

**FINAL
SAFETY AND HEALTH CODES BOARD
PUBLIC HEARING AND MEETING MINUTES
THURSDAY, June 14, 2018**

BOARD MEMBERS PRESENT: Mr. John Fulton
Dr. Caroline "Carrie" Holsinger
Ms. Anna Jolly
Mr. Courtney Malveaux
Mr. David Martinez, Vice Chair
Mr. Kenneth Richardson, II
Ms. Milagro Rodriguez
Mr. Chuck Stiff

BOARD MEMBERS ABSENT: Mr. Jerome Brooks
Mr. Lou Cernak, Jr.
Mr. Travis Parsons, Chair
Mr. Tommy Thurston

STAFF PRESENT: Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, OPP & OWP
Mr. Ron Graham, Director, VOSH Health Compliance
Mr. Ed Hilton, Director, Boiler Safety Compliance Management
Ms. Jennifer Rose, Director, VOSH Safety Compliance
Ms. Diane Duell, Director, Legal Support
Ms. Holly Raney, Regulatory Coordinator
Mr. John Crisanti, Manager, Office of Policy and Planning
Ms. Regina Cobb, Senior Management Analyst
Ms. Deonna Hargrove, Richmond Regional Health Director
Mr. Eric Miller, CSHO Apprentice
Ms. Mariah Gardner, Compliance Safety and Health Officer
Mr. Kevin Foster, IH Compliance Officer Apprentice
Mr. John McGuinness, Summer Intern
Mr. Wade Williams

OTHERS PRESENT: Ms. Beverly Crandell, Safety Program Coordinator, Tidewater
Community College
Joshua Laws, Esq., Assistant Attorney General, OAG
Mr. Robert R. Payne
Mr. Johnny D. Nugent, DHRM
Mr. Sam Revenson, Armbiz
Mr. Curtis White
Ms. Lisa Wright, Court Reporter, Chandler & Halasz, Stenographic Court
Reporters

ORDERING OF AGENDA

In the absence of Board Chair Travis Parsons, Vice Chair David Martinez called the Public meeting to order at 10:00 a.m. A quorum was present.

Mr. Martinez requested a motion to approve the Agenda. A motion to accept the Agenda was made and properly seconded, and carried by unanimous voice vote.

APPROVAL OF MINUTES

Mr. Martinez asked the Board for a motion to approve the Minutes from the November 30, 2017 Board meeting. A motion was made and properly seconded. The Minutes were approved by unanimous voice vote.

PUBLIC COMMENTS

Mr. Martinez opened the floor for comments from the public. Mr. Robert R. Payne of Manassas, VA addressed the Board regarding his Petition to Amend the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, 16VAC25-60-120. B. He informed the Board that this was an academic exercise, and he was unaware that VOSH had regulations regarding temporary and permanent variances.

Mr. Payne introduced himself as a graduate student at the University of Alabama, Birmingham, School of Engineering, in advanced safety, engineering and management, and a private citizen. He thanked Mr. Withrow for responding to his petition. He informed the Board that, on his job he encounters situations where they use equipment, but the owner's manuals say you have to do things a certain way. He said there was no way to work around the manufacturer without either getting rid of the piece of equipment or not using it. He stated that he appreciates knowing now that there is a way to possibly deal with the need to adjust a manufacturer's requirements and it is through the State's variance process.

Mr. John Crisanti, Manager, Office of Policy and Planning, welcomed to the Board Dr. Caroline Holsinger as the Representative for Dr. Marissa Levine, Commissioner of the Virginia Health Department.

