meeting minutes. He asked the Board if there was any discussion on the March 21, 2022 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.

Motion: Approval of November 14, 2022 Meeting Minutes	Yea	Nay	Abstain	Absent	Other
Mr. Jay Abbott				X	
Mr. Lee Biedrycki	X				
Mr. Robert Buchler	X				
Ms. Kelly Bundy	X				
Mr. John Giese (DEQ)	X				
Ms. Julie Henderson (VDH)	X				
Mr. Travis Parsons	X				
Ms. Lutheria Smith				X	
Mr. Robert Smith	X				
Mr. Thomas Thurston				X	
VACANT					
VACANT					
VACANT					
VACANT					
TOTALS	7			3	

OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD

Vice-Chair Parsons 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 Parsons 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) Report on Periodic Reviews of Certain Regulations

Ms. Bernhardt presented the Board with a Report on certain Periodic Reviews that were noticed by the Board at the December 3, 2021 board meeting. Ms. Bernhardt explained 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](#) govern the periodic review of existing regulations. Six (6) regulations of the Safety and Health Codes Board (Board) were identified for review in 2021.

There was an explanation of the periodic review regulatory process and the Town Hall public comment forum for the Notice of Periodic Reviews that opened May 23, 2022 and closed on June 13, 2022 for the 4 regulations under review. There were no public comments received during the comment period.

Ms. Bernhardt explained to the SHCB that the Office of Regulatory Management (ORM) implemented a new regulatory process requirement for an economic impact analysis that was conducted for the 6 periodic reviews and included in the briefing packages. We will not specifically discuss the economic analysis forms (EAF) but if any board member has any questions we can discuss. Then she went through

the first 2 regulations that were the subject of the periodic reviews to provide the results of the DOLI review conducted as a result of the December 2021 meeting.

1. 16VAC25-20: Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees.

Ms. Bernhardt explained that the purpose of the regulation, which is mandated by statute, is to reduce the incidence of material impairment of the health of Virginians due to exposure to asbestos in the workplace or as an environmental pollutant. This regulation lists the notification requirements for certain asbestos projects conducted by licensed asbestos contractors and provides for the payment of permit fees based on the size of the asbestos project.

A public comment period of 21 days began on May 23, 2022, and closed on June 13, 2022. The Department received no comments. The Department believes the regulation is not overly complex and does not overlap, duplicate, or conflict with federal or state law or regulation. The Department does not believe that economic conditions, or other factors have significantly changed in the area affected by the regulation.

The Department of Labor and Industry believes there is a continued need for this regulation to set and collect sufficient notification fees to support the statutory requirement for the Department "to conduct an on-site unannounced inspection of each licensed asbestos contractor's...procedures in regard to installing, removing and encapsulating asbestos

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 the regulation with no changes.

Vice-Chair Parsons then called for discussion and motion for approval of the Department recommendation to retain 16VAC-25-20 without changes. He asked the Board if there was any discussion. 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.

Motion: Approval of Dept recommendation to retain 16VAC-25-20 without changes	Yea	Nay	Abstain	Absent	Other
Mr. Jay Abbott				X	
Mr. Lee Biedrycki	X				
Mr. Robert Buchler	X				
Ms. Kelly Bundy	X				
Mr. John Giese (DEQ)	X				
Ms. Julie Henderson (VDH)	X				
Mr. Travis Parsons	X				
Ms. Lutheria Smith				X	
Mr. Robert Smith	X				
Mr. Thomas Thurston				X	
VACANT					
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VACANT					

TOTALS	7			3	
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2. 16VAC25-30: Regulations for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos-Containing Construction Wastes

Ms. Bernhardt presented the next regulation on the agenda for periodic review. This regulation adopts and incorporates by reference for state use the federal Environmental Protection Agency’s (EPA) NESHAP regulations that address human exposure to asbestos as a result of air emissions from demolition and renovation, disposal of asbestos containing waste. If the DOLI regulation did not exist, covered employers would still have to comply with the same federal regulatory provisions and be subject to enforcement by either the Virginia Department of Environmental Quality (DEQ) or the federal Environmental Protection Agency (EPA). The purpose of the regulation, which is required so that Virginia regulations can "be at least as stringent as the asbestos regulations passed pursuant to [§ 112 of the Clean Air Act](#)," is to reduce the incidence of material impairment of the health of Virginians due to exposure to asbestos in the workplace or as an environmental pollutant.

A public comment period of 21 days began on May 23, 2022 and closed on June 13, 2022. The Department received no comments. The Department believes the regulation is not overly complex and does not overlap, duplicate, or conflict with federal or state law or regulation. The Department does not believe that economic conditions, or other factors have significantly changed in the area affected by the regulation.

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 the regulation with no changes.

Vice-Chair Parsons then called for discussion and motion for approval of the Department recommendation to retain 16VAC-25-30 without changes. He asked the Board if there was any discussion. There was none. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Motion: Approval of Dept recommendation to retain 16VAC-25-30 without changes	Yea	Nay	Abstain	Absent	Other
Mr. Jay Abbott				X	
Mr. Lee Biedrycki	X				
Mr. Robert Buchler	X				
Ms. Kelly Bundy	X				
Mr. John Giese (DEQ)	X				
Ms. Julie Henderson (VDH)	X				
Mr. Travis Parsons	X				
Ms. Lutheria Smith				X	
Mr. Robert Smith	X				
Mr. Thomas Thurston				X	
VACANT					
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VACANT					
TOTALS	7			3	

Vice Chair Parson introduced Princy Doss, Director of Policy, Planning and Public Information (OPPI) for the Department.

3. 16 VAC 25-40: Standard for Boiler and Pressure Vessel Operator Certification

Ms. Doss presented the next periodic review for consideration by the board. The purpose of the regulation, which is mandated by statute, is to ensure statewide uniformity in the determination of the ability, proficiency and qualifications of boiler and pressure vessel operators certified under a local government ordinance. The regulation identifies a list of core competencies to be verified through written examination and establishes two classes of boiler operator certifications depending on the experience and education of the applicant.

[Va. Code § 15.2-910](#) authorizes a local government, at its option, to require boiler pressure vessel operators to obtain a certification from the locality before engaging in the operation and maintenance of boiler and pressure vessels in its jurisdiction. The Department assumes that economic conditions, or other factors have significantly changed in the area affected by the regulation since, to the Department's knowledge, no locality has chosen to adopt such an ordinance even though the impetus for the statute came from local government entities. The Department does recommend repealing the regulation contingent on the Department successfully obtaining General Assembly approval to repeal [Va. Code § 15.2-910](#).

A public comment period of 21 days began on May 23, 2022 and closed on June 13, 2022. The Department received no comments. The Department believes the regulation is not overly complex and does not overlap, duplicate, or conflict with federal or state law or regulation.

At this time, the Department of Labor and Industry recommends to the Safety and Health Codes Board that this regulation be retained as is while the Department pursues legislative action to repeal the statute. Therefore, the Department requests that the Safety and Health Codes Board vote to retain the regulation with no changes while the Department takes the necessary steps with the General Assembly to repeal [Va. Code § 15.2-910](#).

