Title 09
MARYLAND DEPARTMENT OF LABOR
Subtitle 12 DIVISION OF LABOR AND INDUSTRY
Chapter 20 Occupational Safety and Health

Authority: Labor and Employment Article, §§2-106(b)(4), 5-212, 5-213, 5-312, and 5-702, Annotated Code of Maryland

.01 Definitions.

A. In this chapter and COMAR 09.12.21 and 09.12.22, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Act" means the Maryland Occupational Safety and Health Act, Labor and Employment Article, Title 5, Annotated Code of Maryland.

(2) "Establishment" means:

(a) A single physical location where business is conducted or where services or industrial operations are performed; and

(b) Each distinct activity, where distinctly separate activities are performed at a single physical location.

(3) Inspection.

(a) "Inspection" means an inspection of an employer's factory, plant, establishment, construction site, other area, workplace, or environment where work is performed by an employee of an employer.

(b) "Inspection" includes:

(i) Complaint inspection;

(ii) Reinspection;

(iii) Followup inspection;

(iv) Accident investigation; or

(v) Other inspection conducted under the Act.

(4) "Inspector" means an individual authorized by the Commissioner to conduct an occupational safety and health inspection under Labor and Employment Article, §5-208, Annotated Code of Maryland.

(5) Work Days.

(a) "Work days" means Mondays through Fridays, excluding State holidays.

(b) "Work days" does not include the day a notice is received.

.02 Posting Notice and Copies of the Act.

A. An employer shall post a notice, available from the Commissioner, which informs employees:

(1) Of the protections and obligations provided for by the Act; and

(2) That for assistance and information, including copies of the Act and of specific occupational safety and health standards, to contact the employer or the Commissioner.

B. Location.

(1) An employer shall post the notice in:

(a) Each establishment; and

(b) A conspicuous place where employee notices are customarily posted.

(2) An employer shall ensure that when:

(a) Distinctly separate activities are performed at a single physical location, each activity is treated as a separate physical establishment and a separate notice is posted in each establishment;

(b) Employers are engaged in activities which are physically dispersed, the notice is posted at the location to which employees report each day; and

(c) Employees do not usually work at, or report to, a single establishment, the notice is posted at the location from which the employees operate to carry out their activities.

C. An employer shall ensure that the notice is kept posted and not altered, defaced, or covered by other material.

D. If an employer has obtained a copy of the Act and of the regulations and applicable occupational safety and health standards, the employer shall, upon request, make them available to any employee or authorized employee representative for review in the establishment where the employee is employed:

(1) On the same day the request is made; or

(2) At the earliest mutually convenient time to the employee or authorized employee representative and the employer.

.03 Inspection Procedures.

A. Authority For Inspection. An inspector is authorized to:

(1) Conduct inspections in accordance with §5-208 of the Act; and

(2) Review:

(a) Records required by the Act, and by regulations and occupational safety and health standards adopted under the Act; and

(b) Other records which are directly related to the purpose of the inspection.

B. Objection to Inspection.

(1) If an employer refuses to permit an inspector to conduct an inspection in accordance with the Act and applicable regulations and standards, the inspector shall:

(a) Terminate the inspection, or confine the inspection to the area, machine, apparatus, condition, device, equipment, material, structure, record, or interview concerning which no objection is raised;

(b) Attempt to ascertain the reason for the refusal; and

(c) Immediately report the refusal and the reason for the refusal to the supervisor.

(2) The supervisor shall immediately consult with the Commissioner or the Commissioner's authorized representative.

(3) The Commissioner or the Commissioner's authorized representative shall promptly take appropriate action, including compulsory process, if necessary.

C. Waiver.

(1) An employer may not condition the conduct of an inspection upon a waiver of a cause of action, citation, or penalty under the Act.

(2) An inspector may not grant a waiver.

D. Conduct of Inspections.

(1) Subject to the provisions of this regulation, an inspector shall conduct an inspection at the time and place directed by the Commissioner or the Commissioner's authorized representative.

(2) Opening Conference. At the beginning of an inspection, an inspector shall:

(a) Present the inspector's credentials to the owner, operator, or agent in charge of the establishment;

(b) Explain the nature and purpose of the inspection; and

(c) Indicate generally:

(i) The scope of the inspection,

(ii) The records which the inspector wants to review, and

(iii) That the designation of specific records does not preclude access to additional records.

(3) An inspector may:

(a) Take environmental samples;

(b) Take or obtain photographs relating to the purpose of the inspection;

(c) Question privately an employer, owner, operator, agent, or employee at an establishment; and

(d) Employ other reasonable investigative techniques, including but not limited to:

(i) Using devices to measure employee exposures, and

(ii) Attaching personal sampling equipment, such as a dosimeter, pump, badge, or other similar device, to an employee in order to monitor exposures.

(4) An inspector shall:

(a) Comply with all safety and health rules and practices at the establishment being inspected;

(b) Wear appropriate protective clothing and use appropriate protective equipment; and

(c) Take reasonable precaution to ensure that:

(i) When taking pictures and using sampling equipment, the equipment used does not pose a hazard, and

(ii) The operation of the employer's establishment is not unreasonably disrupted.

(5) Closing Conference. At the conclusion of an inspection, the inspector shall:

(a) Confer with the employer or the employer's representative, and informally advise the employer of any apparent safety or health violation disclosed by the inspection; and

(b) Provide the employer the opportunity to bring to the attention of the inspector pertinent information regarding conditions in the workplace.

E. Representatives of Employers and Employees.

(1) An inspector shall:

(a) Be in charge of inspections and of questioning persons; and

(b) Provide an opportunity for a representative of the employer and a representative chosen by employees to accompany the inspector during the physical inspection of a workplace for the purpose of aiding the inspection.

(2) An inspector may permit:

(a) Additional employer or employee representatives to accompany the inspector, if the inspector determines that the additional representatives will further aid the inspection;

(b) A different employer and employee representative to accompany the inspector during each phase of an inspection if this does not interfere with the conduct of the inspection.

(3) If there is no representative chosen by employees, or if the inspector is unable to determine with reasonable certainty who is the representative, the inspector shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(4) Except as noted in §E(5) of this regulation, the representative chosen by employees shall be an employee of the employer.

