



Final Regulation Agency Background Document

Agency name	Virginia Department of Labor and Industry
Virginia Administrative Code (VAC) citation	16 VAC 25-60
Regulation title	Administrative Regulations for the Virginia Occupational Safety and Health (VOSH) Program
Action title	Amendment to Administrative Regulations for the Virginia Occupational Safety and Health (VOSH) Program
Date this document prepared	March 13, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The Administrative Regulations lay out the rules and basic parameters of employer responsibilities and how to redress issues with the VOSH Program in cases of disagreement. Amendments are necessary to comply with changes to statutory law or to address procedural or other administrative changes that have occurred since the Administrative Regulations were revised.

This proposed amendment to the Administrative Regulations for the Virginia Occupational Safety and Health (VOSH) Program further clarifies and specifies the intent of definitions or other procedural actions listed in the regulation. It adds omitted statutory references applicable to the regulation and corrects omissions in listing of documents covered under notification and posting requirements. It clarifies the disclosability of file documents prior to the issuance of a final order. It further specifies the eligibility of a person to file a complaint, to modify the classification of complaints to correspond with the parallel procedures of federal OSHA and the response to such complaints. The proposed amendment requires employers to comply with manufacturer's specifications, requirements and limitations on all machinery, equipment, vehicles, materials

and tools where not superseded by more stringent VOSH regulations. The proposed amendment clarifies the meaning of the term “agricultural operations.” It also further clarifies the existing timetable for issuing citations and proposed penalties. Additionally, the proposed amendment codifies in regulation the multi-employer worksite policy for citation issuance; and it removes the direct involvement of the Commissioner of Labor and Industry in the determination of the extension of abatement times.

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 March 7, 2006, the Safety and Health Codes Board adopted as “final” standards of the Board the Amendment to the Administrative Regulations for the VOSH Program, with an effective date of June 1, 2006.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it 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 these amendments is to provide greater specificity and clarity of current regulatory intent; to make needed housekeeping changes and to add applicable statutory references; to remove requirements for direct involvement of the Commissioner in administrative procedures where it has been determined to be unnecessary; to codify in regulation the agency’s longstanding multi-employer worksite policy for citation issuance and the multi-employer worksite defense; and to require the use of manufacturer’s guidelines for machinery, equipment, vehicles, materials and tools where no overriding specific regulations exist.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The proposed amendments to 16 VAC 25-60-30, Applicability to Public Employers, would subject public sector employers to the same potential criminal sanctions as private sector employers and employees under Va. Code §40.1-10. Additionally, the proposed amendment will provide the VOSH program with an enforcement tool to compel a political subdivision to allow the Department to conduct an enforcement inspection, were the political subdivision to refuse its consent to allow an inspection. In VAC 25-60-140, the proposed amendment clarifies the meaning of the term "agricultural operations." In 16 VAC 25-60-120, 130, 140 and 150, the proposed amendment will provide an additional enforcement tool for the Commissioner to prevent the recurrence of accidents by assuring that machinery, vehicles, tools, materials and equipment, which are not functioning properly, are removed from service until the condition is corrected. In 16 VAC 25-60-260, Issuance of Citation and Proposed Penalty, guidance is provided on how to apply the requirement in Va. Code §40.1-49.4.A.3 (calculating the six months time frame) and a new subsection F is added to codify the Department's longstanding multi-employer worksite inspection policy, which details which employer would possibly be cited for an employee's exposure to an occupational hazard. A new subsection G is added to codify the multi-employer worksite defense.

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.*

There are no advantages and/or disadvantages to the regulated community, the public or the Department. The proposed regulation merely codifies current and longstanding VOSH policies, interpretations and procedures. With respect to the proposed amendments to §260, codifying the multi-employer citation policy and defense, there will be an impact only on employers that fall into the category of a "controlling" employer, as the current policy does not apply to them by virtue of the Va. Court of Appeals decision in *C. Ray Davenport, Commissioner of Labor and Industry v. Summit Contractors*, referenced in the briefing package of this proposed regulation. It is estimated that 1% or less of the more than 3,000 VOSH inspections conducted on an annual basis concern the application of the multi-employer citation policy to "controlling" employers.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section	Requirement at	What has changed	Rationale for change
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number	proposed stage		
16VAC25-60-260.G.	<p>5. The employer has instructed his employees to recognize the hazard and, where necessary, informed them how to avoid the dangers associated with it.</p> <p>6. Where feasible, an exposing employer must have taken appropriate alternative means of protecting employees from the hazard.</p>	<p>5. The employer has instructed his employees to recognize the hazard and, where necessary, informed them how to avoid the dangers associated with it;</p> <p>6. Where feasible, an exposing employer must have taken appropriate alternative means of protecting employees from the hazard; <u>and</u></p>	<p>Correcting typographical errors in punctuation at the end of paragraphs 5. and 6. to show that an exposing employer needs to prove all elements to establish an affirmative defense to a multi-employer worksite violation.</p>

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.

Commenter	Comment	Agency response
Mr. Robert Ledbetter, Director of Safety & Human Resources, Kenbridge Construction Company, Kenbridge, VA	Mr. Ledbetter spoke in opposition to the proposed amendments addressing multi-employer worksite citation policy (see §260.F.), and asked “that citations only be issued to those who fail to meet the safety requirements and not hold the general contractor as a second person to be held liable for the citations.” In support of his opposition, Mr. Ledbetter also stated that “...if you come on our site, you have to obey and follow our safety regulations and rules, which meet or in many cases, ours do exceed the OSHA and the VOSH requirements.”	<p>The Virginia State Plan is required by federal regulation to establish either the “same” standards, procedures, criteria and rules as federal OSHA or alternative ones that are “as effective as” those of federal OSHA, so Virginia is required to have a multi-employer worksite policy. Based on information received from federal OSHA, all state plan states have a multi-employer worksite policy. [SEE AGENCY RESPONSE TO COMMENTER 2 FOR ADDITIONAL DETAIL.]</p> <p>Although adoption of the proposed language in §260.F. will allow the VOSH program to again issue citations to general contractors as “controlling employers,” there is proposed language in § 260.F.2.b. which is different than federal OSHA’s multi-employer citation policy. That section will allow VOSH to pursue citations against a prime subcontractor in its roll as a “controlling employer” (e.g., the main framing contractor has subcontracted framing work out to another subcontractor who creates a hazard, and the main framing</p>

