



[townhall.virginia.gov](http://townhall.virginia.gov)

## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Labor and Industry/Safety and Health Codes Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	16VAC25-85-1904.39
<b>Regulation title(s)</b>	Recording and Reporting Occupational Injuries and Illnesses
<b>Action title</b>	Reporting to OSHA Fatalities, Hospitalizations, Amputations, and Losses of an Eye As a Result of Work-related Incidents
<b>Final agency action date</b>	September 13, 2016
<b>Date this document prepared</b>	September 19, 2016

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

The regulation in question, Occupational Injury and Illness Recording and Reporting Requirements - Reporting Fatalities, Hospitalizations, Amputations, and Losses of an Eye As a Result of Work-related Incidents to OSHA, 16VAC25-85-1904.39, requires employers with more than ten employees in most industries to report all work-related fatalities and work-related incidents within certain specified timeframes.

The vast majority of regulatory changes, which adopt other identical federal OSHA standards, begin with adoption of the changes by the Board followed by the standard regulatory promulgation process, with

the Virginia Administrative Process Act's Article 2 exemption, to become law. However, in this particular case, the changes OSHA enacted by regulation, i.e., to change injury reporting timeframe requirements, are also statutorily enacted in the controlling statute for the regulation, §40.1-51.1 of the *Code of Virginia*.

In this case, as discussed during the Board's first amendment to this regulation in 2015, regulation is subordinate to statutory law, and prior action by the General Assembly was necessary to change conflicting language in the statute to remove the potential conflict with a regulatory change of the Board.

**A. 2015 Action by the General Assembly and the Board**

Action by the General Assembly during the 2015 Session was first necessary to change the language in the existing statute to accommodate the federal OSHA regulatory change and remove the potential conflict. On March 17, 2015, a statutory change approved by the General Assembly was signed by Governor McAuliffe with an effective date of July 1, 2015. [*Refer to Attachment-1 to this package.*]

This 2015 action by the General Assembly cleared the way for the Board to act on the new federal amendments to Part 1904. This action, however, included a legislative drafting error which incorrectly required reporting of all in-patient hospitalizations, amputations, and losses of an eye within eight (8) hours.

The VOSH regulation subsequently adopted by the Board on July 15, 2015, was not identical to the federal OSHA requirements, as it was required to incorporate the errors in the statutory change earlier that year, i.e., to report in-patient hospitalizations, amputations, and losses of an eye within eight (8) hours from the time the event is reported to the employer rather than the 24-hour period allowed by the revised federal OSHA regulation.

**B. Resultant VOSH Enforcement Policy**

Due to the necessity to enact a statutory amendment in 2016 correcting the legislative drafting error discussed above prior to any correction of the regulation by the Board, the policy of VOSH regarding enforcement of the standard over the past year has been to not issue citations or penalties. In such instances, where an in-patient hospitalization, amputation, or loss of an eye were reported within OSHA's requirement of 24 hours, but not within the 8 hours required by §40.1-51.1.D., a *de minimis* violation would be noted in the case file in accordance with §40.1-49.4.A.2. A *de minimis* violation is defined as one that has no direct or immediate relationship to safety and health.

**C. 2016 Action by the General Assembly**

The Department was successful in amending §40.1-51.1.D during the 2016 Session of the Virginia General Assembly to bring the statute into conformity with the OSHA regulation. The statutory change to Va. Code §40.1-51.1.D was signed by Governor McAuliffe and became effective on July 1, 2016. [*Refer to Attachment-2 to this package.*]

This action facilitates the Board's option to adopt regulatory amendments requested by VOSH to the Part 1904 changes adopted by the Board last year bringing the Board's Part 1904

requirements into complete conformity with the federal OSHA Part 1904 requirements.

### **Corrections to the Part 1904 Reportable Work Related Injury and Illness Allowable Reporting Times**

These amendments will complete the update of 16VAC25-1904.39, resulting in the VOSH standard being identical to the 2014 federal OSHA requirements for employers to report certain work-related injury and illnesses. The affected timeframes requested for amendment in order to become OSHA-identical are listed below:

- § Every in-patient hospitalization resulting from a work-related incident must be reported within twenty-four (24) hours of the hospitalization;
- § All amputations resulting from work-related incidents, resulting from a work-related incident must be reported within twenty-four (24) hours of the incident;
- § Each loss of an eye resulting from a work-related incident must be reported within twenty-four (24) hours of the incident;

### **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 September 13, 2016, the Safety and Health Codes Board adopted federal OSHA's amendments to Recording and Reporting Occupational Injuries and Illnesses – Reporting to OSHA Fatalities, Hospitalizations, Amputations, and Losses of an Eye as a Result of Work-related Incidents, 16VAC25-85-1904.39, as authorized by Virginia Code §§40.1-22(5), 40.1-51.1.D., and 2.2-4006.A.4(c), with an effective date of December 1, 2016.