(5) If the inspector determines that the inclusion of a third party, such as an industrial hygienist or a safety engineer, who is not an employee of the employer is reasonably necessary to conduct an effective and thorough physical inspection of the workplace, the inspector may permit that individual to participate in the inspection.

(6) An inspector may deny the right of accompaniment to an individual whose conduct interferes with a fair and orderly inspection.

(7) The right of accompaniment in areas containing trade secrets is subject to the provisions of §F of this regulation.

(8) With regard to information classified by an agency of the United States Government in the interest of national security, only an individual authorized to have access to the information may accompany the inspector.

F. Trade Secrets.

(1) At the beginning of an inspection, the employer may identify an area in the establishment which contains or which might reveal a trade secret.

(2) If the inspector has no clear reason to question the identification of the area as involving a trade secret, the inspector shall ensure that all information obtained in the identified area, including negatives and prints of photographs and environmental samples, is:

(a) Labeled "confidential—trade secret"; and

(b) Not disclosed, except in accordance with the provisions of §5-217 of the Act.

(3) Employee Representative.

(a) Upon the request of an employer, the employee, or a representative chosen by employees to accompany the inspector in an area containing trade secrets, shall be an employee in that area or an employee authorized by the employer to enter the area;

(b) If there is no representative or employee, the inspector shall consult with a reasonable number of employees who work in the area concerning matters of safety and health.

G. Consultation With Employees.

(1) An inspector may consult with employees concerning matters of occupational safety and health to the extent the inspector considers necessary for the conduct of an effective and thorough inspection.

(2) During the course of the inspection, employees shall be afforded the opportunity to bring to the attention of the inspector any violation of the Act which the employees have reason to believe exists in the workplace.

H. An employer shall provide the inspector with correct and truthful information including, but not limited to, company name, mailing address, federal employer identification number or other assigned identification number, and company ownership information, such as corporation, partnership, or sole owner.

.04 Complaints by Employees.

A. Complaint Inspection.

(1) If upon receipt of a complaint, the Commissioner or the Commissioner's authorized representative determines that the complaint meets the requirements in §5-209(a) of the Act and that there are reasonable grounds to believe that a threat or danger exists, the Commissioner or the Commissioner's authorized representative shall cause an inspection to be made as soon as practicable, to determine if the threat or danger exists.

(2) Inspections under this section are not limited to matters referred to in the complaint.

B. Before or during an inspection of a workplace, an employee or representative chosen by employees employed in the workplace may notify in writing the Commissioner or the Commissioner's authorized representative, in accordance with §5-209(b) of the Act, of any violation of the Act which the employee or representative of employees has reason to believe exists in the workplace.

C. Inspection Not Warranted.

(1) If the Commissioner or the Commissioner's authorized representative determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation, threat, or danger exists with respect to a complaint under §5-209 of the Act, the Commissioner or the Commissioner's authorized representative shall notify the complaining party in writing of the determination.

(2) The complaining party may obtain review of a determination by submitting a written statement of position to the Commissioner or the Commissioner's authorized representative, and, at the same time, providing the employer with a copy of the statement by certified mail.

(3) The employer may submit an opposing written statement of position to the Commissioner or the Commissioner's authorized representative, and, at the same time, shall provide the complaining party with a copy of the statement by certified mail.

(4) Upon request of the complaining party or the employer, the Commissioner, at the Commissioner's discretion, may convene an informal conference and permit the complaining party and the employer to present their positions orally.

(5) After considering all the positions, both written and oral, the Commissioner shall:

(a) Affirm, modify, or reverse the determination; and

(b) Furnish the complaining party and the employer with written notification of the decision and the reason for the decision.

D. Failure to Meet Requirements of the Act.

(1) If the Commissioner or the Commissioner's authorized representative determines that an inspection is not warranted because a complaint does not meet the requirements of §5-209(b) of the Act, the Commissioner or the Commissioner's authorized representative shall notify the complaining party in writing of this determination.

(2) The determination shall be without prejudice to the filing of a new complaint meeting the requirements of the Act.

.05 Protection of Employees Under §5-604 of the Act.

A. Employee Rights. With regard to §5-604 of the Act, the exercise of "a right under this title" includes a right:

(1) Explicitly provided in the Act, such as the right to participate as a party in an enforcement proceeding;

(2) Which exists by necessary implication, including the right of an employee to:

(a) Request information from the Commissioner, or

(b) Be interviewed by an inspector in the course of an inspection or investigation.

B. Refusal to Perform a Job. Although the Act affords an employee no general right to refuse to perform a job because of potential unsafe conditions at the workplace, the protections of §5-604 of the Act apply when:

(1) An employee:

(a) Is confronted with a choice between not performing an assigned task or being subjected to serious injury or death arising from a hazardous condition at the workplace,

(b) Has no reasonable alternative, and

(c) Refuses in good faith to expose himself or herself to the dangerous condition; and

(2) The condition causing the employee's apprehension of death or injury is of such a nature that a reasonable individual, under the circumstances then confronting the employee, would conclude that:

(a) There is a real danger of death or serious injury,

(b) There is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular MOSH statutory enforcement channels or to seek the assistance of another public agency which has responsibility in the field of safety and health, and

(c) The employee, if possible, has sought correction of the dangerous conditions from the employer, and has been unable to obtain a correction.

C. Other Refusals. Except in the circumstances detailed in §B(1) and (2) of this regulation, the protections of §5-604 of the Act generally do not apply when an employer disciplines an employee for refusing to perform normal job activities because of alleged safety or health hazards.

D. Complaints. With regard to §5-604(b) of the Act, a "complaint under or related to this title" includes but is not limited to:

(1) A request for inspection under §5-209;

(2) Complaints regarding conditions at the workplace registered with the Commissioner, with a federal, State, or local agency with authority regarding occupational safety and health conditions, or with such an agency that the employee, in good faith, believes has authority regarding occupational safety and health conditions; and

(3) Complaints regarding conditions at the workplace made in good faith to an employer, management supervisor, or other employee serving in a supervisory capacity.

.06 Imminent Danger.

A. In this regulation, "imminent danger" means a condition or practice which exists in a place of employment that reasonably could be expected to cause death or serious physical harm:

(1) Immediately; or

(2) Before the imminence of the danger can be eliminated through the enforcement procedures otherwise provided by the Act.