<p>Mr. Steve Vermillion, Chief Executive Officer, Associated General Contractors</p>	<p>Mr. Vermillion expressed his organization's concern about the multi-employer policy, noting that the policy is "a gray area" and that although the policy is a requirement at the federal level, it is not a federal regulation. He inquired whether the VOSH Program had to have such a policy or regulation to be "as effective as" federal OSHA. Mr. Vermillion observed that the construction industry has changed tremendously in the last few years and noted that the general contractor is not always the controlling contractor on job sites as they used to be where you just had a general contractor, subcontractors and suppliers. Now you have situations where you have "subs to the subs" and the general contractor may hardly know about all the different subcontractors on site. Mr. Vermillion stated the multi-employer policy before the court case [the Summit decision referenced above] caused too much confusion and had too much unfairness built into the system.</p>	<p>contractor knew or should have known of the hazard and was responsible by contract or through actual practice for that area of the worksite). As related to the Safety and Health Codes Board at its September 15, 2005 meeting on this proposed regulation, this new provision will in some cases result in the general contractor avoiding citation, and thereby address some of Mr. Ledbetter's concerns. [SEE AGENCY RESPONSE TO COMMENTER 2 FOR ADDITIONAL DETAIL.]</p> <p>With regard to Mr. Vermillion's question about whether the VOSH Program has to have a multi-employer worksite policy to be "as effective as" federal OSHA, see the following selected excerpts from federal OSHA regulations regarding the establishment and maintenance of state plans for occupational safety and health:</p> <p>Selected Excerpts from 29 CFR 1902, Indices of Effectiveness</p> <p>1902.4(a) General. In order to satisfy the requirements of effectiveness under 1902.3(c)(1) and (d)(1), the State plan shall:</p> <p>1902.4(a)(1) Establish the same standards, procedures, criteria and rules as have been established by the Assistant Secretary under the Act, or:</p> <p>1902.4(a)(2) Establish alternative standards, procedures, criteria, and rules which will be measured against each of the indices of effectiveness in paragraphs (b) and (c) of this section to determine whether the alternatives are at least as effective as the Federal program with respect to the subject of each index. For each index the State must demonstrate by the presentation of factual or other appropriate information that its plan is or will be at least as effective as the Federal program.</p>
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		<p>1902.4(c)(2)(xi)</p> <p>Provides effective sanctions against employers who violate State standards and orders, such as those prescribed in the Act.</p> <p>As the above excerpts indicate, the Virginia State Plan is required by federal regulation to establish either the “same” standards, procedures, criteria and rules as federal OSHA or alternative ones that are “as effective as” those of federal OSHA, so Virginia is required to have a multi-employer worksite policy. Based on information received from federal OSHA, all state plan states have a multi-employer worksite policy.</p> <p>With regard to Mr. Vermillion’s comments about recent changes in the construction industry and the example of a general contractor having to deal with situations where there is a “sub to a sub to a sub,” the VOSH program has noted the same changes in the industry. In part as a response to those changes and as a reflection of actual VOSH citation practices, there is proposed language in § 260.F.2.b. which is different than federal OSHA’s multi-employer citation policy which allows VOSH to pursue citations against a prime subcontractor in its roll as a “controlling employer” (e.g., the main framing contractor has subcontracted framing work out to another subcontractor who creates a hazard, and the main framing subcontractor knew or should have known of the hazard and was responsible by contract or through actual practice for that area of the worksite). Section 260.F.2.B. provides that citations may be issued to an employer who is not a general contractor, but is:</p> <p>“responsible, by contract or through actual practice for safety and health conditions for a specific area of the worksite, or specific work practice, or specific phase of a construction project, and has the authority for ensuring that the hazardous condition is corrected.”</p> <p>The facts from an actual VOSH accident inspection involving such a business arrangement were related to the Safety and Health Codes Board at its September 15, 2005, meeting when it considered the proposed regulation. The accident involved a truss collapse during the construction of an 8 unit</p>
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		<p>townhouse, and the general contractor had hired a framing subcontractor, who then subcontracted the truss installation to a second subcontractor. The trusses were not braced in accordance with the manufacturer’s instructions and they collapsed. After reviewing the specific facts of the case, the VOSH program issued citations related to the accident to the framing subcontractor and its subcontractor, but not to the general contractor.</p> <p>Facts that are looked at in such a case to determine which companies will receive citations include, but are not limited to: contractual rights and responsibilities, actual work practices on the site, whether the individual employers knew or should have known of the hazard (i.e. employer knowledge), whether employers had provided adequate safety and health programs and trained their employees, whether employers had complied with VOSH standards requiring frequent and regular inspections of the job site; what was the level of technical expertise and experience of the employers involved; how long the hazard was in existence before the accident occurred, etc.</p> <p>Although adoption of the proposed language in §260.F. will allow the VOSH program to again issue citations to general contractors as “controlling employers,” the proposed language in § 260.F.2.B. will also allow VOSH to pursue prime subcontractors as well, which in some cases will result in the general contractor avoiding citation and thereby address some of Mr. Vermillion’s concerns.</p>
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All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
16 VAC 25-60-10		<p><i>"Abatement period"</i> means the period of time permitted for correction of a violation.</p> <p><i>"Commissioner"</i> means the Commissioner of Labor and Industry. Except where the context clearly indicates the contrary, any reference to the commissioner shall include his authorized representatives.</p> <p><i>"Commissioner of Labor and Industry"</i> means only the Commissioner of Labor and Industry.</p> <p><i>"Person"</i> means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.</p> <p><i>"Public employer"</i> means the Commonwealth including its agencies, or any political subdivision or public body.</p>	<p><i>"Abatement period"</i> means the period of time <u>defined or set out in the citation permitted</u> for correction of a violation.</p> <p><i>"Commissioner"</i> means the Commissioner of Labor and Industry. Except where the context clearly indicates the contrary, any <u>such</u> reference to the commissioner shall include his authorized representatives.</p> <p><i>"Commissioner of Labor and Industry"</i> means only the <u>individual who is</u> Commissioner of Labor and Industry.</p> <p><i>"Person"</i> means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons <u>any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.</u></p> <p><i>"Public employer"</i> means the Commonwealth <u>of Virginia, including its agencies, authorities, or instrumentalities</u> or any political subdivision or public body.</p> <p>Rationale: Proposed changes in this section are primarily for clarification purposes and do not involve any substantive changes.</p>
16 VAC 25-60-20		<p>All Virginia statutes, standards, and regulations pertaining to occupational safety and health shall apply to every employer, employee and place of employment in the Commonwealth of Virginia except where:</p> <p>1. The United States is the employer or exercises</p>	<p>All Virginia statutes, standards, and regulations pertaining to occupational safety and health shall apply to every employer, employee and place of employment in the Commonwealth of Virginia except where:</p> <p>± <u>A.</u> The United States is the employer or exercises exclusive jurisdiction;</p>