Vice-Chair Parsons then called for discussion and motion for approval of the Department recommendation to retain 16VAC-25-40 without changes at this time. He asked the Board if there was any discussion. There was none. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Motion: Approval of Dept recommendation to retain 16VAC-25-40 without changes while the Department pursues repeal of the statute Va. Code § 15.2-910 .	Yea	Nay	Abstain	Absent	Other
Mr. Jay Abbott				X	
Mr. Lee Biedrycki	X				
Mr. Robert Buchler	X				
Ms. Kelly Bundy	X				
Mr. John Giese (DEQ)	X				
Ms. Julie Henderson (VDH)	X				
Mr. Travis Parsons	X				
Ms. Lutheria Smith				X	
Mr. Robert Smith	X				

Mr. Thomas Thurston				X	
VACANT					
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TOTALS	7			3	

Vice Chair Parsons introduced Jay Withrow, Director of Legal Support, for the Department to report on the final three regulations for periodic review.

4. 16 VAC 25-70: Virginia Confined Space Standard for the Telecommunications Industry

This regulation establishes the minimum protection for telecommunication workers against exposure to hazardous chemicals and hazardous atmospheres when working in areas defined as confined spaces (utility access holes, etc.). The standard prescribes basic mandatory practices and procedures which employers must establish and use for employee entry into and work within confined spaces, such as requiring atmospheric testing of confined spaces prior to entry, the use of personal protective equipment where necessary, and ventilation of the space to prevent lack of oxygen or accumulation of toxic atmospheres.

Mr. Withrow discussed the adoption history of this Virginia unique standard. During a previous regulatory review in 1996, the Department established an independent review panel to consider the need for the standard or whether it should be eliminated. Based on the analysis of this report, the Department recommended to the Safety and Health Codes Board that the regulation be repealed. However, after review by the Safety and Health Codes Board, the Board rejected that recommendation, finding that employees would not be adequately protected if this regulation was repealed.

The Department believes the standard is not overly complex, and does not overlap, duplicate, or conflict with state law or regulation. The regulation duplicates in part federal OSHA's Telecommunications Standard, providing more stringent protections in certain respects. The Department believes that economic conditions, or other factors may have significantly changed in the area affected by the regulation. The Department recommends that the Board authorize the Department to prepare a Notice of Intended Regulatory Action to consider revision up to and including repeal of portions or the entire standard in light of the above-referenced changed conditions and OSHA interpretations.

The Department also recommends that the Board authorize the Department to appoint a Regulatory Advisory Panel (RAP) pursuant to 16VAC25-11-70 to assist the Department in its review of the standard.¹

¹ **16VAC25-11-20. Definitions.**

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-11-20>

16VAC25-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

Vice-Chair Parsons then called for discussion and motion for approval of the Department recommendation for the changes to 16VAC-25-70 and authorization to appoint a RAP to assist in review of the standard. He asked the Board if there was any discussion. There was none. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Motion: Approval of Dept recommendation for changes to 16VAC-25-70 and authorization to appoint a RAP to assist in review of the standard.	Yea	Nay	Abstain	Absent	Other
Mr. Jay Abbott				X	
Mr. Lee Biedrycki	X				
Mr. Robert Buchler	X				
Ms. Kelly Bundy	X				
Mr. John Giese (DEQ)	X				
Ms. Julie Henderson (VDH)	X				
Mr. Travis Parsons	X				
Ms. Luthera Smith				X	
Mr. Robert Smith	X				
Mr. Thomas Thurston				X	
VACANT					
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VACANT					
TOTALS	7			3	

5. 16 VAC 25-97: Reverse Signal Operation Safety Requirements for Motor Vehicles, Machinery and Equipment in General Industry and the Construction Industry

This regulation establishes requirements for the use of construction and general industry vehicles, machinery, and equipment capable of operating in reverse with an obstructed view, such as requiring that vehicles be generally equipped with reverse signal alarms, procedures for the use of a designated observer or ground guide in certain situations, establishing guidelines for drivers and other employees, and requiring employers provide training to employees.

The Department believes the regulation is not overly complex. The regulation does duplicate in small part federal OSHA's very limited construction and general industry standards addressing back-up hazards on off-road worksites only but provides more stringent protections in other respects. The standard does not overlap, duplicate, or conflict with state law or regulation.

Except for the disruptions related to the COVID-19 pandemic and its aftermath, the Department does not believe that economic conditions, or other factors have significantly changed in the area affected by the regulation. The Department believes there is a continued need for the standard because of its history in

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
 2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.
- <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-11-70>

lowering fatal accident rates and because of the lack of a comprehensive federal OSHA standard applicable across affected industries.

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 the regulation with no changes.

Vice-Chair Parsons then called for discussion and motion for approval of the Department recommendation to retain 16VAC-25-97 without changes. He asked the Board if there was any discussion. There was none. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Motion: Approval of Dept recommendation to retain 16VAC-25-97 without changes	Yea	Nay	Abstain	Absent	Other
Mr. Jay Abbott				X	
Mr. Lee Biedrycki	X				
Mr. Robert Buchler	X				
Ms. Kelly Bundy	X				
Mr. John Giese (DEQ)	X				
Ms. Julie Henderson (VDH)	X				
Mr. Travis Parsons	X				
Ms. Lutheria Smith				X	
Mr. Robert Smith	X				
Mr. Thomas Thurston				X	
VACANT					
VACANT					
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VACANT					
TOTALS	7			3	

6. 16 VAC 25-160: Construction Industry Standard for Sanitation

The Virginia Construction Sanitation Standard requires construction employers to provide potable drinking water, handwashing facilities, and toilet facilities that meet more stringent requirements than those set forth by the federal OSHA regulation, [1926.51](#).

The Department believes that economic conditions, or other factors may have significantly changed in the area affected by the standard. Since the original adoption the Virginia standard, federal OSHA has revised its standard which now contains some provisions that are not in 16 VAC 25-160:

- Employee showers when required elsewhere in the construction standards
- Food handling
- Temporary sleeping quarters (when provided)
- Showers (when required by another Construction Industry standard)
- Change rooms (when required by another Construction Industry standard)

The Department believes there is a continued need for certain parts of the standard, but also believes there is an opportunity to streamline its requirements, and consider adoption of federal identical provisions which are currently not addressed by the Virginia standard, while also maintaining certain safety and health requirements that would assure that construction workers are protected at the same level as other Virginia workers (e.g., agricultural field workers).

The Department recommends that the Board authorize the Department to prepare a Notice of Intended Regulatory Action to consider revision up to and including repeal of portions or the entire standard in light of the above-referenced changed conditions and OSHA interpretations.

The Department also recommends that the Board authorize the Department to appoint a Regulatory Advisory Panel (RAP) pursuant to 16VAC25-11-160 to assist the Department in its review of the standard.