B. When an inspector concludes on the basis of an inspection that an imminent danger exists, the inspector shall inform the affected employees and employer:

(1) Of the danger; and

(2) That the inspector may recommend to the Commissioner that relief be sought in accordance with the provisions of §5-216 of the Act.

C. Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger even if, after notification from the inspector, the employer immediately eliminates the imminence of the danger and initiates steps to abate the danger.

.07 Issuance of a Citation and Notice of De Minimis Violations.

A. In this regulation, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Controlling employer" means the employer who is responsible, by contract or through actual practice, for safety and health conditions on the worksite, whether or not its own employees are exposed, such as an employer who has the authority for ensuring that hazardous conditions are corrected.

(2) "Correcting employer" means the employer who has the responsibility for actually correcting the hazard, whether or not its own employees are exposed.

(3) "Creating employer" means the employer who actually created the hazard through its action or inaction, whether or not its own employees are exposed.

(4) "Exposing employer" means the employer whose employees are exposed to the hazard or have access to the hazard.

C. After an inspection, the Commissioner or the Commissioner's authorized representative shall review the inspector's inspection report.

D. If, on the basis of the report, the Commissioner or the Commissioner's authorized representative is of the opinion that the employer has violated a provision of the Act, or of a standard, regulation, or an order promulgated under the Act, the Commissioner or the Commissioner's authorized representative shall issue to the employer either:

(1) A citation; or

(2) For a violation which has no direct or immediate relationship to safety or health, a notice of de minimis violations.

E. Issuance of Citations.

(1) On multiemployer worksites, more than one employer may be cited for a hazardous condition that violates a provision of the Act or of a standard, regulation, or order promulgated under the Act.

(2) The following employers may be cited:

(a) The exposing employer;

(b) The creating employer;

(c) The controlling employer; and

(d) The correcting employer.

F. An appropriate citation or notice of de minimis violations may be issued even if, after being informed of an alleged violation by the inspector, the employer immediately abates, or initiates steps to abate, the alleged violation.

G. The citation shall note that the issuance of a citation is not a finding that a violation of the Act has occurred unless:

(1) There is a failure to contest as provided for in the Act; or

(2) If contested, the citation is affirmed by the Commissioner.

H. Complaint Inspections.

(1) After an inspection conducted in response to a request for inspection under Regulation .04A(1) of this chapter or a notification of violation under Regulation .04B of this chapter:

(a) If a citation is issued, a copy of the citation or notice of de minimis violations shall be sent to the employee or employee representative who made the request; and

(b) If a determination is made that a citation is not warranted with respect to a danger or violation alleged to exist, the Commissioner or the Commissioner's authorized representative shall notify the complaining party and the employer in writing of the determination.

(2) When a determination is made that a citation is not warranted under §H(1)(b) of this regulation:

(a) The informal review procedures in Regulation .04C(2)—(4) of this chapter are applicable;

(b) After considering all views presented in an informal review under Regulation .04C of this chapter, the Commissioner or the Commissioner's authorized representative may:

(i) Affirm the determination;

(ii) Order a reinspection; or

(iii) Issue a citation if the Commissioner believes that the inspection disclosed a violation.

(3) The Commissioner or the Commissioner's authorized representative shall furnish the complaining party and the employer with written notification of the Commissioner's determination and the reason for it.

I. The citation shall include any notice of proposed penalty.

.08 Posting of Notices and Citations.

A. Posting of Citations.

(1) Upon receipt of a citation issued under the Act, an employer shall immediately post the citation, or an unedited copy, at or near the place the alleged violation referred to in the citation occurred, or if, because of the nature of the employer's operations, this is not practicable, in a prominent place readily observable to affected employees.

(2) When employers are engaged in activities which are physically dispersed, the citation may be posted at the location where the employees operate to carry out their activities.

(3) An employer shall take steps to ensure that a citation is not:

(a) Altered;

(b) Defaced; or

(c) Covered by other material.

(4) An employer is not required to post a notice of de minimis violations.

(5) A citation, or a copy of it, shall remain posted for the later of:

(a) The time the violation was abated; or

(b) 3 work days.

(6) The filing by an employer of a notice of intent to contest under Regulation .09 of this chapter does not affect the employer's posting responsibility.

B. Posting Notice of Contest.

(1) In the same location where a citation is posted, an employer may post a notice indicating that the citation is being contested before the Commissioner.

(2) The notice may state the:

(a) Reasons for contest; and

(b) Steps that have been taken to abate the violation.

C. Posting of Notices.

(1) Upon receipt of a notice concerning a pending case, including a notice of hearing, an employer shall immediately post, where citations are required to be posted, a:

(a) Copy of the notice; and

(b) Notice informing affected employees of their right to participate in any proceeding in the notice.

(2) A notice shall remain posted until:

(a) The proceeding stated in the notice begins; or

(b) Earlier disposition.

D. Posting of a Memorandum of Settlement. A memorandum of settlement shall be posted in the same manner as required by this regulation for the posting of citations and notices.

.09 Employer and Employee Contests.

A. "Notice of contest" includes a notice of intent to contest.

B. Notification.

(1) An employer to whom a citation has been issued may, in accordance with §5-213 of the Act, notify the Commissioner in writing that the employer contests the citation or proposed penalty.

(2) The notice of contest shall be postmarked within 15 work days of the receipt by the employer of the citation.

(3) A notice of contest shall specify if it is directed to the citation, to the proposed penalty, or to both.

C. Notice from Employee.

(1) An employee or representative of employees may, in accordance with §5-213(b) of the Act, file with the Commissioner or the Commissioner's authorized representative a written notice alleging that the period of time provided for in the citation for the abatement of the violation is unreasonable.

(2) The notice shall be postmarked within 15 work days of the issuance of the citation.

.10 Failure to Correct a Cited Violation.

A. If an inspection discloses that an employer has failed to correct a cited violation within the period permitted for its correction, the Commissioner or the Commissioner's authorized representative shall notify the employer by certified mail, or by personal service by an inspector, of this failure and the additional penalty proposed under §§5-213(d) and 5-809(d) of the Act for the failure.

B. An employer receiving a notification of failure to correct a violation and proposed additional penalty may notify in writing, in accordance with §5-213(d) of the Act, the Commissioner or the Commissioner's authorized representative that the employer intends to contest the alleged failure to correct the violation, and proposed additional penalty, or both.

