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Final Regulation Agency Background Document

Agency name	Virginia Department of Labor and Industry/Safety and Health Codes Board
Virginia Administrative Code (VAC) citation(s)	16 VAC25-200
Regulation title(s)	Virginia Voluntary Protection Programs
Action title	Final Regulation on Virginia Voluntary Protection Programs (VPP)
Date this document prepared	August 16, 2017, Revised September 6, 2017

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 of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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

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 the larger mission of the Department of Labor and Industry (DOLI) 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.

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 an employer 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.

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.

This 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.

“AGC” means Associated General Contractors;
“BEST” means Building Excellence in Safety and Health;
“DOLI” means Department of Labor and Industry;
“OSHA” means Occupational Safety and Health Administration;
“NOIRA” means Notice of Intended Regulatory Action;
“LCC” means Lunenburg Correctional Center;

“TCIR” means Total Case Incidence Rate (RCIR)

“VADOC” means Virginia Department of Corrections;

“VOSH” means the Virginia Occupational Safety and Health program of the Department of Labor and Industry.

“VPP” means Virginia Voluntary Protection Programs

Statement of final agency action

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

On July 27, 2017, the Safety and Health Codes Board adopted 16VAC25-200, Virginia Voluntary Protection Programs (VPP) as a final regulation of the Board.

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.

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 Virginia Voluntary Protections 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.

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 final regulation 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 % 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.

The Board adopted proposed regulatory language on March 3, 2016.

At the March 3, 2016 meeting, the Board requested staff to research the term "nested contractor" which is referenced in 16VAC25-200-50.D.4, Application requirements:

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.

The proposed regulation was published on December 12, 2016, with a 60-day comment period ending on February 17, 2017. A public hearing was held by the Board on February 16, 2017. No comments were received from the public.

Scope, Purpose and Applicability Issue:

During regulatory review process, the Department of Planning and Budget suggested that the Department review §16VAC25-200-10, Scope, Purpose and Applicability, with the Registrar of Regulations to assure that the section only contains "regulatory" subject matter language in accordance with §1VAC7-10-40.C:

- C. Pursuant to §30-150 of the Code of Virginia, the registrar may omit from publication in the Virginia Register of Regulations or inclusion in the Virginia Administrative Code (i)

effective date clauses, (ii) severability clauses, (iii) purpose statements, and (iv) provisions that are nonregulatory in nature, such as a defined word, term, or phrase that is not used in the regulatory text.

Other issues identified by the Registrar of Regulations include:

- Substitution of “Department” for “Agency”
- Substitution of “Chapter” for “Regulation”
- Substitution of “commissioner” for “Commissioner”
- Removal of duplicative text
- Definitions for “Challenge” and “VOSH” were added
- The definition of “Small Business” was deleted since the term is not used in the regulation.
- Movement of some language from the definition section to the body of the regulations
- The term “participant” was substituted for the terms “company” and “site” in a number of places

Changes Recommended by the Department

- Definitions for “Applicant”, “Commissioner of Labor and Industry”, and “Participant” were added
- The term “employer” was substituted in a number of places for “company” since the VPP regulation will apply to state and local government agencies

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.

VPP is a voluntary program so 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 \$42,000.¹ In 2013, the Washington Post reported that the average net profit margin for all U.S. companies was 8.2 percent². **With a net profit margin of 8.2%, a business needs to generate \$512,195 in new revenues to simply pay for the costs of that single injury.**

¹ http://www.nsc.org/Membership%20Site%20Document%20Library/2015%20Injury%20Facts/NSC_InjuryFacts2015Ed.pdf

² https://www.washingtonpost.com/business/on-small-business/why-small-businesses-are-better-off-now-than-before-the-recession--in-one-chart/2014/04/23/f501aad2-ca54-11e3-93eb-6c0037dde2ad_story.html