### **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 Reporting to OSHA Fatalities, Hospitalizations, Amputations, and Losses of an Eye As a Result of Work-related Incidents, please click on the link below:

[https://www.osha.gov/FedReg\\_osha\\_pdf/FED20140918.pdf](https://www.osha.gov/FedReg_osha_pdf/FED20140918.pdf)

**2015 SESSION****CHAPTER 270**

*An Act to amend and reenact § 40.1-51.1 of the Code of Virginia, relating to workplace safety; employer reporting requirements.*

[H 1681]

Approved March 17, 2015

Be it enacted by the General Assembly of Virginia:

1. That § [40.1-51.1](#) of the Code of Virginia is amended and reenacted as follows:

§ [40.1-51.1](#). Duties of employers.

A. It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, and to comply with all applicable occupational safety and health rules and regulations promulgated under this title.

B. Every employer shall provide to employees by such suitable means as shall be prescribed in rules and regulations of the Safety and Health Codes Board, information regarding their exposure to toxic materials or harmful physical agents and prompt information when they are exposed to concentration or levels of toxic materials or harmful physical agents in excess of those prescribed by the applicable safety and health standards and shall provide employees or their representatives with the opportunity to observe monitoring or measuring of exposures. Every employer shall also inform any employee who is being exposed of the corrective action being taken and shall provide former employees with access to information about their exposure to toxic materials or harmful physical agents.

C. Every employer cited for a violation of any safety and health provisions of this title or standards, rules and regulations promulgated thereunder shall post a copy of such citation at the site of the violations so noted as prescribed in the rules and regulations of the Safety and Health Codes Board.

D. Every employer shall report to the Virginia Department of Labor and Industry within eight hours any work-related incident resulting in (i) a fatality ~~or in~~, (ii) the ~~in-patient~~ *inpatient* hospitalization of ~~three~~ *one* or more persons, (iii) *an amputation*, or (iv) *the loss of an eye*, as prescribed in the rules and regulations of the Safety and Health Codes Board.

E. Every employer, through posting of notices or other appropriate means, shall keep his employees informed of their rights and responsibilities under this title and of specific safety and health standards applicable to his business establishment.

F. An employer representative shall be given the opportunity to accompany the safety and health inspectors on safety or health inspections.

G. Nothing in this section shall be construed to limit the authority of the Commissioner pursuant to § [40.1-6](#) or the Board pursuant to § [40.1-22](#) to promulgate necessary rules and regulations to protect and promote the safety and health of employees.

**2016 SESSION****CHAPTER 336**

An Act to amend and reenact § 40.1-51.1 of the Code of Virginia, relating to reporting requirements for work-related hospitalization, amputation, or loss of an eye.

[H 691]

Approved March 11, 2016

Be it enacted by the General Assembly of Virginia:

1. That § 40.1-51.1 of the Code of Virginia is amended and reenacted as follows:

§ 40.1-51.1. Duties of employers.

A. It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment which that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, and to comply with all applicable occupational safety and health rules and regulations promulgated under this title.

B. Every employer shall provide to employees, by such suitable means as shall be prescribed in rules and regulations of the Safety and Health Codes Board, information regarding their exposure to toxic materials or harmful physical agents and prompt information when they are exposed to concentration or levels of toxic materials or harmful physical agents in excess of those prescribed by the applicable safety and health standards and shall provide employees or their representatives with the opportunity to observe monitoring or measuring of exposures. Every employer shall also inform any employee who is being exposed of the corrective action being taken and shall provide former employees with access to information about their exposure to toxic materials or harmful physical agents.

C. Every employer cited for a violation of any safety and health provisions of this title or standards, rules, and regulations promulgated thereunder shall post a copy of such citation at the site of the violations so noted as prescribed in the rules and regulations of the Safety and Health Codes Board.

D. Every employer shall report to the Virginia Department of Labor and Industry within eight hours any work-related incident resulting in (i) a fatality, (ii) or within 24 hours any work-related incident resulting in (i) the inpatient hospitalization of one or more persons, (iii) (ii) an amputation, or (iv) (iii) the loss of an eye, as prescribed in the rules and regulations of the Safety and Health Codes Board.

E. Every employer, through posting of notices or other appropriate means, shall keep his employees informed of their rights and responsibilities under this title and of specific safety and health standards applicable to his business establishment.

F. An employer representative shall be given the opportunity to accompany the safety and health inspectors on safety or health inspections.

G. Nothing in this section shall be construed to limit the authority of the Commissioner pursuant to § 40.1-6 or the Board pursuant to § 40.1-22 to promulgate necessary rules and regulations to protect and promote the safety and health of employees.