Vice-Chair Parsons then called for discussion and motion for approval of the Department recommendation for the changes to 16VAC-25-160 and authorization to appoint a RAP to assist in review of the standard. He asked the Board if there was any discussion.

Ms. Henderson asked Mr. Withrow if he was familiar with the food handling issues for construction sites. Mr. Withrow indicated he did not know off the top of his head and would need to pull up the federal standard. Ms. Henderson said there was no need but indicated that VDH often see job sites unpermitted and unregulated in sale of food and they are frequently chasing that down and was interested in the requirements. Ms. Henderson indicated that VDH regulations do require mobile food units to be under permit but see the issues with people selling out of the back of their cars on the job sites. Mr. Withrow mentioned that he believes part of the federal standard involves the environment or exposure to chemicals, etc as far as location requirements for where employees can eat. Basically providing for a clean space for employees to eat as opposed to the food itself. That is what OSHA would be interested in their focus.

Vice-Chair Parsons then asked for motion for approval of the Department recommendation for the changes to 16VAC-25-160 and authorization to appoint a RAP to assist in review of the standard. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Motion: Approval of Dept recommendation for changes to 16VAC-25-160 and authorization to appoint a RAP to assist in review of the standard.	Yea	Nay	Abstain	Absent	Other
Mr. Jay Abbott				X	
Mr. Lee Biedrycki	X				
Mr. Robert Buchler	X				
Ms. Kelly Bundy	X				
Mr. John Giese (DEQ)	X				
Ms. Julie Henderson (VDH)	X				
Mr. Travis Parsons	X				
Ms. Lutheria Smith				X	
Mr. Robert Smith	X				
Mr. Thomas Thurston				X	

VACANT					
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TOTALS	7			3	

Vice-Chair Parsons moved to the next item on the agenda under Old Business. He introduced Princy Doss, Director, OPPPI to address the Board.

(b) Status of Periodic Reviews of Certain Regulations

Princy Doss, Director of OPPPI 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 Parsons 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

Commissioner Pan addressed the Board to announce the Boiler and Pressure Vessel Inspector meeting being held on June 28, 2023 from 10 am – 2 pm at the Virginia War Memorial in Richmond, Virginia. This meeting is being hosted by Virginia Department of Labor and Industry. Everyone on the Board is invited to attend this event. This will be first time in four years that we have collected this group of people and a great opportunity to collaborate more with our inspectors and maintaining safe practices in inspection throughout the Commonwealth.

ITEMS OF INTEREST FROM MEMBERS OF THE BOARD

Vice-Chair Parsons asked for items of interest from the Members of the Board. Julie Henderson wanted to thank Jay Withrow and his team during the pandemic and how they advised and supported the SHCB and partnership with VDH in education and enforcement as it pertained to the protections and executive orders. She enjoyed developing the relationships and it was a great partnership. Vice-Chair Parsons echoed her sentiments.

Commissioner Pan emphasized one of the goals of the Department is to be proactive with marketing, education, social media, and the promotion of safe practices, particularly in high hazard industry areas. The Department is developing a campaign to promote positive programs in the area of cooperative and consultation services.

Vice Chair Parsons asked about the trenching in excavation initiatives with the rash of incidents nationwide and concern from OSHA to increase inspection and enforcement. Mr. Withrow explained that DOLI has an emphasis program in trenching for quite a while. Federal OSHA recently revised their trenching emphasis program because there was quite a national surge at one point. Fortunately, we have not experienced that surge in Virginia. However, the Department will be updating our Directive on Trenching to add a few items from the federal program.

MEETING ADJOURNMENT

Vice-Chair Parsons adjourned the meeting at 11:50 am.

DRAFT



COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

Gary G. Pan
COMMISSIONER

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

For September 18, 2023

Improve Tracking of Workplace Injuries and Illnesses, §1904.41
Final Rule

I. Action Requested

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board consider for adoption 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. 139,² And as authorized by Virginia Code §§ 40.1-22(5)³ and 2.2-4006.A.4(c)⁴, 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.

II. Summary of the Final Rule

In general, OSHA regulations at Part 1904 currently require employers with 11 or more employees in most industries to keep records of work-related injuries and illnesses at their establishments to help these employers and their employees identify hazards, fix problems and prevent additional injuries and illnesses. Employers covered by these rules must prepare the following forms for each case: OSHA Forms 300⁵ – *Log of Work-Related Injuries and Illnesses*, 300A – *Summary of Work-Related Injuries and Illnesses*, and 301 – *Injury and Illness Incident Report*.

² 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

³ § 40.1-22. Safety and Health Codes Commission continued as Safety and Health Codes Board. <https://law.lis.virginia.gov/vacode/40.1-22/>

⁴ § 2.2-4006. Exemptions from requirements of this article. <https://law.lis.virginia.gov/vacode/2.2-4006/>

⁵ OSHA's recordkeeping forms. <https://www.osha.gov/recordkeeping/forms>

OSHA currently obtains the injury and illness data entered on the three recordkeeping forms through onsite inspections which collect only the data from the individual establishments being inspected. OSHA also receives Forms 300A – *Summary of Work-Related Injuries and Illnesses*, through its Injury Tracking Application (ITA)⁶ from establishments required to submit them.

A. Update 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.
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)⁷ 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:

⁶ OSHA’s Injury Tracking Application (ITA) <https://www.osha.gov/injuryreporting>

⁷ Employer ID Numbers (EIN). <https://www.irs.gov/businesses/small-businesses-self-employed/employer-id-numbers>

- 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

B. Applicability to Public Sector Employers

16VAC25-60-30⁸, Applicability to Public Employers, provides that:

A. All occupational safety and health standards adopted by the board shall apply to public employers and their employees in the same manner as to private employers.

16VAC25-60-10, Definitions, defines “public employer” as:

Public employer" means the Commonwealth of Virginia, including its agencies, authorities, or instrumentalities or any political subdivision or public body.

Determining the size of a public sector employer’s “establishment” must be done in the same manner that the 1904 regulation is applied to private sector employers.

III. Basis, Purpose and Impact of the Amendment

A. Basis and History

The Safety and Health Codes Board is authorized by Va. Code § 40.1-22(5) to:

(5) ...with the advice of the Commissioner,...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 Occupational Safety and Health Act of 1970 (P.L. 91-596), and as may be necessary to carry out its functions established under this title. The Commissioner shall enforce such rules and regulations. All such rules and regulations shall be designed to protect and promote the safety and health of such employees. 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 Occupational Safety and Health Act of 1970 (P.L. 91-596). In addition to the attainment of the highest degree of health and safety

⁸ 16VAC25-60-30. Applicability to public employers.

<https://law.lis.virginia.gov/admincode/title16/agency25/chapter60/section30/>

protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired. Such standards when applicable to products which are distributed in interstate commerce shall be the same as federal standards unless deviations are required by compelling local conditions and do not unduly burden interstate commerce.