<p>16 VAC 25-60-30</p>		<p>exclusive jurisdiction;</p> <p>2. The federal Occupational Safety and Health Act of 1970 does not apply by virtue of § 4(b)(1) of that Act. The commissioner shall consider Federal OSHA case law in determining where jurisdiction over specific working conditions has been preempted by the regulations of a federal agency; or,</p> <p>3. The employer is a public employer, as that term is defined in these regulations. In such cases, the Virginia laws, standards and regulations governing occupational safety and health are applicable as stated including §§ 10, 30, 280, 290, and 300 of these regulations.</p> <p>C. The following portions of Title 40.1 of the <i>Code of Virginia</i> shall apply to public employers: §§ 40.1-49.4.A(1), 40.1-49.8, 40.1-51, 40.1-51.1, 40.1-51.2, 40.1-51.2:1, 40.1-51.3, 40.1-51.3:2, and 40.1-51.4:2.</p> <p>D. Section § 40.1-51.2:2 A of the Code of Virginia shall apply to public employers except that the commissioner shall not bring action in circuit court in the event that a</p>	<p>2 B. The federal Occupational Safety and Health Act of 1970 does not apply by virtue of § 4(b)(1) of that Act. The commissioner shall consider Federal OSHA case law in determining where jurisdiction over specific working conditions has been preempted by the regulations of a federal agency; or,</p> <p>3 C. The employer is a public employer, as that term is defined in these regulations. In such cases, the Virginia laws, standards and regulations governing occupational safety and health are applicable as stated including §§ 10, 30, 280, 290, and 300 of these regulations.</p> <p>Rationale: Proposed changes in §20 correct subparagraph numbering and do not involve any substantive changes.</p> <p>C. The following portions of Title 40.1 of the <i>Code of Virginia</i> shall apply to public employers: <u>§§ 40.1-10</u>, 40.1-49.4.A(1), 40.1-49.8, 40.1-51, 40.1-51.1, 40.1-51.2, 40.1-51.2:1, 40.1-51.3, 40.1-51.3:2, and 40.1-51.4:2.</p> <p>Rationale: The proposed amendment is to subject public sector employers (and in the case of Va. Code §40.1-10, public sector employees, since that section applies to any “person” found to be in violation) to the same potential criminal sanctions as private sector employers and employees. There does not appear to be any sound policy or legal rationale for shielding public employers/ employees from criminal sanctions when they have engaged in conduct that would otherwise be considered criminal in nature.</p> <p>Section § 40.1-51.2:2 A of the Code of Virginia shall apply to public employers except that the commissioner shall not bring action in circuit court in the event that a voluntary agreement cannot be obtained.</p>
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<p>16 VAC 25-60-40</p>		<p>voluntary agreement cannot be obtained.</p> <p>E. Sections §§40.1-49.4.F and 40.1-51.2:2 of the <i>Code of Virginia</i> shall apply to public employers other than the Commonwealth and its agencies.</p> <p>1. Such notice or notices, including all citations, petitions for variances or extensions of abatement periods, orders, and other documents of which employees are required to be informed by the employer under statute or by these regulations, shall be delivered by the employer to any authorized employee representative, and shall be posted at a conspicuous place where notices to employees are routinely posted and shall be kept in good repair and in unobstructed view. The document must remain posted for 10 working days unless a different period is prescribed elsewhere in Title 40.1 of the <i>Code of Virginia</i> or these regulations.</p> <p>2. A citation issued to an employer, or a copy thereof, shall remain posted in a conspicuous place and in unobstructed view at or near each place of alleged violation for three working days or until the violation has been abated, whichever is longer.</p>	<p><u>Rationale:</u> Housekeeping change to correct redundancy.</p> <p>E. Sections §§ 40.1-49.4.F, 40.1-49.9, 40.1-49.10, 40.1-49.11, 40.1-49.12, and 40.1-51.2:2 of the <i>Code of Virginia</i> shall apply to public employers other than the Commonwealth and its agencies. Removal of “§§” following the word “Sections: is a housekeeping change.</p> <p><u>Rational:</u> Under the current ARM, the VOSH program has no enforcement tool that would allow the Department to conduct an enforcement inspection were the political subdivision to refuse its consent to allow an inspection. This proposed amendment would allow the Commissioner to pursue an administrative search warrant through the local court system.</p> <p>± <u>A.</u> Such notice or notices, including all citations, <u>notices of contest</u>, petitions for variances or extensions of abatement periods, orders, and other documents of which employees are required to be informed by the employer under statute or by these regulations, shall be delivered by the employer to any authorized employee representative, and shall be posted at a conspicuous place where notices to employees are routinely posted and shall be kept in good repair and in unobstructed view. The document must remain posted for 10 working days unless a different period is prescribed elsewhere in Title 40.1 of the <i>Code of Virginia</i> or these regulations.</p> <p>± <u>B.</u> A citation issued to an employer, or a copy thereof, shall remain posted in a conspicuous place and in unobstructed view at or near each place of alleged violation for three working days or until the violation has been abated, whichever is longer.</p>
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<p>16 VAC 25-60-80</p>		<p>3. A copy of any written notice of contest shall remain posted until all proceedings concerning the contest have been completed.</p> <p>4. Upon receipt of a subpoena, the employer shall use the methods set forth in this section to further notify his employees and any authorized employee representative of their rights to party status. This written notification shall include both the date, time and place set for court hearing, and any subsequent changes to hearing arrangements. The notification shall remain posted until commencement of the hearing or until an earlier disposition.</p> <p>VA. CODE § 2.1-377 TO - 386</p>	<p>3 C. A copy of any written notice of contest shall remain posted until all proceedings concerning the contest have been completed.</p> <p>4-D. Upon receipt of a subpoena, the employer shall use the methods set forth in this section to further notify his employees and any authorized employee representative of their rights to party status. This written notification shall include both the date, time and place set for court hearing, and any subsequent changes to hearing arrangements. The notification shall remain posted until commencement of the hearing or until an earlier disposition.</p> <p>Rationale: Proposed changes in §40 correct subparagraph numbering and do not involve any substantive changes.</p> <p>VA. CODE § 2.2-3800 to §2.2-3809</p> <p>Rationale: The proposed change will delete an obsolete reference and change it to the re-designated reference. This is a housekeeping measure and does not involve any substantive change.</p>
<p>16 VAC 25-60-90</p>		<p>D. Issued citations, orders of abatement and proposed penalties are public documents and are releasable upon a written request. All other file documents in cases where a citation has been issued are not disclosable until the case is a final order of the commissioner or the court.</p>	<p>D. Issued citations, orders of abatement and proposed penalties are public documents and are releasable upon a written request. All other file documents in cases where a citation has been issued are not disclosable until the case is a final order of the commissioner or the court; <u>except that once a copy of file documents in a contested case has been provided to legal counsel for the employer in response to a request for discovery, or to a third party in response to a subpoena duces tecum, such documents shall be releasable upon a written request, subject to the exclusions in this regulation and the Virginia Freedom of Information Act.</u></p> <p>Rationale: This proposed change is to primarily assist family members of accident victims to obtain documents from VOSH inspection files in a more timely fashion. The current VOSH ARM provision does not allow release of documents until the case is closed which can stretch out to a period of years when the case is in litigation.</p>

