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Proposed Regulation Agency Background Document

Agency name	Virginia Department of Labor and Industry/Safety and Health Codes Board
Virginia Administrative Code (VAC) citation(s)	16VAC25-200
Regulation title(s)	Virginia Voluntary Protection Programs (VPP)
Action title	Proposed Regulation on Virginia Voluntary Protection Programs (VPP)
Date this document prepared	March 31, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

On March 19, 2015, the Virginia General Assembly approved the adoption of §40.1-49.13 of the *Code of Virginia*, which codified the VOSH Voluntary Protection Program (VPP). Subsection B. of §40.1-49.13 requires the Safety and Health Codes Board to adopt a VPP regulation and provides for the following:

- B. "The Safety and Health Codes Board shall adopt definitions, rules, regulations, and standards necessary for the operation of the Voluntary Protection Program in a manner that will promote safe and healthy workplaces throughout the Commonwealth. The standards for the VPP shall include the following requirements for VPP participation:

1. Upper management leadership and active and meaningful employee involvement;
2. Systematic assessment of occupational hazards;
3. Comprehensive hazard prevention, mitigation, and control programs;
4. Employee safety and health training; and
5. Safety and health program evaluation."

Subsection B. of §40.1-49.13 also provides that current participants may continue as such, but on and after July 1, 2016, their continued participation is conditional upon complying with the standards for participation ultimately adopted by the Safety and Health Codes Board.

The proposed regulation addresses the following issues:

- Scope, purpose, and applicability
- Definitions
- Categories of participation (Star, Merit, Challenge, etc.);
- Ways to participate (site-based in both general industry and construction, mobile workforce, VPP corporate);
- Application requirements;
- Comprehensive safety and health management system requirements;
- Certification and re-certification processes;
- On-site evaluations;
- Annual submissions;
- Other participation requirements;
- Enforcement activity at VPP sites; and
- Withdrawal or termination

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

"OSHA" means Occupational Safety and Health Administration

"VOSH" means Virginia Occupational Safety and Health

"VPP" means Virginia Voluntary Protection Program

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Safety and Health Codes Board is authorized by Title 40.1-22(5) to:

“... adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal OSH Act of 1970...as may be necessary to carry out its functions established under this title”.

“In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity”.

“However, such standards shall be at least as stringent as the standards promulgated by the federal OSH Act of 1970 (P.L.91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws.”

On March 19, 2015, the Virginia General Assembly approved the amendment of the *Code of Virginia* by adding §40.1-49.13, which codifies the VPP.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the proposed change is to adopt those definitions, rules, regulations, and standards required by §40.1-49.13 of the *Code of Virginia*, and necessary for the operation of the Virginia VPP in a manner that will promote and recognize employer implementation of exceptional safety and health management systems throughout the Commonwealth. Historically, employer adoption of the VPP concepts has consistently resulted in injury and illness rates 50-60 % or more below that of the employer's industry as a whole.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.

The proposed regulation provides requirements for traditional site-based VPP, which has two levels of participation, Star worksite and Merit worksite. Star participants are a select group of worksites that have designed and implemented outstanding safety and health programs, including full and meaningful employee involvement. Merit participants are those that have demonstrated the potential and willingness to achieve Star status and are implementing planned actions to fully meet the VPP Star requirements.

VPP also encompasses the following programs which provide interested employers and employees the opportunity to develop and implement exemplary safety and health management systems:

- Challenge – where employers guided by Challenge Administrators through a three stage process, which can prepare a company to achieve VPP Star status;
- Site-based Construction – for long term construction sites;
- Mobile Workforce – for employers that move from site to site; and
- Corporate - designed for corporate applicants.

The standards for the VPP include the following requirements for VPP participation:

1. Upper management leadership and active and meaningful employee involvement;
2. Systematic assessment of occupational hazards;
3. Comprehensive hazard prevention, mitigation, and control programs;
4. Employee safety and health training; and
5. Safety and health program evaluation."

The proposed regulation addresses the following issues:

- Scope, purpose, and applicability
- Definitions
- Categories of participation (Star, Merit, Challenge, etc.);
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- Application requirements;
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- Certification and re-certification processes;
- On-site evaluations;
- Annual submissions;
- Other participation requirements;
- Enforcement activity at VPP sites; and
- Withdrawal or termination

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of

implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

In Virginia, the Voluntary Protection Program was instituted in 1996 and is patterned after federal OSHA's VPP, which was originally created in 1982. The VOSH Program adopted VPP as a component of DOLI's larger mission to "...make Virginia a better place in which to work, live and conduct business...by promoting safe, healthful workplaces, best employment practices..." An employer's membership in VPP is recognized as the nation's and Virginia's highest award that can be bestowed by a government agency to an employer for excellence in occupational safety and health management systems.

Virginia VPP currently recognizes 45 VPP sites employing over 11,000 employees who enjoy the protections and benefits of working in some of the safest and healthiest working conditions in the country. VPP sites also directly impact numerous qualified subcontractors and their employees that work at VPP sites as those companies are required to provide safety and health protections to their employees that are the equivalent to the protections provided to VPP site employees.

The traditional site-based VPP has two levels of participation, Star worksite and Merit worksite. Star participants are a select group of worksites that have designed and implemented outstanding safety and health programs, including full and meaningful employee involvement. Merit participants are those that have demonstrated the potential and willingness to achieve Star status and are implementing planned actions to fully meet the VPP Star requirements.

VPP also encompasses the following programs which provide interested employers and employees the opportunity to develop and implement exemplary safety and health management systems:

- Challenge – where employers guided by Challenge Administrators through a three stage process, which can prepare a company to achieve VPP Star status;
- Site-based Construction – for long term construction sites;
- Mobile Workforce – for employers that move from site to site; and
- Corporate - designed for corporate applicants.

This regulation applies to Virginia employers and employees that volunteer to participate in Virginia VPP. As such, there is no negative impact on Virginia's employers that are not program participants.

Program participants do incur costs associated with developing and implementing safety and health management systems that often exceed current requirements in VOSH laws, standards and regulations; however, the costs are incurred on a voluntary basis.

Employers that take proactive steps to improve safety and health protections for employees can realize significant savings and avoided costs associated with workplace injuries and illnesses. In 2015, the National Safety Council reported that the average cost of a medically consulted occupational injury in 2013 was \$42,000. In 2013, the Washington Post reported that the average net profit margin for all U.S. companies was 8.2 percent. With a net profit margin of 8.2%, a business would need to generate \$512,195 in new revenues to simply pay for the costs of that single injury.

The Department tracks injury and illness rates for each VPP site on an annual basis. Virginia VPP participating worksites average more than 60% lower injury and illness rates than their non-participating counterparts in their respective industries. Virginia VPP helps employers identify and correct occupational hazards in a proactive and cooperative approach that will reduce or eliminate debilitating injuries, illnesses and fatal accidents suffered by Virginia's employees. Nationally, VPP sites' recordable injury and illness rates for VPP sites have averaged 50 % below that of other worksites in their industry.

VPP Star sites regularly report decreased bottom line expenditures, which are associated with both drastically reduced injury and illness rates, and improved productivity and employee morale. Reducing private sector employer costs associated with injuries, illnesses and fatal accidents enhances a company's economic viability and competitiveness, and increases available capital for reinvestment, expansion and new hiring.

Virginia VPP worksites have demonstrated over many years that VPP participation will:

- substantially reduce workplace injuries and illnesses;
- reduce workers' compensation costs;
- result in a more highly trained and experienced workforce;
- improve company productivity; and
- promote competitiveness in the marketplace.

VPP is available to private and public sector employers of all sizes. For example, it includes the Dominion Power North Anna nuclear facility, which has almost 1,000 employees as well as Veritiv-Lynchburg with approximately ten employees. A small sample of other participants in the Virginia VPP include: Delta Airlines, Miller Coors, Raytheon, Eastman Chemical Company, and International Paper.