OSHA's regulations on recording and reporting occupational injuries and illnesses were first issued in 1971. This regulation requires the recording of work-related injuries and illnesses that involve death, loss of consciousness, days away from work, restriction of work, transfer to another job, medical treatment other than first aid, or diagnosis of a significant injury or illness by a physician or other licensed healthcare professional.

From 1997 to 2012, OSHA used the authority in the previous §1904.41, *Annual OSHA injury and illness survey of ten or more employers*, to collect establishment-specific injury and illness data through the OSHA Data Initiative (ODI). OSHA then used this information to identify and target the most hazardous worksites in their Site Specific Targeting (SST) planned inspection program⁹.

In 2013, OSHA issued a proposed rule to improve tracking of workplace injuries and illnesses through the electronic collection of establishment-specific injury and illness data. After considering public comments, OSHA issued a final rule that requires certain employers to electronically submit injury and illness data.

In 2014, OSHA again amended the Part 1904 regulations to require employers to report work-related fatalities, in-patient hospitalizations and losses of an eye to OSHA and to allow electronic reporting.

On May 12, 2016, OSHA issued an amendment to the regulations established in 2014 requiring employers with 250 or more employees to submit their OSHA Forms 300, 300A, and 301 to OSHA or OSHA's designee annually and electronically. In this amendment, OSHA also noted that employers with 20-249 employees in certain high-hazard industries were similarly required to submit their OSHA Forms 300, 300A, and 301 to OSHA or an OSHA designee annually and electronically.

In 2019, OSHA amended the regulations once more to remove the requirement for establishments with 250 or more employees to report their OSHA 300 and 301 Forms electronically once a year, requiring only the 300A logs to be submitted.

⁹ OSHA's Site Specific Targeting program uses data from the Information Tracking Application to create a "planned" inspection program for its enforcement program in general industry. [Site-Specific Targeting \(SST\)](#) ([osha.gov](https://www.osha.gov))

After proposing the current final rule to require establishments with 100 or more employees in certain industries to report annually and electronically their OSHA Forms 300 and 301, OSHA released the proposal for public comment. This proposal also included the amendment that establishments must include their company name alongside their establishment name and EIN on their respective submission each year. Ultimately, OSHA decided to move forward in issuing the current amendment to the regulation as outlined in section 2, part A of this briefing.

B. Purpose

Authority has been granted to OSHA to gather employer data on work-related injuries and illnesses in the interest of furthering occupational safety and health standards: “The OSH Act authorizes the Secretary of Labor to issue two types of occupational safety and health rules: standards and regulations. Standards, which are authorized by Section 6 of the Act (29 U.S.C 655), aim to correct identified workplace hazards, while regulations further the general enforcement and detection purposes of the OSH Act.”¹⁰

In addition to this “The prior policy, contained within the 2019 final recordkeeping rule, represented a return to the pre-2016 status quo wherein large employers were not required to submit their Form 300 and 301 information to OSHA.”¹¹

1. Establishments with 100 or more employees:

OSHA found that maintaining the universe of large establishments required to submit data from Form 300A, as in previous years, would cause no new burden on employers. This decision was made to avoid confusion amongst employers regarding what is required of them. This information was maintained as necessary to collect in the interest of occupational safety.

In order to improve data collection related to work-related injuries and illnesses, OSHA decided to expand the universe of employers who report their injury and illness data. Regarding the inclusion of employers in certain industries with 100 or more employees OSHA stated that “[we] sought to balance the utility of the information collection for enforcement, outreach, and research, on the one hand, and the burden on employers to provide the information to OSHA, on the other hand”¹². They also pointed out that “The 100 or more-employee threshold will allow OSHA to strike an appropriate balance between the total number of establishments required to submit case-specific data to OSHA and the total number of injury and illness cases collected...”¹³

¹⁰ OSHA “Improve Tracking of Workplace Injuries and Illnesses” Federal Register Vol. 88, No. 139, Friday, July 21, 2023, p. 47258

¹¹ Ibid, p. 47259

¹² Ibid, p. 47266

¹³ Ibid, p. 47271

They note that any reduction in this number of employees required to submit would place a burden on smaller employers, thus the decision to make the threshold 100 or more employees was implemented.

2. Publishing Forms 300 and 301: Confidentiality

The issue of confidentiality has been approached in this final rule regarding employer identification. Employer's will now be required to submit their company name on the Forms alongside their establishment name and their EIN. OSHA plans to publish data from these submissions, only after identifying and removing any "information that could reasonably be expected to identify individuals directly"¹⁴.

Including the company name on the data submission allows for compliance officers, safety consultants, and researchers to better access important data pertaining to their region. Establishment-specific information is already available on OSHA's website, and this requirement follows the same precedent.

The publishing of this data is subject to Federal Law including the Freedom of Information Act (FOIA) and will be treated accordingly. OSHA will not be publishing establishment-specific data found on the left side of Form 301. The published information will be run through de-identification technology to protect the privacy of the employees: "...OSHA is now better able to collect, analyze, and publish data from Forms 300 and 301, and advances in technology have reduced the risk that information that could reasonably be expected to identify individuals directly will be disclosed to the public."¹⁵

By requiring certain employers to submit their OSHA Forms 300 and 301, more detailed information on high hazard industries will be collected. This will allow for nuance and more specific data to inform occupational health and safety research and regulations in the future. "OSHA believes that the inclusion of more information about the specific cases (rather than the summary information from forms 300A) will mitigate against potential misunderstandings, because the public can use that information to determine the circumstances that led to the injury or illness."¹⁶ OSHA found that focusing recordkeeping efforts to higher hazard industries will better focus data collection efforts where research will have a higher impact. Less hazardous industries in turn will face less burden.

3. Updates to Industry Codes in Appendix A

OSHA explained that the revision of the NAICS codes in Appendix A "would not affect which industries were required to provide their data, but rather simply reflect the

¹⁴ Ibid, p. 47271

¹⁵ Ibid, p. 47279

¹⁶ Ibid, p. 47271

updated 2017 NAICS codes.”¹⁷ This update promotes consistency and OSHA agrees that “it is practical and logical to align the industry list in appendix A with more recent NAICS codes.”¹⁸

C. Impact on Employers

The final rule impacts employers as follows:

- The new provisions require most employers to electronically submit the information they have already collected and recorded to OSHA.
- The electronic submission requirements do not add to or change any employer’s obligation to complete, retain, and certify injury and illness records. There is no additional burden on employers.
- It does not add to or change the recording criteria or definitions for these records.
- Industries have been added to the high-hazard industry list for employers that need to submit OSHA 300 and 301 data.
- The establishments listed in Appendix B have been selected from high-hazard industries listed in Appendix A, so the establishments already have experience collecting and submitting data to OSHA.
- Employers must include their legal company name in their electronic submission.
- Establishments subject to the additional requirements in the final rule already have experience submitting data to OSHA electronically.