OLD BUSINESS

Va. Code 2.2-4006.A.4.c. of the Virginia Administrative Process Act; 16VAC25-60-180. of the VOSH Administrative Regulations

Mr. Jay Withrow, Director, Legal Support, VPP, ORA, OPP and OWP, for the Department of Labor and Industry, began by explaining that this agenda item is just a briefing package and no action is being requested of the Board. He reminded the Board that, at the November 30, 2017 Board meeting, an "indefinite" delay of enforcement of the Beryllium Standard for Construction and Shipyards by OSHA was presented to the Board. He explained that on June 27, 2017, OSHA issued a proposed rule to make changes to the Beryllium Standard for Shipyards and Construction (§§1915.1024 and 1926.1124) that would remove the "ancillary" provisions from the standards, leaving only the new PELs and STELs in place. He further explained that VOSH does not have jurisdiction over private sector workers in Maritime/Shipyards, but it does have jurisdiction over state and local government workers in those

employment sectors. He added that the Department is unaware of any such covered employees in Virginia that would be covered by the Beryllium Standard for Shipyards. As such, Mr. Withrow informed the Board that the main focus of the briefing package was to address employee exposure to beryllium in the construction industry.

Mr. Withrow stated that, at the November 30, 2017 meeting, the Board decided not to adopt OSHA's "indefinite" delay of enforcement, but stayed enforcement of the regulation until August 1, 2018, to give the Department the opportunity to research the following issues:

1. If the Board chose not to adopt OSHA's indefinite stay, would the federal identical standards for Construction and Shipyards (in state and local government) be enforceable in Virginia?

Mr. Withrow responded that the short answer is "no". He cited as current guidance, the VOSH Administrative Regulations on OSHA administrative stays, which can be found in §16VAC25-60-180. Response to judicial action. He stated that VOSH federal identical regulations are adopted under the authority of Va. Code §2.3-4006.A.4.c. Mr. Withrow added that for Virginia to maintain its State Plan for occupational safety and health, it is required to be "at least as effective as" OSHA, and specifically, in regard to the adoption of safety and health standards, he referred to §18(c)(2) of the OSH Act of 1970 (29 USC 667(c)(2)).

He informed the Board that the Department "informally" reviewed the language in §18(c)(2) of the OSH Act of 1970 (29 USC 667(c)(2)) with the Office of the Attorney General and both parties agreed that the proper reading of §18(c)(2) and Va. Code §2.2-4006.A.4.c, as they apply to OSHA's indefinite delay/administrative stay of enforcement, is that any Board failure to adopt an administrative stay would mean that Virginia's Beryllium Standards in Construction and Shipyards no longer meets the APA exemption criteria in §2.2-4006.A.4.c., and could only become legally effective if the standards went through the full notice, comment and adoption requirements of the APA. In other words, once OSHA issues an administrative stay for a standard that makes the standard temporarily unenforceable, Virginia's federal identical counterpart standard is "no longer necessary to meet the requirements of federal law or regulation" under Va. Code §2.2-4006.A.4.c. He further explained that for this or any other administrative stay issued by OSHA, contrary to the current wording of §16VAC25-60-180 of the VOSH Administrative Regulations, the administratively stayed federal standard cannot be enforced by the Commissioner, even if the federal stay has not been reviewed or adopted by the Board.

He stated that the Department will propose at a future Board meeting a Notice of Intended Regulatory Action (NOIRA) to amend §16VAC25-60-180 to address this issue. In the interim, the Board will still be asked to review and adopt OSHA administrative stays and the lifting of administrative stays. The Board will continue to be able to use its discretion regarding the dates for adoption and lifting of such stays.

2. If the answer to Question # 1 is "no", would the Department research whether there was sufficient evidence in the OSHA administrative record that would enable the Board to use the OSHA record to support a full regulatory rulemaking in accordance with the Virginia Administrative Process Act?

Mr. Withrow stated that the short answer is "maybe".

