

**VOSH PROGRAM DIRECTIVE: 09-003F**

**ISSUED: 15 October 2013**

**SUBJECT:** Administrative Regulations Manual (ARM) for the Virginia Occupational Safety and Health Program

**Purpose:**

- **CHANGE I** transmits to field personnel the above-referenced Administrative Regulations Manual.
- **CHANGE II** amends the ARM to correct a typographical error and to reflect revised statutory language concerning the time limit for employers to report work-related incidents resulting in a fatality or in the in-patient hospitalization of at least 3 individuals.
- **CHANGE III** reflects the requirements from the Abatement Verification regulation that employers provide specific documentation of abatement, including detailed evidence of the corrective actions that have been taken to abate hazards for which citations were issued.
- **CHANGE IV** removes outdated references to the Administrative Process Act (APA) which appear in the Administrative Regulations Manual and replaces those outdated references with renumbered references reflecting the statutory revisions to the APA.
- **CHANGE V** codifies in regulation the agency's longstanding multi-employer worksite policy for citation issuance and the multi-employer worksite defense and requires the use of manufacturer's guidelines for machinery, equipment, vehicles, materials and tools where no overriding specific regulations exist.
- **CHANGE VI** provides VOSH personnel with procedures for exercising the Commissioner's statutory authority to take and preserve testimony, examine witnesses and administer oaths, in instances where such witnesses/employees/supervisors refuse requests for interviews or refuse to answer specific questions posed by a VOSH inspector. Also, it makes longstanding non-substantive housekeeping changes to match the Virginia Registrar of Regulations official copy.

*This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.*

**Scope**

This directive applies to all VOSH personnel.

**References**

**CHANGE I:** Not Applicable;  
**CHANGE II:** Not Applicable;  
**CHANGE III:** 62 FR 15324 (March 31, 1997); OSHA Instruction STP 2.23 (June 4, 1997);  
**CHANGE IV:** Not Applicable;  
**CHANGE V:** Not Applicable; and  
**CHANGE VI:** Not Applicable.

**Cancellations**

- CHANGE I:** VOSH Program Directive 09-003 (9/1/93);
- CHANGE II:** VOSH Program Directive 09-003A (9/1/94);
- CHANGE III:** VOSH Program Directive 09-003B (7/1/95);
- CHANGE IV:** VOSH Program Directive 09-003C (3/15/98);
- CHANGE IV:** VOSH Program Directive 09-003D (April 1, 2003); and
- CHANGE V:** VOSH Program Directive 09-003E (October 1, 2006)

**Action.**

The Assistant Commissioner, Directors and Managers shall assure that VOSH personnel are aware of and comply with the rules, requirements and procedures of the ARM for the VOSH Program, as amended.

**Effective Dates.**

- CHANGE I:** June 30, 1994;
- CHANGE II:** August 1, 1995;
- CHANGE III:** December 15, 1997;
- CHANGE IV:** March 1, 2003;
- CHANGE V:** September 21, 2006; and
- CHANGE VI:** December 5, 2012

*William Burge*

Acting Commissioner

Attachments: CHANGES I - V: None. Attachments have already been incorporated into the VOSH ARM  
CHANGE VI: 16VAC25-60-10,20,90,100,130,140,190,210,220 and 240

Distribution:	Commissioner of Labor and Industry	Cooperative Programs Manager
	Assistant Commissioner	VOSH Compliance and Cooperative Programs Staffs
	VOSH Directors and Managers	OSHA Region III and OSHA Norfolk Area Offices
	Legal Support and IMIS Staffs	

## I. Background.

**CHANGE I:** The purpose of the Administrative Regulations Manual (ARM) is to provide an operational framework of rules and procedures for the administration of the Virginia Occupational Safety and Health (VOSH) program. The major objective of this revised ARM was to provide employers, employees, the public, VOSH employees, and other parties interested in the administrative rules governing the VOSH program with a simplified document in a more concise format to aid in the understanding of the general administrative provisions and specific related procedures of the program.

**CHANGE II:** Two amendments were made in the document. The purpose of the first amendment, which appears in paragraph 4 of what was then § 2.3, is to delete a typographical error that inadvertently resulted during the 1994 revision. The second amendment, affecting what was then § 2.4. A. and B., was made pursuant to Chapter 373 of the 1995 Virginia Acts of Assembly which amends Chapter 40.1-51.1, dealing with duties of employers. This statutory change was initiated by the Department to comply with a similar regulatory change by federal OSHA published at 59 FR 15594 on April 1, 1994.