Virginia was the first VPP in the country to recognize state correctional institutions as VPP members – Augusta and Lunenburg Correctional Facilities of the Virginia Department of Corrections (VADOC). Both facilities have consistently incurred lower workers' compensation costs than other comparable Virginia Department of Corrections (VADOC) sites and have significantly lower injury and illness rates than the national rates for correctional facilities.

VADOC, a participant in the VPP program since 2001, estimates that the Commonwealth saved approximately \$1.5 million at Lunenburg Correctional Center (LCC) between 2002 and 2006. VADOC further estimates that since 2001, based on a 2009 comparative analysis, the five other medium security dormitory-design Virginia correctional centers achieved similar results in VPP to that of LCC. The potential savings may have been approximately \$3 million in direct (insured) costs and \$10.4 million in indirect costs, for a total savings of \$13.4 million. With the program's continued expansion into other state facilities, the Commonwealth could expect increased savings. Other state agencies, as well as local governments, could also experience these benefits from participating in VPP.

Expanding Virginia's VPP will promote safer and healthier work places in Virginia by using a proactive, cooperative approach between employers, employees and Virginia government, rather than a punitive one. The Department benefits from this cooperative relationship by having exemplary sites to lead and guide other employers to improve their occupational safety and health performance.

Once a site has qualified and successfully submitted an application for consideration in the VPP Star program, final approval requires an intensive weeklong on-site evaluation by a VOSH VPP team. Final approval is determined by DOLI’s Commissioner. VPP participants are exempt from regular VOSH programmed compliance inspections while they maintain their VPP status. Each VPP member site is required to be re-certified by an on-site evaluation team of safety and health professionals every 3-4 years to remain in VPP.

Adopting a regulation for the operation of VPP and establishing a formal and permanent structure for VPP will also assist DOLI in its pursuit of several bold initiatives it hopes will greatly enhance safety and health protections for Virginia’s workers.

First, DOLI is using VPP staffing resources to work cooperatively with the Virginia Associated General Contractors (AGC) to establish a pilot strategic partnership, known as Virginia BEST (**B**uilding **E**xcellence in **S**afety and **H**ealth **T**raining) to encourage and recognize construction contractors who voluntarily implement extensive safety and health management systems to benefit construction workers. Virginia BEST is a modified version of the Challenge concept where employers are guided by Challenge Administrators through a three stage process to achieving exemplary safety and health management systems.

Second, DOLI is developing a pilot strategic partnership with the Virginia Department of Corrections (VADOC) to substantially increase VADOC participation in VPP. The VADOC partnership will use Challenge concepts as well.

Finally, DOLI is working to expand the scope of VPP by implementing a Virginia unique version of the OSHA Challenge Program which would establish three levels of participation for employers wishing to enhance their safety and health management systems.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements in the proposed regulation that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities that are particularly affected by the proposed regulation.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Virginia Safety and Health Codes Board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Mr. Jay Withrow, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219; telephone #: 804.786.9873; fax #: 804.786.8418; Email address: Withrow.jay@dol.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>Other than training DOLI employees on the new regulation, no additional fiscal or other programmatic impacts are anticipated for the Department as a result of the adoption of the proposed amendments.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>No significant cost is anticipated for any locality.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Private and public sector employers and employees that fall within VOSH jurisdiction.</p> <p>The Virginia State Plan applies to all public and private sector places of employment in the state, with the exception of federal workers, the United States Postal Service, private sector maritime, federal military facilities, and other federal enclaves where the state has ceded jurisdiction to the federal government.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or</p>	<p>The Virginia State Plan applies to all public and private sector places of employment in the state, with the exception of federal workers, the United States Postal Service, private sector maritime, federal military facilities, and other federal enclaves where the state has ceded jurisdiction to the federal government.</p>

<p>has gross annual sales of less than \$6 million.</p>	<p>VOSH jurisdiction covers approximately 234,644 establishments employing 3,685,797 employees. Source: Virginia Employment Commission, Quarterly Census of Employment and Wages, Fourth Quarter, 2014</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>VPP is a voluntary program so there is no cost impact on Virginia’s employers that are not program participants.</p> <p>Program participants do incur costs associated with developing and implementing safety and health management systems that often exceed current requirements in VOSH laws, standards and regulations. However, the costs are incurred on a voluntary basis. Participants may terminate VPP status at any time for any reason.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The Department tracks injury and illness rates for each VPP site on an annual basis. Virginia VPP participating worksites average more than 60% lower injury and illness rates than their non-participating counterparts in their respective industries. Virginia VPP helps employers identify and correct occupational hazards in a proactive and cooperative approach that will reduce or eliminate debilitating injuries, illnesses and fatal accidents suffered by Virginia’s employees. Nationally, VPP sites’ recordable injury and illness rates for VPP sites have averaged 50 % below that of other worksites in their industry.</p> <p>Virginia VPP currently recognizes 45 VPP sites employing over 11,000 employees who enjoy the protections and benefits of working in some of the safest and healthiest working conditions in the country. VPP sites also directly impact numerous qualified subcontractors and their employees that work at VPP sites as those companies are required to provide safety and health protections to their employees that are the equivalent to the protections provided to VPP site employees.</p> <p>VPP Star sites regularly report decreased bottom line expenditures, which are associated with both drastically reduced injury and illness rates, and improved productivity and employee morale. Reducing private sector employer costs associated with injuries, illnesses and fatal accidents enhances a company’s economic viability and competitiveness, and increases available capital for reinvestment, expansion and new hiring.</p> <p>Virginia VPP worksites have demonstrated over</p>

	<p>many years that VPP participation will:</p> <ul style="list-style-type: none"> • substantially reduce workplace injuries and illnesses; • reduce workers' compensation costs; • result in a more highly trained and experienced workforce; • improve company productivity; and • promote competitiveness in the marketplace. <p>First, DOLI is using VPP staffing resources to work cooperatively with the Virginia Associated General Contractors (AGC) to establish a pilot strategic partnership, known as Virginia BEST (Building Excellence in Safety and Health Training) to encourage and recognize construction contractors who voluntarily implement extensive safety and health management systems to benefit construction workers. Virginia BEST is a modified version of the Challenge concept where employers are guided by Challenge Administrators through a three stage process to achieving exemplary safety and health management systems.</p> <p>Second, DOLI is developing a pilot strategic partnership with the Virginia Department of Corrections (VADOC) to substantially increase VADOC participation in VPP. The VADOC partnership will use Challenge concepts as well.</p> <p>Virginia was the first VPP in the country to recognize state correctional institutions as VPP members – Augusta and Lunenburg Correctional Facilities of the Virginia Department of Corrections (VADOC). Both facilities have consistently incurred lower workers' compensation costs than other comparable Virginia Department of Corrections (VADOC) sites and have significantly lower injury and illness rates than the national rates for correctional facilities.</p> <p>VADOC, a participant in the VPP program since 2001, estimates that the Commonwealth saved approximately \$1.5 million at Lunenburg Correctional Center (LCC) between 2002 and 2006. VADOC further estimates that since 2001, based on a 2009 comparative analysis, the five other medium security dormitory-design Virginia correctional centers achieved similar results in VPP to that of LCC. The potential savings may have been approximately \$3 million in direct (insured) costs and \$10.4 million in indirect costs, for a total savings of \$13.4 million. With the program's continued expansion into other state facilities, the Commonwealth could expect</p>
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	increased savings. Other state agencies, as well as local governments, could also experience these benefits from participating in VPP.
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Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

On March 19, 2015, the Virginia General Assembly approved the adoption of §40.1-49.13 of the Code of Virginia, which codified the VOSH Voluntary Protection Program (VPP) and requires the adoption of these proposed regulation. There are no other viable alternatives to the proposal considered by the Department.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

On March 19, 2015, the Virginia General Assembly approved the adoption of §40.1-49.13 of the Code of Virginia, which codified the VOSH Voluntary Protection Program (VPP) and requires the adoption of these proposed regulation. There are no other viable alternatives to the proposal considered by the Department.