<p>16 VAC 25-60-100</p>		<p>A. Any person who believes that a safety or health hazard exists in a workplace may request an inspection by giving notice to the commissioner. Written complaints signed by an employee or an authorized representative will be treated as formal complaints. Complaints by persons other than employees and authorized representatives and unsigned complaints by employees or authorized representatives shall be treated as nonformal complaints. Nonformal complaints will generally be handled by letter and formal complaints will generally result in an inspection.</p> <p>B. For purposes of this Section and § 40.1-51.2(b) of the Code of Virginia, the representative(s) that will be recognized as authorized by employees for such action shall be:</p> <p>E. A complaint will be classified as formal or nonformal and be evaluated to determine whether there are reasonable grounds to believe that the violation or hazard complained of exists.</p> <p>F. If the commissioner determines that the complaint is formal and offers reasonable</p>	<p>However, once a file has been released to the employer through a discovery request or a litigant in a third-party legal action, any benefit to the Department's litigation strategy has disappeared and there is no purpose served in maintaining confidentiality. [NOTE: This provision would not apply in cases where documents from an active investigation are released in response to a subpoena duces tecum from a third party.]</p> <p>A. <u>An employee or other</u> Any person who believes that a safety or health hazard exists in a workplace may request an inspection by giving notice to the commissioner. <u>Written complaints signed by an employee or an authorized representative will be treated as formal complaints. Complaints by persons other than employees and authorized representatives and unsigned complaints by employees or authorized representatives shall be treated as nonformal complaints. Nonformal complaints will generally be handled by letter and formal complaints will generally result in an inspection.</u></p> <p>B. For purposes of this Section and § 40.1-51.2(b) of the <i>Code of Virginia</i>, the representative(s) that will be recognized as authorized <u>by to act for employees for such action</u> shall <u>can</u> be:</p> <p>E. A complaint will be classified as formal or nonformal and <u>evaluated to determine whether there are reasonable grounds to believe that the violation or hazard complained of exists.</u></p> <p><u>F. If the commissioner determines that the complaint is formal and offers reasonable grounds to believe that a hazard or violation</u></p>
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		<p>grounds to believe that a hazard or violation exists, then an inspection will be conducted as soon as possible. Valid nonformal complaints may be resolved by letter or may result in an inspection if the commissioner determines that such complaint establishes probable cause to conduct an inspection.</p>	<p>exists, then an inspection will be conducted as soon as possible. Valid nonformal complaints may be resolved by letter or may result in an inspection if the commissioner determines that such complaint establishes probable cause to conduct an inspection. The commissioner's response to a complaint will either be in the form of an onsite inspection or an investigation which does not involve onsite response by the Commissioner.</p> <p><u>1. Onsite inspections will normally be conducted in response to complaints alleging the following:</u></p> <ul style="list-style-type: none"> <u>a. The complaint was reduced to writing, is signed by a current employee or employee representative, and states the reason for the inspection request with reasonable particularity. In addition, there are reasonable grounds to believe that a violation of a safety or health standard has occurred.</u> <u>b. Imminent danger hazard;</u> <u>c. Serious hazard, which in the discretion of the commissioner requires an onsite inspection;</u> <u>d. Permanently disabling injury or illness related to a hazard potentially still in existence;</u> <u>e. The establishment has a significant history of non-compliance with VOSH laws and standards;</u> <u>f. The complaint identifies an establishment or an alleged hazard covered by a local or national emphasis inspection program;</u> <u>g. A request from a VOSH/OSHA discrimination investigator to conduct an inspection in response to a complaint initially filed with the investigator;</u> <u>h. The employer fails to provide an adequate response to a VOSH investigation contact, or the complainant provides evidence that the employer's response is false, incorrect, incomplete or does not adequately address the hazard.</u> <p><u>2. A complaint investigation, which does not involve onsite activity, shall normally be conducted for all complaints that do not meet the criteria listed in §100.F.1 above.</u></p> <p><u>3. The commissioner reserves the right, for good cause shown, to initiate an inspection with regard to certain complaints that don't meet the criteria listed in §100.F.1 above; as well as to decline to conduct an inspection and instead conduct an investigation, for good cause shown, when certain complaints are found to otherwise meet the criteria listed in §100.F.1. above.</u></p>
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<p>16 VAC 25-60-120</p>		<p>The occupational safety or health standards adopted as rules or regulations by the board either directly or by reference, from 29 CFR Part 1910 shall apply by their own terms to all employers and employees at places of employment covered by the Virginia State Plan for Occupational Safety and Health.</p>	<p>Rationale: The proposed amendments to §§ A., E., and F. eliminate references to “formal” (signed employee complaints) and “nonformal” complaints (unsigned employee complaints or complaints filed by former employees) and codifies current VOSH procedures which describe complaints as those that are either inspected or investigated. Proposed amendments cause no substantive changes to VOSH policy or procedures.</p> <p>The occupational safety or health standards adopted as rules or regulations by the board either directly or by reference, from 29 CFR Part 1910 shall apply by their own terms to all employers and employees at places of employment covered by the Virginia State Plan for Occupational Safety and Health.</p> <p><u>The employer shall comply with the manufacturer’s specifications and limitations applicable to the operation, training, use, installation, inspection, testing, repair and maintenance of all machinery, vehicles, tools, materials and equipment; unless specifically superseded by a more stringent corresponding requirement in Part 1910. The use of any machinery, vehicle, tool, material or equipment which is not in compliance with any applicable requirement of the manufacturer is prohibited, and shall either be identified by the employer as unsafe by tagging or locking the controls to render them inoperable, or be physically removed from its place of use or operation.</u></p> <p>Rationale: The proposed amendment is to clarify an employer’s current responsibility under the “general duty clause” to comply with manufacturer’s specifications and limitations, as well as allow the use of the new provisions to address “other-than-serious” hazards before they can become serious in nature.</p>
<p>16 VAC 25-60-130</p>		<p>The occupational safety or health standards adopted as rules or regulations by the Virginia Safety and Health Codes Board either directly, or by reference, from 29 C.F.R. Part 1926 shall apply</p>	<p>The occupational safety or health standards adopted as rules or regulations by the Virginia Safety and Health Codes Board either directly, or by reference, from 29 C.F.R. Part 1926 shall apply by their own terms to all employers and employees engaged in either construction work or</p>