He stated that Va. Code §40.1-22(5) contains the requirements that must be met by the Board in setting VOSH regulations. He informed the Board that a majority of the information needed to support a regulatory rulemaking for a unique Virginia Beryllium Standard for Shipyards (state and local

government only) and Construction is contained in the preamble to the original standards in the *Federal Register*, 82 FR 2470; and the preamble to the propose regulation that would eliminate the “ancillary” provisions from §§1915.1024 and 1926.1124. He added that these documents also allow for calculation of the number of construction employees likely impacted in Virginia, the average annualized cost per employee for compliance and the average annualized benefit per employee achieved with full compliance. He explained how Virginia derives at its figures based on OSHA’s figures that appear in a standard’s preamble.

He also mentioned the primary difficulties in gathering data and information that will fully support a Virginia unique regulation.

In discussing Virginia unique rulemaking for standards, Mr. Withrow advised that the Board delay consideration of a unique regulation until it has the benefit of OSHA’ final conclusions on the central issue of retaining the new PELs and STELs and eliminating the “ancillary” provisions.

Occupational Exposure to Beryllium for General Industry, §1910.1024; Stay of Certain Compliance Dates; Adoption of Certain Compliance Dates

Mr. Jay Withrow, requested that the Board consider for adoption federal OSHA’s stay of compliance dates for the Occupational Exposure to Beryllium Standard for General Industry, §1910.1024.

Mr. Withrow mentioned two memoranda from Director Thomas Galassi of OSHA’s Directorate of Enforcement Programs. In the March 2, 2018 memorandum, OSHA stayed the compliance date of March 12, 2018 for 60 days until May 11, 2018, for all sections of the Beryllium Standard for General Industry, §1910.1024; however, the compliance date for paragraphs (i)(2) for change rooms, (i)(3) for showers, and (f) for engineering controls remained unchanged.

In Mr. Galassi’s second memorandum (May 2, 2018), the compliance date for all sections of the Beryllium Standard for General Industry, §1910.1024, was stayed until June 25, 2018, except for the following paragraphs: (c), Permissible exposure limits; (d), exposure assessment; (g), respiratory protection; (k), medical surveillance; and (l), medical removal. Compliance dates for paragraphs (i)(2), (i)(3), and (f) of §1910.1024 remained unchanged. The proposed compliance date for (c), (d), (g), (k), and (l) of §1910.1024, and the stay of the remaining paragraphs of §1910.1024 is September 15, 2018.

Mr. Withrow also informed the Board that the compliance date for certain other ancillary provisions could be stayed until December 12, 2018.

Mr. Withrow stated that these actions to stay compliance dates are to accommodate settlement agreements reached by OSHA with litigants challenging the standard and allow time to complete other ongoing rulemaking proceedings. He added that the Beryllium Standard for General Industry went into effect nationally on May 20, 2017, following stays of the original federal effective date of March 10, 2017, and became effective on May 15, 2017 in Virginia; however, compliance in Virginia was not scheduled to begin until March 12, 2018.

With respect to impact of this standard, Mr. Withrow stated that the stay of compliance dates will not have a negative impact on employers and will provide them with additional time in which to comply with certain provisions (paragraphs (e), (f), (h), (i), (j), (m), and (n) which are stayed until June 25, 2018. Mr. Withrow stated that the soon-to-be effective provisions will immediately provide substantial new

protections for employees in the areas of significantly lower permissible exposure limits, exposure assessment, respiratory protection, medical surveillance and medical removal. He added that the compliance date for most remaining portions of the standard is stayed until June 25, 2018, and certain of the ancillary provisions could be stayed until December 12, 2018.

He stated that no impact on the Department is anticipated from the adoption of the stay of compliance date. The stay will provide additional time for internal training on inspection procedures.

Mr. Withrow concluded by recommending, on behalf of the Department, that the Board adopt federal OSHA's stay of compliance dates for the Occupational Exposure to Beryllium for General Industry, 1910.1024, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of September 15, 2018.

He also recommended that the Board adopt a compliance date for §§1910.1024(c), (d), (g), (k), and (l), as summarized in the briefing package in section I. Action Requested, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of September 15, 2018.