Periodic review and small business impact review report of findings

If this NOIRA is the result of a periodic review/small business impact review, use this NOIRA to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Commenter	Comment	Agency response

These proposed amendments are not the result of a periodic review/small business impact review that was announced during the NOIRA stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response

There were no public comments received following the publication of the NOIRA.

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.

No impact on the family is anticipated as a result of this proposed action.

Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements

If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
16VAC23-200-10	<p>16VAC25-200-10. Scope, purpose, and applicability.</p> <p>A. Scope.</p> <p>In accordance with the requirements of §40.1-49.13 of the <i>Code of Virginia</i>, this regulation establishes requirements for Virginia Occupational Safety and Health (VOSH) Voluntary Protection Programs (VPP) as established by the Commissioner and based on the following principles:</p> <ol style="list-style-type: none"> 1. Participation in VPP is strictly voluntary. The applicant who wishes to participate freely submits information to VOSH on its safety and health management system and opens itself to agency review. 2. VPP emphasizes trust and cooperation between VOSH, the employer, employees, and employee representatives and is complementary to the agency’s enforcement activity, but does not take its place. This partnership enables the agency to remove participating sites from programmed inspection lists, allowing it to focus inspection resources on establishments in greater 		<p>The intent of the proposed change is to adopt those definitions, rules, regulations, and standards required by §40.1-49.13 of the Code of Virginia, and necessary for the operation of the Virginia VPP in a manner that will promote and recognize employer implementation of exceptional safety and health management systems throughout the Commonwealth. Historically, employer adoption of the VPP concepts has consistently resulted in injury and illness rates 50-60 % or more below that of the employer’s industry as a whole.</p> <p>Expanding Virginia’s VPP will promote safer and healthier work places in Virginia by using a proactive, cooperative approach between employers, employees and Virginia government, rather than a punitive one. The Department benefits from this cooperative relationship by having exemplary sites to lead and guide other employers to improve their occupational safety and health performance.</p>