C. The notice of contest shall be postmarked within 15 work days of the receipt by the employer of the notification of failure to correct a violation and proposed additional penalty.

D. A notification of failure to correct a violation and proposed additional penalty shall state that it is a final order, unless a notice of contest in accordance with this regulation is filed.

.11 Informal Conferences.

A. At the request of an affected employer, employee, or representative of employees, the Commissioner or the Commissioner's authorized representative may hold an informal conference to discuss issues raised by the inspection, citation, proposed penalty, or notice of contest.

B. If the employer requests a conference, the Commissioner or the Commissioner's authorized representative may, at the discretion of the Commissioner, afford affected employees or a representative of employees an opportunity to participate.

C. If an employee or representative of employees requests a conference, the Commissioner or the Commissioner's authorized representative may, at the discretion of the Commissioner, afford the employer an opportunity to participate.

D. A party may be represented by counsel at a conference.

E. Neither the request for a conference nor the conference shall operate as a stay of the 15-work-day period for filing a notice of contest under Regulation .09 of this chapter.

.12 Penalties.

A. Scope. This regulation applies to the assessment of civil penalties by the Commissioner under Labor and Employment Article, §§5-809 and 5-810, Annotated Code of Maryland, in all cases arising from inspections conducted on and after the effective date of this regulation.

B. Definition. In this regulation, "Commissioner" means:

(1) The Commissioner of Labor and Industry;

(2) The Commissioner's authorized representative; or

(3) A person acting pursuant to a delegation of authority from the Commissioner of Labor and Industry.

C. In assessing a penalty for a violation of the law, a regulation, or an order, the Commissioner shall consider the following factors in accordance with this regulation:

(1) Gravity of the violation for which the penalty is to be assessed;

(2) Good faith of the employer;

(3) Existence and quality of a safety and training program;

(4) Injury and illness experience of the employer;

(5) The extent to which the existence of the violation was known to the employer, but remained not corrected;

(6) History of violations by the employer;

(7) Extent to which the current violation is part of a recurrent pattern of the same or similar type of violation;

(8) Size of the business of the employer against whom the penalty is to be assessed; and

(9) Actual harm to human health, including injury or illness.

D. Gravity-Based Penalty.

(1) Gravity.

(a) Based on the gravity of a violation, the Commissioner shall assess up to $5,000.

(b) The Commissioner shall determine the amount to assess for the gravity of the violation by considering the:

(i) Severity of the most serious injury or illness that is reasonably predictable from the hazard; and

(ii) Probability that an injury or illness will arise from a hazard.

(c) The Commissioner shall assign each hazard a severity assessment and a probability assessment in accordance with this regulation.

(2) Severity Assessment. The Commissioner shall assign the most serious injury or illness which is reasonably predictable from the safety or health hazard cited, a severity assessment of 1 to 10 as follows:

(a) Death, injuries, or illness involving permanent disability or a chronic, irreversible condition—severity factor of 8 to 10;

(b) Injuries or temporary, reversible illnesses resulting in hospitalization, or a variable but limited period of disability—severity factor of 5 to 7;

(c) Injuries or temporary, reversible illnesses not resulting in hospitalization and requiring only minor supportive treatment—severity factor of 2 to 4; and

(d) Hazard violation characterized as other-than-serious—severity factor of 1.

(3) Probability Assessment.

(a) Probability for Safety or Health Hazards When Samples are not Taken. For a safety or health hazard when samples are not taken, the Commissioner shall determine the probability that an injury or illness will arise from the apparent violation by assigning a value of 1 to 10 to each of the following factors:

(i) The number of employees exposed, with a value of 1 being the lowest number of employees exposed;

(ii) The frequency of exposure, with a value of 1 being the lowest frequency;

(iii) The proximity of the employee to the zone of danger, with a value of 1 being the lowest proximity; and

(iv) Working conditions, with a value of 1 being conditions least likely to contribute to injury or illness.

(b) Probability for Safety and Health Hazards When Sampling is Conducted. For a safety or health hazard when sampling is conducted, the Commissioner shall determine the probability that an injury or illness will arise from the hazard by considering:

(i) The number of employees exposed with a value of 1 being the lowest number of employees exposed;

(ii) The duration of exposure with a value of 1 being the lowest duration of exposure;

(iii) The use of appropriate personal protective equipment with a value of 1 being the lowest; and

(iv) If applicable, an evaluation of the medical surveillance program.

(c) Probability Assessment. The Commissioner shall total factors assigned pursuant to §D(3)(a) or (b) of this regulation and divide by the number of factors considered to determine the probability assessment.

(4) Gravity Assessment. The Commissioner shall determine the gravity-based penalty for each violation by adding the severity assessment and the probability assessment, dividing by 2, and multiplying the quotient by $500.

E. Penalty Adjustment Factors.

(1) The Commissioner may reduce the gravity-based penalty on the basis of an employer's good faith, size of business, and history in accordance with §§F—H of this regulation.

(2) The Commissioner shall calculate the penalty adjustment factor only once for each employer, after the gravity-based penalty has been determined for each violation and the general character of the employer's performance is apparent.

F. Good Faith.

(1) Based on the degree of employer good faith, the Commissioner may reduce the gravity-based penalty by a maximum of 25 percent.

(2) The Commissioner shall consider the following in determining whether to reduce the gravity-based penalty based on an employer's good faith factor:

(a) The existence and quality of a safety and health program and a training program, that:

(i) Provides for appropriate management commitment and employee involvement,

(ii) Provides for worksite analysis for the purpose of hazard identification,

(iii) Provides for hazard prevention and control measures,

(iv) Provides for employee training and instruction relative to the hazards of the work being performed, including hazard communication, lockout-tagout, hazardous materials and emergency responses, safety and health programs for construction, and trenching and excavation, and

(v) Has deficiencies that are only incidental;

(b) The injury and illness experience of the employer;

(c) The level of supervision and of employer concern and knowledge about safety and health requirements;

(d) The extent to which the employer knew of the violation and failed to take action to correct it; and

(e) Employer action to abate an apparent violation or mitigate exposure during the inspection.

G. History.

(1) Based on an employer's history of violations, the Commissioner may reduce the gravity-based penalty by a maximum of 10 percent.

(2) The Commissioner shall consider the following in determining whether to reduce the gravity-based penalty based on an employer's history:

(a) Nature and extent of the employer's history of prior MOSH violations; and

(b) Extent to which the violation at issue is part of a recurrent pattern of the same or similar type of violation.

