



Proposed Regulation Agency Background Document

Agency name	Virginia Department of Labor and Industry/Safety and Health Codes Board
Virginia Administrative Code (VAC) citation(s)	16 VAC25-60-10, Definitions [amended]; 16 VAC25-60-20, Jurisdiction [amended]; 16VAC25-60-30, Applicability to public employers [amended]; 16VAC25-60-260, Issuance of citation and proposed penalty [amended]; 16VAC25-60-270, Contest of citation or proposed penalty; general proceedings [amended]; and 16VAC25-60-280, General contest proceedings applicable to the public sector [amended];
Regulation title(s)	Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program
Action title	Proposed Regulation to Amend the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program; State and Local Government Penalties
Date this document prepared	March 9, 2017

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

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program is the promulgated rules and procedures under which the Commonwealth carries out its obligations, as prescribed by Title 40.1 of the Code of Virginia and the Virginia State Plan for Occupational Safety and Health, as approved by the U.S. Department of Labor.

Changes proposed include:

The proposed amendment establishes procedures for the application of penalties for state and local government employers in accordance with §40.1-2.1 of the *Code of Virginia*. In 2016, the Virginia General Assembly passed and Governor Terry R. McAuliffe signed into law legislation that allows the Board to authorize the Commissioner to issue penalties to state and local government employers. During the legislative process, the Department represented to General Assembly members that it would pursue authorization from the Board to:

Allow VOSH to issue proposed penalties to state and local government employers for willful, repeat and failure-to-abate violations, as well as serious violations that cause a fatal accident or are classified as “high gravity”, i.e., a violation that is classified as “high severity” and “high probability”. An example of a “high gravity” serious violation would be one where a violation directly results in non-fatal but serious injuries such as broken bones or amputations. Violations that are classified as non-high gravity serious, and other-than-serious violations would not receive a penalty.

Acronyms and Definitions

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

“ARM” means Administrative Regulations Manual;

“OSH Act” means Occupational Safety and Health Act of 1970 (P.L. 91-596); and

“VOSH” means Virginia Occupational Safety and Health

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

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

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

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

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

Purpose

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

The purpose for amending the Administrative Regulation is to establish procedures for the application of penalties for state and local government employers in accordance with §40.1-2.1 of the *Code of Virginia*.

Substance

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

This proposed amendment addresses certain issues in regard to the Administrative Regulation of the VOSH Program:

The proposed amendment establishes procedures for the application of penalties for state and local government employers in accordance with §40.1-2.1 of the *Code of Virginia*. In 2016, the Virginia General Assembly passed and Governor Terry R. McAuliffe signed into law legislation that allows the Board to authorize the Commissioner to issue penalties to state and local government employers. During the legislative process, the Department represented to General Assembly members that it would pursue authorization from the Board to:

Allow VOSH to issue proposed penalties to state and local government employers for willful, repeat and failure-to-abate violations, as well as serious violations that cause a fatal accident or are classified as “high gravity”, i.e., a violation that is classified as “high severity” and “high probability”. An example of a “high gravity” serious violation would be one where a violation directly results in non-fatal but serious injuries such as broken bones or amputations. Violations that are classified as non-high gravity serious, and other-than-serious violations would not receive a penalty.

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.

1) There is no primary advantage or disadvantage to the public.

2) The primary advantage to the agency or the Commonwealth: If the proposed imposition of penalties has the anticipated deterrent effect, pro-active steps to develop and implement injury and illness prevention programs can have a significant positive impact in reducing injury and illness rates and the significant associated costs for state and local government employers. Recent incidents which have resulted in the death of government employees, as well as other accident situations, have highlighted a need for an additional incentive for compliance with the safety and health laws and regulations. From January 1, 2007 to August 1, 2014, twenty-nine fatalities and catastrophes occurred in state and local government employment. The deterrent effect of a penalty can reduce this number by encouraging compliance. The Department introduced this legislation in 2007 based on what it viewed at the time as a high number of fatalities among government employees. Unfortunately, the rate of fatalities and catastrophes for state and local employees has increased from an average of 2.2 per year before the Department introduced the legislation to 3.9 per year since then.