A motion to accept the Department's recommendation was amended by the Board and properly accepted. The motion was approved unanimously by voice vote.

Occupational Exposure to Beryllium for the Shipyard Industry, §1915.1024, and the Construction Industry, §1926.1124; Stay of Certain Compliance Dates; Adoption of Certain Compliance Dates

Mr. Withrow requested that the Board consider for adoption federal OSHA's indefinite stay of compliance dates for the "ancillary" provisions of the Occupational Exposure to Beryllium for the Shipyard Industry, §1915.1024, and the Construction Industry, §1926.1124. He informed the Board that on March 2, 2018, a memorandum from Director Thomas Galassi of the OSHA Directorate of Enforcement Programs, set a compliance date of May 11, 2018, for §§1915.1024(c) and 1926.1124(c), the new permissible exposure limits (PEL) and short term exposure limits (STEL) for the Beryllium Standards for Shipyards and Construction, respectively.

He stated that the proposed compliance date for §§1915.1024(c) and 1926.1124(c) is September 15, 2018. Also, he stated that the proposed effective date for the indefinite stay of the remaining "ancillary" provisions of §§1915.1024 and 1926.1124 is August 1, 2018.

Mr. Withrow informed the Board that the new Beryllium standards went into effect nationally on May 20, 2017, following the stays of the original federal effective date of March 10, 2017, and became effective on May 15, 2017 in Virginia. He added that compliance obligations both nationally and in Virginia were not scheduled to begin until March 12, 2018.

He stated that OSHA decided not to enforce the "ancillary" provisions of the January 9, 2017 Shipyard and Construction Standards, staying them indefinitely, and has proposed a new rulemaking for the Shipyard and Construction Standards that would remove the "ancillary" provisions of those standards, but maintain the new PELs and STELs. The indefinite stay of the compliance dates for those ancillary provisions remain in place while the proposed rulemaking is underway. OSHA began enforcing the new PELs and STELs for Beryllium in Shipyards and Construction on May 11, 2018.

Mr. Withrow reviewed the proposed ancillary provisions that OSHA has proposed to remove that appeared in the January 9, 2017 final rule. He also listed other shipyard and construction standards that can be used to provide protections to employees that are comparable to the ancillary provisions that OSHA proposes to remove from these standards.

Mr. Withrow informed the Board that the indefinite stay of the “ancillary” provisions of the Shipyard and Construction Standards provides OSHA with additional time for further review of its proposed rule and public comment period that are currently underway.

He stated that the indefinite stay of compliance dates for the “ancillary” provisions of the Shipyard and Construction standards will not have a negative impact on employers, employees, or the Department. VOSH is unaware of any state and local government employers or employees that are covered by the Beryllium Standard for Shipyards at this time. Construction employers will have to comply with current VOSH general standards, e.g., ventilation, PPE, respiratory protection, hazard communication, etc. Construction employees will immediately benefit from the enforcement of the new lower PELs and STELs for Beryllium in Shipyards and Construction, as they will provide substantial protections for exposed employees from the significant health effects of chronic beryllium disease and lung cancer.

Mr. Withrow listed current construction standards that OSHA and VOSH have identified that can be used to address many of the issues for which the “ancillary” provisions were designed.

Mr. Withrow concluded by recommending, on behalf of the Department, that the Board adopt federal OSHA’s indefinite stay of compliance dates for the “ancillary” provisions of the Occupational Exposure to Beryllium for the Shipyards Industry, Part 1915, and the Construction Industry, Part 1926, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of September 15, 2018.

He added that the Department also recommends that the Board adopt a compliance date for §§1915.1024(c) and 1926.1124(c), as summarized in the briefing package in Section I. Action Requested, and as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of September 15, 2018.

A motion to accept the Department’s recommendation was amended by the Board and properly accepted. The motion was approved unanimously by voice vote.