In 2015, the National Safety Council reported that in 2012 Virginia Workers' Compensation payments totaled 913.8 million dollars³. A recent study indicates that Workers' Compensation payments only cover approximately 21% of the cost of workplace injuries⁴. If Virginia's workers' compensation payout in 2012 of 913.8 million dollars represents only 21% of the cost, **the total impact of compensated injuries in 2012 in Virginia was 4.351 billion dollars.**

That same study found that approximately 50% of the cost of workplace accidents is born by the employee and his/her family, so of the estimated 4.351 billion cost to Virginia in 2012, **approximately 2.175 billion dollars was borne by Virginia workers and their families.**

The Department tracks injury and illness rates for each VPP site on an annual basis. Virginia VPP participating worksites average approximately 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 productivity; and
- promote competitiveness in the marketplace.

VPP is available to private and public sector employers of all sizes.

There are no known disadvantages to the agency or the Commonwealth caused by the adoption of this regulation.

³ The National Safety Council reports that in 2012, \$61.9 billion dollars, including benefits under deductible provisions was paid out under state workers' compensation.
http://www.nsc.org/Membership%20Site%20Document%20Library/2015%20Injury%20Facts/NSC_InjuryFacts2015Ed.pdf

⁴ Adding Inequality to Injury: The Costs of Failing to Protect Workers on the Job, OSHA; <https://www.dol.gov/oshareport/20150304-inequality.pdf>; Leigh JP, Marcin JP. Workers' compensation benefits and shifting costs for occupational injury and illness. Journal of Occupational and Environmental Medicine 2012;54:445-450

VPP participation benefits employees by enhancing workplace safety and health practices; reducing workplace injuries and illnesses and the associated workers' compensation and medical costs; and improving employee morale.

VPP participation encourages active employee involvement in safety and health, which can lead to higher quality production, increased productivity and better general housekeeping. Employee suggestions translate into improved efficiency and other exceptional business metrics. [*Virginia Capitol Connections, Winter 2015, p. 13*]

The Virginia VPP tracks injury and illness rates at each VPP site on an annual basis. Virginia VPP participating worksites average over 50 % lower injury and illness rates than their counterparts in their respective industries.

This regulation causes no known disadvantages to Virginia employees.

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 onsite 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 onsite 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. There are no known disadvantages to the Public or Commonwealth caused by regulation.

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 of the proposed regulation which are more restrictive than applicable federal requirements. The Virginia Voluntary Protection Program was instituted in 1996 and is patterned after federal 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.

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 this proposed regulation.

Family impact

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

This final regulation has no potential impact on the institution of the family or family stability.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
16VAC25-200-10	Heading: Voluntary Participation Program	Heading: Voluntary [Participation Protection] Program	The header was originally published incorrectly and this change corrects the mistake.
16VAC25-200-20.	<p>Definitions.</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>Definitions.</p> <p><u>["Applicant" means an employer that has submitted an application for one of the Voluntary Protection Programs specified in 16VAC25-200-40 which has been accepted, but has not yet been approved for participation. Depending on the context used in this chapter, an employer's application may concern one or more locations or sites.]</u></p> <p><u>["Commissioner of Labor and Industry" means only the individual who is Commissioner of Labor and Industry.]</u></p> <p>"Mentoring" means the assistance that a VPP participant provides to another [company employer] to improve that site's safety and health management system or prepare it for VPP application or participation.</p> <p><u>["Nested contractor" means a contractor whose employees are supervised by the applicant or</u></p>	<p><u>Rationale:</u> Changes were recommended by the Department of Labor and Industry and in response to Board requests.</p> <p><u>Rationale:</u> Changes were made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p><u>Rationale:</u> Changes were made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p><u>Rationale:</u> Definition added was recommended by the</p>