Another primary advantage to the agency is that action by the General Assembly during the 2016 Session amended the language in the existing statute to allow the issuance of monetary penalties to state and local government employers for certain occupational safety and health program violations. On March 29, 2016, a statutory change approved by the General Assembly was signed by Governor McAuliffe with an effective date of July 1, 2016. *[Refer to Attachment-1 at the end of the regulatory text in this form.]* Perhaps, a primary disadvantage to the Commonwealth would be that state and local government employers now will be issued a penalty for violations of occupational safety and health laws in which a worker can be seriously injured or killed.

An average of three (3) willful violations have been issued by VOSH per year in the public sector. Since 2007, there have been 24 willful violations, all of which have been issued to local government employers. An average of 1.4 repeated violations are issued per year to local government and 3.3 to state agencies.

Approximately five per cent (5%) of the serious violations issued are classified as high gravity. VOSH estimates that 15 such violations in state and local government would be subject to penalty per year. The average penalty issued for high gravity serious items is \$6,300.

VOSH estimates there are up to three (3) willful violations per year and up to five (5) repeat violations per year. The average penalty for a "high gravity" willful violation is \$63,000 and for a repeat is \$12,600.

VOSH estimates that the total penalties on a per year basis could range from zero to \$346,500.¹ In 2015, the National Safety Council (NSC) reported that the average cost of a medically consulted occupational injury in 2013 was \$42,000.

¹ Va. Code §40.1-49.4A.4(a) provides that the calculation of penalties shall take into account the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

The Washington State Plan, which is tied directly into the states' workers' compensation system, conducted a study on "The impact of DOSH Enforcement and Consultation Visits on Workers' Compensation Claims Rates and costs, 1999-2008",² May, 2011. The study reviewed ten annual studies on the topic and found that:

"...enforcement inspections conducted at fixed worksites 'were associated with a 7.4% larger decrease in non-MSD [musculoskeletal disorder] compensable claims rates relative to employers with no DOSH activity. DOSH **consultation visits were associated with a 24.8% larger decrease** in non-MSD compensable claims rates relative to employers with no DOSH activity" (Emphasis added).

and

"...**enforcement** inspections were associated with a **3.1% larger decrease** in compensable claims rates relative to employers with no DOSH activity. DOSH consultation visits were associated with an **8.5% larger decrease** in compensable claims rates relative to employers with no DOSH activity."

Virginia employees will benefit from the identification and correction of workplace hazards as a result of cited violations and issued penalties, the development and implementation of injury and illness prevention programs, and the anticipated reduction in injuries and illnesses. No adverse impacts to employees are anticipated from the adoption of the proposed amendments.

According to OSHA publication, "Adding Inequality to Injury: The Costs of Failing to Protect Workers on the Job", the costs of workplace injury and illness are borne primarily by injured workers, their families, and tax-payer supported safety net programs...workers' compensation payments cover only a small fraction (about 21%) of lost wages and medical costs of work injuries and illnesses, workers, their families and private health insurance pay for nearly 63 percent of these costs, with taxpayers shouldering the remaining 16%.³

Adding penalties to citations issued does not significantly increase the workload for an individual VOSH Compliance Safety and Health Officer (CSHO). It is only anticipated that approximately 21 violations per year will carry a penalty for state and local government employers.

No adverse impacts to employees are anticipated from the adoption of the proposed amendments.

Other than training DOLI employees on the changes to the regulation, no additional fiscal or other programmatic impacts are anticipated for the Department from the adoption of the proposed amendments.

² <http://www.lni.wa.gov/Safety/Research/Files/OccHealth/DoshEnforce19992008.pdf>

³ https://www.osha.gov/Publications/inequality_michaels_june2015.pdf

Requirements more restrictive than federal

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

The proposed regulation is less restrictive than federal penalties applicable to private sector employers, but more restrictive than federal penalties applied to federal government agencies.

Localities particularly affected

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

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

Public participation

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

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

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Mr. Jay Withrow, Director, Legal Support, VPP, ORA, OPP, and OWP, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219; (804) 786-9873; (804) 786-8184 (fax); jay.withrow@doli.virginia.gov Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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