With these new requirements, OSHA expects to receive injury-specific data from approximately 52,092 establishments on approximately 766,257 injury and illness cases¹⁹. In order to facilitate the recording, OSHA will be introducing a new electronic system to collect the OSHA Forms 300 and 301 case-specific data prior to the effective date.

D. Impact on Employees

The final rule impacts employees as follows:

- Using data newly accessible under this final rule, potential employees could examine the injury and illness records of establishments where they are interested in working to help make a more informed decision about a future place of employment.
- Employees privacy concerns are paramount and to address any concerns OSHA has taken the following steps:
 - OSHA will not collect worker names and addresses.
 - OSHA will convert birth dates to age and discard birth dates.
 - OSHA will withhold from publication the information on age, gender, date hired, and whether the worker was treated in an emergency room and/or hospitalized overnight as an in-patient.

¹⁷ Ibid, p. 47264

¹⁸ Ibid, p. 47264

¹⁹ Ibid, p. 47269

- OSHA will use automated information technology to detect and remove any remaining information that could directly identify workers.

According to the Bureau of Labor Statistics' (BLS) Survey of Occupational Injuries and Illnesses (SOII), in 2021, workers experienced 2.6 million recordable nonfatal injuries and illnesses at work²⁰. There are approximately 22 million workers in the establishments covered by the more detailed reporting requirements for establishments in certain high-hazard industries with 100 or more employees. The final rule will allow for the study of a larger data set that can pinpoint trends in the changing world of occupational safety and health. In turn, these will help keep Virginia's workers safe and healthy with better interventions and safeguards in place.

E. Impact on the Department of Labor and Industry

The final rule impacts the Department of Labor and Industry as follows:

- VOSH believes that having workplace injury and illness information reported online will help the agency improve safety and health without additional inspections.
- The information VOSH gets about workplace injuries and illnesses under the new rule will help point VOSH toward where workers are most at risk.
- The rule will also provide VOSH with data to assist the agency in improving allocation of compliance assistance by:
 - Helping VOSH to identify employers who want to improve their safety standards and better "target" its limited enforcement resources.
 - Expanding the agency's ability to identify, target and remove safety and Health hazards, thereby preventing workplace injuries, illnesses, and deaths.
 - Enabling the agency to conduct more rigorous evaluations of the impact of OSHA and VOSH injury prevention activities.

OSHA projects that the addition of the establishments with 100 or more employees required to submit OSHA 300 and 301 forms will enable it to receive data on 750,000 injury and illness cases per year²¹. This data in turn will allow VOSH to target enforcement for preventative outreach in communities.

Federal regulations 29 CFR 1953.4(b)²² and 1953.5(a)(1)²³ require that State Plans such as 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

²⁰ "Employer-Reported Workplace Injuries and Illnesses, 2021." Economic News Release. *U.S. Bureau of Labor Statistics*, 9 Nov., 2022

www.bls.gov/iif/#:~:text=In%202021%2C%20employers%20reported%202.6,to%20365%2C200%20cases%20in%202021. Accessed 14 Aug. 2023.

²¹ OSHA "Improve Tracking of Workplace Injuries and Illnesses" Federal Register Vol. 88, No. 139, Friday, July 21, 2023, p.47275, www.osha.gov/sites/default/files/laws-regs/federalregister/2023-07-21.pdf.

²² Under OSHA Standard 1953 on Changes to State Plans, 1953.4 is on submission of plan supplements. <https://www.osha.gov/laws-regs/regulations/standardnumber/1953/1953.4>

²³ Under OSHA Standard 1953 on Changes to State Plans, 1953.5 is on special provisions for standards changes. <https://www.osha.gov/laws-regs/regulations/standardnumber/1953/1953.5>

change. The Virginia Code reiterates this requirement in §40.1-22(5).²⁴ Adopting these revisions will allow Virginia to conform to the federal program change.

F. Benefits

The primary goal of the new requirements is to gather a larger data set on workplace safety and health that can inform the decision-making processes of a myriad of actors and ultimately reduce the number of workplace injuries and illnesses. Thus, OSHA believes that the annual benefits significantly exceed the annual costs. The benefits generally are:

- Improving the ability of stakeholders, including employees, potential employees, workplace safety professionals, and the public, to make more informed decisions about workplace safety and health using recent establishment-specific, case-specific, injury/illness information.
- Improving the quality of data by expanding the type of data collected and getting a larger data set which analysts can use to increase their sample size for studies.
- Offering a centralized data repository with expanded access to case-specific and establishment-specific injury and illness data
 - If each state were to create their own data collection division the endeavor would be costly, inefficient and lack the standardization necessary to compare datapoints across different states and nationally.
- Providing more complete information to all interested parties by addressing the problem of information asymmetry in the labor market where the businesses with the greatest problems have the lowest incentive to self-disclose.
- Allowing the public to use and benefit from the data by providing online access.
- Creating a database that will provide the use of establishment-specific data without having to work under the restrictions imposed by the BLS for use of confidential data, and,
- Accessing injury and illness classifications that are not currently available from any other source including the BLS SOII. This primarily applies to case-specific injury and illness data for cases that did not result in days away from work or days of job transfer or restriction.

There are also additional benefits for specific groups including employers, employees, government agencies and other interested parties (including researchers, employee representatives, potential employees, customers, potential customers, workplace safety and health consultants etc.)

Benefits to Employers

- Improves employers' ability to prevent injuries and illnesses among their employees.
- Provides employers with the ability to upload information electronically and to help facilitate this, OSHA will provide resources such as FAQs, job aids and fact sheets once the rule is published.
- Identifies emerging problems in the workplace.
- Improves the ability of employers to compare their own injury and illness data on hazards with the data at other establishments in the same industry.

²⁴ § 40.1-22. Safety and Health Codes Commission continued as Safety and Health Codes Board.
<https://law.lis.virginia.gov/vacode/40.1-22/>

- Allows for the use of data to instill workplace interventions to prevent safety and health incidents since the cost of an incident on employers goes beyond the cost of the injured or ill employee(s).
- Incentivizes the employer to improve their safety record to support their reputation.
- Improves the quality of the information and lead employers to increase workplace safety and health.

Benefits to Employees

- Allows employees access to information about the workplace without having to ask their employer, avoiding the risk of possible retaliation.
- Allows employees to review information about their workplace without necessarily having to consider other identifying information about a person which may be perceived as intrusive.
- According to BLS's Survey of Occupational Injuries and Illnesses (SOII), in 2021, employees experienced 2.6 million recordable nonfatal injuries and illnesses at work²⁵.
 - This information will help OSHA and VOSH use their enforcement and compliance assistance resources more effectively by enabling OSHA to identify the workplaces where workers are at greatest risk.
 - In addition, OSHA and VOSH will be able to use the information to identify emerging hazards, support an agency response, and reach out to employers whose workplaces might include those hazards.

