

MARYLAND REGISTER

Proposed Action on Regulations

Comparison to Federal Standards Submission and Response

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In accordance with Executive Order 01.01.1996.03 and memo dated July 26, 1996, the attached document is submitted to the Department of Business and Economic Development for review.

The Proposed Action is not more restrictive or stringent than corresponding federal standards.

COMAR Codification: 09.12.21.02

Corresponding Federal Standard:

29 CFR §1904.2, .39, and Appendix A to Subpart B

Discussion/Justification:

This adoption is mandatory as part of Maryland's participation as a state plan state with Federal OSHA and involves the reporting of serious injuries and fatalities by employers to Maryland Occupational Safety and Health. The Appendix to the Federal standard proposed for incorporation by reference updates the types of industries that are required to report certain data based on recent BLS information. There is one clarification from the Federal standard included in the proposal that limits reporting of amputations to those involving bone or cartilage loss to avoid the reporting of non-serious injuries (such as skin on the tip of the finger or hangnail loss). This clarification will still keep Maryland in compliance with the required reporting requirements of the standard while lessening the burden on the Department and employers from reporting and processing non-serious injuries.

TO BE COMPLETED BY DBED

- Agree

-Disagree

Comments:

Commerce does not have the necessary expertise in this area. Commerce believes that the Department of Labor, Licensing and Regulation does have the necessary expertise and therefore trusts their assertion that the proposal is not more restrictive/stringent than corresponding federal standards.

Name: Jennifer Cox

Date: 9/20/2016

_ -Submit to Governor's Office
Governor's Office Response

Comments:

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	09/26/2016	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 10/28/2016

2. COMAR Codification

Title Subtitle Chapter Regulation

09 12 21 02

3. Name of Promulgating Authority

Department of Labor, Licensing, and Regulation

4. Name of Regulations Coordinator Telephone Number

Jessica V Carter 410-230-6112

Mailing Address

500 N. Calvert Street, Suite 406

City State Zip Code
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jessica.carter1@maryland.gov

5. Name of Person to Call About this Document Telephone No.

Mischelle F. Vanreusel 410-767-2225

Email Address

mischelle.vanreusel@maryland.gov

6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: September 15, 2016.

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Jean H. Baker, Assistant Attorney General, (telephone #410-230-6135) on September 15, 2016. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Thomas J. Meighen

Title

Commissioner of Labor and Industry

Telephone No.

410-767-4037

Date

September 15, 2016

Title 09
DEPARTMENT OF LABOR, LICENSING, AND
REGULATION

Subtitle 12 DIVISION OF LABOR AND INDUSTRY

09.12.21 Employee Injury and Illness Records and Reports

Authority: Labor and Employment Article, §§2-106(b)(4), 5-312, and 5-702—5-704,
Annotated Code of Maryland

Notice of Proposed Action

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The Commissioner of Labor and Industry proposes to amend Regulation .02 under COMAR 09.12.21 Employee Injury and Illness Records and Reports.

This action was considered by the Maryland Occupational Safety and Health Advisory Board pursuant to a meeting held on March 22, 2016. The notice of this meeting was given in 43:3 Md. R. 304 (February 5, 2016) in accordance with General Provisions Article, §3-302(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to incorporate by reference recent amendments to the OSHA Final Rule on Occupational Injury and Illness Recording and Reporting Requirements—NAICS Update and Reporting Revisions. This action also clarifies the reporting requirements for the reporting of amputations to those involving loss of bone or cartilage.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Mischelle Vanreusel, Regulatory and Grants Coordinator, Division of Labor & Industry, DLLR, 1100 N. Eutaw Street, Room 600, Baltimore, MD 21201, or call 410-767-2225, or email to mischelle.vanreusel@maryland.gov, or fax to 410-767-2986. Comments will be accepted through November 29, 2016. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2017

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

Federal and Special: Workers' Compensation Commission

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

Employers currently report fatalities and certain injuries to the Department and their workers' compensation carrier. This requirement makes modifications to the reporting requirements but does not significantly increase the time spent reporting serious injuries or fatalities.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

The required recordkeeping updates regarding which industries have to maintain records of injuries in the Appendix of the Federal standard does not apply to businesses with 10 or fewer employees.