	<p>need of agency oversight and intervention. However, VOSH will continue to investigate valid employee safety and health complaints, referrals, fatalities, accidents, and other significant events at VPP participant sites, in accordance with VOSH enforcement procedures.</p> <p>3. VPP participants develop and implement a systems approach to effectively identify, evaluate, prevent, and control occupational hazards so that injuries and illnesses to employees are prevented. Participants are often on the leading edge of hazard prevention methods and technology, and serve as models of safety and health excellence, demonstrating the benefits of a systems approach to worker protection.</p> <p>4. VPP participants are selected based on their written safety and health management system, the effective implementation of this system over time, and their performance in meeting VPP requirements. Not all worksites are appropriate candidates for VPP. At qualifying sites, all personnel are involved in the effort to maintain</p>		<p>Description of VOSH enforcement authority at VPP sites.</p> <p>VPP is intended to be limited in size to only recognize the "best of the best" employer safety and health management systems.</p>
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	<p>rigorous, detailed attention to safety and health. VPP participants often mentor other worksites interested in improving safety and health, participate in safety and health outreach and training initiatives, share best practices and promote excellence in safety and health in their industries and communities.</p> <p>5. VPP participants must demonstrate continuous improvement in the operation and impact of their safety and health management systems. Annual VPP self-evaluations help participant’s measure success, identify areas needing improvement, and determine needed changes. VOSH on-site evaluation teams verify this improvement.</p> <p>6. Participation in VPP does not diminish employee and employer rights and responsibilities under VOSH laws, standards and regulations.</p> <p>7. The provisions of this regulation are intended to provide solely for the safety, health and welfare of employees and the benefits thereof shall not run to any applicant, participant or any other person nor shall a third</p>		
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	<p>party have any right of action for breach of any provision of this regulation except as otherwise specifically provided herein.</p> <p>8. Nothing in this regulation shall be construed to in any way limit the Commissioner's discretion to use agency personnel and resources in accordance with the powers and duties as set forth in Title 40.1 of the <i>Code of Virginia</i>.</p> <p>B. Purpose.</p> <p>This regulation establishes requirements necessary for the operation of Virginia Voluntary Protection Programs in a manner that will promote safe and healthy workplaces throughout the Commonwealth. The elements for VPP shall include the following requirements for participation:</p> <ol style="list-style-type: none"> 1. Upper management leadership and active and meaningful employee involvement; 2. Systematic assessment of occupational hazards; 3. Comprehensive hazard prevention, mitigation, and control 		<p>See Va. Code §40.1-49.13, Virginia Voluntary Protection for the legislative standards established for VPP.</p>
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<p>16VAC25-200-20</p>	<p>programs;</p> <p>4. Employee safety and health training;</p> <p>5. Safety and health program evaluation.</p> <p>C. Applicability.</p> <p>1. This regulation applies to Virginia employers and employees that volunteer to participate in Virginia VPP.</p> <p>2. Because Virginia VPP is a voluntary program, the Commissioner's final decision to accept or reject an application, or suspend or terminate a company's participation in VPP, or to take any other action contemplated by this regulation or §40.1-49.13 of the <i>Code of Virginia</i>, is not subject to the provisions of the Virginia Administrative Process Act, Va. Code §2.2-4000 through 2.2-4032 of the <i>Code of Virginia</i>.</p> <p>16VAC25-200-20. Definitions.</p> <p>"1-Year Conditional Goal" means a target for correcting deficiencies in safety and health management system elements or sub-elements identified by VOSH during the on-site evaluation of a Star participant. Such deficiencies, which indicate that a participant no longer</p>		<p>The Virginia State Plan applies to all public and private sector places of employment in the state, with the exception of federal workers, the United States Postal Service, private sector maritime, federal military facilities, and other federal enclaves where the state has ceded jurisdiction to the federal government.</p> <p>VOSH jurisdiction covers approximately 234,644 establishments employing 3,685,797 employees. Source: Virginia Employment Commission, Quarterly Census of Employment and Wages, Fourth Quarter, 2014.</p> <p>This goal is often used for VPP Merit sites – see definition of "Merit" below.</p>
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	<p>fully meets Star requirements, must be corrected within 90 days, and the participant must then operate at the Star level for 1 year, for the conditional status to be lifted. Failure to meet this requirement will result in termination from VPP.</p> <p>"90-Day Item" means compliance related issues that must be corrected within a maximum of 90 days, with effective protection provided to employees in the interim.</p> <p>"Annual Evaluation" means a participant's yearly self-assessment to gauge the effectiveness of all required VPP elements and any other elements of the safety and health management system.</p> <p>"Annual Submission" means a document written by a participant and submitted to the Department on or before the 15th of February each year, consisting of the following information: Updated names and addresses, the participant's and applicable contractors' injury and illness case numbers and rates, average annual employment and hours worked for the previous calendar year, a copy of the most recent annual evaluation of the safety and health management system, descriptions of significant changes or events, progress made on the previous year's</p>		<p>Because VPP site visits for recertification only happen every three to four years, the annual evaluation and annual submission process is an important way for the Department to monitor participating sites to assure that they are maintaining all VPP elements and sub-elements. When annual reports indicate that safety and health concerns may be developing, VPP staff can visit the site to check on concerns.</p>
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	<p>recommendations, Merit or 1-Year Conditional goals (if applicable), and any success stories.</p> <p>"Applicable Contractor" means a contractor whose employees worked at least 1,000 hours for the participant in any calendar quarter within the last 12 months and are not directly supervised by the applicant/participant.</p> <p>"Challenge Administrator" means selected individuals in organizations such as corporations, state agencies or non-profit associations that have met VOSH VPP criteria including, dedicated resources to administer the Challenge program for their worksites/members or other organizations' worksites/members. Administrators are involved in the application and review processes. In certain situations as specified by the Commissioner, VOSH can serve as a Challenge Administrator.</p> <p>"Commissioner" means the Commissioner of Labor and Industry or his designees.</p> <p>"Contract Employees" means workers who are employed by a company that provides services under contract to the VPP applicant or participant, usually at the VPP applicant's or participant's worksite.</p>		<p>VPP sites also directly impact numerous qualified subcontractors and their employees that work at VPP sites as those companies are required to provide safety and health protections to their employees that are the equivalent to the protections provided to VPP site employees.</p> <p>VPP sites also directly impact numerous qualified subcontractors and their employees that work at VPP sites as those companies are required to provide safety and health protections to their employees that are the equivalent to the protections provided to VPP site</p>
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	<p>"Days Away, Restricted, and/or Transfer Case Incidence Rate (DART rate)" means the rate of all injuries and illnesses resulting in days away from work, restricted work activity, and/or job transfer. This rate is calculated for a worksite for a specified period of time, usually one to three years.</p> <p>"Department" means the Department of Labor and Industry.</p> <p>"Mentoring" means the assistance that a VPP participant provides to another company to improve that site's safety and health management system or prepare it for VPP application or participation.</p> <p>"Merit Goal" means a target for improving one or more deficient safety and health management system elements for a participant approved to the Merit program. A Merit goal must be met in order for a site to achieve Star status.</p> <p>"Merit Program" means a program designed for worksites that have demonstrated the potential and commitment to achieve Star quality, but that need to further improve their safety and health management system. A worksite may be designated as Merit when,</p>		<p>employees.</p> <p>DART (see above) and TCIR are injury illness rates calculated on an annual basis by industry and individual worksite and serve as excellent measuring tool to compare the effectiveness of safety and health management systems locally and nationally.</p> <p>One of the major benefits of VPP is the mentoring services provided by participant sites to prospective applicants. VPP sites regularly share best practices with other companies - sometimes in competitive industries - in the interests of protecting employee safety and health.</p>
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	<p>during an initial Star certification review, the VOSH review team determines that not all Star requirements are being fully met. In the case of a Merit designation, the participant must complete specified Merit goals in order to achieve Star status and continue in VPP. "Merit" is not a participation level that can be applied for.</p> <p>"Misclassification" means when an employer improperly classifies a worker as an independent contractor who should in fact be an employee.</p> <p>"Model system" means an exemplary, voluntarily implemented worker safety and health management system that (i) implements comprehensive safety and health programs that exceed basic compliance with occupational safety and health laws and regulations and (ii) meets the VPP standards adopted by the Safety and Health Codes Board pursuant to this regulation.</p> <p>"On-site Assistance Visit" means a visit to an applicant or participant site by agency personnel or other non-enforcement personnel, to offer assistance, including help with their application, conduct a records review, and/or make general observations about the site's safety and health management system.</p>		<p>See Governor's Executive Order 24, Establishing an Inter-Agency Task Force on Worker Misclassification and Payroll Fraud, for background on this issue.</p> <p>Because VPP site visits for recertification only happen every three to four years, the annual evaluation and annual submission process is an important way for the Department to monitor participating sites to assure</p>
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	<p>"On-site Evaluation" means a visit to an applicant or participant site by a VOSH on-site evaluation team to determine whether the site qualifies to participate, continue participation, or advance within VPP.</p> <p>"On-site Evaluation Report" means a document written by the VOSH on-site evaluation team and consisting of the site report. This document contains the team's assessment of the safety and health management system and the team's recommendation regarding approval of the applicant or re-approval of the participant in VPP.</p> <p>"On-site Evaluation Team" means an interdisciplinary group of VOSH professionals and private industry volunteers who conduct on-site evaluations. The team normally consists of a team leader, a backup team leader, safety and health specialists, and other specialists as appropriate.</p> <p>"Private Industry Volunteer (PIV)" means a volunteer from a VPP site or corporation, knowledgeable in safety and health management system assessment, formally trained in the policies and procedures of VPP, and determined by VOSH to be qualified to perform as a team member on a VPP on-site evaluation.</p>		<p>that they are maintaining all VPP elements and sub-elements. When annual reports indicate that safety and health concerns may be developing, VPP staff can visit the site to check on concerns.</p> <p>VPP sites regularly provide safety and health experts to serve as members of VPP on-site evaluation teams. PIVs provide exceptional levels of expertise and save the Commonwealth staffing resources and associated travel costs. On-site review teams are always lead by VOSH personnel.</p>