Economic impact

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

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>Other than training DOLI employees on the changes to the regulation, no additional fiscal or other programmatic impacts are anticipated for the Department as a result of the adoption of the proposed amendments.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>No significant cost is anticipated for any locality.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>State and local government employers that fall within VOSH jurisdiction.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The Virginia State Plan applies to all public and private sector places of employment in the state, with the exception of federal workers, the United States Postal Service, private sector maritime, federal military facilities, and other federal enclaves where the state has ceded jurisdiction to the federal government.</p> <p>The proposed regulation will potentially impact 133 County and Independent City agencies, as well as Executive Branch and independent agencies of the Commonwealth of Virginia, and a limited number of other independent public sector entities for work conducted within Virginia's jurisdiction (e.g., the Metropolitan Washington Transit Authority; the Metropolitan Washington Airports Authority, etc.)</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>VOSH has issued an average of three willful violations per year in the public sector. Since 2007, there have been 24 willful violations, all of which have been issued to local government employers. An average of 1.4 repeated violations are issued per year to local government and 3.3 to state agencies. Approximately five percent of the serious violations issued are classified as high gravity. VOSH estimates that 15 such violations in state and local government would be subject to penalty per year. The average penalty issued for high gravity serious items is \$6,300.</p>

	<p>VOSH estimates up to three willful violations per year and up to five repeat violations per year. The average penalty for a “high gravity” willful violation is \$63,000 and for a repeat is \$12,600. VOSH estimates that total penalties on a per year basis could range from zero to \$346,500.</p> <p>No additional impacts on employers are anticipated.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Recent incidents, which have resulted in the death of government employees, as well as other accident situations, have highlighted a need for an additional incentive for compliance with the safety and health laws and regulations. From January 1, 2007 to August 1, 2014, 29 fatalities and catastrophes occurred in state and local government employment. The Department introduced legislation in 2007, based on what it viewed at the time as a high number of fatalities among government employees. Unfortunately, the rate of fatalities and catastrophes for state and local employees has increased from an average of 2.2 per year before the Department introduced the legislation to 3.9 per year since then.</p> <p>In 2016, the Virginia general Assembly passed and Governor McAuliffe signed into law legislation that allows the Safety and Health Codes Board to authorize the Commissioner of Labor and Industry to issue penalties to state and local government employers.</p> <p>The deterrent effect of a proposed penalty can reduce this number by encouraging compliance.</p>

Alternatives

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

There are no known alternatives to these amendments which are necessary to comply with changes to statutory law or that address procedural or other administrative changes that have occurred since the Administrative Regulations Manual was last revised.

Regulatory flexibility analysis

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

The proposed regulation does not contain any reporting requirements. There are no additional compliance requirements from the establishment of procedures for the application of penalties for state and local government employers in accordance with §40.1-2.1 of the *Code of Virginia*. State and local government employers are already required to comply with occupational safety and health regulations. Allowing VOSH to issue proposed penalties to state and local government employers for willful, repeat and failure-to-abate violations, as well as serious violations that cause a fatal accident ("high gravity"), will not require additional compliance from state and local government workers.

Periodic review and small business impact review report of findings

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

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

Public comment

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

Commenter	Comment	Agency response

There were no comments received during the initial public comment period.

Family impact

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

To the extent that the proposed changes deter employers from violating VOSH safety and health laws and regulations which, in turn, reduce the number of occupational safety and health injuries suffered by working men and women in Virginia, families will be positively impacted.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation.

If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
Part I 16VAC25-60-10. Definitions.		Part I Definitions 16VAC25-60-10. Definitions. ...	Part I Definitions 16VAC25-60-10. Definitions. ... <u>“Gravity based penalty” means an unadjusted penalty that is calculated based on the severity of the hazard and the probability that an injury or illness would result from the hazard.</u> <u>“High gravity violation” means a violation with a gravity based penalty calculated at the statutory maximums contained in §§40.1-49.4 H through J.</u> <u>Rationale:</u> These definitions were added because they basically come from the field operations manual that the