	<p>"Onsite assistance visit" means a visit to an applicant or participant site by agency personnel or other nonenforcement personnel to offer assistance, including help with its application, conduct of a records review, or make general observations about the site's safety and health management system.</p>	<p><u>participant and are regularly intermingled with the host participant's employees.]</u></p> <p>"Onsite assistance visit" means a visit to an applicant or participant site by [agency department] personnel or other nonenforcement personnel to offer assistance, including help with its application, conduct of a records review, or make general observations about the site's safety and health management system.</p> <p><u>["Participant" means an employer that has submitted an application and been approved for one of the Voluntary Protection Programs specified in 16VAC25-200-40. Depending on the context used in this chapter, a "participant" may have one or more active physical locations or sites.]</u></p>	<p>Department of Labor and Industry and in response to Board requests.</p> <p><u>Rationale:</u> Changes were made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p><u>Rationale:</u> Changes were made at the request of the Registrar of Regulations and by the Office of the Attorney General and these changes were recommended by the Department of Labor and Industry and in response to Board requests.</p>
<p>16VAC25-200-30.A.</p>	<p>Categories of participation. ...</p> <p>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.</p>	<p>Categories of participation. ...</p> <p>2. Challenge participants where employers are guided by challenge administrators through a three-stage process, which can prepare [a company an employer] to achieve VPP Star status.</p>	<p><u>Rationale:</u> Changes were recommended by the Department of Labor and Industry and in response to Board requests.</p>
<p>16VAC25-200-40.</p>	<p>Ways to participate. ...</p> <p>2. Stage 2 - implement, track, and control. Challenge participants complete and implement policies and programs developed in Stage 1;</p>	<p>Ways to participate. ...</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</p>	

	<p>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 or special trade contractor safety and health management program requirements.</p>	<p>management program; implement and improve their safety and health management program; and begin to incorporate policies for contractor [or and] special trade contractor safety and health management program requirements.</p>	<p><u>Rationale:</u> Changes were made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p>
<p>16VAC25-200-50.</p>	<p>Application requirements. ... C. ... 1. The applicant must not have been issued final VOSH citations related to a fatality in the preceding three-year period prior to application submission. 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 become a final order of the commissioner.</p>	<p>Application requirements. ... C. ... 1. The applicant must not have been issued final VOSH citations related to a fatality in the preceding three-year period prior to application submission. In the event that the [company employer] elects to contest a citation related to a VOSH fatality, the [company employer] may not submit a VPP application until such time as all fatality-related citations have become a final order of the [commissioner Commissioner of Labor and Industry].</p>	<p><u>Rationale:</u> Changes were recommended by the Department of Labor and Industry and in response to Board requests to improve clarity.</p>
<p>16VAC25-200-70.</p>	<p>Certification process. ... C. ... 1. Notify the site by letter or email in a timely manner that an onsite evaluation will be conducted. However, no onsite evaluation may be conducted until all prior enforcement actions have been closed. E. Recommendations. At the conclusion of the onsite evaluation, the onsite evaluation team</p>	<p>Certification process. ... C. ... 1. Notify the [site applicant] by letter or email in a timely manner that an onsite evaluation will be conducted. However, no onsite evaluation may be conducted until all prior enforcement actions have been closed. E. Recommendations. At the conclusion of the onsite evaluation, the onsite evaluation team must reach a consensus to</p>	<p><u>Rationale:</u> Changes were recommended by the Department of Labor and Industry and in response to Board requests for improved clarity. <u>Rationale:</u> Changes were recommended by the Department of Labor and Industry and in</p>