H. Size.

(1) "Size" means peak employment at all of an employer's establishments and work locations during the 12-month period preceding a violation.

(2) Based on the size of an employer, the Commissioner may reduce a gravity-based penalty by a maximum of 60 percent in accordance with the following schedule:

(a) 1 to 25 employees, maximum 60 percent reduction;

(b) 26 to 100 employees, maximum 40 percent reduction;

(c) 101—250 employees, maximum 20 percent reduction; and

(d) 251 or more employees, no reduction.

I. Actual Harm to Human Health, Including Injury or Illness.

(1) Based on the actual harm to human health or well-being, arising from a hazard, the Commissioner shall assess up to $2,000.

(2) The Commissioner shall determine the amount to assess for the actual harm factor by considering the degree and nature of actual harm to an employee.

(3) The Commissioner may not apply an adjustment factor to a penalty assessed for actual harm.

J. Penalty Assessment.

(1) In determining the total penalty to assess for a violation, the Commissioner shall comply with this section.

(2) For a serious violation, the Commissioner shall:

(a) Determine the gravity-based penalty;

(b) Reduce the gravity-based penalty by the penalty adjustment factor; and

(c) Add to the adjusted gravity-based penalty any assessment for actual harm.

(3) For an other-than-serious violation, when the Commissioner determines to issue a penalty, the Commissioner shall assess the penalty by first determining the gravity-based penalty and adjusting it by the appropriate penalty adjustment factor, and then adding any assessment for actual harm.

(4) Willful Violation.

(a) When an employer willfully violates the law, a regulation, or an order, the Commissioner shall:

(i) Determine the gravity-based penalty;

(ii) Reduce the gravity-based penalty by the penalty adjustment factor determined for the employer;

(iii) Add any assessment for actual harm; and

(iv) Multiply the sum by 10.

(b) If the penalty determined under §J(4)(a) of this regulation is less than $5,000, the Commissioner shall propose a penalty of $5,000.

(5) When an employer repeatedly violates the law, a regulation, or an order, the Commissioner shall:

(a) Determine the gravity-based penalty;

(b) Reduce the gravity-based penalty by the penalty adjustment factor established for the employer;

(c) Add any actual harm assessment; and

(d) Multiply the total by:

(i) 2, for the first repeat;

(ii) 4, for the second repeat;

(iii) 6, for the third repeat; and

(iv) 10, for the fourth repeat.

(6) In negotiating a bona fide settlement of a citation, the Commissioner may adjust a penalty assessed in accordance with this regulation in a manner appropriate under the relevant statutory factors and the facts and circumstances of the case.

.13 Hearings — General.

A. Application.

(1) This regulation supplements the notice and hearing requirements of the Administrative Procedure Act—Contested Cases, State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

(2) In the event of a conflict with COMAR 28.02.01, the provisions set forth in this chapter control the conduct of a hearing conducted under the Act.

B. Discovery. Except as required by State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, discovery, including a request for production of documents, interrogatories, and depositions, is not allowed.

C. Service.

(1) A party may be served with a document by:

(a) Personal delivery; or

(b) Mail sent to the last known address of the party.

(2) A person serving a document shall certify to the manner and date of service.

D. Notice of Hearing.

(1) The Commissioner shall serve notice of a hearing on all parties at least 10 days before the hearing, and ensure that the notice conforms to State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

(2) When the Commissioner appoints a hearing examiner to hold a hearing under this chapter, the Commissioner or the Commissioner's authorized representative shall provide to the hearing examiner a copy of the notice of hearing, together with the citation and notice of contest or any written request for hearing.

E. Subpoena.

(1) On application of a party, the hearing examiner assigned the case shall immediately issue a subpoena requiring the:

(a) Attendance and testimony of a witness; and

(b) Production of evidence, including relevant books, records, correspondence, or documents in the possession or under control of the person subpoenaed.

(2) An application for subpoena may be made ex parte.

(3) A subpoena shall show on its face the name and address of the party requesting the subpoena.

(4) A hearing examiner shall recommend to the Commissioner that proceedings be initiated to enforce the subpoena, if:

(a) A person fails to comply with a subpoena; and

(b) In the hearing examiner's opinion, the testimony of the witness is material to the proceedings.

F. Parties.

(1) Employee.

(a) An affected employee may elect to participate as a party by filing a written request for party status with the hearing examiner.

(b) A request for party status shall be filed:

(i) Before the hearing begins; or

(ii) For good cause shown, at a later date.

(c) If a hearing examiner denies a request for party status:

(i) An employee may file with the Commissioner a written request for review of the denial; and

(ii) The Commissioner immediately shall review the request.

(2) Employer. If an employee files a notice of contest challenging the reasonableness of the period for abatement of a violation, the employer responsible for abating the violation may elect party status at any time before the hearing begins.

(3) Representatives of Parties.

(a) A party may appear in person or through a representative.

(b) An affected employee represented by an authorized representative may appear only through the representative.

(c) A party may withdraw the appearance of its representative by:

(i) Filing a written notice of withdrawal; and

(ii) Serving a copy of the notice on each party.

(d) A representative of a party shall control all matters affecting the party's interest in the proceeding.

G. Postponement.

(1) Postponement of a hearing generally is not allowed.

(2) Except in the case of an emergency or in unusual circumstances, a request for postponement may not be considered unless it is received in writing by the Commissioner or the hearing examiner at least 3 work days before the date set for the hearing.

(3) A postponement of more than 30 days is not allowed without the approval of the Commissioner.

H. Failure to Appear.

(1) Except as otherwise provided by this section, if a party filing a notice of contest fails to appear at a hearing of which that party has notice, the failure is considered:

(a) A waiver of the hearing; and

(b) Except for a hearing on a motion or other procedural matter, a withdrawal of the notice of contest.

(2) When a failure to appear at a hearing is considered a withdrawal of the notice of contest, the:

(a) Hearing examiner shall promptly serve on all parties notification that the notice of contest is considered to have been withdrawn; and

(b) Party filing the notice of contest has 15 work days from receipt of the notice of withdrawal to request the notice of contest be reinstated.

(3) A request for reinstatement:

(a) Shall be filed in writing with the Commissioner; and

(b) May be granted by the Commissioner only upon a showing of good cause for the failure to appear for hearing.