Benefits to Government agencies

- Improves workplace safety and health by including data from OSHA Forms 300 and 301 by allowing OSHA and VOSH to use their resources more effectively.
 - Enables the agencies to identify workplaces where workers are at greatest risk from specific hazards allowing both agencies to target compliance assistance and enforcement efforts accordingly.
- Increases OSHA's effectiveness and efficiency by providing establishment-specific, case-specific injury and illness data for analyses that are not currently possible, such as an assessment of changes in types and rates of particular injuries or illnesses in a particular industry over time, or rigorous evaluations of different types of programs, initiatives, and interventions in different industries and geographic areas.
- Increases the agencies' ability to identify and respond to emerging hazards.
- Supports private-sector outreach to establishments, through VOSH cooperative programs for example, that could benefit and support the development of innovative ideas in the private sector for improving workplace safety and health, particularly related to management practices, the financial status of employers, and software development.
- Enables the agency to access establishment-specific, case-specific injury and illness data to interact directly with establishments with specific hazards, through enforcement and/or outreach activities, to address and abate the hazards.

²⁵ "Employer-Reported Workplace Injuries and Illnesses, 2021." Economic News Release. *U.S. Bureau of Labor Statistics*, November 9, 2022, [www.bls.gov/iif/#:~:text=In%202021%2C%20employers%20reported%202.6,to%20365%2C200%20cases%20in%202021](https://www.bls.gov/iif/#:~:text=In%202021%2C%20employers%20reported%202.6,to%20365%2C200%20cases%20in%202021.). Accessed 14 Aug. 2023.

- Increases the amount of information available for analysis and results in more accurate statistics regarding work-related injuries and illnesses, including more detailed statistics on injuries and illnesses for specific occupations and industries.
- Allows for the use of workplace safety and health information in tandem with BLS data to understand workplace injury and illness trends.
- Allows government agencies to identify companywide workplace injury and illness trends by using the company name as a signifier.

Benefits to Other Interested Parties

- Allows employers, employees, employee representatives, government, and researchers to use the information obtained through this final rule, to be better able to identify, target, and remove workplace safety and health hazards and thereby prevent worker injuries and illnesses.
- Provides more complete information to job seekers and reducing a problem of information asymmetry in the labor market, where the businesses with the greatest problems have the lowest incentive to self-disclose.
- Improves research on the distribution and determinants of workplace injuries and illnesses.
- Increases the public-health surveillance information available for use by county, state and territorial Departments of Health and other public institutions charged with injury and illness surveillance.
- Enables public access to establishment-specific, case-specific injury and illness data that will allow employers, employees, potential employees, employee representatives, customers, potential customers, and the general public to make more informed decisions about workplace safety and health at a given establishment.
- Incentivizes employers to address workplace related injury concerns proactively
 - OSHA believes that disclosure of and public access to these data will “nudge” some employers to abate hazards and thereby prevent workplace injuries and illnesses, without OSHA having to conduct onsite inspections.
- Allows the public, including employees and potential employees, researchers, employers, unions, and workplace safety and health consultants, to use and benefit from the data through online access.
- Provides a dataset allowing for the use of establishment-specific data without having to work under the restrictions imposed by BLS for the use of confidential data.
- Provides data on injury and illness classifications that are not currently available from any source, including the BLS SOII.
 - Specifically, under this collection, there would be case-specific data for injuries and illnesses that do not involve days away from work, job transfer or restriction. The BLS case and demographic data is limited to cases involving days away from work, job transfer or restriction and a small subset of cases involving restricted work activity.

G. Cost Estimates

	National	VA
Total annualized costs of the final rule	\$ 7,651,818	\$202,970.76
Total annualized costs to	\$7,098,120	\$188,283.46

affected establishments

Annualized costs for electronic submissions for affected establishments with 100 or more employees \$6,900,030 \$183,028.96

Fully implemented, the first-year economic cost for all provisions of the final rule \$2,591,299 \$68736.33

OSHA estimates that the total cost for implementing the final rule to the Federal government will be \$553,698. While OSHA anticipates that there will be some costs to employers affected by the final rule who use custom recordkeeping software to implement the new changes, employers who use commercially available software are unlikely to incur any additional charges.

Amendments to the recordkeeping regulation in §1904.41 is the only new requirement in the final rule. This is the only update that imposes new costs on employers. The additional cost to establishments for submitting the OSHA 300 and 301 forms is estimated to be \$136 per year per establishment. This is not expected to create undue financial burden on the establishments. OSHA anticipates that other changes to the requirements in this final rule will incur non-substantive charges.

TABLE 3—TOTAL COST SUMMARY

Cost element	Annual cost	One-time cost
Annual electronic submission of OSHA Form 300 Log and OSHA Form 301 Incident Report by establishments with 100 or more employees in designated industries.	\$6,900,030	\$0
One-Time Rule Familiarization Cost	NA	532,257
Annualized 10 yr at 7%	75,781	NA
Annualized 10 yr at 3%	62,397	NA
One-Time Software Upgrade	NA	859,042
Annualized 10 yr at 7%	122,308	NA
Annualized 10 yr at 3%	100,706	NA
Total Private Sector Costs ***	7,098,120	1,391,299
<i>Average Cost per 52,092 Establishments</i>	<i>136</i>	<i>NA</i>
Processing of annual electronic submissions of OSHA 300/301.	128,360	0
Annual Contractor Software Support	50,000	0
Annual Government Software Support	204,485	0
One-Time Software Design and Development	NA	1,200,000
Annualized 10 yr at 7%	170,853	NA
Annualized 10 yr at 3%	140,677	NA
Total Government Costs ***	553,698	1,200,000
Total *	7,651,818	2,591,299

* One-time costs are annualized and appear in annual cost column; the one-time cost is not an additional cost.
 ** Annualized over 10 years at 7%.

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H. Economic Feasibility

²⁶ For more in depth analysis of how OSHA calculated the cost, see Improve Tracking of Workplace Injuries and Illnesses; Final Rule, 88 FR 139. This can be found [2023-07-21.pdf \(osha.gov\)](https://www.federalregister.gov/documents/2023/07/21/2023-07-21.pdf). The cost analysis can be found at pages 47334-47342.

OSHA concluded that the final rule will be economically feasible, and certified that this final rule will not have a significant economic impact on a substantial number of small entities. For establishments with 100 or more employees mentioned in the industries in appendix B, the average cost of additionally submitting information from OSHA Forms 300 and 301 will be roughly \$136 per year per establishment. These costs will not affect the economic viability of these establishments²⁷.

I. Technological Feasibility

The final rule is technologically feasible since OSHA will provide an electronic system to record occupational injuries and illnesses and to maintain OSHA Forms 300, 301 and 300A. OSHA will also provide resources to employers to help them submit their data including FAQs, job aids and fact sheets once the final rule is published. The new provisions only require employers to submit to OSHA electronically the information they have already recorded. Many of these employers already have experience submitting this data electronically either through the OSHA Data Initiative (ODI) or through the BLS Survey of Occupational Injuries and Illnesses.

OSHA believes that establishments with 100 or more employees have the necessary personnel and IT resources to complete with the electronic submission requirements in the final rule.

