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Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Department of Labor and Industry/Safety and Health Codes Board
Virginia Administrative Code (VAC) citation(s)	16VAC25-85-1904.0, Purpose 16VAC25-85-1904.4, Recording Criteria, §1904.4 16VAC25-85-1904.29, Forms, §1904.29 16VAC25-85-1904.32, Year-end Review and Annual Summary, §1904.32 16VAC25-85-1904.33, Retention and maintenance of Accurate Records, §1904.33 16VAC25-85-1904.34, Change in Business Ownership, §1904.34 16VAC25-85-1904.35, Employee Involvement, §1904.35 16VAC25-85-1904.40, Providing Accurate Records to Government Representatives, §1904.40
Regulation title(s)	Clarification of Employers' Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness
Action title	Final Rule on the Clarification of Employers' Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness
Final agency action date	February 16, 2017
Date this document prepared	February 21, 2017

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Federal OSHA amended its recordkeeping regulations to clarify that the duty to make and maintain accurate records of work-related injuries and illnesses is an ongoing obligation. The duty to record an injury or illness continues for as long as the employer must keep records of the recordable injury or illness. The duty does not expire just because the employer fails to create the necessary records when first required to do so.

To that end, OSHA has revised the titles of some existing sections and subparts in Part 1904 and changed the text of some existing recordkeeping requirements. These amendments clarify the following:

- a) **OSHA 300 Log.** Employers must record every recordable injury or illness on the Log. This obligation continues through the five-year record retention-and-access period if employers do not create the record within seven days of when the employer learns of the injury or illness. During that five-year period, employers must update the OSHA 300 Log by adding cases not previously recorded and by noting changes to previously recorded cases.
- b) **OSHA 301 Incident Report.** Employers must prepare a Form 301 Incident Report for each recordable illness or injury. This obligation continues throughout the five-year retention-and-access period if employers do not prepare the report within seven days of when the employer learns of the injury or illness. Unlike with the OSHA 300 Log, employers are not required to update the Incident Report to show changes to the case that occur after the form is initially prepared.
- c) **Year-end records review; preparation certification; and posting of the Form 300A annual summary.** These ancillary tasks are intended to be performed at particular times during each year. They are not continuing obligations.

Statement of final agency action

Please 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 February 16, 2017, the Safety and Health Codes Board adopted federal OSHA's Final Rule on the Clarification of Employers' Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of May 15, 2017.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action does not appear to have any impact on the institution of the family and family stability.

To access the Final Rule for the Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness, please click on the link below:

https://www.osha.gov/FedReg_oshapdf/FED20161219B.pdf

**Clarification of Employer's Continuing Obligation to Make and Maintain
an Accurate Record of Each Recordable Injury and Illness; Final Rule**

As Adopted by the
Safety and Health Codes Board

Date: February 16, 2017



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: May 15, 2017

16VAC25-85-1904.0, Purpose

16VAC25-85-1904.4, Recording Criteria, §1904.4

16VAC25-85-1904.29, Forms, §1904.29

16VAC25-85-1904.32, Year-end Review and Annual Summary, §1904.32

16VAC25-85-1904.33, Retention and maintenance of Accurate Records, §1904.33

16VAC25-85-1904.34, Change in Business Ownership, §1904.34

16VAC25-85-1904.35, Employee Involvement, §1904.35

16VAC25-85-1904.40, Providing Accurate Records to Government Representatives, §1904.40

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 18, 2017

May 15, 2017

■ 2. Revise § 1904.0 to read as follows:

§ 1904.0 Purpose.

The purpose of this rule (part 1904) is to require employers to make and maintain accurate records of and report work-related fatalities, injuries, and illnesses, and to make such records available to the Government and to employees and their representatives so that they can be used to secure safe and healthful working conditions. For purposes of this part, accurate records are records of each and every recordable injury and illness that are made and maintained in accordance with the requirements of this part.

Note to § 1904.0: Recording or reporting a work-related injury, illness, or fatality does not mean that the employer or employee was at fault, that an OSHA rule has been violated, or that the employee is eligible for workers' compensation or other benefits.

Subpart C—Making and Maintaining Accurate Records, Recordkeeping Forms, and Recording Criteria

■ 3. Revise the heading of subpart C to read as set forth above.

■ 4. In § 1904.4, revise paragraph (a) introductory text and add a note to § 1904.4(a) to read as follows:

§ 1904.4 Recording criteria.

(a) *Basic requirement.* Each employer required by this part to keep records of fatalities, injuries, and illnesses must, in accordance with the requirements of this part, make and maintain an accurate record of each and every fatality, injury, and illness that:

* * * * *

Note to § 1904.4(a): This obligation to make and maintain an accurate record of each and every recordable fatality, injury, and illness continues throughout the entire record retention period described in § 1904.33.

* * * * *

■ 5. Revise § 1904.29(b)(3) to read as follows:

§ 1904.29 Forms.