**CHANGE III:** Historically, employer compliance with requests by both federal OSHA nationally and VOSH to provide evidence of abatement has been administrative, rather than regulatory in nature and follow-up inspections were often necessary to determine whether abatement had occurred. A 1991 General Accounting Office (GAO) Report to Congress assessed the adequacy of federal OSHA's policies and procedures for ensuring abatement of cited hazards. In its report, GAO determined that OSHA's existing policies had limitations that interfered with OSHA's ability to identify those employers who have failed to abate the hazards for which they had been cited. This was especially true for construction employers who could move cited hazardous equipment to another location where it could continue to pose a risk to an additional group of employees who would not be aware of the OSHA citation.

**CHANGE IV:** Chapter 844 of the 2001 session of the General Assembly amended the Code of Virginia by recodifying Titles 2.1 and 9. As a result of this action, which became effective on October 1, 2001, the code sections in the Administrative Process Act were renumbered.

**CHANGE V:** Amendments were necessary to comply with changes to statutory law or to address procedural or other administrative changes that had occurred since the Administrative Regulations were revised.

**CHANGE VI:** Amendments were needed to provide procedures for exercising the Commissioner's statutory authority to take and preserve testimony, examine witnesses and administer oaths, in instances where such witnesses/employees/supervisors refuse requests for interviews or refuse to answer specific questions posed by a VOSH inspector. Also, longstanding non-substantive housekeeping changes were made to match the Registrar of Regulations official copy.

## II. Summary.

**CHANGE I:** This was the first complete revision of the Administrative Regulations Manual (ARM) which was initially adopted in 1986. This revision contained substantive changes primarily in the areas of additional definition of terms and clarification of the 48-hour accident reporting requirements of employers. To respond to the requests to the Department for information by subpoena, new language was added which allowed the Commissioner to restrict VOSH employees from being deposed, testifying or otherwise participating in third-party lawsuits in which the Department had no genuine interest. This revision also clarified the VOSH program's response to certain federal judicial action, such as vacation of §1910.1000 permissible exposure limits (PEL). The revised ARM codified the employee misconduct defense and provided that the defense does not apply to supervisory personnel.

This revision also simplified the regulation by omitting requirements already stipulated in Title 40.1 of the Code of Virginia in those cases where no further regulatory language was necessary to carry out that mandate.

**CHANGE II:** This first amendment involves removing the unnecessary language, "subsection B of," which appears in paragraph 4 of § 2.3., Notification and Posting Requirements. This typographical error was made when the Administrative Regulation for the Virginia Occupational Safety and Health Program was revised in 1994.

The second amendment, which appears in § 2.4. A. and B., reduces from 48 hours to 8 hours the time limit for employers to report any work-related incident resulting in a fatality or the hospitalization of at least 3, rather than 5, individuals. In cases where an employer does not immediately learn of a reportable incident, the employer would report within 8 hours, rather than 48 hours, of learning of such incident. This amendment also requires an employer to report within 8 hours, rather than 48 hours, after learning of the death of a worker who dies within 30 days of an incident; and provides specifics for information requirements and reporting methods.

**CHANGE III:** If abatement occurs during or immediately after the inspection that identified the violation(s), the employer would not be required to submit an abatement certification letter to VOSH. If the violation(s) is an other-than-serious violation, or serious violation that does not require additional documentation, the employer is required to certify abatement using a simple one page form letter or equivalent. This simple form describing the completed abatement actions will meet the requirements for most violations. The employer certification that abatement is complete must include, among other things, a statement that affected employees and their representatives have been informed of the abatement (1903.19(c)(3)). In cases involving the most serious violations, additional documentation will be required. Willful and repeat violations will require certification and documentation of abatement. Serious violations will require abatement documentation only if designated by VOSH. OSHA estimates that between 84 and 90 percent of all violations will require only a simple letter verification of abatement.

Abatement plans may be required by VOSH if the period allowed for abatement exceeds 90 days. Such plans, when required, will generally be simple one page documents. Progress reports may also be required by VOSH to note the status of abatement efforts and may require only a simple sentence description of the interim action taken.

For movable equipment, such as construction equipment, that has been cited as a serious hazard, the regulation would allow employers to either post a copy of the citation on the cited equipment or attach a warning tag supplied by VOSH, or devised by the employer to the equipment to alert affected employees to the presence of the hazard.