G. Small Business Worksheet:

Attached Document:

.02 Incorporation by Reference.

A. [In this chapter,] *In addition to Labor and Employment Article, §5-702(c)(2)*, the following documents are incorporated by reference.

B. Documents Incorporated.

- (1) (text unchanged)
- (2) 29 CFR §1904.2 [(2001)] (2014).
- (3) — (17) (text unchanged)
- (18) 29 CFR §1904.39 [(2001)] (2014).
- (19) — (22) (text unchanged)
- (23) 29 CFR §1904 Non-Mandatory Appendix A to Subpart B—Partially Exempt Industries [(2001)] (2014).

C. The following amendments apply to the documents incorporated by reference in §B of this regulation:

- (1) (text unchanged)
- (2) For 29 CFR §1904.2, in:
 - [(2) For 29 CFR §1904.2(a)(1),] (a) Subsection (a)(1), where the words “all employers must report to OSHA” appear, substitute “MOSH” for “OSHA”; and
 - (b) Subsection (b)(2), where the words “OSHA office or State agency” appear, substitute “MOSH office”;
- (3) — (10) (text unchanged)
- (11) For 29 CFR §1904.38[:], in:
 - (a) [In subsection] Subsection (a), where the words “Basic requirement.” appear, substitute “Private sector basic variance requirements.”;
 - (b) [In subsection] Subsection (a), the word “you” means “an employer as defined in §5-101(d) [(1)(i)] of the Maryland Occupational Safety and Health Act”; and
 - (c) [In subsection] Subsection (b)(4), where the words “If I have already been cited by OSHA” appear, substitute “MOSH” for “OSHA”;
- (12) For 29 CFR §1904.39:
 - (a) Except as provided in paragraphs (b)—[(e)] (k) of this subsection, wherever the word “OSHA” appears, substitute “MOSH”;
 - (b) [In subsection (a), where the words “Area Office of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor,” appear, substitute “MOSH Central Office” and strike the last sentence;] In subsection (a)(1), where the words “the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor” appear, substitute “MOSH”;
 - (c) In subsection (a)(2), where the words “an employee’s amputation” appear substitute “an employee’s amputation involving bone or cartilage loss”
 - (d) In subsection (a)(2), where the word “OSHA” appears, substitute “MOSH”;
 - (e) In subsection (a)(3)(i), where the words “OSHA Area Office” appear, substitute “MOSH Central Office”, and delete the words “that is nearest to the site of the incident”;
 - (f) In subsection (a)(3)(ii), where the words “OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742)” appear, substitute “MOSH Central Office toll-free telephone number, 1-800-759-6297”;
 - (g) In subsection (a)(3)(iii), substitute “form” for “application”, “MOSH’s” for “OSHA’s”, and “www.dllr.maryland.gov/labor/mosh/” for “www.osha.gov”;
 - [(c)] (h) In subsection (b)(1), substitute “MOSH Central Office” for “Area Office”, substitute “MOSH’s” for “OSHA’s”, [and] substitute “MOSH Central Office toll-free [emergency] telephone number [1-888-257-MOSH (1-888-257-6674)] 1-800-759-6297” for the words “800 number”, substitute “form” for “application”, and substitute “MOSH’s public Web site at www.dllr.maryland.gov/labor/mosh/” for “OSHA’s public Web site at www.osha.gov”;
 - [(d)] (i) In subsections (b)(2), [(b)](3) and (4), except for references to “OSHA injury and illness records”, wherever the word “OSHA” appears, substitute “MOSH”; [and]
 - [(e)] (j) In subsection (b)(5), where the words “your local OSHA Area Office director” appear, substitute “the MOSH Assistant Commissioner”; and
 - (k) In subsections (b)(6), (7), (8) and (10), except for a reference to “OSHA injury and illness records”, wherever the word “OSHA” appears, substitute “MOSH”;
- (13) — (15) (text unchanged)
- (16) In 29 CFR §1904 Non-Mandatory Appendix A to Subpart B—Partially Exempt Industries, [where the words “must report to OSHA any workplace incident” appear,] except for a reference to “OSHA injury and illness records”, substitute “MOSH” for “OSHA” in the last sentence.

Thomas J. Meighen

Commissioner of Labor and Industry