OSHA is also better equipped to collect, analyze, and publish data electronically and has technology that can be reasonably expected to reduce the risk that information could be used to identify individuals directly. OSHA has also signaled the intention to use automated systems, as they do at the BLS, to code information in the text fields, for example, the nature of injury. For example, all injuries which are related to hip fractures due to a slip and fall on a stable surface will be coded the same. This will allow for better data analysis – as all slip and fall hip injuries in workplaces will be accounted for in the same manner.

Contact Person

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²⁷ OSHA “Improve Tracking of Workplace Injuries and Illnesses” Federal Register Vol. 88, No. 139, Friday, July 21, 2023, p. 47343

RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends 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.

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.

DRAFT

Improve Tracking of Workplace Injuries and Illnesses; Final Rule

As Adopted by the
Safety and Health Codes Board

Date:



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: January 1, 2024

When the regulations, as set forth in the Final Rule for the Clarification of Employer’s Continuing Obligation To Make and Maintain an Accurate Record of Each Recordable Injury and Illness, 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

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

January 1, 2024

January 21, 2024

DRAFT

Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508), and the Department of Labor's NEPA Procedures (29 CFR part 11). As a result of this review, OSHA has determined that the final rule will have no significant adverse effect on air, water, or soil quality, plant or animal life, use of land, or other aspects of the environment.

X. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this final rule in accordance with Executive Order 13175 (65 FR 67249 (Nov. 9, 2000)) and determined that it does not have “tribal implications” as defined in that order. The rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

List of Subjects in 29 CFR Part 1904

Health statistics, Occupational safety and health, Reporting and recordkeeping requirements.

Authority and Signature

This document was prepared under the direction of Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. It is issued under Sections 8 and 24 of the Occupational Safety and Health Act (29 U.S.C. 657, 673), Section 553 of the Administrative Procedure Act (5 U.S.C. 553), and Secretary of Labor's Order No. 8–2020 (85 FR 58393 (Sept. 18, 2020)).

Signed at Washington, DC, on July 12, 2023.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

For the reasons stated in the preamble, OSHA amends part 1904 of chapter XVII of title 29 as follows:

PART 1904—[AMENDED]

Subpart E—Reporting Fatality, Injury and Illness Information to the Government

- 1. The authority citation for part 1904, subpart E, is revised to read as follows:

Authority: 29 U.S.C. 657, 673, 5 U.S.C. 553, and Secretary of Labor's Order No. 08–2020 (85 FR 58393, Sept. 18, 2020) or 1–2012 (77 FR 3912, Jan. 25, 2012), as applicable.

- 2. Amend § 1904.41 as follows:

- a. Revise paragraphs (a)(1) and (2) and (b)(1);
- b. Add paragraphs (b)(9) and (10); and
- c. Revise paragraph (c).

The revisions and additions read as follows:

§ 1904.41 Electronic submission of Employer Identification Number (EIN) and injury and illness records to OSHA.

* * * * *

(a) * * *

(1) *Annual electronic submission of information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses.* (i) If your establishment had 20–249 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to subpart E of this part, then you must electronically submit information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the form.

(ii) If your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must electronically submit information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the form.

(2) *Annual electronic submission of information from OSHA Form 300 Log of Work-Related Injuries and Illnesses and OSHA Form 301 Injury and Illness Incident Report by establishments with 100 or more employees in designated industries.* If your establishment had 100 or more employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix B to subpart E of this part, then you must electronically submit information from OSHA Forms 300 and 301 to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the forms.

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(b) * * *

(1) *Does every employer have to routinely make an annual electronic submission of information from part 1904 injury and illness recordkeeping forms to OSHA?* No, only three categories of employers must routinely

submit information from these forms. The first category is establishments that had 20–249 employees at any time during the previous calendar year, and are classified in an industry listed in appendix A to this subpart; establishments in this category must submit the required information from Form 300A to OSHA once a year. The second category is establishments that had 250 or more employees at any time during the previous calendar year, and are required by this part to keep records; establishments in this category must submit the required information from Form 300A to OSHA once a year. The third category is establishments that had 100 or more employees at any time during the previous calendar year, and are classified in an industry listed in appendix B to this subpart; establishments in this category must also submit the required information from Forms 300 and 301 to OSHA once a year, in addition to the required information from Form 300A. Employers in these three categories must submit the required information by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form (for example, 2024 for the 2023 form(s)). If your establishment is not in any of these three categories, then you must submit the information to OSHA only if OSHA notifies you to do so for an individual data collection.

* * * * *

(9) *If I have to submit information under paragraph (a)(2) of this section, do I have to submit all of the information from the recordkeeping forms?* No, you are required to submit all of the information from the forms *except* the following:

(i) Log of Work-Related Injuries and Illnesses (OSHA Form 300): Employee name (column B).

(ii) Injury and Illness Incident Report (OSHA Form 301): Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).

(10) *My company uses numbers or codes to identify our establishments. May I use numbers or codes as the establishment name in my submission?* Yes, you may use numbers or codes as the establishment name. However, the submission must include a legal company name, either as part of the establishment name or separately as the company name.

(c) *Reporting dates.* Establishments that are required to submit under paragraph (a)(1) or (2) of this section

must submit all of the required information by March 2 of the year after the calendar year covered by the form(s) (for example, by March 2, 2024, for the forms covering 2023).

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■ 3. Revise appendix A to subpart E to read as follows:

**Appendix A to Subpart E of Part 1904—
Designated Industries for
§ 1904.41(a)(1)(i) Annual Electronic
Submission of Information From OSHA
Form 300A Summary of Work-Related
Injuries and Illnesses by Establishments
With 20–249 Employees in Designated
Industries**