<p>16VAC25-60-20. Jurisdiction. ...</p>		<p>16VAC25-60-20. Jurisdiction. ...</p> <p>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, 6VAC25-60-280, 16VAC25-60-290, and 16VAC25-60-300.</p>	<p>Department has always used in the private sector. When the department calculates a penalty, by statute, it has to take into account the size of the company, the gravity of the violation (which is where these definitions come from), good faith, and the history of previous violations. When the Department looks at the gravity of a violation, it looks at the seriousness of the hazard and at the probability that the injury or illness could occur from being exposed to the hazard. A high gravity violation is one coded as high severity and high probability.</p> <p>16VAC25-60-20. Jurisdiction. ...</p> <p>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, <u>16VAC25-60-260</u>, 16VAC25-60-280, 16VAC25-60-290, and 16VAC25-60-300.</p> <p><u>Rationale:</u> The Administrative Regulations Manual requires the Department to apply, by regulation, statutes to the public sector when the Department needs them to apply. Section 16VAC25-60-260 was added so that the Department’s ability to issue citations and penalties for safety and health violations also will apply to “public employers” defined as the Commonwealth of Virginia, including its agencies, authorities, or instrumentalities or any political subdivision or public body.</p>
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<p>Part II General Provisions ...</p> <p>16VAC25-60-30</p>		<p>Part II Provisions ...</p> <p>16VAC25-60-30. Applicability to public employers.</p> <p>C. The following portions of Title 40.1 of the Code of Virginia shall apply to public employers: §§ 40.1-10, 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>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 Code of Virginia shall apply to public employers other than the Commonwealth and its agencies.</p>	<p>Part II Provisions ...</p> <p>16VAC25-60-30. Applicability to public employers.</p> <p>C. The following portions of Title 40.1 of the Code of Virginia shall apply to public employers: §§ 40.1-10, 40.1-49.4 A(1), <u>40.1-49.4 A(4), except that the reference to subsection G does not apply, 40.1-49.4 C, 40.1-49.4 D, 40.1-49.4 H through J,</u> 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>E. Sections <u>40.1-49.4 A(4), except that the reference to subsection G does not apply, 40.1-49.4 C, 40.1-49.4 D, 40.1-49.4 F, 40.1-49.4 H through J,</u> 40.1-49.9, 40.1-49.10, 40.1-49.11, 40.1-49.12, and 40.1-51.2:2 of the Code of Virginia shall apply to public employers other than the Commonwealth and its agencies.</p> <p><u>Rationale:</u></p> <p>The code sections added, which now also will apply to public sector employers, are referencing sections in the Virginia Code that provide for the maximum penalty levels for serious violations, willful violations, repeat violations, and failure to abate. Sections that deal with other-than-serious penalties have been excluded.</p>
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<p>16VAC25-60-260</p>		<p>Part VI Citation and Penalty</p> <p>16VAC25-60-260. Issuance of citation and proposed penalty.</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 Code of Virginia 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>...</p> <p>E. In determining the amount of the proposed penalty for a violation the commissioner will ordinarily be guided by the system of penalty adjustment set forth in the VOSH Field Operations Manual. In any event the commissioner shall consider</p>	<p>Part VI Citation and Penalty</p> <p>16VAC25-60-260. Issuance of citation and proposed penalty.</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 Code of Virginia or the appropriate rule, regulation, or standard. In addition, the citation must fix a reasonable time for abatement of the violation. <u>The commissioner shall have authority to propose penalties for cited violations in accordance with §40.1-49.4 of the Code of Virginia and this Chapter.</u> 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>...</p> <p>E. In determining the amount of the proposed penalty for a violation the commissioner will ordinarily be guided by the system of penalty adjustment set forth in the VOSH Field Operations Manual. In any event the commissioner shall consider the gravity of the violation, the size of the business, the good faith of the employer, and the employer's history</p>
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<p>16VAC25-60-270</p>		<p>the gravity of the violation, the size of the business, the good faith of the employer, and the employer's history of previous violations.</p> <p>...</p> <p>16VAC25-60-270. Contest of citation or proposed penalty; general proceedings</p> <p>A. An employer to whom a citation or proposed penalty has been issued may contest the citation by notifying the commissioner in writing of the contest. The notice of contest must be mailed or delivered by hand within 15 working days from the receipt of the citation or proposed penalty. No mistake, inadvertence, or neglect on the part of the employer shall serve to extend the 15 working day period in which the employer must contest.</p>	<p>of previous violations.</p> <p><u>The commissioner shall have authority to propose civil penalties to public employers for willful, repeat and failure-to-abate violations in accordance with §§40.1-49.4 I and J; and for serious violation(s) that cause death to an employee or are classified as high gravity in accordance with §40.1-49.4 H.</u></p> <p>...</p> <p><u>Rationale:</u> These amendments are cleanup, non-substantive changes made to match the regulatory text with statutory text. The Commissioner has statutory authority to propose penalties, but the Department had not place the above language in the regulation.</p> <p>16VAC25-60-270. Contest of citation or proposed penalty; general proceedings</p> <p>A. An employer to whom a citation, <u>abatement order</u> or proposed penalty has been issued may contest the citation by notifying the commissioner in writing of the contest. The notice of contest must be mailed or delivered by hand within 15 working days from the receipt of the citation or proposed penalty. No mistake, inadvertence, or neglect on the part of the employer shall serve to extend the 15 working day period in which the employer must contest.</p> <p><u>Rationale:</u> The addition of the words “abatement order” is a cleanup provision to make sure the regulation matches the statute.</p>