I. Record of Hearing. A hearing, including a hearing on a motion, shall be recorded word for word.

.14 Hearings — Prehearing Conference.

A. A party may request a prehearing conference with the assistant attorney general assigned to the case to:

(1) Exchange information;

(2) Attempt to resolve or narrow the issues; or

(3) Discuss settlement of a case.

B. Request for Prehearing Conference.

(1) A party who seeks a prehearing conference shall:

(a) Request a prehearing conference well in advance of the scheduled hearing; and

(b) Direct the request to the assistant attorney general assigned to the case.

(2) Unless all parties agree, a prehearing conference may not be held less than 10 days after the parties receive the notice of the conference.

(3) A scheduled hearing generally may not be postponed to allow the parties to have a prehearing conference.

C. Upon receipt of a request for a prehearing conference, the assistant attorney general assigned to the case shall:

(1) Schedule a conference for the earliest practicable time that is at least 10 days after the parties receive notice of the conference; and

(2) Serve on all parties a notice of the conference.

D. Notice of Prehearing Conference.

(1) A notice of prehearing conference shall:

(a) State the date, time, and place of the conference; and

(b) Inform affected employees of their right to participate in the conference.

(2) Upon receipt of a notice of prehearing conference, an employer shall:

(a) Post the notice conspicuously at or near each place where a citation shall be posted; and

(b) Keep the notice posted until the conference begins.

(3) At a prehearing conference, the assistant attorney general shall verify that:

(a) All parties were notified of the conference; and

(b) The notice was posted as required by this chapter.

E. If the prehearing conference results in an agreement between the parties that resolves or simplifies an issue or otherwise affects the conduct of the formal hearing, the agreement shall be stated on the record at the beginning of the hearing.

.15 Hearings — Conduct of Hearing.

A. Powers and Duties of Hearing Examiner.

(1) A hearing examiner shall:

(a) Conduct a fair and impartial hearing to:

(i) Fully elicit all the facts,

(ii) Adjudicate all issues, and

(iii) Avoid delay; and

(b) Exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(2) Subject to applicable laws and regulations, a hearing examiner may:

(a) Administer oaths and affirmations;

(b) Rule on offers of proof and procedural matters;

(c) Postpone, continue, or reschedule a hearing;

(d) Regulate the course of a hearing, including the conduct of parties, their representatives, and witnesses;

(e) Receive relevant evidence;

(f) Accept a stipulation or agreed statement of facts if all parties agree to its admission;

(g) Admit an affidavit as evidence in place of testimony, if the matters in the affidavit are otherwise admissible and if all parties agree to its admission; and

(h) Take other action authorized by the Act, regulations adopted under the Act, or the Administrative Procedure Act, State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

(3) A hearing examiner may not grant a motion to dismiss, a motion for judgment, or any other dispositive motion without the concurrence of all parties.

B. A hearing examiner shall:

(1) Call the title of the case;

(2) Briefly explain the purpose and nature of the hearing; and

(3) Administer the oath to all who will testify.

C. Preliminary Matters. Counsel or a party may address a preliminary matter, exception, or motion.

D. Order of Testimony.

(1) In a citation case, the presenter of evidence shall proceed first and shall present all evidence.

(2) In an abatement case, the employer or the employer's representative shall proceed first.

E. Oral Argument and Briefs.

(1) On request of a party before the close of a hearing, the hearing examiner shall allow each party a reasonable time at the close of the hearing, for oral argument.

(2) 2Post hearing briefs are permitted if the hearing examiner determines that there is a need for guidance on an unresolved question of law.

.16 Hearings — Determination and Review.

A. Within a reasonable time after the hearing examiner has heard and considered all evidence, written briefs, and memoranda, the hearing examiner shall:

(1) Issue a written determination which:

(a) Is dated,

(b) Summarizes testimony and exhibits,

(c) Is the hearing examiner's final disposition of the proceedings, and

(d) Comports with the Act, regulations adopted under the Act, and State Government Article, §10-214, Annotated Code of Maryland; and

(2) Serve a copy of the determination on each party; and

(3) Return all documents and exhibits to the Commissioner.

B. The determination of the hearing examiner shall become the final order of the Commissioner unless, in accordance with the Act:

(1) The employer, or an employee or representative of an employee, requests a review; or

(2) The Commissioner orders a review.

C. Review of Proceedings Before the Commissioner.

(1) A request for review filed by an affected employer, or an employee or representative of an employee, shall:

(a) Be in writing;

(b) Contain a concise statement identifying each portion of the hearing examiner's determination for which a review is requested;

(c) Be filed with the Commissioner within 15 work days after the date of the hearing examiner's determination; and

(d) Be mailed by the requesting party to all other parties to the proceeding.

(2) Affected parties have the opportunity to present argument to the Commissioner.

(3) Order of the Commissioner.

(a) After review of the proceedings with or without a hearing, the Commissioner shall:

(i) Issue an order based on findings of fact;

(ii) Mail copies of the order to all affected parties.

(b) The Commissioner's order shall:

(i) Affirm, modify, or vacate the citation or proposed penalty, or direct other appropriate relief; and

(ii) Become final 15 days after it is issued.

.17 Variances.

A. Effect of Variance. A variance granted under the Act and regulations adopted under the Act has only future effect.

B. Temporary Variance.

(1) Application.

(a) An affected employer seeking a temporary variance shall file with the Commissioner, or the Commissioner's authorized representative, an application for variance before the effective date of the regulation or part of a regulation for which the temporary variance is sought.

(b) In addition to the requirements of §5-320 of the Act, an application for temporary variance shall be in writing and shall specify:

(i) The name and address of the applicant;

(ii) The address of each place of employment for which a variance is sought;

(iii) If the applicant seeks a hearing on the application, a request for hearing;

(iv) A statement of the facts the applicant would show to establish that the applicant is unable to comply with a regulation by its effective date because necessary professional or technical personnel or material and equipment are unavailable, or necessary construction or alteration of facilities cannot be completed by the effective date; and

(v) A description of how the employer provided the notice required by §5-321(a) of the Act.

(2) Interim Order.

(a) An applicant for an order for temporary variance may also request an interim order of variance.

(b) A request for interim order may include a statement of facts and arguments as to why an interim order should be granted.

(c) The Commissioner may rule ex parte on an application for interim order.