	<p>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>recommend to the commissioner <u>Commissioner of Labor and Industry</u> as to whether the site is suitable for participation or continued participation in VPP, and at what level of participation.</p>	<p>response to Board requests to improve clarity.</p>
<p>16VAC25-200-80.D.</p>	<p>Onsite evaluations. ...</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 a Merit goal or a one-year conditional goal. Implementation of goals is mandatory for VPP participation. Timeframes, interim protection, and methods of achieving goals must be discussed and agreed to with site management.</p>	<p>Onsite evaluations. ...</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 a Merit goal or a one-year conditional goal. [Implementation of goals is mandatory for VPP participation. Timeframes, interim protection, and methods of achieving goals must be discussed and agreed to with site management.]</p> <p><u>[2. A deficiency resulting in a One-Year Conditional goal indicates that a participant no longer fully meets Star requirements, must be corrected within 90 days, and the participant must then operate at the Star level for one year, for the conditional status to be lifted. Failure to meet this requirement will result in termination from VPP in accordance with the requirements of 16VAC25-200-110.C.]</u></p> <p><u>[3. A Merit goal must be met in order for a site to achieve Star status.]</u></p> <p><u>[4. Implementation of goals is mandatory for VPP participation. Timeframes, interim protection, and methods of achieving goals must be discussed and agreed to with site management.]</u></p>	<p><u>Rationale:</u> Changes were recommended by the Department of Labor and Industry and in response to Board requests for improved clarity.</p> <p><u>Rationale:</u> Changes were recommended by the Department of Labor and Industry and in response to Board requests for improved clarity.</p> <p><u>Rationale:</u> Changes were recommended by the Department of Labor and Industry and in response to Board requests for improved clarity.</p> <p><u>Rationale:</u> Changes were recommended by the Department of Labor and Industry and in response to Board</p>

		<p><u>[2-5.] 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.</u></p>	<p>requests for improved clarity.</p> <p><u>Rationale:</u> Renumbering paragraphs was necessary to reflect paragraph changes.</p>
16VAC25-200-110.	<p>Withdrawal, suspension, or termination.</p> <p>...</p> <p>A</p> <p>...</p> <p>6. The commissioner will consider the company's reapplication to VPP if and when eligibility requirements are met.</p> <p>C</p> <p>...</p> <p>1. The commissioner may terminate a participant 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 participant from participation in the VPP, the commissioner, in</p>	<p>Withdrawal, suspension, or termination.</p> <p>...</p> <p>A</p> <p>...</p> <p>6. The commissioner will consider the [company's] <u>employer's</u> reapplication to VPP if and when eligibility requirements are met.</p> <p>C</p> <p>...</p> <p>1. The [commissioner] <u>Commissioner of Labor and Industry</u> may terminate a participant 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 participant from participation in the VPP, the [commissioner] <u>Commissioner of Labor and Industry</u>, in his discretion, may</p>	<p><u>Rationale:</u> Changes were recommended by the Department of Labor and Industry and in response to Board requests for improved clarity.</p> <p><u>Rationale:</u> Changes were recommended by the Department of Labor and Industry and in response to Board requests for improved clarity.</p> <p><u>Rationale:</u> Changes were recommended by the Department of Labor and Industry and in response to Board requests for improved clarity.</p>

	<p>his discretion, may terminate the participation in VPP.</p> <p>3. If a whistleblower investigation pursuant to §§ 40.1-51.2:1 and 40.1-51.2:2 of the Code of Virginia 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, in his discretion, may terminate the participation in VPP.</p> <p>5. The commissioner shall establish written termination procedures that 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 participant's appeal valid, the participant may continue in VPP.</p>	<p>terminate the participation in VPP.</p> <p>3. If a whistleblower investigation pursuant to §§ 40.1-51.2:1 and 40.1-51.2:2 of the Code of Virginia 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 <u>Commissioner of Labor and Industry</u>, in his discretion, may terminate the participation in VPP.</p> <p>5. The commissioner shall establish written termination procedures that provide for the commissioner's formal notification to the participant and union representatives, an appeal process, and notification of the commissioner's <u>Commissioner of Labor and Industry's</u> final decision.</p> <p>6. If the commissioner <u>Commissioner of Labor and Industry</u> finds the participant's appeal valid, the participant may continue in VPP.</p>	<p><u>Rationale:</u> Changes were recommended by the Department of Labor and Industry and in response to Board requests for improved clarity.</p> <p><u>Rationale:</u> Changes were recommended by the Department of Labor and Industry and in response to Board requests for improved clarity.</p> <p><u>Rationale:</u> Changes were recommended by the Department of Labor and Industry and in response to Board requests for improved clarity.</p>
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Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Commenter	Comment	Agency response