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		<p>B. The notice of contest shall indicate whether the employer is contesting the alleged violation, the proposed penalty or the abatement time.</p> <p>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.</p> <p>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.</p> <p>E. If the matter is not settled or it is determined that</p>	<p>Employers have the right to contest citations, which contain the violations, abatement orders, and penalties. The words "abatement order" had been inadvertently omitted previously.</p> <p>B. The notice of contest shall indicate whether the employer is contesting the alleged violation, the proposed penalty or the abatement time.</p> <p><u>C. Employees may contest abatement orders by notifying the commissioner in the same manner as described at subsection A.</u></p> <p><u>Rationale:</u> This is a cleanup, non-substantive change made to match the regulatory text with statutory text, and states that employees may contest abatement orders by notifying the commissioner in writing. That text was not in the regulation and it should have been.</p> <p>C. <u>D.</u> 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.</p> <p>D. <u>E.</u> 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.</p> <p>E. <u>F.</u> If the matter is not settled or it is determined that settlement does not</p>
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<p>16VAC25-60-280</p>		<p>settlement does not appear probable, the commissioner will initiate judicial proceedings by referring the contested issues to the appropriate Commonwealth's Attorney and arranging for the filing of a bill of complaint and issuance of a subpoena to the employer.</p> <p>F. A contest of the proposed penalty only shall not stay the time for abatement.</p> <p>....</p> <p>16VAC25-60-280. General contest proceedings applicable to the public sector.</p> <p>A. The commissioner will not propose penalties for citations issued to public employers.</p> <p>B. Public employers may contest citations or abatement orders by notifying the commissioner in writing of the contest. The notice of contest must be mailed or delivered by hand within 15 working days from receipt of the citation or abatement order. No mistake, inadvertence, or neglect on the part of the employer shall serve to extend the 15 working day period during which the employer may contest.</p>	<p>appear probable, the commissioner will initiate judicial proceedings by referring the contested issues to the appropriate Commonwealth's Attorney and arranging for the filing of a bill of complaint and issuance of a subpoena to the employer.</p> <p>F. <u>G.</u> A contest of the proposed penalty only shall not stay the time for abatement.</p> <p><u>Rationale:</u> Renumbering of sections required as a result of adding a new section C.</p> <p>....</p> <p>16VAC25-60-280. General contest proceedings applicable to the public sector.</p> <p>A. The commissioner will not propose penalties for citations issued to public employers.</p> <p><u>B. A.</u> Public employers may contest citations, or abatement orders <u>or proposed penalties</u> by notifying the commissioner in writing of the contest. The notice of contest must be mailed or delivered by hand within 15 working days from receipt of the citation or abatement order. No mistake, inadvertence, or neglect on the part of the employer shall serve to extend the 15 working day period during which the employer may contest.</p>
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		<p>C. The notice of contest shall indicate whether the employer is contesting the alleged violations or the abatement order.</p> <p>D. Public employees may contest abatement orders by notifying the commissioner in the same manner as described at subsection B.</p> <p>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.</p> <p>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.</p>	<p><u>Є. B.</u> The notice of contest shall indicate whether the <u>public employer</u> is contesting the alleged violations, <u>the proposed penalty</u> or the abatement order.</p> <p><u>Đ. C</u> Public employees may contest abatement orders by notifying the commissioner in the same manner as described at subsection <u>B. A.</u></p> <p><u>Є. D.</u> 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.</p> <p><u>Ƒ. E.</u> 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.</p> <p><u>Rationale:</u> The Department did have contest proceedings for the public sector, one of which mentioned the fact that the Department did not issue penalties, so the Department had to strike through that language, and then a reference had to be added that there could be proposed penalties, and that the employer has the right to contest those proposed penalties.</p> <p><u>F. A contest of the proposed penalty only shall not stay the time for abatement.</u></p>
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			<p><u>Rationale:</u> Employers have the right to contest both violations and penalties. If only the penalties are contested, then the employer has to go ahead and abate the violation immediately. If the employer contests the violation and the abatement period, the employer does not have to correct the violation until the violation becomes a final order of the commissioner. This is based on statute as well.</p>

