

MARYLAND REGISTER

Proposed Action on Regulations

Comparison to Federal Standards Submission and Response

Name: Jessica V Carter
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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 Part 1904

Discussion/Justification:

Maryland is a state plan state. As such, it is required to adopt rules that are identical to or at least as effective as the Federal OSHA rule. Federal OSHA provides the state plan states with 6 months to adopt a regulation from the time OSHA finalizes their regulation.

TO BE COMPLETED BY DBED

- Agree

-Disagree

Comments:

Commerce does not have the subject matter expertise in this area. However, we believe the Department of Labor, Licensing and Regulation does and we trust the assertion that the regulation is not more restrictive/stringent than corresponding federal regulations.

Name: Jennifer Cox

Date: 12/14/2015

-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
	12/15/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 1/22/2016

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
Baltimore MD 21202

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jessica.carter1@maryland.gov

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

Andi Morony 410-767-2962

Email Address

andi.morony@maryland.gov

6. Check applicable items:

- New Regulations
- Amendments to Existing Regulations
Date when existing text was downloaded from COMAR online: .
- 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 State Government Article, §10-506(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 Jessica V. Carter, Assistant Attorney General, (telephone #410-230-6112) on December 14, 2015. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Thomas Meighen

Title

Commissioner of Labor and Industry

Telephone No.

410-767-2241

Date

December 14, 2015

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

[]

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 June 17, 2015, notice of which was given in accordance with State Government Article, §10-506(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.

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 Andi Morony, Policy Director, Division of Labor and Industry, Department of Labor, Licensing and Regulation, 1100 N. Eutaw Street, Room 606, Baltimore, MD 21201, or call 410-767-2962, or email to

andi.morony@maryland.gov, or fax to 410-767-2986. Comments will be accepted through February 22, 2016. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2016

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/General

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:

These regulations simply update the appendix to the OSHA Injury and Illness Recording and Reporting regulation.

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

These regulations simply update the appendix to the OSHA Injury and Illness Recording and Reporting regulation.

G. Small Business Worksheet:

Impact Statement Part C — Legislative Information

Part C requests agencies to provide information required by the Department of Legislative Services in its report to the AELR Committee. Answer the questions in the space provided. Part C is not printed in the Maryland Register.

Small Business Analysis Worksheet

This worksheet is designed to assist the agency in determining if and how the proposal impacts small businesses. Quantify the number of affected small businesses and estimates of costs and benefits to small businesses if possible. State Government Article, §2-1505.2, includes the following definitions which are relevant to the analysis:

“Economic impact analysis” means an estimate of the cost or the economic benefit to small businesses that may be affected by a regulation proposed by an agency pursuant to Title 10, Subtitle 1 of this article.

“Small business” means a corporation, partnership, sole proprietorship, or other business entity, including its affiliates, that: (i) is independently owned and operated; (ii) is not dominant in its field; and (iii) employs 50 or fewer full-time employees.

1a. Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation?

Employers in general

Are these intended beneficiaries primarily households or businesses? Businesses

1b. Intended Beneficiaries: Households. If households are the primary intended beneficiaries, will the proposal affect their income or purchasing power such that the volume or patterns of their consumer spending will change? If so, what directions of change would you anticipate? Will these expected spending changes have a disproportionate impact on small businesses? Can you descriptively identify the industries or types of business activities that are impacted?

N/A

1c. Intended Beneficiaries: Businesses. If businesses are the intended beneficiaries, identify the businesses by industry or by types of business activities.

Employers in general

How will businesses be impacted?

This proposal expands the list of severe injuries that an employer must report. More specifically, employers will be required to notify MOSH of work-related fatalities within eight hours and work-related in-patient hospitalizations, amputations, and loss of an eye within 24 hours. Although employers are currently required to notify MOSH of work-related fatalities within 8 hours, an employer is currently only required to report work-related fatalities and in-patient hospitalizations of three or more employees. The reporting of single hospitalizations, amputations or loss of an eye are amendments to the existing requirements.

Are these Maryland establishments' disproportionately small businesses?

No

If so, how will these Maryland small businesses be affected?

N/A

Can you identify or estimate the present number of small businesses affected?

N/A

Can you estimate the present total payroll or total employment of small businesses affected?

N/A

2a. Other Direct or Indirect Impacts: Adverse. Businesses may not be the intended beneficiaries of the proposal. Instead, the proposal may direct or otherwise cause businesses to incur additional expenses of doing business in Maryland. Does this proposal require Maryland businesses to respond in such a fashion that they will incur additional work-time costs or monetary costs in order to comply?

No

Describe how Maryland establishments may be adversely affected.

Maryland establishments will not be adversely affected by this proposal.

Will Maryland small businesses bear a disproportionate financial burden or suffer consequences that affect their ability to compete?

No

Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that businesses must accomplish to comply can be described.)

No

2b. Other Direct or Indirect Impacts: Positive. Maryland businesses may positively benefit by means other than or in addition to changed consumer spending patterns. How may Maryland businesses be positively impacted by this initiative?

It is the position of OSHA that this rule will improve access to information about workplace safety and health. This will allow MOSH to use its resources more effectively to identify workplaces where workers are at greater risk. It is believed that the new rule will improve the reporting of serious events and thus supply MOSH with better information.

Will Maryland small businesses share proportionately or disproportionately in these gains?

Proportionately

Can you estimate the possible number of Maryland small businesses positively affected?

No

3. Long-Term Impacts. There are instances where the longer run economic impact effect from regulations differ significantly from immediate impact. For example, regulations may impose immediate burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years. Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described above?

No

4. Estimates of Economic Impact. State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

N/A

Attached Document:

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

.02 Incorporation by Reference.

A. (text unchanged)

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 s] Subsection (a), where the words “Basic requirement.” appear, substitute “Private sector basic variance requirements.”;

(b) [In s] 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 s] 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)] (j) 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 word “OSHA” appears, substitute “MOSH”;

(d) 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”;

(e) 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”;

(f) 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)] (g) 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)] (h) 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)] (i) In subsection (b)(5), where the words “your local OSHA Area Office director” appear, substitute “the MOSH Assistant Commissioner”; and

(j) 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.