NEW BUSINESS

Petition to Amend the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program; 16VAC25-60-120.B

Mr. Withrow began his summarization of the Petition to Amend Process by informing the Board that on December 8, 2017, Robert R. Payne, University of Alabama at Birmingham, had submitted to the Department a petition to amend 16VAC25-60-120.B, pursuant to Va. Code §2.2-4007. He continued by explaining that the Department’s initial response to the petition was filed on the Regulatory Town Hall on December 18, 2017, and was published in the Virginia Register of Regulations on January 8, 2018, with a 21-day comment period, ending on January 28, 2018. No comments were received.

He stated that the Board will issue a written decision on the petition within 90 days of the close of the comment period, or within 14 days of its next meeting should the Board not meet within the initial 90 day period.

He explained that the petition asks that the following language be added to 16VAC25-60-120.B.:

“Any employer who is using machinery, vehicles, tools, materials or equipment as part of a Process Safety Management (PSM) covered process, as defined in 29 CFR (Code of Federal Regulations) 1910.119, may adjust the operation, training, use, installation, inspection, testing, repair or maintenance after completion of the following:

- Documenting the adjustment from the Manufacturer’s Specifications and Limitations (MS&L) in the Process Safety Information (PSI)
- Completing the Management of Change (MOC) requirement described in 29 CR 1910.119 (I) and
- Certification from a company executive that they have examined this adjustment and that to the best of their knowledge the information is true, accurate and complete.”

Mr. Withrow then summarized the Petitioner’s Rationale for the Proposed Amendment: that an employer operating a process safety management (PSM) work site may be negatively impacted by 16VAC25-60-120.B. since the VOSH regulations do not provide an option for employers to vary from the requirements of 16VAC25-60-120.B.

Mr. Withrow also explained the Department’s recommendation and rationale for the Board’s denial of the petition by stating that the VOSH Administrative Regulations Manual describes procedures for employers to seek variances from VOSH regulations. He continued by explaining that the variance procedures provide employers the opportunity to apply to the Commissioner for either an interim order and/or a permanent variance from an existing VOSH regulation (see VOSH ARM §§190-220).

He also explained that Va. Code §40.1-22(5) provides that, in deciding whether to adopt or amend a regulation, the Safety and Health Codes Board shall take into consideration “experiences gained under this and other health and safety laws.” Mr. Withrow continued by stating that based on the “experiences gained” under §1910.119 and 16VAC25-60-120.B, it does not appear that a significant enough number of PSM employers/employees are impacted negatively in Virginia by 16VAC25-60-120.B to warrant the undertaking of a potentially costly and time consuming regulatory amendment process. He added that the Department would reconsider its recommendation on this petition to amend if the Department ultimately receives a significant number of variance requests on this issue.

On behalf of the Department, Mr. Withrow recommended that the Board deny the petition to amend 16VAC25-60-120.B for the reasons stated in the presentation before the Board and in accordance with the authority of the Board under §40.1-22(5) and the requirements of the Administrative Process Act, §2.2-4000, *et seq.* He added that it is further recommended that the Board direct the Department to draft a written decision to the Petitioner to be signed by the Board Chair within 14 days of this meeting.

A motion to accept the Department’s recommendation was made and properly accepted. The motion was approved unanimously by voice vote.

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

Mr. Withrow, on behalf of the VOSH Program, requested that the Board consider for adoption federal OSHA's Final Rule on the Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness, as published on May 3, 2017 in 82 FR 20548.

Mr. Withrow summarized this final rule by explaining that, under the Congressional Review Act, Congress passed and the President signed Public Law 115-21, a resolution of disapproval of OSHA's final rule entitled, Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness," which was informally referred to as the "Volks" rule. The "Volks" rule affirmed longstanding OSHA policy by putting into regulation recordkeeping requirements stating that employers had a continuing obligation to maintain accurate injury and illness records and effectively gave OSHA the ability to issue citations to employers for failing to record work-related injuries and illnesses during the five-year retention period (normally OSHA has a six-month statute of limitations to issue violations).