If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

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

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case “current section number” or “current chapter-section number” would refer to the **pre-emergency** regulation.

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation includes changes since the emergency regulation, please create two charts: 1) a chart describing changes from the **pre-emergency** regulation to the proposed regulation as described in the paragraph above, and 2) a chart describing changes from the **emergency** regulation to the proposed regulation. For the second chart please use the following title: “Changes from the Emergency Regulation.” In this case “current section number” or “current chapter-section number” would refer to the **emergency** regulation.

**16VAC25-60, *et seq.*, Administrative Regulation for the
Virginia Occupational Safety and Health (VOSH) Program;
State and Local Government Penalties**

As Adopted by the
Safety and Health Codes Board

Date: February 16, 2017



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

**16VAC25-60, *et seq.*, Administrative Regulation for the
Virginia Occupational Safety and Health (VOSH) 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.

"Commissioner of Labor and Industry" means only the individual who is Commissioner of Labor and Industry.

"Department" means the Virginia Department of Labor and Industry.

"De minimis violation" means a violation which has no direct or immediate relationship to safety and health.

"Employee" means an employee of an employer who is employed in a business of his employer.

"Employee representative" means a person specified by employees to serve as their representative.

"Employer" means any person or entity engaged in business who has employees but does not include the United States.

"Establishment" means, for the purpose of record keeping requirements, a single physical location where business is conducted or where services or industrial operations are performed, e.g., factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office. Where distinctly separate activities are performed at a single physical location, such as contract activities operated from the same physical location as a lumberyard; each activity is a separate establishment. In the public sector, an establishment is either (i) a single physical location

where a specific governmental function is performed; or (ii) that location which is the lowest level where attendance or payroll records are kept for a group of employees who are in the same specific organizational unit, even though the activities are carried on at more than a single physical location.

"Failure to abate" means that the employer has failed to correct a cited violation within the period permitted for its correction.

"FOIA" means the Freedom of Information Act.

"Gravity based penalty" means an unadjusted penalty that is calculated based on the severity of the hazard and the probability that an injury or illness would result from the hazard.

"High gravity violation" means a violation with a gravity based penalty calculated at the statutory maximums contained in §§40.1-49.4 H through J.

"Imminent danger condition" means any condition or practice in any place of employment such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through standard enforcement procedures provided by Title 40.1 of the Code of Virginia.

"OSHA" means the Occupational Safety and Health Administration of the United States Department of Labor.

"Other violation" means a violation which is not, by itself, a serious violation within the meaning of the law but which has a direct or immediate relationship to occupational safety or health.

"Person" means 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.

"Public employer" means the Commonwealth of Virginia, including its agencies, authorities, or instrumentalities or any political subdivision or public body.

"Public employee" means any employee of a public employer. Volunteer members of volunteer fire departments, pursuant to § 27-42 of the Code of Virginia, members of volunteer rescue squads who serve without pay, and other volunteers pursuant to the Virginia State Government Volunteers Act are not public employees. Prisoners confined in jails controlled by any political subdivision of the Commonwealth and prisoners in institutions controlled by the Department of Corrections are not public employees unless employed by a public employer in a work-release program pursuant to § 53.1-60 or § 53.1-131 of the Code of Virginia.

"Recordable occupational injury and illness" means (i) a fatality, regardless of the time between the injury and death or the length of illness; (ii) a nonfatal case that results in lost work days; or (iii) a nonfatal case without lost work days which results in transfer to another job or termination of

employment, which requires medical treatment other than first aid, or involves loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illness which is reported to the employer but is not otherwise classified as a fatality or lost work day case.

"Repeated violation" means a violation deemed to exist in a place of employment that is substantially similar to a previous violation of a law, standard or regulation that was the subject of a prior final order against the same employer. A repeated violation results from an inadvertent or accidental act, since a violation otherwise repeated would be willful.

"Serious violation" means a violation deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation. The term "substantial probability" does not refer to the likelihood that illness or injury will result from the violative condition but to the likelihood that, if illness or injury does occur, death or serious physical harm will be the result.