There were no public comments received in a public hearing or submitted directly to the Department of Labor and Industry or the Safety and Health Codes Board.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	16VAC25-200.		<u>VIRGINIA VOLUNTARY PROTECTION PROGRAM</u>
	16VAC25-200-10. Heading		<p>Scope, purpose, and applicability-Voluntary [Participation protection] Program</p> <p><u>Rationale:</u> The Department of Planning and Budget (DPB) suggested that the Department of Labor and Industry (DOLI) review the heading with the Registrar of Regulations to assure that the section only contains “regulatory” subject matter language in accordance with §1VAC7-10-40.C: Pursuant to §30-150 of the Code of Virginia, the registrar may omit from publication in the Virginia Register of Regulations or inclusion in the Virginia Administrative Code (i) effective date clauses, (ii) severability clauses, (iii) purpose statements, and (iv) provisions that are nonregulatory in nature, such as a defined word, term, or phrase that is not used in the regulatory text.</p>
	16VAC25-200-10.A.		<p>A. Scope.</p> <p>In accordance with the requirements of §40.1-49.13 of the Code of Virginia, 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> <p><u>Rationale:</u> Paragraph removed as a result of</p>

			<p>stylistic changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p>1. A. 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 department] review.</p> <p>2. B. VPP emphasizes trust and cooperation between VOSH, the employer, employees, and employee representatives and is complementary to the agency department's enforcement activity, but does not take its place. This partnership enables the agency department to remove participating sites from programmed inspection lists, allowing it to focus inspection resources on establishments in greater need of agency department 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. C. 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>...</p> <p>7. G. The provisions of this regulation chapter 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 party have any right of action for breach of any provision of this</p>
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			<p>regulation chapter except as otherwise specifically provided herein.</p> <p>8. H. Nothing in this regulation chapter shall be construed to in any way limit the Commissioner commissioner's discretion to use agency department 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><u>Rationale:</u> "Department" substituted for "agency". "Chapter" substituted for "regulation". Stylistic changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p>
	<p>16VAC25-200-10.B.</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 programs; 4. Employee safety and health training; 5. Safety and health program evaluation. <p><u>Rationale:</u> Subsection B. is duplicative of 16VAC25-200-60.A.</p>
	<p>16VAC25-200-10.C.</p>		<p>C. Applicability.</p> <ol style="list-style-type: none"> 1. This regulation applies to Virginia employers and employees that volunteer to participate in Virginia VPP. 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

		<p>participation in VPP, or to take any other action contemplated by this regulation or §40.1-49.13 of the Code of Virginia, is not subject to the provisions of the Virginia Administrative Process Act, Va. Code §2.2-4000 through 2.2-4032 of the Code of Virginia.</p> <p><u>Rationale:</u> Subsection C. is duplicative of 16VAC25-200-60.A.</p>
	<p>16VAC25-200-20.</p>	<p>Definitions.</p> <p><u>The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:</u></p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</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 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><u>Rationale:</u> "One-Year Conditional Goal" definition re-sorted alphabetically. Language in second sentence moved to 16VAC25-200-80.D.2.</p> <p>"Annual Submission" means a document written by a participant and submitted to the Department on or before February 15 of each year, consisting of the following information: Updated names and addresses, the participant's and applicable contractors'</p>