VOSH must indicate cited items on the citation for which documentation and/or an abatement plan is required and the cited items for which certification is not required.

**CHANGE IV:** These amendments to the Administrative Regulation for the Virginia Occupational Safety and Health Program will replace outdated references to Title 9 of the Administrative Process Act with the current references.

**CHANGE V:** This 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. This 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. This amendment clarifies the meaning of the term "agricultural operations." It also further clarifies the existing timetable for issuing citations and proposed penalties. Additionally, the 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.

**CHANGE VI:** This amendment seeks to establish procedures for the Commissioner or his appointed representatives under Va. Code §40.1-6(5) to take and preserve testimony, examine witnesses and administer oaths under Va. Code §§40.1-6(4) and 40.1-10.

The amendment:

- Specifies the wording of the oath to be administered and the manner in which it would be administered.
- Explains the manner in which the Commissioner would appoint in writing Department personnel as his representatives having the authority to administer such oaths and having the authority to examine witnesses in accordance with the procedures outlined in the regulation.
- Specifies that testimony preserved under the regulation would be recorded by a court reporter.
- Specifies the level of confidentiality that would attach to any testimony preserved under the statute.
- Establishes a procedure for the Commissioner or his authorized representatives to follow in the event that any employer refuses to make an employee or supervisor available to provide testimony in accordance with Va. Code 40.1-6(4). The final regulation provides that an application for an inspection warrant under Va. Code §§40.1-49.8 through 40.1-49.12 for VOSH investigations/inspections will be submitted to the local General District or Circuit Court with jurisdiction over the employer.
- Establishes a procedure for the Commissioner or his authorized representatives to follow in the event that any person who has sworn to give testimony willfully refuses or fails to answer any legal and proper question in accordance with Va. Code §§40.1-10 and 40.1-6(4), up to and including referring such refusal to the appropriate Commonwealth's Attorney for prosecution of the individual involved.
- Recommends longstanding non-substantive housekeeping changes to the final regulation that are primarily in response to a request from the Registrar of Regulations to correct sections which do not comply with Virginia Administrative Code (VAC) formatting requirements:
  - Section 10, Definitions, definitions are put in alphabetical order.
  - Section 20, Jurisdiction, sections are renumbered, and cross-references to other sections in the regulation are put in proper VAC format.
  - Section 90, Release of information and disclosure pursuant to requests under the Virginia Freedom of Information Act and subpoenas, the following language was amended:

B. Interview statements of employers, owners, operators, agents, or employees given to the commissioner pursuant to § 40.1-49.8 of the Code of Virginia are confidential. Pursuant to the requirements set forth in §40.1-11 of the Code of Virginia, individuals shall have the right to request a copy of their own interview statements.

- Section 100, Complaints, cross-references to other sections in the regulation were put in proper VAC format.
- Section 130, Construction industry standards, sections renumbered.
- Cross-references to other sections within the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program were put in proper Virginia Administrative Code format for the following sections:
  - 16 VAC 25-60-140, Agricultural standards
  - 16 VAC 25-60-190, General provisions
  - 16 VAC 25-60-210, Permanent variances
  - 16 VAC 25-60-220, Interim order
  - 16 VAC 25-60-260, Issuance of citation and proposed penalty
  - 16 VAC 25-60-270, Contest of citation or proposed penalty
  - 16 VAC 25-60-280, General contest proceedings applicable to the public sector
  - 16 VAC 25-60-310, Contest of abatement period
  - 16 VAC 25-60-320, Extension of abatement time
  - 16 VAC 25-60-330, Informal Conference
  - 16 VAC 25-60-340, Settlement

**Administrative Regulations Manual (ARM) for the Virginia  
Occupational Safety and Health Program**

As adopted by the

Safety and Health Codes Board

Date: April 25, 1994



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: June 30, 1994

Administrative Regulations Manual for the  
Virginia Occupational Safety and Health Program

VR 425-02-95

**Administrative Regulations Manual (ARM) for the Virginia  
Occupational Safety and Health Program;  
and Corrections**

As adopted by the

Safety and Health Codes Board

Date: April 17, 1995



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: August 1, 1995

Administrative Regulations Manual for the  
Virginia Occupational Safety and Health Program