"Standard" means an occupational safety and health standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

"VOSH" means Virginia Occupational Safety and Health.

"Willful violation" means a violation deemed to exist in a place of employment where (i) the employer committed an intentional and knowing, as contrasted with inadvertent, violation and the employer was conscious that what he was doing constituted a violation; or (ii) the employer, even though not consciously committing a violation, was aware that a hazardous condition existed and made no reasonable effort to eliminate the condition.

"Working days" means Monday through Friday, excluding legal holidays, Saturday, and Sunday.

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, 16VAC25-60-260, 16VAC25-60-280, 16VAC25-60-290, and 16VAC25-60-300.

Part II

General Provisions

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16VAC25-60-30. Applicability to public employers.

A. All occupational safety and health standards adopted by the board shall apply to public employers and their employees in the same manner as to private employers.

B. All sections of this chapter shall apply to public employers and their employees. Where specific procedures are set out for the public sector, such procedures shall take precedence.

C. The following portions of Title 40.1 of the Code of Virginia shall apply to public employers: §§ 40.1-10, 40.1-49.4 A(1), 40.1-49.4 A(4), except that the reference to subsection G does not apply, 40.1-49.4 C, 40.1-49.4 D, 40.1-49.4 H through J, 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.

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 voluntary agreement cannot be obtained.

E. Sections 40.1-49.4 A(4), except that the reference to subsection G does not apply, 40.1-49.4 C, 40.1-49.4 D, 40.1-49.4 F, 40.1-49.4 H through J, 40.1-49.9, 40.1-49.10, 40.1-49.11, 40.1-49.12, and 40.1-51.2:2 of the Code of Virginia shall apply to public employers other than the Commonwealth and its agencies.

F. If the commissioner determines that an imminent danger situation, as defined in § 40.1-49.4 F of the Code of Virginia, exists for an employee of the Commonwealth or one of its agencies, and if the employer does not abate that imminent danger immediately upon request, the Commissioner of Labor and Industry shall forthwith petition the governor to direct that the imminent danger be abated.

G. If the commissioner is unable to obtain a voluntary agreement to resolve a violation of § 40.1-51.2:1 of the Code of Virginia by the Commonwealth or one of its agencies, the Commissioner of Labor and Industry shall petition for redress in the manner provided in this chapter.

....

Part VI
Citation and Penalty

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

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 Code of Virginia or the appropriate rule, regulation, or standard. In addition, the citation must fix a reasonable time for abatement of the violation. The commissioner shall have authority to propose penalties for cited violations in accordance with §40.1-49.4 of the Code of Virginia and this Chapter. 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.

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:

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 § 1-210 A of the Code of Virginia. The word "month" shall be construed to mean one calendar month in accordance with § 1-223 of the Code of Virginia.

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.

c. Notwithstanding subdivision 1 b of this subsection, 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 § 40.1-51.1 D of the Code of Virginia, the six-month time frame shall not be deemed to commence until the commissioner receives actual notice of the incident.

d. Notwithstanding subdivision 1 b of this subsection, if the commissioner is first notified of a work-related incident resulting in an injury or illness to an employee(s) through receipt of an Employer's Accident Report (EAR) form from the Virginia Workers' Compensation Commission as provided in § 65.2-900 of the Code of Virginia, the six-month time frame shall not be deemed to commence until the commissioner actually receives the EAR form.

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.

B. A citation issued under subsection A to an employer who violates any VOSH law, standard, rule or regulation shall be vacated if such employer demonstrates that:

1. Employees of such employer have been provided with the proper training and equipment to prevent such a violation;

2. Work rules designed to prevent such a violation have been established and adequately communicated to employees by such employer and have been effectively enforced when such a violation has been discovered;

3. The failure of employees to observe work rules led to the violation; and

4. Reasonable steps have been taken by such employer to discover any such violation.

C. For the purposes of subsection B only, the term "employee" shall not include any officer, management official or supervisor having direction, management control or custody of any place of employment which was the subject of the violative condition cited.

D. The penalties as set forth in § 40.1-49.4 of the Code of Virginia shall also apply to violations relating to the requirements for record keeping, reports or other documents filed or required to be maintained and to posting requirements.

E. In determining the amount of the proposed penalty for a violation the commissioner will ordinarily be guided by the system of penalty adjustment set forth in the VOSH Field Operations Manual. In any event the commissioner shall consider the gravity of the violation, the size of the business, the good faith of the employer, and the employer's history of previous violations.