			<p>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 recommendations, Merit or [1-Year <u>one-year Conditional-conditional]</u> goals (if applicable), and any success stories.</p> <p><u>Rationale:</u> Stylistic changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p><u>["Applicant" means an employer that has submitted an application for one of the Voluntary Protection Programs specified in 16VAC25-200-40 which has been accepted, but has not yet been approved for participation. Depending on the context used in this chapter, an employer’s application may concern one or more locations or sites.]</u></p> <p><u>Rationale:</u> Changes were recommended by the Department of Labor and Industry and in response to Board requests.</p> <p><u>"Challenge" means a voluntary protection program that provides participating employers and workers a three stage process to work with their designated Challenge Administrators to develop and improve their safety and health management program. VOSH-approved volunteer third party Challenge Administrators collaborate with participating employers to improve their safety and health management programs through mentoring, training and progress tracking.</u></p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p><u>["Commissioner of Labor and Industry"</u></p>
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			<p><u>means only the individual who is Commissioner of Labor and Industry.]</u></p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p>"Mentoring" means the assistance that a VPP participant provides to another <u>[company employer]</u> to improve that site's safety and health management system or prepare it for VPP application or participation.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</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 <u>requirements of this chapter.</u></p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p><u>["Nested contractor" means a contractor whose employees are supervised by the applicant or participant and are regularly intermingled with the host participant's employees.]</u></p> <p><u>Rationale:</u> Changes were recommended by the Department of Labor and Industry and in response to Board requests.</p> <p><u>"One-Year Conditional Goal" means a target for correcting deficiencies in safety and health management system elements or sub-elements identified by VOSH during the</u></p>
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			<p><u>on-site evaluation of a Star participant.</u></p> <p><u>Rationale:</u> "One-Year" changed from "1-Year" and resorted.</p> <p>"On-site Assistance Visit" means a visit to an applicant or participant site by <u>agency department</u> personnel or other non-enforcement personnel, to offer assistance, including help with their application, conduct a records review, <u>and/or</u> make general observations about the site's safety and health management system.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p><u>["Participant" means an employer that has submitted an application and been approved for one of the Voluntary Protection Programs specified in 16VAC25-200-40. Depending on the context used in this chapter, a "participant" may have one or more active physical locations or sites.]</u></p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General and changes recommended by the Department of Labor and Industry and in response to Board requests.</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><u>Rationale:</u> The term "Small Business" was deleted because it is not used in this Chapter.</p> <p><u>"VOSH" means the Virginia Occupational and Safety Health program of the Department of Labor and Industry.</u></p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the</p>
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			Office of the Attorney General.
	16VAC25-200-30.		<p>Categories of Participation</p> <p>...</p> <p>A.</p> <p>...</p> <p>2. Challenge participants where employers are guided by Challenge Administrators through a three stage process, which can prepare [a company an employer] to achieve VPP Star status;</p> <p><u>Rationale:</u> Changes recommended by the Department of Labor and Industry and in response to Board requests.</p> <p>...</p> <p>C. Nothing in this regulation chapter shall be construed to prohibit the Commissioner <u>commissioner</u> from establishing programs that are site-specific, company-wide, statewide, or any combination thereof.</p> <p><u>Rationale:</u> Changes recommended by the Department of Labor and Industry and in response to Board requests.</p>
	16VAC25-200-40.		<p>Ways to participate.</p> <p>...</p> <p>B.</p> <p>...</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 / or and special trade contractor safety and health management program requirements.</p>
	16VAC25-200-50.		<p>Application requirements.</p> <p>...</p>