	<p>by their own terms to all employers and employees engaged in either construction work or construction related activities covered by the Virginia State Plan for Occupational Safety and Health.</p> <p>1. For the purposes of the applicability of such Part 1926 standards, the key criteria utilized to make such a decision shall be the activities taking place at the worksite, not the primary business of the employer. Construction work shall generally include any building, altering, repairing, improving, demolishing, painting or decorating any structure, building, highway, or roadway; and any draining, dredging, excavation, grading or similar work upon real property. Construction also generally includes work performed in traditional construction trades such as carpentry, roofing, masonry work, plumbing, trenching and excavating, tunnelling, and electrical work. Construction does not include</p>	<p>construction related activities covered by the Virginia State Plan for Occupational Safety and Health.</p> <p><u>The employer shall comply with the manufacturer’s specification and limitations applicable to the operation, training, use, installation, inspection, testing, repair and maintenance of all machinery, vehicles, tools, materials and equipment; unless specifically superceded by a more stringent corresponding requirement in Part 1926. The use of any machinery, vehicle, tool, material or equipment which is not in compliance with any applicable requirement of the manufacturer is prohibited, and shall either be identified by the employer as unsafe by tagging or locking the controls to render them inoperable, or physically removed from its place of use or operation.</u></p> <p>Rationale: The proposed amendment is to clarify an employer’s current responsibility under the “general duty clause” to comply with manufacturer’s specifications and limitations, as well as allow the use of the new provisions to address “other-than-serious” hazards before they can become serious in nature.</p> <p>‡ <u>A.</u> For the purposes of the applicability of such Part 1926 standards, the key criteria utilized to make such a decision shall be the activities taking place at the worksite, not the primary business of the employer. Construction work shall generally include any building, altering, repairing, improving, demolishing, painting or decorating any structure, building, highway, or roadway; and any draining, dredging, excavation, grading or similar work upon real property. Construction also generally includes work performed in traditional construction trades such as carpentry, roofing, masonry work, plumbing, trenching and excavating, tunnelling, <u>tunneling</u>, and electrical work. Construction does not include maintenance, alteration or repair of mechanical devices, machinery, or equipment, even when the mechanical device, machinery or equipment is part of a pre-existing structure.</p>
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<p>16 VAC 25-60-140</p>		<p>maintenance, alteration or repair of mechanical devices, machinery, or equipment, even when the mechanical device, machinery or equipment is part of a pre-existing structure.</p> <p>2. Certain standards of 29 C.F. R. Part 1910 have been determined by federal OSHA to be applicable to construction and have been adopted for this application by the board.</p> <p>3. The standards adopted from 29 C.F.R. Part 1910.19 and 29 C.F.R. Part 1910.20 containing respectively, special provisions regarding air contaminants and requirements concerning access to employee exposure and medical records shall apply to construction work as well as general industry.</p> <p>The occupational safety or health standards adopted as rules or regulations by the board either directly, or by reference, from 29 CFR Part 1928 shall apply by their own terms to all employers and employees engaged in either agriculture or agriculture related activities covered by the Virginia State Plan for Occupational Safety and Health.</p>	<p>2 <u>B.</u> Certain standards of 29 C.F. R. Part 1910 have been determined by federal OSHA to be applicable to construction and have been adopted for this application by the board.</p> <p>3 <u>C.</u> The standards adopted from 29 C.F.R. Part 1910.19 and 29 C.F.R. Part 1910.20 containing respectively, special provisions regarding air contaminants and requirements concerning access to employee exposure and medical records shall apply to construction work as well as general industry.</p> <p>Rationale: The proposed amendment corrects a typographical error as well as renumbers the paragraphs.</p> <p>The occupational safety or health standards adopted as rules or regulations by the board either directly, or by reference, from 29 CFR Part 1928 and 29 CFR Part 1910 shall apply by their own terms to all employers and employees engaged in either agriculture or agriculture related activities covered by the Virginia State Plan for Occupational Safety and Health.</p> <p><u>For the purposes of applicability of such Part 1928 and Part 1910 standards, the key criteria utilized to make a decision shall be the activities taking place at the worksite, not the primary business of the employer. Agricultural operations shall generally include any operation involved in the growing or harvesting of crops or the raising of livestock or poultry, or activities integrally related to agriculture, conducted by a farmer or agricultural employer on sites such as farms, ranches, orchards, dairy farms or similar establishments. Agricultural operations do not</u></p>
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<p>16 VAC 25-60-150</p>		<p>The occupational safety or health standards adopted as rules or regulations by the board either directly, or by reference, from 29 C.F.R. Part 1915 and 29 C.F.R. Part 1917, shall apply by their own terms to all public sector employers and employees engaged in maritime related activities covered by the Virginia State Plan for Occupational Safety</p>	<p><u>include construction work as described in § 130.A. of this regulation; nor does it include operations or activities substantially similar to those that occur in a general industry setting and are therefore not unique and integrally related to agriculture.</u></p> <p><u>The employer shall comply with the manufacturer’s specifications and limitations applicable to the operation, training, use, installation, inspection, testing, repair and maintenance of all machinery, vehicles, tools, materials and equipment; unless specifically superceded by a more stringent corresponding requirement in Part 1928 or Part 1910. The use of any machinery, vehicle, tool, material or equipment which is not in compliance with any applicable requirement of the manufacturer is prohibited, and shall either be identified by the employer as unsafe by tagging or locking the controls to render them inoperable, or be physically removed from its place of use or operation.</u></p> <p><u>Rationale:</u> The proposed amendment provides further guidance to VOSH personnel, employers and employees concerning the applicability of, and in certain cases, the non-applicability, of the agricultural standards contained in Part 1928. It also reflects current VOSH enforcement policy and is based in part on a definition of “farming operation” contained in Federal OSHA Instruction CPL 2-0.51J. This proposed amendment is also to clarify an employer’s current responsibility under the “general duty clause” to comply with manufacturer’s specifications and limitations, as well as allow the use of the new provisions to address “other-than-serious” hazards before they can become serious in nature.</p> <p>The occupational safety or health standards adopted as rules or regulations by the board either directly, or by reference, from 29 C.F.R. Part 1915, and 29 C.F.R. Part 1917, <u>29 C.F.R. Part 1918</u> and 29 C.F.R. Part 1919, shall apply by their own terms to all public sector employers and employees engaged in maritime related activities covered by the Virginia State Plan for Occupational Safety and Health.</p> <p><u>The employer shall comply with the</u></p>
