

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Labor, Licensing, and Regulation
(DLS Control No. 15-432)**

Overview and Legal and Fiscal Impact

The regulation incorporates by reference the federal Occupational Safety and Health Administration (OSHA) Final Rule on Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Revisions.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Department of Labor, Licensing, and Regulation:

Division of Labor and Industry: Employee Injury and Illness Records and Reports:
COMAR 09.12.21.02

Legal Analysis

Background

The Maryland Occupational Safety and Health (MOSH) program within the Department of Labor, Licensing, and Regulation (department) is a state plan that has been approved by OSHA to develop job safety and health programs for Maryland workers. In order to continue operating MOSH, the State, through the Occupational Safety and Health Advisory Board within the department, must propose or recommend rules that (1) are or will be at least as effective in providing safe and healthful employment and places of employment as the corresponding federal rule and (2) do not place a burden on interstate commerce under specified circumstances.

According to the notice that OSHA published in the Federal Register, the federal rule updates the Occupational Injury and Illness Recording and Reporting Requirements regulation in two key respects. In the first respect, the changes alter which work-related injuries and illnesses are partially exempt from specified recordkeeping requirements to reflect newly available injury and illness data. In the second respect, the federal rule alters reporting requirements for work-related hospitalizations by requiring employers to notify OSHA of all employee deaths, work-related in-patient hospitalizations, losses of eyes, and amputations within 24 hours of the event. The previous requirement, which is codified in § 5-702 of the Labor and Employment Article, required employers to report work-related in-patient hospitalizations of three or more

employees, as well as loss of eye, amputation, or death of an employee. Employers were required to report those accidents or illnesses within eight hours of the event.

Summary of Regulation

The regulation incorporates by reference the OSHA Final Rule on Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Revisions. In incorporating the final rule, the regulation changes from 2001 to 2014 the effective dates for the various sections of the Code of Federal Regulations that OSHA updated in its recent action. The regulation also alters various existing amendments to the regulations to reflect MOSH as the appropriate agency for Maryland employers. For example, the regulation substitutes contact information for MOSH for contact information for OSHA to require employers in the State to contact MOSH, rather than OSHA, after an employee’s death, amputation, loss of eye, or work-related in-patient hospitalization.

Legal Issues

This regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 2-106(b)(4), 5-312, and 5-702 through 5-704 of the Labor and Employment Article as authority for the regulation. Section 2-106(b)(4) generally authorizes the department to adopt regulations that are necessary to carry out Title 5 of the Labor and Employment Article. Section 5-702, as discussed previously, authorizes the Commissioner of Labor and Industry to require an employer to keep and make available to the commissioner specified records and reports and to report orally to the commissioner employment accidents within eight hours after it occurs if the accident results in death of an employee or hospitalization of at least three employees. Sections 5-703 and 5-704 relate to recordkeeping and report submittal requirements for employers. Section 5-312 is not necessary to justify the regulation but specifies when a public hearing is required and details the process under which the commissioner adopts regulations.

This authority is correct and complete. Although the regulation is necessary to reflect a change in federal law – as is required under § 5-309 of the Labor and Employment Article – the change presents a conflict with a statutory provision, § 5-702(c)(1) of that article. The department should consider revising the statute to reflect the change in regulation, so that the regulation better complies with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulation incorporates by reference updated requirements for employers to report certain work-related injuries and illnesses. The department advises that the regulation has no impact on State or local governments because the regulation simply updates the appendix to the Occupational Safety and Health Administration Injury and Illness Recording and Reporting regulation. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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