			<p>B.</p> <p>1. Injury and illness history is evaluated using a 3- <u>three</u>-year total case incident rate (TCIR) and a 3- <u>three</u>-year day away, restricted, and/ or transfer case incident rate (DART rate). The 3- <u>three</u>-year TCIR and DART rates must be compared to the published Bureau of Labor Statistics (BLS) national average for the <u>five-digit</u> or six-digit North American Industrial Classification System (NAICS) code for the industry in which the 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><u>Rationale:</u> Changes were recommended by the Department of Labor and Industry and in response to Board request. Changes were also made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p>...</p> <p>C.</p> <p>1. The applicant must not have been issued final VOSH citations related to a fatality in the preceding three-year period <u>prior to application submission</u>. In the event that the [company <u>employer</u>] elects to contest a citation related to a VOSH fatality, the [company <u>employer</u>] may not submit a VPP application until such time as all fatality-related citations have been successfully contested <u>become a final order of the Commissioner of Labor and Industry</u>.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p>...</p> <p>E.</p> <p>...</p> <p>2.h.(2) Any agreements <u>Agreements</u> between management and the collective</p>
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			<p>bargaining agent(s) concerning safety and health;</p> <p>2.h.(3) Any data <u>Data</u> necessary to evaluate the achievement of individual Merit or 1One-Year Conditional goals.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p>...</p> <p>2.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 <u>significant</u> changes.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p>...</p> <p>F.</p> <p>1. <u>Agency Department</u> personnel may conduct <u>onsite assistance visit</u> visits of 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.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p>...</p> <p>G.</p> <p>3. If it is clear that the applicant cannot qualify for VPP, the agency department <u>agency department</u> must ask the applicant to withdraw the application within 30 days. If the application is not withdrawn, the application will be</p>
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			<p>returned with a letter indicating the reasons the application was denied.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</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 <u>agency department</u> must retain a working copy for one year, for use in responding to questions that may arise.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p>
	<p>16VAC25-200-60.</p>		<p>Comprehensive safety and health management system requirements.</p> <p>...</p> <p>B. The Commissioner <u>commissioner</u> shall establish written procedures to address applicant and participant requirements concerning the elements and sub-elements appropriate to the program:</p> <p><u>Rationale:</u> Stylistic changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p>
	<p>16VAC25-200-70.</p>		<p>Certification process.</p> <p>A. Evaluation periods. The Commissioner <u>commissioner</u> shall establish written procedures to set time periods and scheduling requirements for on-site evaluations in response to initial applications accepted by the <u>agency department</u> and for re-certification of participants.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the</p>

			<p>Office of the Attorney General. ...</p> <p>C. 1.a. Notify the [<u>site applicant</u>] 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.</p> <p><u>Rationale</u>: Changes recommended by the Department of Labor and Industry and in response to Board requests.</p> <p>E. Recommendations. At the conclusion of the on-site evaluation, the on-site evaluation team must reach a consensus to recommend to the [commissioner <u>Commissioner of Labor and Industry</u>] as to whether the site is suitable for participation or continued participation in VPP, and at what level of participation.</p> <p><u>Rationale</u>: Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p>
	<p>16VAC25-200-80.</p>		<p>On-site evaluation</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 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, <u>private industry volunteers</u>, qualified volunteer safety or health professionals from private industry, and other qualified team members.</p> <p><u>Rationale</u>: Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General. ...</p>

			<p>C.5. Should any identified hazard be determined to present a risk of imminent danger to life or health of an employee, <u>agency department</u> 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><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p>...</p> <p>D.</p> <p>...</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 of achieving goals must be discussed and agreed to with site management.]</p> <p><u>Rationale:</u> Second sentences moved to Subsection D.4. of 16VAC25-200-80.</p> <p><u>[2. A deficiency resulting in a One-Year Conditional goal indicates that a participant no longer fully meets Star requirements, must be corrected within 90 days, and the participant must then operate at the Star level for one year, for the conditional status to be lifted. Failure to meet this requirement will result in termination from VPP in accordance with the requirements of 16VAC25-200-110.C.]</u></p> <p><u>Rationale:</u> Changes recommended by the Department of Labor and Industry and in response to Board requests.</p> <p><u>[3. A Merit goal must be met in order for a site to achieve Star status.]</u></p>
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			<p><u>Rationale:</u> Changes recommended by the Department of Labor and Industry and in response to Board requests.</p> <p><u>[4. Implementation of goals is mandatory for VPP participation. Time frames, interim protection, and methods of achieving goals must be discussed and agreed to with site management.]</u></p> <p><u>Rationale:</u> Renumbering paragraphs was necessary to reflect paragraph changes.</p> <p><u>[2.5.] 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.</u></p> <p><u>Rationale:</u> Renumbering paragraphs was necessary to reflect paragraph changes.</p> <p>F. Closing conference.</p> <p>The findings of the on-site evaluation team, including its recommendation to the Commissioner <u>commissioner</u>, must be presented to site management and appropriate employee representatives before the team leaves the site.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p>
	<p>16VAC25-200-90.</p>		<p>A. Annual self-assessment.</p> <p>1. Participation in VPP requires each site / <u>or</u> participant to annually evaluate the effectiveness of its safety and health management system, including the effectiveness of all VPP elements and sub-elements.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the</p>