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<p>16 VAC 25-190</p>		<p>and Health.</p> <p>B. In addition to the information specified in §§200.A and 210.A of this regulation, every variance application shall contain the following:</p> <p>2. A statement indicating that the applicant has posted, with the summary of the application described above, the following notice: "Affected employees or their representatives have the right to petition the Commissioner of Labor and Industry for an opportunity to present their views, data, or arguments on the requested variance, or they may submit their comments to the commissioner in writing. Petitions for a hearing or written comments should be addressed to the Commissioner of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA. 23219.</p>	<p><u>manufacturer's specifications and limitations applicable to the operation, training, use, installation, inspection, testing, repair and maintenance of all machinery, vehicles, tools, materials and equipment; unless specifically superceded by a more stringent corresponding requirement in Parts 1915, 1917, 1918 or 1919. The use of any machinery, vehicle, tool, material or equipment which is not in compliance with any applicable requirement of the manufacturer is prohibited, and shall either be identified by the employer as unsafe by tagging or locking the controls to render them inoperable, or be physically removed from its place of use or operation.</u></p> <p>Rationale: The proposed amendment is to clarify an employer's current responsibility under the "general duty clause" to comply with manufacturer's specifications and limitations, as well as allow the use of the new provisions to address "other-than-serious" hazards before they can become serious in nature.</p> <p>B. In addition to the information specified in §§200.A and 210.A of this regulation, every variance application shall contain the following:</p> <p>2. A statement indicating that the applicant has posted, with the summary of the application described above, the following notice: "Affected employees or their representatives have the right to petition the Commissioner of Labor and Industry for an opportunity to present their views, data, or arguments on the requested variance, or they may submit their comments to the commissioner in writing. Petitions for a hearing or written comments should be addressed to the Commissioner of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA. 23219 23219-4101. Such petitions will be accepted if they are received within 30 days from the posting of this notice or within 30 days from the date of publication of the commissioner's notice that public comments concerning this matter will be accepted, whichever is later."</p> <p>Rationale: Zip Code change.</p>
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<p>16 VAC 25-60-260</p>		<p>Such petitions will be accepted if they are received within 30 days from the posting of this notice or within 30 days from the date of publication of the commissioner's notice that public comments concerning this matter will be accepted, whichever is later."</p> <p>A. Each citation shall be in writing and describe with particularity the nature of the violation or violations, including a reference to the appropriate safety or health provision of Title 40.1 of the <i>Code of Virginia</i> or the appropriate rule, regulation, or standard. In addition, the citation must fix a reasonable time for abatement of the violation. The citation will contain substantially the following: "NOTICE: This citation will become a final order of the commissioner unless contested within fifteen working days from the date of receipt by the employer." The citation may be delivered to the employer or his agent by the commissioner or may be sent by certified mail or by personal service to an officer or agent of the employer or to the registered agent if the employer is a corporation.</p>	<p>A. Each citation shall be in writing and describe with particularity the nature of the violation or violations, including a reference to the appropriate safety or health provision of Title 40.1 of the <i>Code of Virginia</i> or the appropriate rule, regulation, or standard. In addition, the citation must fix a reasonable time for abatement of the violation. The citation will contain substantially the following: "NOTICE: This citation will become a final order of the commissioner unless contested within fifteen working days from the date of receipt by the employer." The citation may be delivered to the employer or his agent by the commissioner or may be sent by certified mail or by personal service to an officer or agent of the employer or to the registered agent if the employer is a corporation.</p> <p><u>1. No citation may be issued after the expiration of six months following the occurrence of any alleged violation. The six month time frame is deemed to be tolled on the date the citation is issued by the commissioner, without regard for when the citation is received by the employer. For purposes of calculating the six month time frame for citation issuance, the following requirements shall apply:</u></p> <p>Rationale: The proposed amendment codifies guidance on how to apply the requirement in Va. Code §40.1-49.4.A.3, which provides that “No citation may be issued under this section after the</p>
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		<p>expiration of six months following the occurrence of any alleged violation.”</p> <p><u>a. The six month time frame begins to run on the day after the incident or event occurred or notice was received by the commissioner (as specified below), in accordance with Va. Code §1-210.A. The word “month” shall be construed to mean one calendar month in accordance with Va. Code §1-223.</u></p> <p>Rationale: The proposed amendment is to clarify for employers and employees that in order to comply with Va. Code §40.1-49.4.A.3., the Commissioner only need to “issue” the violations within six months of the occurrence of any alleged violation, even if the employer receives the citation several days after the end of the six month period.</p> <p><u>b. An alleged violation is deemed to have “occurred” on the day it was initially created by commission or omission on the part of the creating employer, and every day thereafter that it remains in existence uncorrected.</u></p> <p>Rationale: The purpose of the proposed amendment is to clarify for employers and employees how the six month time frame is calculated by specifically referencing Code of Virginia provisions that apply to computation of time in statutes.</p> <p><u>c. Notwithstanding b. above, if an employer fails to notify the commissioner of any work-related incident resulting in a fatality or in the in-patient hospitalization of three or more persons within eight hours of such occurrence as required by Va. Code §40.1-51.1.D, the six month time frame shall not be deemed to commence until the commissioner receives actual notice of the incident.</u></p> <p>Rationale: The proposed amendment is to clarify for employers and employees that that for purposes of calculating the six month time frame for issuing a citation, the date a violation occurred includes not only the first day that it was created, but also every day thereafter that the violation continues to go uncorrected.</p> <p><u>d. Notwithstanding b. above, if the Commissioner is first notified of a work-related incident resulting in an injury or illness to an</u></p>
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employee(s) through receipt of an Employer's Accident Report (EAR) form from the Virginia Workers' Compensation Commission as provided in Va. Code § 65.2-900, the six month time frame shall not be deemed to commence until the commissioner actually receives the EAR form.

