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Exempt Action: Final Regulation Agency Background Document

Agency name	Department of Labor and Industry/Safety and Health Codes Board
Virginia Administrative Code (VAC) Chapter citation(s)	16VAC25-85 -1904.
VAC Chapter title(s)	Federal Identical Recording and Reporting Occupational Injuries and Illnesses.
Action title	Improve Tracking of Workplace Illness and Injury
Final agency action date	September 18, 2023
Date this document prepared	October 2, 2023 – Updated October 12, 2023

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

To improve tracking of workplace illnesses and injuries, OSHA is amending its occupational injury and illness recordkeeping regulation, 29 CFR Part 1904, to require certain employers to electronically submit injury and illness information to OSHA that employers are already required to keep under the recordkeeping regulation. Specifically, OSHA is amending its regulation to require establishments with 100 or more employees in certain designated industries to electronically submit information from their OSHA Forms 300 and 301 to OSHA once a year. OSHA will not collect employee names or addresses, names of health care professionals, or names and addresses of facilities where treatment was provided if treatment was provided away from the worksite from the Forms 300 and 301.

NOTE: 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.

Establishments with 20 to 249 employees in certain industries will continue to be required to electronically submit information from their OSHA Form 300A annual summary to OSHA once a year. All establishments with 250 or more employees that are required to keep records under OSHA's injury and illness regulation will also continue to be required to electronically submit information from their Form 300A to OSHA on an annual basis.

OSHA is also updating the NAICS codes used in appendix A, which designates the industries required to submit their Form 300A data, and is adding appendix B, which designates the industries required to submit Form 300 and Form 301 data. In addition, establishments will be required to include their company name when making electronic submissions to OSHA.

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)¹ on each submission.
8. Implementation Schedule - VOSH would comply with OSHA’s new reporting requirements by January 21, 2024. Virginia will match federal OSHA’s timeline:
 - a. January 1, 2024 – Rule becomes effective
 - b. January 2, 2024 – Data collection begins
 - c. March 2, 2024 – First annual deadline for timely, electronic submission of data from OSHA Form 300 Log and OSHA Form 301 Incident Report

Illustration of OSHA Final Rule Changes to the Tracking of Workplace Injuries and Illnesses:

OSHA Forms	OSHA Form 300A Summary of Work-Related Injuries and Illnesses	OSHA Form 300-Log of Work-Related Injuries and Illnesses	OSHA Forms 301 – Incident Report of Work-Related Injuries and Illnesses	Changes to regulatory requirements
Establishments with 20 – 249 employees in certain high hazard industries designated in Appendix A*	Employers who are currently required to keep records (in industries listed in Appendix A) are required to electronically submit 300A Summary Form only.	Not required	Not required	*Updates to Appendix A NAICS Codes for designated industries
100 or more employees in certain high hazard industries designated in Appendix B*	Old requirement to submit 300A Summary Form only	New requirement for case log that employers are already required to	New requirement for case specific incident report that employers are	*Adds Appendix B high hazard industries (with 100 or more employees)

¹ Employer ID Numbers (EIN). <https://www.irs.gov/businesses/small-businesses-self-employed/employer-id-numbers>

		keep a record must now also submit OSHA Form 300.	already required to keep a record must now also submit OSHA Form 301.	now required to submit the case specific forms. Form 300 Log and Form 301 Incident Report
250 or more employees for all other industries	Requirement has not changed. Employers must submit OSHA Form 300A Summary of Work-Related Injuries and Illnesses.	Not required	Not required	No change

Only establishments with 100 or more employees in designated industries are required to submit case-specific information from the OSHA Form 300 Log and the OSHA Form 301 Incident Report.

- o Establishments that had a peak employment of 100 or more employees during the previous calendar year meet this size criteria.
- o The designated industries are listed in [Appendix B to Subpart E of 29 C.F.R. Part 1904](#).

Establishments with 100 or more employees in certain high-hazard industries must electronically submit information from their Form 300-Log of Work-Related Injuries and Illnesses, and Form 301-Injury and Illness Incident Report to OSHA once a year. These submissions are in addition to submission of Form 300A-Summary of Work-Related Injuries and Illnesses.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Federal OSHA requires that state plans adopt an identical or equivalent standard for their federal standard, **29 CFR Part 1904 Improve Tracking of Workplace Injuries and Illnesses**. Federal regulations 29 CFR 1953.4(b) and 1953.5(a)(1) 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 change. OSHA recently amended this regulation on July 21, 2023 with the changes included in the Summary section with effective date of January 1, 2024.

Va. Code § 40.1-22(5) provides that standards and regulations adopted by the Safety and Health Codes Board "shall be at least as stringent as the standards promulgated by the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596)."

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On September 18, 2023, the Department of Labor and Industry's Safety and Health Codes Board adopted 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) and 2.2-4006.A.4(c), with an effective date of January 1, 2024.

To access the Code of Federal Regulations (CFR) federal OSHA's Final Rule to Improve Tracking of Workplace Illness and Injury, please click on the link below:

[2023-07-21.pdf \(osha.gov\)](#)

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

Improve Tracking of Workplace Injuries and Illnesses; Final Rule

As Adopted by the
Safety and Health Codes Board

Date: September 18, 2023



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 1, 2024

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.

* * * * *

(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).

* * * * *

■ 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.

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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.
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4842	Specialized Freight Trucking.
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4853	Taxi and Limousine Service.
4854	School and Employee Bus Transportation.
4859	Other Transit and Ground Passenger Transportation.
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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.
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[FR Doc. 2023-15091 Filed 7-17-23; 8:45 am]

BILLING CODE 4510-26-P