VR 425-02-95



**Amendment to the Administrative Regulation for the Virginia Occupational Safety and Health Program by  
inclusion of Abatement Verification, Final Rule, 29 CFR § 1903.19**

As adopted by the

Safety and Health Codes Board

Date: September 29, 1997



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: December 15, 1997

16 VAC 25-60-307, Abatement Verification

When the regulations as set forth in the final rule for Abatement Verification, 29 CFR §1903.19, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms or language, shall be considered to read as below:

Federal Terms/Language:

VOSH Equivalent:

OSHA

VOSH

Occupational Safety and Health Act of 1970

Virginia Occupational Safety and Health Act

29 CFR

VOSH Standard

§1903.16

§0ARM.0002.03

§1903.19

§0ARM.0007.00

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

May 30, 1997

December 15, 1997

Occupational Safety and Health  
Review Commission

Virginia Circuit Court

“(b)(2)(ii) For a contested citation item for which the Occupational Safety and Health Review Commission (OSHRC) has issued an order affirming the violation, the later of:  
(A) The date identified in the final order for abatement; or  
(B) The date computed by adding the period allowed in the citation for the abatement to the final order date;  
(C) The date established by a formal settlement agreement.

“(b)(2)(ii) For a contested citation item the date established in a formal settlement agreement between VOSH and the employer; **or**  
For a contested citation item for which a Virginia Circuit Court has issued an order affirming the violation, the later of:  
(A) The date identified in the final order; or  
(B) The date computed by adding the period allowed in the citation for the abatement to the final order date;  
or  
(C) The date established by an agreed order.

“(b)(4)(ii)(A) The thirtieth day after the date on which a decision or order of a commission law judge administrative law judge has been docketed with the commission, unless a member of the commission has directed review; or...”

“(b)(4)(ii)(A) Date that a formal settlement agreement is signed by VOSH; or..”

“(b)(4)(ii)(B) Where review has been directed, the Thirtieth day after the date on which the Commission issues its decision or order Disposing of all or pertinent part of a case; or...”

“(b)(4)(ii)(B) The thirtieth day after the date on which a decision or order of a circuit court judge has been entered;, or...”

“(b)(4)(ii)(C) That date on which a federal appeals court issues a decision affirming the violation in a case in which a final order of OSHRC has been stayed.”

“(b)(4)(ii)(C) The date on which the Virginia Court of Appeals issues a decision affirming the violation in a VOSH case.”

**16 VAC 25-60, *et seq.*, Administrative Regulation for the Virginia Occupational Safety and Health Program**

As Adopted by the  
Safety and Health Codes Board

Date: December 2, 2002



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: March 1, 2003

16 VAC 25-60, *et seq.*, Administrative Regulation  
for the Virginia Occupational Safety and Health Program

**16 VAC 25-60, *et seq.*, Administrative Regulation for the Virginia Occupational Safety and Health Program**

As Adopted by the  
Safety and Health Codes Board

Date: March 7, 2006



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: September 21, 2006

16 VAC 25-60, *et. seq.*, Administrative Regulation  
for the Virginia Occupational Safety and Health Program

**16 VAC 25-60, *et seq.*, Administrative Regulation for the Virginia Occupational Safety and Health Program**

As Adopted by the  
Safety and Health Codes Board

Date: August 18, 2010



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: December 5, 2012

16 VAC 25-60, *et. seq.*, Administrative Regulation  
for the Virginia Occupational Safety and Health Program

**16 VAC 25-60, et. seq., Administrative Regulation for the Virginia Occupational Safety and Health Program**

Part I

Definitions

16VAC25-60-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Abatement period" means the period of time defined or set out in the citation for correction of a violation.

"Board" means the Safety and Health Codes Board.

"Bureau of Labor Statistics" means the Bureau of Labor Statistics of the United States Department of Labor.

"Citation" means the notice to an employer that the commissioner has found a condition or conditions that violate Title 40.1 of the Code of Virginia or the standards, rules or regulations established by the commissioner or the board.

"Commissioner" means the Commissioner of Labor and Industry. Except where the context clearly indicates the contrary, any such reference shall include his authorized representatives.

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Part II

General Provisions

16VAC25-60-20. Jurisdiction.

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:

1. The United States is the employer or exercises exclusive jurisdiction;
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

3. The employer is a public employer, as that term is defined in this chapter. In such cases, the Virginia laws, standards and regulations governing occupational safety and health are applicable as stated including 16VAC25-60-10, 16VAC25-60-30, 16VAC25-60-280, 16VAC25-60-290, and 16VAC25-60-300.