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	<p>"Recommendations" means suggested improvements noted by the on-site evaluation team that are not requirements for VPP participation but that would enhance the effectiveness of the site's safety and health management system. Compliance with VOSH standards is a requirement, not a recommendation.</p> <p>"Safety and Health Management System" means a method of preventing worker fatalities, injuries and illnesses through the ongoing planning, implementation, integration, and control of four interdependent elements: management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training.</p> <p>"Small Business" means a company having no more than 250 employees at any one facility, and no more than 500 employees nationwide.</p> <p>"Star Program" means the program within VPP designed for participants whose safety and health management systems operate in a highly effective, self-sufficient manner and meet all VPP requirements. Star is the highest level of VPP participation.</p> <p>"Temporary Employee" means an employee hired on</p>		<p>The STAR program is the traditional site-based VPP participation program.</p>
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<p>16VAC25-200-30</p>	<p>a non-permanent basis by the applicant/participant site.</p> <p>"Total Case Incidence Rate (TCIR)" means a number that represents the total recordable injuries and illnesses per 100 full-time employees, calculated for a worksite for a specified period of time (usually one to three years).</p> <p>"Voluntary Protection Programs" or "VPP" means voluntary programs under which the Commissioner recognizes and partners with workplaces in which a model system has been implemented.</p> <p>"Voluntary Protection Program Participants' Association (VPPPA)" means a nonprofit 501(c) (3) organization whose members are involved in VPP. The mission of the VPPPA is to promote safety, health, and environmental excellence through cooperative efforts among employees, management, and government.</p> <p>16VAC25-200-30. Categories of participation.</p> <p>A. Categories of participation may include, but are not limited to:</p> <ol style="list-style-type: none"> 1. Site-based fixed worksites and long term construction sites, including traditional Star 		<p>DART (see above) and TCIR are injury illness rates calculated on an annual basis by industry and individual worksite and serve as excellent measuring tool to compare the effectiveness of safety and health management systems locally and nationally.</p> <p>The categories of participation allow VOSH to reach beyond the traditional site based program to reach mobile and construction worksites. The Challenge program allows VPP to develop programs that</p>
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	<p>and Merit designations;</p> <ol style="list-style-type: none"> 2. Challenge participants where employers are guided by Challenge Administrators through a three stage process, which can prepare a company to achieve VPP Star status; 3. Mobile workforce participants where employers often work as subcontractors and move from site to site; 4. Corporate participants that have adopted VPP on a large scale. <p>B. Levels of recognition:</p> <ol style="list-style-type: none"> 1. Star Worksite status recognizes the safety and health excellence of worksites where workers are successfully protected from fatality, injury, and illness by the implementation of comprehensive and effective workplace safety and health management systems. These worksites are self-sufficient in identifying and controlling workplace hazards. 2. Merit Worksite status recognizes worksites that have good safety and health management systems and that show the willingness, commitment, and ability 		<p>recognize employers who have placed themselves on a path to VPP but have not achieved full implementation of all elements and sub-elements of the STAR program.</p> <p>The VPP STAR program is intended to be limited in size. The period leading up to the ability to even apply to VPP can require years of hard work and sacrifice from management and labor personnel. The Merit Worksite status recognizes that hard work even though a site may have come up a little short of expectations during the VPP on-site team visit. Merit site designation is not permanent. If the site does not show improvement to STAR status within three years, it will have to withdraw or be terminated from the program.</p>
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	<p>to achieve site-specific goals that will qualify them for Star participation.</p> <p>a. If the on-site evaluation team recommends participation in the Merit program, the site must then complete a set of goals in order to maintain Merit status and qualify for the Star Program.</p> <p>b. Merit goals must address Star requirements not presently in place or aspects of the safety and health management system that are not up to Star quality.</p> <p>c. Methods for improving the safety and health management system that will address identified problem areas must be included in Merit goals.</p> <p>d. Correction of a specific hazardous condition must be a 90-day item, not a Merit goal. However, when a safety and health management system deficiency underlies a specific hazardous condition, then corrections to the system must be included as Merit goals.</p> <p>e. Reducing a 3-year TCIR or DART rate to</p>		
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	<p>below the national average is not by itself an appropriate Merit goal. Corrections to safety and health management system deficiencies underlying the high rate must be included in the Merit goals.</p> <p>f. Merit worksites are given a three year conditional goal of achieving Star status. A participant must meet Star rate requirements within the first two years of its Merit participation. This is to afford an additional year's experience, for a total of no more than three years to gain Star approval.</p> <p>g. A Merit participant qualifies for Star when it has met its Merit goals, Star rate requirements, and when all other safety and health elements and sub-elements are operating at Star quality.</p> <p>h. A Merit participant may qualify for the Star Program before the end of its Merit term if the participant meets all conditions in g., above.</p> <p>3. Challenge recognizes three stages of accomplishment as specified in 16VAC25-200-40.B.</p>		
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<p>16VAC25-200-40</p>	<p>C. Nothing in this regulation shall be construed to prohibit the Commissioner from establishing programs that are site-specific, company-wide, statewide, or any combination thereof.</p> <p>16VAC25-200-40. Ways to participate.</p> <p>A. Site-based fixed participation is directed at the owners and site officials who control site operations and have ultimate responsibility for assuring safe and healthful working conditions of:</p> <ol style="list-style-type: none"> 1. Private-sector fixed worksites in general industry; 2. Construction worksites or projects that will have been in operation for at least 12 months at the projected time of approval and that expect to continue in operation for at least an additional 12 months; 3. State and local government sector fixed worksites; 4. Resident contractors at participating VPP sites for the contractors' operations at those VPP sites; 5. Resident contractors at non-participating sites for the contractors' 		<p>The categories of participation allow VOSH to reach beyond the traditional site based program to reach mobile and construction worksites. The Challenge program allows VPP to develop programs that recognize employers who have placed themselves on a path to VPP but have not achieved full implementation of all elements and sub-elements of the STAR program.</p> <p>Virginia was the first VPP in the country to recognize state correctional institutions as VPP members – Augusta and Lunenburg Correctional Facilities of the Virginia Department of Corrections (VADOC). Both facilities have consistently incurred lower workers' compensation costs than other comparable</p>
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	<p>operations at those sites, so long as the resident contractors are part of a larger organization approved to participate under the corporate option.</p> <p>B. Challenge provides participating employers and workers an avenue to work with designated Challenge Administrators to develop and/or improve their safety and health management system. Challenge participants do not generally receive exemptions from VOSH programmed inspections, although it is within the Commissioner's discretion to design programs that permit exemption from programmed inspections for successful Stage 3 applicants.</p> <p>Challenge Administrators collaborate with participating employers to improve their safety and health management programs in three stages through mentoring, training and progress tracking:</p> <p>1. Stage 1 - Assess, Learn, and Develop. Challenge participants learn the elements necessary to develop and implement an effective safety and health</p>		<p>Virginia Department of Corrections (VADOC) sites and have significantly lower injury and illness rates than the national rates for correctional facilities.</p> <p>DOLI is developing a pilot strategic partnership with the Virginia Department of Corrections (VADOC) to substantially increase VADOC participation in VPP. The VADOC partnership will use Challenge concepts as well. RIVER NORTH AND DILLWYN CORRECTINAL CENTERS ARE THE FIRST TWO PROPOSED SITES.</p> <p>DOLI is working to expand the scope of VPP by implementing a Virginia unique version of the OSHA Challenge Program which would establish three levels of participation for employers wishing to enhance</p>
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	<p>management program; assess performance of existing safety and health programs and policies; provide training to management and workers; and develop strategies, programs, and policies.</p> <p>2. Stage 2 - Implement, Track, and Control. Challenge participants complete and implement policies and programs developed in Stage 1; continue to enhance and develop their safety and health management program; implement and improve their safety and health management program; and begin to incorporate policies for contractor/special trade contractor safety and health management program requirements.</p> <p>3. Stage 3 - Reassess, Monitor, and Improve. Challenge participants monitor, reassess, and continuously improve their safety and health management program. Challenge participants who complete Stage 3 have a safety and health management system sufficiently advanced for the participant to begin the application process for VPP Star certification.</p> <p>C. Mobile workforce companies typically</p>		<p>their safety and health management systems.</p> <p>DOLI is using VPP staffing resources to work cooperatively with the Virginia Associated General Contractors (AGC) to establish a pilot strategic partnership, known as Virginia BEST (Building Excellence in Safety and Health Training) to encourage and recognize construction contractors who voluntarily implement extensive safety and health management systems to benefit construction workers. Virginia BEST is a modified version of the Challenge concept where employers are guided by Challenge Administrators through a three stage process to achieving exemplary safety and health management systems.</p>
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<p>16VAC25-200-50</p>	<p>function as contractors or subcontractors which may or may not have the authority for safety and health for an entire worksite; and for those companies that have employees that move site-to-site, such as a specialty trade contractor or repair and maintenance company, regardless of size or length and duration of the project or service.</p> <p>D. VPP corporate is designed for corporate applicants, who demonstrate a strong commitment to employee safety and health and VPP. These applicants, typically large corporations or state or local government agencies, have adopted VPP on a large scale for protecting the safety and health of their employees. VPP corporate applicants must have established standardized corporate-level safety and health management systems that are effectively implemented organization-wide, as well as internal audit/screening processes that evaluate their facilities for safety and health performance.</p> <p>16VAC25-200-50. Application requirements.</p>		
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	<p>A. Term of Participation.</p> <ol style="list-style-type: none"> 1. There is no time limit to the term of participation in Star, as long as a site continues to meet all Star requirements and to maintain Star quality. 2. Fixed-site construction participation ceases with the completion of the construction project. 3. There is no time limit to the term of participation for Mobile Worksite, Corporate or Challenge site as long as the participant continues to meet all applicable requirements and maintain quality systems. <p>B. Injury and Illness History Requirements.</p> <ol style="list-style-type: none"> 1. Injury and illness history is evaluated using a 3-year total case incident rate (TCIR) and a 3-year day away, restricted, and/or transfer case incident rate (DART rate). The 3-year TCIR and DART rates must be compared to the published Bureau of Labor Statistics (BLS) national average for the five- or six-digit North American Industrial Classification System (NAICS) code for the industry in which the 		<p>The VPP STAR program is intended to be limited in size. The period leading up to the ability to even apply to VPP can require years of hard work and sacrifice from management and labor personnel. One element that often takes proposed applicants the longest to achieve is to implement safety and health management systems that result in injury rates that are lower than the national average for their industry.</p>