* * * * *

(b) * * *
(3) *How quickly must each injury or illness be recorded?* You must enter each and every recordable injury or illness on the OSHA 300 Log and on a 301 Incident Report within seven (7) calendar days of receiving information that the recordable injury or illness occurred. A failure to record within seven days does not extinguish your continuing obligation to make a record of the injury or illness and to maintain accurate records of all recordable injuries and illnesses in accordance

PART 1904—RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

with the requirements of this part. This obligation continues throughout the entire record retention period described in § 1904.33. See §§ 1904.4(a); 1904.32(a)(1); 1904.33(b)(1); and 1904.40(a).

* * * * *

■ 6. Revise the heading and paragraphs (a) and (b)(1) of § 1904.32 to read as follows:

§ 1904.32 Year-end review and annual summary.

(a) *Basic requirement.* At the end of each calendar year, you must:

(1) Review that year's OSHA 300 Log to verify that it contains accurate entries for all recordable injuries and illnesses that occurred during the year, and make any additions or corrections necessary to ensure its accuracy;

(2) Verify that each injury and illness recorded on the 300 Log, including any injuries and illnesses added to the Log following your year-end review pursuant to paragraph (a)(1) of this section, is accurately recorded on a corresponding 301 Incident Report form;

(3) After you have verified the accuracy of the Log, create an annual summary of injuries and illnesses recorded on the Log;

(4) Certify the summary; and

(5) Post the summary.

(b) * * *

(1) *How extensively do I have to review the OSHA 300 Log at the end of the year?* You must review the Log and its entries as extensively as necessary to verify that all recordable injuries and illnesses that occurred during the year are entered and that the Log and its entries are accurate.

* * * * *

■ 7. Revise the heading and paragraph (b) of § 1904.33 to read as follows:

§ 1904.33 Retention and maintenance of accurate records.

* * * * *

(b) *Implementation*—(1) *Other than the obligation identified in § 1904.32, do I have further recording duties with respect to the OSHA 300 Logs and 301 Incident Reports during the five-year retention period?* You must make the following additions and corrections to the OSHA Log and Incident Reports during the five-year retention period:

(i) The OSHA Logs must contain entries for all recordable injuries and illnesses that occurred during the calendar year to which each Log relates. In addition, each and every recordable injury and illness must be recorded on an Incident Report. This means that if a recordable case occurred and you

failed to record it on the Log for the year in which the injury or illness occurred, and/or on an Incident Report, you are under a continuing obligation to record the case on the Log and/or Incident Report during the five-year retention period for that Log and/or Incident Report;

(ii) You must also make any additions and corrections to the OSHA Log that are necessary to accurately reflect any changes that have occurred with respect to previously recorded injuries and illnesses. Thus, if the classification, description, or outcome of a previously recorded case changes, you must remove or line out the original entry and enter the new information; and

(iii) You must have an Incident Report for each and every recordable injury and illness; however, you are not required to make additions or corrections to Incident Reports during the five-year retention period.

(2) *Do I have to make additions or corrections to the annual summary during the five-year retention period?* You are not required to make additions or corrections to the annual summaries during the five-year retention period.

■ 8. Revise § 1904.34 to read as follows:

§ 1904.34 Change in business ownership.

If your business changes ownership, you are responsible for recording and reporting work-related injuries and illnesses only for that period of the year during which you owned the establishment. You must transfer the Part 1904 records to the new owner. The new owner must save all records of the establishment kept by the prior owner, as required by § 1904.33, but need not update or correct the records of the prior owner. The new owner is not responsible for recording and reporting work-related injuries and illnesses that occurred before the new owner took ownership of the establishment.

■ 9. Revise paragraphs (b)(2) introductory text and (b)(2)(iii) of § 1904.35 to read as follows:

§ 1904.35 Employee involvement.

* * * * *

(b) * * *

(2) *Do I have to give my employees and their representatives access to the OSHA injury and illness records?* Yes, your employees, former employees, their personal representatives, and their authorized employee representatives have the right to access accurate OSHA injury and illness records, with some limitations, as discussed below.

* * * * *

(iii) *If an employee or representative asks for access to the OSHA 300 Log,*

when do I have to provide it? When an employee, former employee, personal representative, or authorized employee representative asks for copies of your current or stored OSHA 300 Log(s) for an establishment the employee or former employee has worked in, you must give the requester a copy of the relevant and accurate OSHA 300 Log(s) by the end of the next business day.

* * * * *

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

■ 10. Revise the heading of subpart E to read as set forth above.

■ 11. Revise the heading and paragraph (a) of § 1904.40 to read as follows:

§ 1904.40 Providing accurate records to government representatives.

(a) *Basic requirement.* When an authorized government representative requests the records you keep under part 1904, you must provide accurate records, or copies thereof, within four (4) business hours of the request.

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[FR Doc. 2016-30410 Filed 12-16-16; 8:45 am] BILLING CODE 4510-26-P