			<p>Office of the Attorney General.</p> <p>2. The Commissioner <u>commissioner</u> shall establish written procedures establishing the content and reporting requirements of participant annual submissions.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p>3. Annual submissions are due on or before the 15th of February <u>February 15</u> each year.</p> <p><u>Rationale:</u> Stylistic changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p>
	16VAC25-200-100.		<p>Enforcement activity at VPP sites.</p> <p>A.</p> <p>...</p> <p>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 <u>trigger reassessment.</u></p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p>...</p> <p>C. Enforcement personnel.</p> <p>The Commissioner <u>commissioner</u> shall establish written procedures describing the use of enforcement personnel during on-site evaluations and any limitations placed on their conducting an enforcement inspection at a VPP site.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p>
	16VAC25-200-110.		<p>Withdrawal, suspension or termination.</p> <p>A.</p>

			<p>...</p> <p>4. The Commissioner <u>commissioner</u> shall establish written withdrawal procedures which provide for the company's <u>participant's</u> formal notification to the Department, the Commissioner's <u>commissioner's</u> acknowledgement of receipt and notification to the company participant <u>agency department</u> personnel of the status change, return of the company participant <u>agency department</u> to the VOSH programmed inspection list and disposition of the VPP participant file.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p>5. The Commissioner <u>commissioner</u> 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><u>Rationale:</u> Stylistic changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p>6. The Commissioner <u>commissioner</u> will consider the company's participant's <u>participant's</u> reapplication to VPP if and when eligibility requirements are met.</p> <p><u>Rationale:</u> Changes recommended by the Department of Labor and Industry and in response to Board requests.</p> <p>B.</p> <p>...</p> <p>2. The Commissioner <u>commissioner</u> 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</p>
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			<p>other recognition device from display until the suspension is lifted.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p>3. A participant's suspension will not result in the company <u>the participant</u> being returned to the VOSH programmed inspection list.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p>C.</p> <p>1. The commissioner Commissioner of Labor and Industry] may terminate a <u>site participant</u> from the VPP for failure to maintain the requirements of the program (e.g., failure of a participant to meet a one-year conditional goal identified by VOSH during the on-site evaluation will result in termination from VPP).</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General and changes were recommended by the Department of Labor and Industry and in response to Board request.</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 <u>site participant</u> from participation in the VPP, the commissioner <u>Commissioner of Labor and Industry</u>, at <u>in</u> his discretion, may terminate the site's participation in VPP.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p>
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			<p>3. In the event <u>If</u> 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 <u>Commissioner of Labor and Industry</u>, at in his discretion, may terminate the site's participation in VPP.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p>...</p> <p>5. The Commissioner <u>commissioner</u> shall establish written termination procedures which provide for the Commissioner's <u>commissioner's</u> formal notification to the participant and union representatives, an appeal process, and notification of the commissioner's <u>Commissioner of Labor and Industry's</u> final decision.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p>6. If the commissioner <u>Commissioner of Labor and Industry</u> finds the site participant's <u>site participant's</u> appeal valid, the site participant <u>site participant</u> may continue in VPP.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p> <p>7. In the event of a final decision to terminate, the written procedures shall provide for notification to agency <u>department</u> personnel of the status change, return of the company <u>participant</u> to the VOSH programmed inspection list and disposition of the VPP participant file. If a</p>
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			<p>terminated company <u>employer</u> wishes to pursue reinstatement, it must wait three years to reapply.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General and changes were recommended by the Department of Labor and Industry and in response to Board request.</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 Code of Virginia.</p> <p><u>Rationale:</u> Changes made at the request of the Registrar of Regulations and by the Office of the Attorney General.</p>
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