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	<p>applicant is classified. The BLS publishes NAICS industry averages two years after data is collected. For example, in calendar year 2016, calendar year 2014 national averages will be available and used for comparison.</p> <p>2. Both the 3-year TCIR and the 3-year DART rate must be below one of the three most recently published BLS national averages for the specific NAICS code.</p> <p>3. Some smaller worksites may be eligible to use the alternate rate calculation as provided for in VOSH written procedures.</p> <p>C. VOSH Inspection History.</p> <p>1. The applicant must not have been issued final VOSH citations related to a fatality in the preceding three-year period. In the event that the company elects to contest a citation related to a VOSH fatality, the company may not submit a VPP application until such time as all fatality-related citations have been successfully contested.</p> <p>2. If VOSH has inspected an applicant site in the 36 months preceding the application, the</p>		<p>VPP is intended for worksites who establish a long and consistent track record for exceptional safety and health management systems. One way to measure this is VOSH inspection history and how the proposed applicant worked with VOSH to resolve any enforcement issues. VPP is looking for exemplary corporate citizens.</p>
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	<p>inspection, abatement, and any other history of interaction with VOSH must indicate good faith attempts by the employer to improve safety and health at the site. This includes verification of correction of all serious violations. In addition, the existence of any of the following at the site precludes the site's participation in VPP:</p> <ul style="list-style-type: none"> a. Open enforcement investigations; b. Pending or open contested citations or notices under appeal at the time of application; c. Affirmed willful or anti-discrimination whistleblower violations under §40.1-51.2:1 of the <i>Code of Virginia</i> during the 36 months prior to application; d. Documented instances of misclassification of employees during the 36 months prior to application; e. Unresolved, outstanding enforcement actions, such as long term abatement agreements or contests. <p>D. Contract Worker</p>		
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	<p>Coverage.</p> <ol style="list-style-type: none"> 1. Workers for applicable contractors must be provided with safety and health protection equal in quality to that provided to participant employees. 2. All contractors, whether regularly involved in routine site operations or engaged in temporary projects such as construction or repair, must follow the safety and health rules of the host site. 3. VPP participants must have in place a documented oversight and management system covering applicable contractors to: <ol style="list-style-type: none"> a. Ensure that safety and health considerations are addressed during the process of selecting contractors and when contractors are on-site; b. Ensure that contractors follow site safety rules; c. Include provisions for timely identification, correction, and tracking of uncontrolled hazards in contractor work areas; 		<p>One of the major benefits of VPP is that participant sites also directly impact numerous qualified subcontractors and their employees that work at VPP sites as those companies are required to provide safety and health protections to their employees that are the equivalent to the protections provided to VPP site employees.</p> <p>Contractor oversight and management systems are essential elements to a safety and health management system. Anytime an outside element is introduced to a VPP site, it can present challenges to maintaining an exceptional safety and health culture at the worksite.</p>
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	<p>d. Include a provision for removing a contractor or contractor's employees from the site for safety or health violations.</p> <p>4. Nested contractors, such as contracted maintenance workers, and temporary employees who are supervised by host site management and governed by the site's safety and health management system are entitled to the same workplace protections as host employees; and are therefore included in the host site's injury and illness rates.</p> <p>5. Site management must maintain copies of the TCIR and DART rate data for all applicable contractors based on hours worked at the site. Sites must report all applicable contractors' TCIR and DART rate data to VOSH annually.</p> <p>6. Managers, supervisors, and non-supervisory employees of contract employers must be made aware of:</p> <p>a. The hazards they may encounter while on the site;</p> <p>b. How to recognize</p>		<p>Nested contractor oversight and management systems are also important to the effectiveness of the safety and health management system. New employees of contractors have to undergo site training on the safety and health management system and on the VPP elements and sub elements.</p>
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	<p>hazardous conditions and the signs and symptoms of workplace-related illnesses and injuries;</p> <p>c. The implemented hazard controls, including safe work procedures;</p> <p>d. Emergency procedures.</p> <p>E. Assurances.</p> <p>1. Applicants must understand and agree, through assurances, to fulfill program requirements for participation in VPP.</p> <p>2. Applicants must assure that:</p> <p>a. The applicant will comply with VOSH laws, standards, and regulations, and will correct in a timely manner all hazards discovered through self-inspections, employee notification, accident investigations, a VOSH on-site review, process hazard reviews, annual evaluations, or any other means. The applicant will provide effective interim protection as necessary.</p> <p>b. Site deficiencies related to compliance</p>		<p>Because VPP is a voluntary program that includes a limited exemption from planned VOSH inspections, VOSH must have a high degree of confidence of applicant's commitment to VPP principles. Applicant assurances are one of a number of ways to achieve this goal.</p>
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	<p>with VOSH requirements and identified during the VOSH on-site review will be corrected within 90 days, with interim protection provided to employees.</p> <p>c. Site employees support the VPP application.</p> <p>d. VPP elements are in place, and the requirements of the elements will be met and maintained.</p> <p>e. Employees, including newly hired employees and contract employees when they reach the site, will have the VPP explained to them, including employee rights under the program and VOSH laws, standards and regulations.</p> <p>f. Employees performing safety and health duties as part of the applicant's safety and health management system will be protected from discriminatory actions resulting from their carrying out such duties. See §40.1-51.2:1 of the <i>Code of Virginia</i>.</p> <p>g. Employees will</p>		<p>Providing alternative methods to assure employee protections when safety and health deficiencies are noted is a core element of safety and health management practice.</p> <p>See §40.1-51.2:1 of the <i>Code of Virginia</i>. Assuring that employees feel free to report safety and health issues to management to assure prompt correction is essential to having meaningful employee involvement in the safety and health management system. A VPP site cannot maintain compliance with VPP</p>
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	<p>have access to the results of self-inspections, accident investigations, and other safety and health management system data upon request. At unionized sites, this requirement may be met through the employee representative's access to these results.</p> <p>h. The information listed below will be maintained and available for VOSH review to determine initial and continued approval to the VPP:</p> <ul style="list-style-type: none"> (1) Written safety and health management system; (2) Any agreements between management and the collective bargaining agent(s) concerning safety and health; (3) Any data necessary to evaluate the achievement of individual Merit or 1-Year 		<p>elements and sub-elements without effective employee involvement.</p> <p>VPP does require a significant amount of documentation of safety and health programs to assure not only compliance with VOSH laws and regulations, but to establish an audit path for on-site review teams and VOSH VPP staff to assure the VPP elements and sub-elements are receiving constant scrutiny from the applicant/participant.</p>
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	<p>Conditional goals.</p> <ul style="list-style-type: none"> i. On or before the 15th of February each year, each participating site must submit its annual evaluation to the Department. j. Whenever significant organizational, ownership, union, or operational changes occur, such as but not limited to a change in management, corporate takeover, merger, or consolidation, a new statement of commitment signed by both management and any authorized collective bargaining agents, as appropriate will be provided to VOSH within 60 days of the effective date of the aforementioned changes. <p>3. The applicant must demonstrate a willingness to follow through on all assurances.</p> <p>4. Employees must be aware of the recourse available to them if management fails to fulfill any of these assurances. This may include rescinding their support</p>		<p>Management commitment and employee involvement are the lynchpins of a successful VPP site, so when any changes to a participant occur that might affect either of these elements, VPP staff need to be notified so that proper monitoring can occur.</p>
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	<p>of VPP participation or exercising the right to file a VOSH complaint.</p> <p>F. Pre-Application Assistance.</p> <ol style="list-style-type: none"> 1. Agency personnel may visit a prospective applicant’s site to offer assistance in the application process or before scheduling the on-site evaluation to obtain additional information or clarification of information provided in the application. 2. Pre-application assistance may also include referrals to the VPP mentoring program, Virginia VPP Best Practices training sessions, VPPPA conferences, and VPPPA application workshops. <p>G. Application Receipt and Review.</p> <ol style="list-style-type: none"> 1. The Commissioner shall establish written procedures to address requirements concerning receipt and review of application contents, including but not limited to the comprehensive safety and health management system requirements outlined in 16VAC25-200-60. 2. If, upon review, the application is considered incomplete, the 		<p>VPP staff and mentors from participating sites make themselves available to assist proposed applicants. The application process is long and sometimes arduous and applicants are most successful when they are provided as much detailed information as possible early in the process.</p> <p>VOSH uses a VPP Policies and Procedures Manual to establish agency policy on review of applications.</p>
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<p>16VAC25-200-60</p>	<p>Department shall notify the applicant by letter, noting the missing elements and requesting that the missing information be submitted within 90 days. If the additional information is not provided within that time, the application must be returned to the applicant. Applications can be resubmitted at any time.</p> <p>3. If it is clear that the applicant cannot qualify for VPP, the agency must ask the applicant to withdraw the application within 30 days. If the application is not withdrawn, the application will be returned with a letter indicating the reasons the application was denied.</p> <p>4. An applicant may withdraw the application by notifying the Department. The withdrawal is effective on the date the notification is received. The original application must be returned to the applicant. If the application had already been accepted, the agency must retain a working copy for one year, for use in responding to questions that may arise.</p> <p>16VAC25-200-60. Comprehensive safety and</p>		