Rationale: The proposed amendment is to clarify for employers and employees that the six month time frame for issuing a citation in response to the six month time frame for issuing a citation in response to fatal or catastrophic accident, as defined in Va. Code §40.1-51.1.D., does not begin until the Commissioner receives actual notice of the accident if the employer fails to comply with the notification requirements of Va. Code §40.1-51.1D.

e. Notwithstanding b. above, if the Commissioner is first notified of a work-related hazard, or incident resulting in an injury or illness to an employee(s), through receipt of a complaint in accordance with §100 of these regulations, or referral, the six month time frame shall not be deemed to commence until the commissioner actually receives the complaint or referral.

Rationale: The proposed amendment is to clarify for employers and employees that the six month time frame for issuing a citation in response to an inspection that the Commissioner initiated following receipt of an Employer's Accident Report (EAR) does not begin until the Commissioner actually receives the EAR form.

F. On multi-employer worksites for all covered industries, citations shall normally be issued to an employer whose employee is exposed to an occupational hazard (the exposing employer). Additionally, the following employers shall normally be cited, whether or not their own employees are exposed:

1. The employer who actually creates the hazard (the creating employer);

2. The employer who is either:

a. responsible, by contract or through actual practice, for safety and health conditions on the entire worksite, and has the authority for ensuring that the hazardous condition is corrected

		<p><u>(the controlling employer); or</u></p> <p><u>b. responsible, by contract or through actual practice, for safety and health conditions for a specific area of the worksite, or specific work practice, or specific phase of a construction project, and has the authority for ensuring that the hazardous condition is corrected (the controlling employer);</u></p> <p><u>3. The employer who has the responsibility for actually correcting the hazard (the correcting employer).</u></p> <p><u>Rationale:</u> The proposed amendment is to codify VOSH's longstanding enforcement policy for the issuance of citations in multi-employer worksite situations. In a recent Virginia Court of Appeals case, <i>C. Ray Davenport, Commissioner of Labor and Industry v. Summit Contractors</i>, the VOSH Program's multi-employer citation policy was upheld in part and overturned in part. The court's invalidation of part of the VOSH Program's multi-employer citation policy potentially places that portion of the VOSH Program in violation of the "as effective as" requirement of the OSH Act of 1970 and federal regulations which require VOSH laws, regulations and policies to be "as effective as" those of federal OSHA.</p> <p><u>G. A citation issued under subsection F. to an exposing employer who violates any VOSH law, standard, rule or regulation shall be vacated if such employer demonstrates that:</u></p> <p><u>1.The employer did not create the hazard;</u></p> <p><u>2.The employer did not have the responsibility or the authority to have the hazard corrected;</u></p> <p><u>3.The employer did not have the ability to correct or remove the hazard;</u></p> <p><u>4.The employer can demonstrate that the creating, the controlling and/or the correcting employers, as appropriate, have been specifically notified of the hazards to which his employees were exposed;</u></p> <p><u>5. The employer has instructed his employees to recognize the hazard and, where necessary, informed them how to avoid the dangers associated with it;</u></p>
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<p>16 VAC 25-60-300</p>		<p>A. Where the informal conference has failed to resolve any controversies arising from a citation issued to the Commonwealth or one of its agencies, and a timely notice of contest has been received, the Commissioner of Labor and Industry shall refer the case to the Attorney General, whose written decision on the contested matter shall become a final order of the commissioner.</p> <p>G. When affected employees, or their representatives object to the petition, the</p>	<p><u>6. Where feasible, an exposing employer must have taken appropriate alternative means of protecting employees from the hazard- ; and</u></p> <p><u>7. When extreme circumstances justify it, the exposing employer shall have removed his employees from the job.</u></p> <p>Rationale: The proposed amendment is to codify VOSH’s longstanding recognition of a defense to the multi-employer citation policy for a certain class of employers since the VOSH Program is proposing that the Board codify the multi-employer citation policy. Punctuation typographical errors corrected in paragraphs 5 and 6.</p> <p>A. Where the informal conference has failed to resolve any controversies arising from a citation issued to the Commonwealth or one of its agencies, and a timely notice of contest has been received, the Commissioner of Labor and Industry shall refer the case to the Attorney General <u>Governor</u>, whose written decision on the contested matter shall become a final order of the commissioner.</p> <p>Rationale: The proposed amendment is to change the decision maker for resolution of contested state agency VOSH cases from the Attorney General to the Governor, who has the authority to issue orders to Executive Branch agencies.</p> <p>G. When affected employees, or their representatives object to the petition, the commissioner will attempt to resolve the issue in accordance with § 330 of these regulations. If the matter is not settled or settlement does not appear probable, the Commissioner of Labor and Industry will hear the objections <u>will be heard</u> in the manner set forth at subsection I below.</p> <p>Rationale: The proposed amendment is for clarification and procedural purposes.</p>
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<p>16 VAC 25-60-320</p>	<p>commissioner will attempt to resolve the issue in accordance with § 330 of these regulations. If the matter is not settled or settlement does not appear probable, the Commissioner of Labor and Industry will hear the objections in the manner set forth at subsection I below.</p> <p>I. An employee's objection not resolved under Subsection G of this section or an employer or employee appeal under Subsection H will be heard by the Commissioner of Labor and Industry using the procedures of §§ 2.2-4019 and 2.2-4021 of the <i>Code of Virginia</i>. Burden of proof for a hearing under subsection G shall lie with the employer. Burden of proof for an appeal under subsection H shall lie with the party seeking review.</p> <p>2. Within 15 working days of the hearing, all parties will be advised of the Commissioner of Labor and Industry's decision.</p> <p>3. Since the issue is whether the Commissioner of Labor and Industry will exercise his enforcement discretion, no further appeal is available.</p>	<p>I. An employee's objection not resolved under subsection G of this section or an employer or employee appeal under Subsection H will be heard by the Commissioner of Labor and Industry using the procedures of §§ 2.2-4019 and 2.2-4021 of the <i>Code of Virginia</i>. Burden of proof for a hearing under subsection G shall lie with the employer. Burden of proof for an appeal under subsection H shall lie with the party seeking review.</p> <p><u>Rationale:</u> The proposed amendment is for clarification and procedural purposes.</p>
<p>16 VAC 25-60-340</p>	<p>C. Where a settlement with the employer is reached before the 15th working day after receipt of a citation, order of abatement, or proposed civil penalty, and no notice of contest has been filed, the commissioner shall forthwith amend the citation, order of abatement, or proposed civil</p>	<p>2. Within 15 working days of the hearing, all <u>All</u> parties will be advised of the Commissioner of Labor and Industry's decision <u>within 15 working days of the hearing.</u></p> <p><u>Rationale:</u> The proposed amendment is for clarification and procedural purposes.</p> <p>3. Since the issue is whether the Commissioner of Labor and Industry will exercise his enforcement discretion, no further appeal is available.</p> <p><u>Rationale:</u> The proposed amendment is for clarification and procedural purposes.</p> <p>C. Where a settlement with the employer is reached before the 15th working day after receipt of a citation, order of abatement, or proposed civil penalty, and no notice of contest has been filed, the commissioner shall forthwith amend <u>prepare a settlement agreement noting any changes to</u> the citation, order of abatement, or proposed civil penalty, as agreed. The amended citation shall bear a title to indicate that it has been amended and the amended citation or an accompanying agreement shall contain a statement to the following effect: " This citation</p>