(d) If the Commissioner grants an interim order, the Commissioner shall:

(i) Serve the order on the applicant and each other party; and

(ii) Require as a condition of the order that the applicant give notice of the interim order to affected employees by the same means used to inform employees of the application for variance.

(e) If the Commissioner denies the interim order, the Commissioner shall:

(i) Give prompt notice of the denial; and

(ii) Provide a brief statement of the grounds for the denial.

C. Permanent Variance. An application for permanent variance shall be in writing and shall specify:

(1) The name and address of the applicant;

(2) The address of each place of employment for which a variance is sought;

(3) If the applicant seeks a hearing on the application, a request for hearing;

(4) A description of the conditions, means, methods, practices, processes, or operations used or proposed to be used by the applicant;

(5) A statement showing how the conditions, means, methods, practices, processes, or operations used or proposed to be used would make employment and places of employment at least as safe and healthful for employees as they would be if the applicant complied with the regulation or standard from which the permanent variance is sought;

(6) A description of how the employer provided the notice required by §5-321(b) of the Act; and

(7) A certification that the employer has informed its employees of the application by:

(a) Giving a copy of the application for permanent variance to its employees or their authorized representative,

(b) Posting the application, or a statement summarizing the application and specifying where a copy may be examined, at each place where notices to employees normally are posted, and

(c) Other appropriate means.

D. Notice of Application for Variance.

(1) Upon receipt of a proper application for variance, the Commissioner shall publish in the Maryland Register a notice of the filing of the application.

(2) The notice shall:

(a) Accurately summarize the application;

(b) Specify the regulation or part of a regulation for which a variance is requested;

(c) Invite interested persons to submit, within a specified period of time, written data or recommendations regarding the application; and

(d) Inform affected employers, employees, and interested persons affected by the application of the right to request a hearing on the application.

E. Modification and Revocation.

(1) Application. An application filed by an affected employer or employee for modification or revocation of a permanent variance shall be in writing and shall specify:

(a) The name and address of the applicant;

(b) A description of the relief sought;

(c) A statement setting forth with particularity the grounds for the relief;

(d) If the applicant seeks a hearing on the application, a request for hearing;

(e) If the applicant is an employer, a certification that the employer has informed its affected employees of the application as required by this regulation; and

(f) If the applicant is an affected employee, a certification that the employee has furnished a copy of the application to the employer.

(2) The Commissioner may modify or revoke a permanent variance at any time, on the Commissioner's own initiative and after a hearing, after:

(a) Informing the affected employer and employees of the Commissioner's intention and of their right to request a hearing; and

(b) Affording affected employers and employees an opportunity to submit written data or arguments regarding the proposal.

.18 Adoption, Amendment, or Repeal of a Regulation.

A. An interested person may file with the Commissioner a petition for the adoption, amendment, or repeal of a regulation or standard.

B. A petition shall be in writing and shall:

(1) Identify the regulation proposed for adoption, amendment, or repeal;

(2) State the reasons for the proposal; and

(3) State the intended effect of the proposal.

.19 Repealed.

.20 Petition for Modification of Abatement Date.

A. An employer may file a petition for modification of abatement date (PMA) when the employer has:

(1) Made a good faith effort to comply with the abatement requirements of a citation; and

(2) Not completed abatement because of factors beyond the employer's reasonable control.

B. Content. A PMA shall be in writing and shall state:

(1) The actions the employer has taken in an effort to achieve compliance during the prescribed abatement period and the date of each action;

(2) The specific additional abatement time necessary in order to achieve compliance;

(3) The reason the additional time is necessary, including the:

(a) Unavailability of:

(i) Professional or technical personnel, or

(ii) Materials and equipment; or

(b) Inability to complete, by the original abatement date, necessary construction or alteration of facilities;

(4) The available interim steps being taken to safeguard the employees against the cited hazard during the abatement period;

(5) A certification that a copy of the PMA has been:

(a) Posted; and

(b) If appropriate, served on the authorized representative of affected employees; and

(6) A certification of the date upon which the petition was posted and service was made.

C. Filing.

(1) A PMA shall be filed with the Assistant Commissioner not later than the close of the next work day following the date on which abatement was originally required.

(2) An employer filing a PMA after the date set forth in §C(1) of this regulation shall include with it a statement setting forth the circumstances for the delay.

(3) The Assistant Commissioner may accept a late-filed PMA only if exceptional circumstances lead to the delay.

D. Posting and Service.

(1) The employer shall post a copy of the PMA in a conspicuous place:

(a) Where affected employees will have notice; or

(b) Near the location where the violation occurred.

(2) The PMA shall remain posted for at least 10 work days.

(3) When affected employees have an authorized representative, the employer shall serve the representative with a copy of the petition.

E. Filing of Objections.

(1) Affected employees or their representatives may file an objection to the PMA in writing with the Assistant Commissioner.

(2) The objection shall be filed within 10 work days of the date that the PMA was:

(a) Posted; or

(b) Served upon an authorized representative.

(3) Failure to file a timely objection constitutes a waiver of any further right to object to the petition.

F. Assistant Commissioner.

(1) The Assistant Commissioner has the authority to approve any PMA filed under this regulation.

(2) The Assistant Commissioner may not grant a PMA until the expiration of 15 work days from the date the employer complies with §D of this regulation.

G. Objections and Denials.

(1) When either an affected employee objects to, or the Assistant Commissioner denies approval of, a PMA, the PMA, citation, and any objection shall be forwarded to the Commissioner within 3 work days after the expiration of the 15-day period set forth in §F(2) of this regulation.

(2) The Commissioner shall treat a PMA so forwarded in the same manner as a contested case involving a citation.

H. Burden of Proof. To obtain modification of an abatement period, the employer filing a PMA has the burden of proving that it:

(1) Made a good faith effort to comply with the abatement requirements of the citation; and

(2) Has not completed abatement because of factors beyond its control.

.21 Abatement Verification.

A. In this regulation, the following terms have the meanings indicated:

(1) "Abatement" means action by an employer to:

(a) Comply with a cited standard or regulation; or

(b) Eliminate a recognized hazard identified by MOSH during an inspection.