The commissioner shall have authority to propose civil penalties to public employers for willful, repeat and failure-to-abate violations in accordance with §§40.1-49.4 I and J; and for serious violation(s) that cause death to an employee or are classified as high gravity in accordance with §40.1-49.4 H.

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 (the controlling employer); or

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); or

3. The employer who has the responsibility for actually correcting the hazard (the correcting employer).

G. A citation issued under subsection F of this section to an exposing employer who violates any VOSH law, standard, rule or regulation shall be vacated if such employer demonstrates that:

1. The employer did not create the hazard;

2. The employer did not have the responsibility or the authority to have the hazard corrected;

3. The employer did not have the ability to correct or remove the hazard;

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;

5. The employer has instructed his employees to recognize the hazard and, where necessary, informed them how to avoid the dangers associated with it;

6. Where feasible, an exposing employer must have taken appropriate alternative means of protecting employees from the hazard; and

7. When extreme circumstances justify it, the exposing employer shall have removed his employees from the job.

....

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

A. An employer to whom a citation, abatement order or proposed penalty has been issued may contest the citation by notifying the commissioner in writing of the contest. The notice of contest must be mailed or delivered by hand within 15 working days from the receipt of the citation or proposed penalty. No mistake, inadvertence, or neglect on the part of the employer shall serve to extend the 15 working day period in which the employer must contest.

B. The notice of contest shall indicate whether the employer is contesting the alleged violation, the proposed penalty or the abatement time.

C. Employees may contest abatement orders by notifying the commissioner in the same manner as described at subsection A.

~~C.D.~~ 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.E.~~ 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.

~~E.F.~~ If the matter is not settled or it is determined that settlement does not appear probable, the commissioner will initiate judicial proceedings by referring the contested issues to the appropriate Commonwealth's Attorney and arranging for the filing of a bill of complaint and issuance of a subpoena to the employer.

~~F.G.~~ A contest of the proposed penalty only shall not stay the time for abatement.

....

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

~~A.~~ The commissioner will not propose penalties for citations issued to public employers.

~~B.A.~~ Public employers may contest citations, ~~or~~ abatement orders or proposed penalties by notifying the commissioner in writing of the contest. The notice of contest must be mailed or delivered by hand within 15 working days from receipt of the citation or abatement order. No mistake, inadvertence, or neglect on the part of the employer shall serve to extend the 15 working day period during which the employer may contest.

~~C.B.~~ The notice of contest shall indicate whether the public employer is contesting the alleged violations, the proposed penalty or the abatement order.

~~D.C.~~ Public employees may contest abatement orders by notifying the commissioner in the same manner as described at subsection ~~B.A.~~

~~E.D.~~ 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.E.~~ 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.

F. A contest of the proposed penalty only shall not stay the time for abatement.

VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

CHAPTER 526

An Act to amend and reenact § 40.1-2.1 of the Code of Virginia, relating to the occupational safety and health program applicable to employees of agencies of the Commonwealth, political subdivisions, and other public bodies.

[S 607]

Approved March 29, 2016

Be it enacted by the General Assembly of Virginia:

1. That § 40.1-2.1 of the Code of Virginia is amended and reenacted as follows:

§ 40.1-2.1. Application of title to Commonwealth and its agencies, etc.; safety and health program for public employees.

The provisions of this title and any rules and regulations promulgated pursuant thereto shall not apply to the Commonwealth or any of its agencies, institutions, or political subdivisions, or any public body, unless, and to the extent that, coverage is extended by specific regulation of the Commissioner or the ~~Safety and Health Codes~~ Board. The Commissioner is authorized to establish and maintain an effective and comprehensive occupational safety and health program applicable to employees of the Commonwealth, its agencies, institutions, political subdivisions, or any public body. Such program shall be subject to any State plan submitted to the federal government for State enforcement of the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596), or any other regulation promulgated under Title 40.1. The Commissioner *or the Board* shall establish procedures *and adopt regulations* for enforcing the program ~~which~~ that shall include provisions for (i) *the issuance of proposed penalties*; (ii) *the payment of such penalties or a negotiated sum in lieu of such penalties*; (iii) *the deposit of such payments into the general fund of the state treasury*; (iv) fair hearings, including judicial review; and (v) *other* sanctions to be applied for violations.