	<p>penalty, as agreed. The amended citation shall bear a title to indicate that it has been amended and the amended citation or an accompanying agreement shall contain a statement to the following effect: "This citation has been amended by agreement between the commissioner and the employer named above. As part of the written agreement, the employer has waived his right to file a notice of contest to this order. This agreement shall not be construed as an admission by the employer of civil liability for any violation alleged by the commissioner."</p> <p>D. Following receipt of an employer's timely notice of contest, the commissioner will immediately notify the appropriate Commonwealth's Attorney and may delay the initiation of judicial proceedings until settlement opportunities have been exhausted.</p> <p>1. During this period, the commissioner may amend the citation, order of abatement, or proposed civil penalty through the issuance of an amended citation. Every such amended citation shall bear a title to indicate that it has been amended and the amended citation or the accompanying agreement shall contain a statement to the following effect: "This amended citation is being issued as a result of a settlement between the commissioner and the employer. The employer, by his signature below, agrees to withdraw his notice of contest filed in this matter and not to contest the amended citation.</p>	<p>has been amended by agreement between the commissioner and the employer named above. As part of the written agreement, the employer has waived his right to file a notice of contest to this order. This agreement shall not be construed as an admission by the employer of civil liability for any violation alleged by the commissioner."</p> <p>Rationale: The proposed amendment is primarily procedural and provides clarification, and does not involve any substantive changes to VOSH operations.</p> <p>D. Following receipt of an employer's timely notice of contest, the commissioner will immediately notify the appropriate Commonwealth's Attorney and may delay the initiation of judicial proceedings until settlement opportunities have been exhausted.</p> <p>1. During this period, the commissioner may <u>agree to</u> amend the citation, order of abatement, or proposed civil penalty, through the issuance of an amended citation. Every such amended citation shall bear a title to indicate that it has been amended and the amended citation or the accompanying <u>The settlement</u> agreement shall contain a statement to the following effect: " This amended citation is being issued as a result of a settlement between the commissioner and the employer. The employer, by his signature below, agrees to withdraw his notice of contest filed in this matter and not to contest the amended citation. This agreement shall not be construed as an admission by the employer of civil liability for any violation alleged by the commissioner."</p> <p>Rationale: The proposed amendment is primarily procedural and provides clarification, and does not involve any substantive changes to VOSH operations.</p>
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		<p>This agreement shall not be construed as an admission by the employer of civil liability for any violation alleged by the commissioner."</p> <p>E. Employees or their representative have the right to contest abatement orders arising out of settlement negotiations if the notice is timely filed with the commissioner within 15 working days of issuance of the amended citation and abatement order. Upon receipt of a timely notice of contest the commissioner will initiate judicial proceedings.</p>	<p>E. Employees or their representative have the right to contest abatement orders arising out of settlement negotiations if the notice is timely filed with the commissioner within 15 working days of issuance of the <u>agreement amended citation</u> and abatement order. Upon receipt of a timely notice of contest the commissioner will initiate judicial proceedings.</p> <p>Rationale: The proposed amendment is primarily procedural and provides clarification, and does not involve any substantive changes to VOSH operations.</p>
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Regulatory flexibility analysis

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.

With this amendment, the Department has memorialized procedures for operating its State Plan program, therefore, the public has a better idea of how the agency operates. With respect to the proposed amendments to §260, the Department has codified longstanding regulatory procedures required by federal OSHA that employers have been exposed to for the last 20 years.

Family impact

Please assess the impact of the proposed 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.

16 VAC 25-60, Final Regulation to Amend the Administrative Regulation for the Virginia Occupational Safety and Health Program

**As Adopted by the
Safety and Health Codes Board**

Date: _____



16 VAC 25-60, Administrative Regulations for the Virginia Occupational Safety and Health (VOSH) Program