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16VAC25-60-90. Release of information and disclosure pursuant to requests under the Virginia Freedom of Information Act and subpoenas.

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B. Interview statements of employers, owners, operators, agents, or employees given to the commissioner pursuant to § 40.1-49.8 of the Code of Virginia are confidential. Pursuant to the requirements set forth in §40.1-11 of the Code of Virginia, individuals shall have the right to request a copy of their own interview statements.

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16VAC25-60-100. Complaints.

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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 subdivision 1 of this subsection.

3. The commissioner reserves the right, for good cause shown, to initiate an inspection with regard to certain complaints that do not meet the criteria listed in subdivision 1 of this subsection; 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 subdivision 1 of this subsection.

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Part III

Occupational Safety and Health Standards

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16VAC25-60-130. Construction industry standards.

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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, tunneling, 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.

2. Certain standards of 29 CFR Part 1910 have been determined by federal OSHA to be applicable to construction and have been adopted for this application by the board.

3. The standards adopted from 29 CFR Part 1910.19 and 29 CFR 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.

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16VAC25-60-140. Agriculture standards.

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For the purposes of applicability of such Part 1910 and Part 1928 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 include construction work as described in subdivision 1 of 16VAC25-60-130, 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.

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Part IV

Variances

16VAC25-60-190. General provisions.

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B. In addition to the information specified in 16VAC25-60-200 A and 16VAC25-60-210 A, every variance application shall contain the following:

1. A statement that the applicant has informed affected employees of the application by delivering a copy of the application to their authorized representative, if there is one, as well as having posted, in accordance with 16VAC25-60-40, a summary of the application which indicates where a full copy of the application may be examined;

....

F. The commissioner will grant a variance request only if it is found that the employer has met by a preponderance of the evidence, the requirements of either 16VAC25-60-200 B 4 or 16VAC25-60-210 B 4.

....

2. The employer shall post a copy of the commissioner's decision in accordance with 16VAC25-60-40.

....

G. Any party may within 15 days of the commissioner's decision file a notice of appeal to the board. Such appeal shall be in writing, addressed to the board, and include a statement of how other affected parties have been notified of the appeal. Upon notice of a proper appeal, the commissioner shall advise the board of the appeal and arrange a date for the board to consider the appeal. The commissioner shall advise the employer and employee representative of the time and place that the board will consider the appeal. Any party that submitted written or oral views or participated in the hearing concerning the original application for the variance shall be invited to attend the appeal hearing. If there is no employee representative, a copy of the commissioner's letter to the employer shall be posted by the employer in accordance with the requirements of 16VAC25-60-40.

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16VAC25-60-210. Permanent variances.

A. Applications filed with the commissioner for a permanent variance from a standard or regulation shall be subject to the requirements of 16VAC25-60-190 and the following additional requirements.

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16VAC25-60-220. Interim order.

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B. A letter of application for an interim order shall include statements as to why the interim order should be granted and shall include a statement that it has been posted in accordance with 16VAC25-60-40. The provisions contained in 16VAC25-60-190 A, B 1 and B 3 shall apply to applications for interim orders in the same manner as they do to variances.

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16 VAC 25-60-240

#### Walkthrough

Walkthrough by the commissioner for the inspection of any workplace includes the following privileges.

1. The commissioner shall be in charge of the inspection and, as part of an inspection, may question privately any employer, owner, operator, agent, or employee. The commissioner shall conduct the interviews of persons during the inspection or at other convenient times. The commissioner may take and preserve testimony, examine witnesses and administer oaths as provided for in §245 of these regulations.

16 VAC 25-60-245

#### Take and Preserve Testimony, Examine Witnesses and Administer Oaths

1. Section 40.1-6(4) of the *Code of Virginia* authorizes the commissioner, in the discharge of his duties, to take and preserve testimony, examine witnesses and administer oaths. In accordance with §40.1-6(5) of the *Code of Virginia*, the Commissioner of Labor and Industry may appoint such representatives as are necessary to carry out the functions outlined in §40.1-6(4) of the *Code of Virginia*. Such appointments shall be made in writing, identify the individual being appointed, the length of appointment, the method of withdrawal of such appointment, and specify what duties are being prescribed.

2. The oath shall be administered by the commissioner's appointed representative to the witness as follows: "Do you swear or affirm to tell the truth".