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	<p>health management system requirements.</p> <p>A. The elements for VPP shall include the following requirements for VPP participation:</p> <ol style="list-style-type: none"> 1. Upper management leadership and active and meaningful employee involvement; 2. Systematic assessment of occupational hazards; 3. Comprehensive hazard prevention, mitigation, and control programs; 4. Employee safety and health training; 5. Safety and health program evaluation. <p>B. The Commissioner shall establish written procedures to address applicant and participant requirements concerning the elements and sub-elements appropriate to the program:</p> <ol style="list-style-type: none"> 1. Management commitment; 2. VPP commitment; 3. Employee involvement; 4. Contract worker coverage; 5. Safety and health management system evaluation; 6. Worksite analysis; 7. Baseline and comprehensive safety and industrial hygiene hazard 		<p>See Va. Code §40.1-49.13, Virginia Voluntary Protection Program.</p> <p>VOSH uses a VPP Policies and Procedures Manual to establish agency policy on the elements and sub-elements of VPP.</p> <p>These elements track OSHA procedures that are used nationally, as well as elements listed in Va. Code §40.1-49.13.</p>
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	<p>analysis;</p> <ul style="list-style-type: none"> 8. Hazard analysis of routine jobs, tasks and processes; 9. Hazard analysis of significant changes; 10. Pre-use analysis; 11. Documentation and use of hazard analysis; 12. Routine self-inspections; 13. Hazard reporting system for employees; 14. Industrial hygiene (IH) program; <ul style="list-style-type: none"> a. IH surveys; b. Sampling strategy; c. Sampling results; d. Documentation; e. Communication; f. Use of results; g. IH expertise; h. Procedures; i. Use of contractors <p>for IH surveys;</p> <ul style="list-style-type: none"> 15. Analysis of injury, illness and near-hit incidents; 16. Trend analysis; 17. Hazard prevention and control; 18. Certified professional resources; 19. Hazard elimination and control methods; <ul style="list-style-type: none"> a. Engineering; b. Administrative; c. Work practices; d. PPE; 20. Hazard control programs; 21. Compliance with applicable Virginia unique occupational safety and health regulations; 22. Occupational health care program; 23. Preventative maintenance of equipment; 		
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<p>16VAC25-200-70</p>	<p>24. Tracking of hazard correction; 25. Disciplinary system; 26. Emergency preparedness and response; and 27. Safety and health training.</p> <p>16VAC25-200-70. Certification process.</p> <p>A. Evaluation periods.</p> <p>The Commissioner shall establish written procedures to set time periods and scheduling requirements for on-site evaluations in response to initial applications accepted by the agency and for re-certification of participants.</p> <p>B. Scheduling exceptions.</p> <p>1. On-site evaluations shall be conducted earlier than normal scheduled requirements when:</p> <ul style="list-style-type: none"> a. Significant changes have occurred in management, processes or products that may require evaluation to ensure the site is maintaining a VPP quality safety and health management system; b. VOSH has learned of significant problems at the site, such as increasing 		<p>VOSH uses a VPP Policies and Procedures Manual to establish agency policy on scheduling evaluations and the certification and recertification process.</p>
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	<p>injury and illness rates, serious deficiencies described in the site's annual evaluation of its safety and health management system, or deficiencies discovered through VOSH enforcement activity resulting from an employee complaint, fatality, accident, or other event.</p> <p>C. Decision to conduct the on-site evaluation.</p> <ol style="list-style-type: none">1. Once an application is accepted, the agency must:<ol style="list-style-type: none">a. Notify the site by letter or e-mail in a timely manner that an on-site evaluation will be conducted. However, no on-site evaluation may be conducted until all prior enforcement actions have been closed.b. Notify the appropriate VOSH enforcement personnel so that the site can be removed from any programmed inspection lists, effective no more than 75 days prior to the scheduled on-site review.		
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<p>16VAC25-200-80</p>	<p>D. Methods of evaluation.</p> <p>The three primary methods of evaluation during the certification or recertification process are document review, walkthrough, and employee interviews. Additional activities that must occur are the opening conference, daily briefings, report preparation, and closing conference. The on-site evaluation team must evaluate each element and sub-element of the safety and health management system and VPP requirements.</p> <p>E. Recommendations.</p> <p>At the conclusion of the on-site evaluation, the on-site evaluation team must reach a consensus to recommend to the Commissioner as to whether the site is suitable for participation or continued participation in VPP, and at what level of participation.</p> <p>16VAC25-200-80. On-site evaluations.</p> <p>A. On-site evaluation team.</p> <p>An on-site evaluation consists of a thorough evaluation of a VPP applicant's or participant's safety and</p>		<p>VOSH uses a VPP Policies and Procedures Manual to establish agency policy on the conduct of on-site reviews, including procedures for employee interviews and the walkthrough process.</p> <p>The on-site evaluation team can contain safety and health professionals from both VOSH and VPP participants in the form of private industry volunteers.</p>
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	<p>health management system in order to recommend approval or re-approval. On-site evaluations are carried out by a team consisting of VOSH staff acting in a non-enforcement capacity, qualified volunteer safety or health professionals from private industry, and other qualified team members.</p> <p>B. On-site evaluation procedures.</p> <p>The Commissioner shall establish written procedures for on-site evaluations of applicants and participants undergoing recertification. The procedures shall address issues including, but not limited to:</p> <ol style="list-style-type: none"> 1. Prioritizing and scheduling on-site evaluations; 2. Inclusion of union representatives, if any, in the opening and closing conferences and the opportunity to accompany the on-site evaluation team on the site walkthrough; 3. On-site evaluation team composition, qualifications, preparation and assessment of personal 		<p>VOSH uses a VPP Policies and Procedures Manual to establish agency policy on the conduct of on-site reviews, including procedures for employee interviews and the walkthrough process.</p> <p>Employee involvement is a lynchpin of VPP participation. Virginia has a number of current participants where employees are represented by unions.</p>
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	<p>protective equipment needed;</p> <p>4. Opening conference subjects, review of injury and illness records, incentive programs, document review, walkthrough, review of safety and health management system elements and sub-elements, formal and informal interviews of employees, including applicable contractor employees, and closing conference subjects and recommendations;</p> <p>5. Employee rights under the program and under VOSH laws, standards and regulations;</p> <p>6. Assuring that employees performing safety and health duties as part of the applicant's safety and health management system will be protected from discriminatory actions resulting from their carrying out such duties, pursuant to §40.1-51.2:1 of the <i>Code of Virginia</i>.</p> <p>C. Correction of hazards.</p> <p>1. As hazards are found and discussed during the walkthrough, the on-site evaluation team must add them to a written list of the uncontrolled</p>		<p>Even in the very best run safety and health management systems, hazards can be identified because worksite conditions can change from day to day. VOSH expects identified</p>
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	<p>hazards identified. This list will be used when the team briefs site management at the end of each day on-site.</p> <p>2. VOSH expects that every effort will be made by the site to correct identified hazards before the closing conference. If hazard correction cannot be accomplished before the conclusion of the on-site evaluation, the on-site evaluation team and site management must discuss and agree upon correction methods and time frames.</p> <p>3. The site may be given up to a maximum of 90 days to correct uncontrolled hazards, as long as interim protection is provided. These “90-day Items” must be corrected before the final on-site evaluation report can be processed. Management must provide the team leader with a signed letter indicating how and when the correction will be made. The team leader may decide to return to the site to verify correction.</p> <p>4. If, after repeated attempts to reach agreement, site management refuses to correct a situation that exposes employees to serious safety or health</p>		<p>hazards to be corrected immediately or at least before the end of the closing conference and that employees will be removed from the hazard until correction can be achieved.</p> <p>Some hazards may take longer to correct, and that is permitted for up to 90 days as long as alternative methods for interim protection are provided.</p> <p>This section outlines VOSH enforcement procedures that can be implemented in situations where site cooperation does not reflect VPP culture.</p>
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	<p>hazards, that situation shall be referred for enforcement action.</p> <p>5. Should any identified hazard be determined to present a risk of imminent danger to life or health of an employee, agency personnel shall assure that its procedures for immediately removing employees from exposure to the hazard until corrected are complied with by the applicant or participant.</p> <p>D. Deficiencies in the Safety and Health Management System.</p> <p>Where the team detects deficiencies in the safety and health management system, even when physical hazards are not present, the on-site evaluation team must document these deficiencies as goals for correction, recommendations for improvement, or both.</p> <p>1. If the system deficiency is a requirement for VPP at the Star level, it must become the subject of a goal, either Merit or One-Year Conditional. Implementation of goals is mandatory for VPP participation. Time frames, interim protection, and methods</p>		<p>The VPP STAR program is intended to be limited in size. The period leading up to the ability to even apply to VPP can require years of hard work and sacrifice from management and labor personnel. The Merit Worksite status recognizes that hard work even though a site may have come up a little short or expectations during</p>
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	<p>of achieving goals must be discussed and agreed to with site management.</p> <p>2. If improvement of the system deficiency is not necessarily a requirement for VPP, but will improve worker safety and health at the site, the improvement must be a recommendation. Implementation of recommendations is encouraged but is not mandatory for VPP participation.</p> <p>E. Final Analysis of Findings.</p> <p>1. When the documentation review, the walkthrough, and employee interviews have been completed, the on-site evaluation team must meet privately to review and summarize its findings before conducting the closing conference.</p> <p>2. A draft of the certification or re-certification report shall be completed by the team before leaving the site. The draft report must reflect the consensus of the on-site evaluation team.</p> <p>F. Closing conference.</p> <p>The findings of the on-site evaluation team, including its</p>		<p>the VPP on-site team visit. Merit site designation is not permanent. If the site does not show improvement to STAR status within three years, it will have to withdraw or be terminated from the program.</p>
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<p>16VAC25-200-90</p>	<p>recommendation to the Commissioner, must be presented to site management and appropriate employee representatives before the team leaves the site.</p> <p>16VAC25-200-90. Annual submissions.</p> <p>A. Annual self-assessment.</p> <ol style="list-style-type: none"> 1. Participation in VPP requires each site/participant to annually evaluate the effectiveness of its safety and health management system, including the effectiveness of all VPP elements and sub-elements. 2. The Commissioner shall establish written procedures establishing the content and reporting requirements of participant annual submissions. 3. Annual submissions are due on or before the 15th of February each year. <p>B. Applicable contractors.</p> <p>Participants shall report on the injury and illness data for all applicable contractors.</p>		<p>Because VPP site visits for recertifications only happen every three to four years, the annual evaluation and annual submission process is an important way for the Department to monitor participating sites to assure that they are maintaining all VPP elements and sub-elements. When annual reports indicate that safety and health concerns may be developing, VPP staff can visit the site to check on concerns.</p>
<p>16VAC25-200-100</p>	<p>16VAC25-200-100.</p>		