He explained that the most recent amendments generally restored the affected recordkeeping regulations to the pre-clarification rule, i.e., prior to the December 19, 2016 final rule, which was effective nationally on January 18, 2017, and in Virginia on May 15, 2017. This amendment removed any references to an employer's continuing obligation to make and maintain an accurate record of each recordable injury and illness. The sections affected were: 1904.0, Purpose; 1904.4, Recording criteria; 1904.29, Forms; 1904.32, Annual Summary, 1904.33, Retention and updating; 1904.34, Change in business ownership; 1904.35, Employee involvement; heading for Subpart E; and 1904.40, Providing records to government representatives.

Mr. Withrow informed the Board that, although there were many revisions, the new rule did retain the requirement for employers to continuously update the OSHA 300 Log throughout the five year storage period the Board previously adopted 16VAC25-60-260.A.2, VOSH Administrative Regulation, effective September 21, 2006, and that the changes to the federal regulation as a result of the Congressional action have no impact on Virginia's regulation at 16VAC25-60-260.A.2, which was in existence prior to the December 19, 2016, recordkeeping rule changes.

Mr. Withrow explained that the purpose of these amendments was to restore the pre-December 19, 2016 Recordkeeping rules. He stated that no new or additional impact on employers, employees or the Department is anticipated. He added that, under this new final rule, an employer's obligations remain the same as they had been prior to the December 19, 2016 clarifying amendment. He stated that the changes to the federal regulation, resulting from the Congressional action, have no impact on Virginia's regulation at 16VAC25-60-260.A.2, which existed prior to the December 19, 2016 recordkeeping rule changes. He noted that there is concern that employers might under-report injuries and illnesses which would, in turn, undermine safety and health and put workers in danger.

Mr. Withrow concluded by stating that staff of the Department recommends that the Board adopt federal OSHA's Final Rule for the Clarification of Employer's 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 September 15, 2018.

A motion to accept the Department's recommendation was made and properly accepted. The motion was approved by voice vote, with Mr. Malveaux voting nay.

Amendment to the Vinyl Chloride Standard for General Industry, §1910.1017, CFR Correction

Mr. Ron Graham, Director of Occupational Health Compliance for the Department, requested the Board to consider for adoption federal OSHA's revision to the existing Final Rule for the Standard for Vinyl Chloride in General Industry, as published in 32 FR 11413 on March 15, 2018.

Mr. Graham explained that this amendment requires employers to notify affected employees within 15 days of their receipt of vinyl chloride monitoring results and the associated steps being taken to reduce exposures with the permissible exposure limit (PEL). He informed the Board that this amendment reinstates subparagraph (n) of the Standard which was inadvertently deleted in the July 1, 2017 revision of the Federal Register covering OSHA Standards, volume 29 CFR 1910.1000 to End.

With respect to impact, he stated that no impact on employers, employees and the Department is anticipated with the re-adoption of subparagraph (n) of the standard, as compliance with this paragraph has been a requirement since 1993.

Lastly, he added that the actions placed on the employer by subparagraph (n) are both technologically and economically feasible.

On behalf of the Department, Mr. Graham recommended that the Board adopt the Amendment to the Vinyl Chloride Standard for General Industry, §1910.1017, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of September 15, 2018.

A motion to accept the Department's recommendation was made and properly accepted. The motion was approved unanimously by voice vote.

Amendment to the Methylenedianiline Standard for the Construction Industry, §1926.60, CFR Correction

Mr. Graham requested that the Board consider for adoption federal OSHA's revision to the existing Final Rule for the Methylenedianiline Standard for the Construction Industry, as published in 83 FR 15499 on April 11, 2018.