3. Testimony given under oath shall be recorded by a court reporter.

4. Questioning of employers, owners, operators, agents or employees under oath shall be in private in accordance with §40.1-49.8(2) of the *Code of Virginia*.
5. An employer's refusal to make an owner, operator, agent or employee available to the commissioner for examination under this section shall be considered a refusal to consent to the commissioner's inspection authority under §40.1-49.8 of the *Code of Virginia*. Upon such refusal the commissioner may seek an administrative search warrant in accordance with the provisions contained in §§40.1-49.9 to -49.12 of the *Code of Virginia*, and obtain an order from the appropriate judge commanding the employer to make the subject owner, operator, agent or employee available for examination at a specified location by a date and time certain.
6. In accordance with §40.1-10 of the *Code of Virginia*, if any person who may be sworn to give testimony shall willfully fail or refuse to answer any legal and proper question propounded to him concerning the subject of the examination under §40.1-6 of the *Code of Virginia*, he shall be guilty of a misdemeanor. Such person, upon conviction thereof, shall be fined not exceeding \$100 nor less than \$25 or imprisoned in jail not exceeding 90 days or both. Any such refusal on the part of any person to comply with this section may be referred by the Commissioner of Labor and Industry to the appropriate Commonwealth's Attorney for prosecution.]

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## Part VI

### Citation and Penalty

16VAC25-60-260. Issuance of citation and proposed penalty.

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A.

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e. Notwithstanding subdivision 1 b of this subsection, 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

16VAC25-60-100 or referral, the six-month time frame shall not be deemed to commence until the commissioner actually receives the complaint or referral.

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16VAC25-60-270. Contest of citation or proposed penalty; general proceedings.

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C. The employer's contest of a citation or proposed penalty shall not affect the citation posting requirements of 16VAC25-60-40 unless and until the court ruling on the contest vacates the citation.

D. When the commissioner has received written notification of a contest of citation or proposed penalty, he will attempt to resolve the matter by settlement, using the procedures of 16VAC25-60-330 and 16VAC25-60-340.

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16VAC25-60-280. General contest proceedings applicable to the public sector.

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E. The commissioner shall seek to resolve any controversies or issues rising from a citation issued to any public employer in an informal conference as described in 16VAC25-60-330.

F. The contest by a public employer shall not affect the requirements to post the citation as required at 16VAC25-60-40 unless and until the commissioner's or the court ruling on the contest vacates the citation. A contest of a citation may stay the time permitted for abatement pursuant to § 40.1-49.4 C of the Code of Virginia.

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## Part VII

### Abatement

16VAC25-60-310. Contest of abatement period.

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C. The same procedures and requirements used for contest of citation and penalty, set forth at 16VAC25-60-270, 16VAC25-60-280, 16VAC25-60-290, and 16VAC25-60-300, shall apply to contests of abatement period.

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16VAC25-60-320. Extension of abatement time.

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C.

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5. A certification that a copy of the petition has been posted and served on the authorized representative of affected employees, if there is one, in accordance with 16VAC25-60-40, and a certification of the date upon which such posting and service was made.

....

G. When affected employees, or their representatives object to the petition, the commissioner will attempt to resolve the issue in accordance with 16VAC25-60-330. If the matter is not settled or settlement does not appear probable, objections will be heard in the manner set forth in subsection I of this section.

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## Part VIII

### Review and Settlement

16VAC25-60-330. Informal conference.

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E. An employee representative shall be given the opportunity to participate in a conference requested by the employer. This same right will be extended to the employer when an informal conference is requested by employees. It is the duty of the employer, if he has requested a conference, to notify the employees by the means described in 16VAC25-60-40 as soon as the time and place of the conference have been established. Upon granting an employee request for a conference, the commissioner is responsible for notifying the employer. The commissioner, at his discretion, may conduct separate portions of the conference with the employer and employee representative.

F. During or following the conference the commissioner may affirm or amend the citations, penalties, or abatement period if the order has not become final. The commissioner shall notify the employer in writing of his decision. The employer shall notify employees of this decision in the manner set forth in 16VAC25-60-40.

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16VAC25-60-340. Settlement.

....

B. Settlement negotiations will ordinarily take place in the medium of an informal conference. Employees shall be given notice of scheduled settlement discussions and shall be given opportunity to participate in the manner provided for in 16VAC25-60-330 E.