	<p>Enforcement activity at VPP sites.</p> <p>A. Types of enforcement activity.</p> <p>Two types of enforcement activity trigger additional VPP assessment:</p> <ol style="list-style-type: none"> 1. Unprogrammed VOSH inspections, which occur in response to all referrals, formal complaints, fatalities, and certain accidents; 2. Other incidents or events, whether or not injuries or illnesses have occurred and whether or not normal enforcement procedures apply to the situation, may trigger reassessment. <p>B. Site reassessment.</p> <p>VOSH may reassess the site’s safety and health management system if there is reason to believe that a serious deficiency exists that would have an impact on the site’s continued qualification for VPP.</p> <p>C. Enforcement personnel.</p> <p>The Commissioner shall establish written procedures describing the use of enforcement personnel during on-site</p>		<p>This clarifies that although VPP provides limited exemptions from planned enforcement inspections, VOSH enforcement still has jurisdiction and will perform standard enforcement activities, including inspections, at VPP sites in response to unprogrammed incidents, such as accidents or employee complaints.</p>
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<p>16VAC25-200-110</p>	<p>evaluations and any limitations placed on their conducting an enforcement inspection at a VPP site.</p> <p>D. Impact of enforcement activity.</p> <ol style="list-style-type: none"> 1. If the event that triggers enforcement activity occurs during the time between application and on-site evaluation, the on-site evaluation must be postponed until the enforcement case is closed. 2. If the event that triggers enforcement activity occurs during the on-site evaluation, the on-site evaluation must cease until the enforcement case is closed. <p>16VAC25-200-110. Withdrawal, suspension or termination.</p> <p>A. Withdrawal.</p> <ol style="list-style-type: none"> 1. Participants may withdraw of their own accord or be asked by VOSH to withdraw from the programs. 2. Any participant may choose to withdraw voluntarily at any time. 3. VOSH shall request that a participant withdraw from VPP if it is determined that it is no 		<p>This clarifies that although VPP provides limited exemptions from planned enforcement inspections, VOSH enforcement still has jurisdiction and will perform standard enforcement activities, including inspections, at VPP sites in response to unprogrammed incidents, such as accidents or employee complaints.</p> <p>This reflects that VPP is a voluntary program and participants are free to withdraw at any time for any reason.</p>
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	<p>longer meeting the requirements for VPP participation.</p> <p>4. The Commissioner shall establish written withdrawal procedures which provide for the company's formal notification to the Department, the Commissioner's acknowledgement of receipt and notification to the company of the status change, notification to agency personnel of the status change, return of the company to the VOSH programmed inspection list and disposition of the VPP participant file.</p> <p>5. The Commissioner shall establish written procedures to address a VPP participant's change of location which establishes criteria for determining whether the participant can retain its VPP status or must withdraw.</p> <p>6. The Commissioner will consider the company's reapplication to VPP if and when eligibility requirements are met.</p> <p>B. Suspension.</p> <p>1. Participants that experience a work-related fatality, whether an employee or contract employee, may be</p>		<p>Participant suspension is necessary to deal with situations where certain enforcement related incidents, such as fatal accidents, need to be</p>
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	<p>immediately suspended from program participation until such time as a VOSH fatality investigation can be completed.</p> <p>2. The Commissioner shall establish written procedures to address a VPP participant's temporary suspension from VPP, which provides for the Department's formal notification to the participant and removal of the VPP flag or other recognition device from display until the suspension is lifted.</p> <p>3. A participant's suspension will not result in the company being returned to the VOSH programmed inspection list.</p> <p>C. Termination.</p> <p>1. The Commissioner may terminate a site from the VPP for failure to maintain the requirements of the program.</p> <p>2. In the event a fatality investigation shows substantial deficiencies in the participant's safety and health programs, such that during a normal certification audit the types of deficiencies would have precluded the site from participation in the VPP, the</p>		<p>investigated thoroughly to determine if VPP recognition is still warranted.</p>
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	<p>Commissioner, at his discretion, may terminate the site’s participation in VPP.</p> <p>3. In the a whistleblower investigation pursuant to §40.1-51.2:1 and §40.1-51.2:2 of the <i>Code of Virginia</i> shows substantial deficiencies in the participant's safety and health programs, such that during a normal certification audit the types of deficiencies would have precluded the site from participation in the VPP, the Commissioner, at his discretion, may terminate the site’s participation in VPP.</p> <p>4. Under most other situations, termination should occur only when all reasonable efforts for assistance have been exhausted.</p> <p>5. The Commissioner shall establish written termination procedures which provide for the Commissioner's formal notification to the participant and union representatives, an appeal process, and notification of the Commissioner's final decision.</p> <p>6. If the Commissioner finds the site’s appeal valid, the site may</p>		<p>Violation of whistleblower provisions would indicate a worksite that is not assuring full employee involvement in the safety and health management system.</p>
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	<p>continue in VPP.</p> <p>7. In the event of a final decision to terminate, the written procedures shall provide for notification to agency personnel of the status change, return of the company to the VOSH programmed inspection list and disposition of the VPP participant file. If a terminated company wishes to pursue reinstatement, it must wait three years to reapply.</p> <p>8. Because Virginia VPP is a voluntary program, the Commissioner's final decision to terminate a company's participation in VPP is not subject to the provisions of the Virginia Administrative Process Act, §2.2-4000 through §2.2-4032 of the <i>Code of Virginia</i>.</p>		
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