He explained that this action removes subparagraph (o)(8)(ii) of §1926.60 which specifies procedures for employee record retention in the event an employer ceases to do business and there is no successor. He further explained that the purpose of this change is to discontinue the requirement whereby an employer who ceases to do business, and there is no successor to receive and retain the employee records, is required to notify the Director of the National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health and Human Services, or their designee, at least 90 days prior to disposal and, upon request, transmit them to the NIOSH Director.

Mr. Graham stated that employers would no longer be required to complete the extra step of notifying and forwarding records to NIOSH, but would follow the requirements of §1910.1020(h), nor would employers experience any additional costs. He added that no impact on employees and the Department is anticipated with this corrective action.

He concluded by recommending, on behalf of the Department, that the Board adopt the amendment to the Methylenedianiline Standard for the Construction Industry, §1926.60 – Correction, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of September 15, 2018. A motion to accept the Department’s recommendation was made and properly accepted. The motion was approved unanimously by voice vote.

Notice of Periodic Review of Certain Existing Regulations

Ms. Holly Raney, Regulatory Coordinator for the Department of Labor and Industry, requested authorization to proceed with the periodic review process of regulations, pursuant to §2.2-4017 of the *Code of Virginia* and Executive Order 17 (2014). The regulation for review is as follows:

16VAC25-145, Safety Standards for Fall Protection in Steel Erection, Construction Industry.

Ms. Raney explained that, following the Board’s approval, the periodic review process begins with publication of a Notice of Periodic Review in the Virginia Register, which begins a public comment period of at least 21 days, but not longer than 90 days. She concluded by informing the Board that the Department of Labor and Industry will post a report on the Regulatory Town Hall website indicating whether the regulation would be retained “as is”, repealed or amended.

Ms. Raney concluded by recommended that the Board approve the publication of a Notice of Periodic Review in the Virginia Register for 16VAC25-145, Safety Standards for Fall Protection in Steel Erection, Construction Industry.

A motion to accept the Department’s recommendation was properly made and seconded. The recommendation was approved unanimously by voice vote.

Items of Interest from the Department of Labor and Industry

Commissioner Ray Davenport reminded the Board that he had mentioned at two previous meetings that the Department was unsuccessful in securing funding on the compliance side of the House of Delegates during the last several General Assembly sessions. He informed the Board of the Department’s continuing concern about the 12 unfunded CSHO vacancies on the compliance sided.

Commissioner Davenport mentioned that OSHA commonly uses statistics to show that there is one CSHO for every 59,000 workers nationally and in Virginia, the ration is currently approximately one CSHO per 80,000 workers. He stated that in Virginia, adding the 12 unfunded CSHOs would improve the ratio to one CSHO per 63,100 workers.

He thanked the Board and Mr. Chuck Stiff for their letter addressing the funding issues following the November 2017 meeting. He noted that, due to the timing of late appointments of committee members, it was decided that timing may not have been right to send the letter of support to the money committee members. Commissioner Davenport added that the Department continues to seek the Board’s assistance in securing the needed funding for these positions and welcomes the Board’s support.

Commissioner Davenport informed the Board that year-to-date, VOSH has investigated 20 fatalities and, as of the week ending June 8th, the Department almost doubled where it was last year at this time – 20

vs. 11 this same time in 2017. He added that there was more than a 35% increase in fatal workplace accidents over the previous two years.

He informed the Board that during calendar year 2017, VOSH investigated 34 fatalities. He noted one trend in the recent fatalities was that 10 of the fatalities this year involved struck-by equipment, objects, vehicles or trees. He added that the Department will continue to monitor this and may in the near future design an outreach or press release to stakeholders calling their attention to these hazards.

He closed by thanking each Board member for their commitment to safety and health.

Items of Interest from Members of the Board

There were no items of Interest from Members of the Board.

Meeting Adjournment

There being no further business, a motion was properly made and seconded to adjourn the meeting. The motion was carried unanimously by voice vote. The meeting adjourned at 12:26 p.m.