NAICS	Industry
11	Agriculture, Forestry, Fishing and Hunting.
22	Utilities.
23	Construction.
31–33	Manufacturing.
42	Wholesale Trade.
4413	Automotive Parts, Accessories, and Tire Stores.
4421	Furniture Stores.
4422	Home Furnishings Stores.
4441	Building Material and Supplies Dealers.
4442	Lawn and Garden Equipment and Supplies Stores.
4451	Grocery Stores.
4452	Specialty Food Stores.
4522	Department Stores.
4523	General Merchandise Stores, including Warehouse Clubs and Supercenters.
4533	Used Merchandise Stores.
4542	Vending Machine Operators.
4543	Direct Selling Establishments.
4811	Scheduled Air Transportation.
4841	General Freight Trucking.
4842	Specialized Freight Trucking.
4851	Urban Transit Systems.
4852	Interurban and Rural Bus Transportation.
4853	Taxi and Limousine Service.
4854	School and Employee Bus Transportation.
4855	Charter Bus Industry.
4859	Other Transit and Ground Passenger Transportation.
4871	Scenic and Sightseeing Transportation, Land.
4881	Support Activities for Air Transportation.
4882	Support Activities for Rail Transportation.
4883	Support Activities for Water Transportation.
4884	Support Activities for Road Transportation.
4889	Other Support Activities for Transportation.
4911	Postal Service.
4921	Couriers and Express Delivery Services.
4922	Local Messengers and Local Delivery.
4931	Warehousing and Storage.
5152	Cable and Other Subscription Programming.
5311	Lessors of Real Estate.
5321	Automotive Equipment Rental and Leasing.
5322	Consumer Goods Rental.
5323	General Rental Centers.
5617	Services to Buildings and Dwellings.
5621	Waste Collection.
5622	Waste Treatment and Disposal.
5629	Remediation and Other Waste Management Services.
6219	Other Ambulatory Health Care Services.
6221	General Medical and Surgical Hospitals.
6222	Psychiatric and Substance Abuse Hospitals.
6223	Specialty (except Psychiatric and Substance Abuse) Hospitals.
6231	Nursing Care Facilities (Skilled Nursing Facilities).
6232	Residential Intellectual and Developmental Disability, Mental Health, and Substance Abuse Facilities.
6233	Continuing Care Retirement Communities and Assisted Living Facilities for the Elderly
6239	Other Residential Care Facilities.
6242	Community Food and Housing, and Emergency and Other Relief Services.
6243	Vocational Rehabilitation Services.
7111	Performing Arts Companies.
7112	Spectator Sports.
7121	Museums, Historical Sites, and Similar Institutions.
7131	Amusement Parks and Arcades.
7132	Gambling Industries.
7211	Traveler Accommodation.
7212	RV (Recreational Vehicle) Parks and Recreational Camps.
7223	Special Food Services.
8113	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.

NAICS	Industry
8123	Drycleaning and Laundry Services.

■ 4. Add appendix B to subpart E to read as follows:

**Appendix B to Subpart E of Part 1904—
Designated Industries for
§ 1904.41(a)(2) Annual Electronic
Submission of Information From OSHA
Form 300 Log of Work-Related Injuries
and Illnesses and OSHA Form 301
Injury and Illness Incident Report by
Establishments With 100 or More
Employees in Designated Industries**

NAICS	Industry
1111	Oilseed and Grain Farming.
1112	Vegetable and Melon Farming.
1113	Fruit and Tree Nut Farming.
1114	Greenhouse, Nursery, and Floriculture Production.
1119	Other Crop Farming.
1121	Cattle Ranching and Farming.
1122	Hog and Pig Farming.
1123	Poultry and Egg Production.
1129	Other Animal Production.
1133	Logging.
1141	Fishing.
1142	Hunting and Trapping.
1151	Support Activities for Crop Production.
1152	Support Activities for Animal Production.
1153	Support Activities for Forestry.
2213	Water, Sewage and Other Systems.
2381	Foundation, Structure, and Building Exterior Contractors.
3111	Animal Food Manufacturing.
3113	Sugar and Confectionery Product Manufacturing.
3114	Fruit and Vegetable Preserving and Specialty Food Manufacturing.
3115	Dairy Product Manufacturing.
3116	Animal Slaughtering and Processing.
3117	Seafood Product Preparation and Packaging.
3118	Bakeries and Tortilla Manufacturing.
3119	Other Food Manufacturing.
3121	Beverage Manufacturing.
3161	Leather and Hide Tanning and Finishing.
3162	Footwear Manufacturing.
3211	Sawmills and Wood Preservation.
3212	Veneer, Plywood, and Engineered Wood Product Manufacturing.
3219	Other Wood Product Manufacturing.
3261	Plastics Product Manufacturing.
3262	Rubber Product Manufacturing.
3271	Clay Product and Refractory Manufacturing.
3272	Glass and Glass Product Manufacturing.
3273	Cement and Concrete Product Manufacturing.
3279	Other Nonmetallic Mineral Product Manufacturing.
3312	Steel Product Manufacturing from Purchased Steel.
3314	Nonferrous Metal (except Aluminum) Production and Processing.
3315	Foundries.
3321	Forging and Stamping.
3323	Architectural and Structural Metals Manufacturing.
3324	Boiler, Tank, and Shipping Container Manufacturing.
3325	Hardware Manufacturing.
3326	Spring and Wire Product Manufacturing.
3327	Machine Shops; Turned Product; and Screw, Nut, and Bolt Manufacturing.
3328	Coating, Engraving, Heat Treating, and Allied Activities.
3331	Agriculture, Construction, and Mining Machinery Manufacturing.
3335	Metalworking Machinery Manufacturing.
3361	Motor Vehicle Manufacturing.
3362	Motor Vehicle Body and Trailer Manufacturing.
3363	Motor Vehicle Parts Manufacturing.
3366	Ship and Boat Building.
3371	Household and Institutional Furniture and Kitchen Cabinet Manufacturing.
3372	Office Furniture (including Fixtures) Manufacturing.
3379	Other Furniture Related Product Manufacturing.
4231	Motor Vehicle and Motor Vehicle Parts and Supplies Merchant Wholesalers.

NAICS	Industry
4233	Lumber and Other Construction Materials Merchant Wholesalers.
4235	Metal and Mineral (except Petroleum) Merchant Wholesalers.
4239	Miscellaneous Durable Goods Merchant Wholesalers.
4244	Grocery and Related Product Merchant Wholesalers.
4248	Beer, Wine, and Distilled Alcoholic Beverage Merchant Wholesalers.
4413	Automotive Parts, Accessories, and Tire Stores.
4422	Home Furnishings Stores.
4441	Building Material and Supplies Dealers.
4442	Lawn and Garden Equipment and Supplies Stores.
4451	Grocery Stores.
4522	Department Stores.
4523	General Merchandise Stores, including Warehouse Clubs and Supercenters.
4533	Used Merchandise Stores.
4543	Direct Selling Establishments.
4811	Scheduled Air Transportation.
4841	General Freight Trucking.
4842	Specialized Freight Trucking.
4851	Urban Transit Systems.
4852	Interurban and Rural Bus Transportation.
4853	Taxi and Limousine Service.
4854	School and Employee Bus Transportation.
4859	Other Transit and Ground Passenger Transportation.
4871	Scenic and Sightseeing Transportation, Land.
4881	Support Activities for Air Transportation.
4883	Support Activities for Water Transportation.
4889	Other Support Activities for Transportation.
4911	Postal Service.
4921	Couriers and Express Delivery Services.
4931	Warehousing and Storage.
5322	Consumer Goods Rental.
5621	Waste Collection.
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6219	Other Ambulatory Health Care Services.
6221	General Medical and Surgical Hospitals.
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6233	Continuing Care Retirement Communities and Assisted Living Facilities for the Elderly.
6239	Other Residential Care Facilities.
6243	Vocational Rehabilitation Services.
7111	Performing Arts Companies.
7112	Spectator Sports.
7131	Amusement Parks and Arcades.
7211	Traveler Accommodation.
7212	RV (Recreational Vehicle) Parks and Recreational Camps.
7223	Special Food Services.

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[FR Doc. 2023-15091 Filed 7-17-23; 8:45 am]

BILLING CODE 4510-26-P