(2) "Abatement date" means:

(a) For an uncontested citation item, the later of the date:

(i) In the citation for abatement of the violation,

(ii) Approved by MOSH or established in litigation as a result of a petition for modification of the abatement date (PMA), or

(iii) Established in a citation by an informal settlement agreement; and

(b) For a contested citation item for which the Commissioner has issued a final order affirming the violation, the later of the date:

(i) Identified in the final order for abatement,

(ii) Computed by adding the period allowed in the citation for abatement to the final order date, or

(iii) Established by a formal settlement agreement.

(3) "Affected employees" means those employees who are exposed to a hazard identified as a violation in a citation.

(4) "Final order date" means:

(a) For an uncontested citation item, the 15th working day after the employer's receipt of the citation; and

(b) For a contested citation item:

(i) The 15th day after the date on which a proposed order of a hearing examiner has been docketed with the Commissioner, unless the Commissioner has directed review or an employee, or representative of an employee or employer whom the proposed order affects has requested review,

(ii) When review has been directed or requested, the 15th day after the date on which the Commissioner issues the final order disposing of all or a pertinent part of a case, or

(iii) The date on which a circuit court issues a decision affirming the violation in a case in which a final order of the Commissioner has been stayed.

(5) "Moveable equipment" means a hand-held or non-hand-held machine or device, powered or unpowered, that is used to do work and is moved within or between worksites.

B. Abatement Certification.

(1) Except as provided in §B(2) of this regulation, within 10 calendar days after the abatement date, the employer shall certify to the Commissioner or the Commissioner's authorized representative that each cited violation has been abated.

(2) The employer is not required to certify abatement if, during the on-site portion of the inspection, the Commissioner or the Commissioner's authorized representative:

(a) Observes, within 24 hours after a violation is identified, that abatement has occurred; and

(b) Notes in the citation that abatement has occurred.

(3) In addition to the information required by §G of this regulation, the employer's certification that abatement is complete for each cited violation shall include:

(a) The date and method of abatement; and

(b) A statement that affected employees and their representatives have been informed of the abatement.

C. Abatement Documentation.

(1) The employer shall submit to the Commissioner or the Commissioner's authorized representative the following:

(a) The information on abatement certification required by §B(3) of this regulation; and

(b) The requisite documentation:

(i) Demonstrating that abatement is complete for each willful or repeat violation, and

(ii) For a serious violation for which the Commissioner or the Commissioner's authorized representative indicates in the citation that this abatement documentation is required.

(2) Documents demonstrating that abatement is complete may include, but are not limited to:

(a) Evidence of the purchase or repair of equipment;

(b) Photographic or video evidence of abatement; or

(c) Other written records.

D. Abatement Plans.

(1) Except for an other-than serious violation, the Commissioner or the Commissioner's authorized representative may require an employer to submit an abatement plan for the cited violation when the time permitted for abatement is more than 90 calendar days.

(2) When an abatement plan is required:

(a) It shall be indicated on the citation;

(b) The employer shall submit an abatement plan for the cited violation within 25 calendar days from the final order date; and

(c) The abatement plan shall identify the violation and the steps to be taken to achieve abatement, including:

(i) A schedule for completing abatement, and

(ii) When necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete.

E. Progress Reports.

(1) An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for the cited violation.

(2) The citation shall indicate:

(a) If a periodic progress report is required and the citation item for which it is required;

(b) The date on which an initial progress report shall be submitted, which shall be at least 30 calendar days after submission of an abatement plan;

(c) Whether additional periodic progress reports are required; and

(d) The dates on which additional progress reports shall be submitted.

(3) For a violation, the periodic progress report shall identify, in a single sentence if possible, the:

(a) Action taken to achieve abatement; and

(b) Date action was taken.

F. Employee Notification.

(1) The employer shall inform affected employees and their representatives about abatement activities covered by this regulation by posting, near the place where the violation occurred, a copy or summary of the document submitted to the Commissioner or the Commissioner's authorized representative.

(2) If this posting does not effectively inform employees and their representatives about abatement activities, the employer shall:

(a) Post the document or a summary of the document in a location where it will be readily observable by affected employees and their representatives; or

(b) Take other steps to communicate fully to affected employees and their representatives about abatement activities.

(3) The employer shall inform employees and their representatives of their right to examine and copy all abatement documents submitted to the Commissioner or the Commissioner's authorized representative.

(4) An employee or an employee representative shall submit a request to examine and copy abatement documents within 3 working days of receiving notice that the documents have been submitted.

(5) The employer shall comply with an employee's or employee representative's request to examine and copy abatement documents within 5 working days of receiving the request.

(6) The employer shall ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the Commissioner or the Commissioner's authorized representative and that abatement documents are:

(a) Not altered, defaced, or covered by other material; and

(b) Remain posted for 3 working days after submission to the Commissioner or the Commissioner's authorized representative.

G. Transmitting Abatement Documents.

(1) The employer shall include, in the submission of required abatement documents, the following:

(a) The employer's name and address;

(b) The inspection number to which the submission relates;

(c) The citation and item numbers to which the submission relates;

(d) A statement that the information submitted is accurate; and

(e) The signature of the employer or the employer's authorized representative.

(2) Date of Submission. The date of submission for:

(a) Mailed documents is the date of postmark; and

(b) Documents transmitted by means other than by mail is the date the Commissioner receives the document.

H. Moveable Equipment.

(1) For serious, repeat, and willful violations involving movable equipment, the employer shall attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the worksite or between worksites.

(2) The employer shall use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued.

(3) If the violation has not already been abated, the warning tag or copy of the citation shall be attached to the equipment:

(a) For hand-held equipment, immediately after the employer receives the citation; or

(b) For non-hand-held equipment, before moving the equipment within or between worksites.

(4) For the construction industry, a tag that is designed and used in accordance with 29 CFR §§1926.20(b)(3) and 1926.200(h), is deemed to meet the requirements of this section when the information required by §H(2) of this regulation is included on the tag.

(5) The employer shall ensure that the tag or copy of the citation attached to movable equipment:

(a) Is not altered, defaced, rendered illegible, or covered by other opaque material;

(b) Is made of materials which will withstand the environmental conditions encountered in the workplace; and

(c) Remains attached until the:

(i) Violation has been abated and all abatement certification documents required by this regulation have been submitted to the Commissioner or the Commissioner's authorized representative,

(ii) Cited equipment has been permanently removed from service or is no longer within the employer's control, or

(iii) Commissioner issues a final order vacating the citation.

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