

Final Regulation

REGISTRAR'S NOTICE: The following regulations are exempt from the Administrative Process Act in accordance with §2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **16VAC25-90. Federal Identical General Industry Standards (adding 16VAC25-90-1910.132).**

16VAC25-100. Federal Identical Shipyard Employment Standards (adding 16VAC25-100-1915.152).

16VAC25-120. Federal Identical Marine Terminals Standards (adding 16VAC25-120-1917.96).

16VAC25-130. Federal Identical Longshoring Standards for Hazard Communications (adding 16VAC25-130-1918.106).

16VAC25-175. Federal Identical Construction Industry Standards (adding 16VAC25-175-1926.95).

Statutory Authority: §40.1-22 of the Code of Virginia.

Effective Date: June 1, 2008.

Agency Contact: John J. Crisanti, Policy and Planning Manager, Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219, telephone 804-786-4300, FAX 804-786-8418, TTY 804-786-2376, or email john.crisanti@doli.virginia.gov.

Summary:

Many federal OSHA health, safety, maritime, and construction standards require employers to provide their employees with protective equipment, including personal protective equipment (PPE), when such equipment is necessary to protect employees from job-related injuries, illnesses, and fatalities.

The provisions in federal OSHA standards that require PPE generally state that the employer is to provide such PPE. However, some of these provisions do not specify that the employer is to provide such PPE at no cost to the employee. This standard does not require employers to pay for items that are not PPE, nor provide PPE where none has before been required. Instead, the standard merely stipulates that the employer must pay for required PPE, except in the limited cases specified in the standard.

This final rule also clarifies federal OSHA's intent regarding employee-owned PPE and replacement PPE.

Employers must also pay for any replacement PPE, except in cases where the employee loses or intentionally damages his equipment.

The final rule also states that an employer is only required to pay for the PPE of its own employees, not independent contractors working in the employer's facilities. "Host employers" and general contractors are not responsible for the payment of PPE for subcontractors employees. However, employers utilizing and controlling the work of workers from temporary help services are responsible for providing PPE at no cost to the worker, but are free to negotiate arrangements with the temporary worker agency.

Note on Incorporation by Reference:

Pursuant to §2.2-4103 of the Code of Virginia, 29 CFR Part 1910, General Industry Standards; 29 CFR Part 1915, Shipyard Employment Standards; 29 CFR Part 1917, Marine Terminals Standards; 29 CFR Part 1918, Longshoring Standards for Hazard Communications; and 29 CFR Part 1926, Construction Industry Standards, are declared documents generally available to the public and appropriate for incorporation by reference. For this reason the documents will not be printed in the Virginia Register of Regulations. Copies of the documents are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

Statement of Final Agency Action:

On February 28, 2008, the Safety and Health Codes Board adopted federal OSHA's final rule for Employer Payment for Personal Protective Equipment (PPE), as published in 72 FR 64341 on November 15, 2007, with an effective date of June 1, 2008, and an implementation date of September 1, 2008.

Federal Terms and State Equivalents:

When the regulations, as set forth in the final rule for Employer Payment for Personal Protective Equipment (PPE), are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
February 13, 2008	June 1, 2008
Implementation date: May 15, 2008	September 1, 2008

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