**Recording and Reporting Occupational Injuries and Illnesses -  
Reporting Fatalities, Hospitalizations, Amputations, and Losses of an Eye  
As a Result of Work-related Incidents to OSHA, 16VAC25-85-1904.39**

As Adopted by the  
Safety and Health Codes Board

Date: September 13, 2016



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: December 1, 2016

**Recording and Reporting Occupational Injuries and Illnesses -  
Reporting Fatalities, Hospitalizations, Amputations, and Losses of an Eye  
As a Result of Work-related Incidents to OSHA, 16VAC25-85-1904.39**

When the regulations, as set forth in the amendment to Regulation for Reporting Fatalities, Hospitalizations, Amputations, and Losses of an Eye As a Result of Work-related Incidents to OSHA, 16VAC25-85-1904.39, 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:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
OSHA	VOSH
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Area Office	Regional Office
Agency	Department
January 1, 2015	December 1, 2016

**Non-relevant Federal Register  
material has been deleted**

■ 4. Revise § 1904.39 to read as follows:

**§ 1904.39 Reporting fatalities, hospitalizations, amputations, and losses of an eye as a result of work-related incidents to OSHA.**

(a) *Basic requirement.* (1) Within eight (8) hours after the death of any employee as a result of a work-related incident, you must report the fatality to the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

(2) Within twenty-four (24) hours after the in-patient hospitalization of one or more employees or an employee's

amputation or an employee's loss of an eye, as a result of a work-related incident, you must report the in-patient hospitalization, amputation, or loss of an eye to OSHA.

(3) You must report the fatality, in-patient hospitalization, amputation, or loss of an eye using one of the following methods:

(i) By telephone or in person to the OSHA Area Office that is nearest to the site of the incident.

(ii) By telephone to the OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742).

(iii) By electronic submission using the reporting application located on OSHA's public Web site at [www.osha.gov](http://www.osha.gov).

(b) *Implementation—(1) If the Area Office is closed, may I report the fatality, in-patient hospitalization, amputation, or loss of an eye by leaving a message on OSHA's answering machine, faxing the Area Office, or sending an email?* No, if the Area Office is closed, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye using either the 800 number or the reporting application located on OSHA's public Web site at [www.osha.gov](http://www.osha.gov).

(2) *What information do I need to give to OSHA about the in-patient hospitalization, amputation, or loss of an eye?* You must give OSHA the following information for each fatality, in-patient hospitalization, amputation, or loss of an eye:

(i) The establishment name;

(ii) The location of the work-related incident;

(iii) The time of the work-related incident;

(iv) The type of reportable event (i.e., fatality, in-patient hospitalization, amputation, or loss of an eye);

(v) The number of employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;

(vi) The names of the employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;

(vii) Your contact person and his or her phone number; and

(viii) A brief description of the work-related incident.

(3) *Do I have to report the fatality, in-patient hospitalization, amputation, or loss of an eye if it resulted from a motor vehicle accident on a public street or highway?* If the motor vehicle accident occurred in a construction work zone, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye. If the motor vehicle accident occurred on a public street or highway,

but not in a construction work zone, you do not have to report the fatality, in-patient hospitalization, amputation, or loss of an eye to OSHA. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(4) *Do I have to report the fatality, in-patient hospitalization, amputation, or loss of an eye if it occurred on a commercial or public transportation system?* No, you do not have to report the fatality, in-patient hospitalization, amputation, or loss of an eye to OSHA if it occurred on a commercial or public transportation system (e.g., airplane, train, subway, or bus). However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(5) *Do I have to report a work-related fatality or in-patient hospitalization caused by a heart attack?* Yes, your local OSHA Area Office director will decide whether to investigate the event, depending on the circumstances of the heart attack.

(6) *What if the fatality, in-patient hospitalization, amputation, or loss of an eye does not occur during or right after the work-related incident?* You must only report a fatality to OSHA if the fatality occurs within thirty (30) days of the work-related incident. For

an in-patient hospitalization, amputation, or loss of an eye, you must only report the event to OSHA if it occurs within twenty-four (24) hours of the work-related incident. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(7) *What if I don't learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye right away?* If you do not learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye at the time it takes place, you must make the report to OSHA within the following time period after the fatality, in-patient hospitalization, amputation, or loss of an eye is reported to you or to any of your agent(s): Eight (8) hours for a fatality, and twenty-four (24) hours for an in-patient hospitalization, an amputation, or a loss of an eye.

(8) *What if I don't learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident?* If you do not learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident, you must make the report to OSHA within the following time period after you or any of your agent(s) learn that the reportable fatality, in-patient

hospitalization, amputation, or loss of an eye was the result of a work-related incident: Eight (8) hours for a fatality, and twenty-four (24) hours for an in-patient hospitalization, an amputation, or a loss of an eye.

(9) *How does OSHA define "in-patient hospitalization"?* OSHA defines in-patient hospitalization as a formal admission to the in-patient service of a hospital or clinic for care or treatment.

(10) *Do I have to report an in-patient hospitalization that involves only observation or diagnostic testing?* No, you do not have to report an in-patient hospitalization that involves only observation or diagnostic testing. You must only report to OSHA each in-patient hospitalization that involves care or treatment.

(11) *How does OSHA define "amputation"?* An amputation is the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached. Amputations do not include avulsions, enucleations, degloving, scalplings, severed ears, or broken or chipped teeth.

[FR Doc. 2014-21514 Filed 9-17-14; 9:45 am]  
BILLING CODE 4510-26-P