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Rule 45. Rules for Administrative Citations and Penalties, Stop Work Orders and Debarment.

45.1000. Scope of Rules.

These rules establish the procedure for issuing administrative citations, conducting hearings on citations and penalties, and assessing penalties.

The Commissioner, after notice and an opportunity for a hearing, may assess an administrative penalty against any person who violates the Workers' Compensation statute or any rule adopted pursuant to it, or any order issued by the Commissioner or the Workers' Compensation Division.

45.2000. Authority to Adopt Rules.

45.2100. These rules are adopted pursuant to 21 V.S.A. §§ 602, 603, 604, 663b, 688, 689, 690(b), 692, 702, 704, 705, and 708. (Employer liability and Workers' Compensation);

45.2200. 8 V.S.A. §§ 4793(c) and 4803. (Licensing requirements); and

45.2300. 3 V.S.A. §§ 809-815. (Administrative Procedure).

45.3000. Issuance of Administrative Citations.

45.3100. The Director of the Workers' Compensation and Safety Division may issue an administrative citation to any person, including an employee, employer, attorney, medical provider, insurer or a representative of the insurer, if the Director determines after an investigation that the person has:

45.3110. Refused or neglected to comply with the provisions of the Workers' Compensation Act (21 V.S.A. Chapter 9);

45.3120. Refused or neglected to comply with the rules promulgated pursuant to the Act;

45.3130. Refused or neglected to file in a complete and timely fashion any reports required by the Act or the rules, or when ordered to do so by the Commissioner;

45.3140. Refused or neglected to comply with any interim or final order issued by the Commissioner or his or her representative; or

45.3150. Willfully made a false statement or representation for the purpose of obtaining any benefit or payment for either himself or herself or any other person.

45.3200. Service of Citation.

The administrative citation shall be served on the person by certified mail or personal service. Each citation shall be in writing and shall specifically describe the nature of the violation and include a citation to the specific statute, rule, or order alleged to have been violated. The citation shall also state the amount of the administrative penalty imposed, the debarment period if applicable, and the process for requesting a hearing.

45.3300. Response.

The person served with an administrative citation shall have 20 days from the date of service to notify the Director in writing of his or her intent to contest the administrative citation and penalty. If the person does not file a notice contesting the citation, the citation and penalty shall be deemed a final order of the Commissioner.

45.3400. Enforcement Authority Not Limited

Administrative citations and penalties issued under these rules shall not limit the authority of the Commissioner to issue orders or seek injunctive relief and penalties through the court, or to take any other appropriate enforcement action authorized by law.

45.3500. Investigations And Determinations Under 21 VSA §663b.

45.3510. If an allegation of claimant fraud is submitted to the Department, a determination shall be made as to whether further investigation is warranted. If warranted, the Commissioner shall order the Workers' Compensation insurer to investigate the specific allegations of fraud and submit a written report to the Department.

45.3520. The report submitted to the Department shall contain:

45.3521. A description of all action taken to investigate the allegations;

45.3522. The names and contact information of all persons interviewed, along with a copy of any statements taken;

45.3523. Copies of any photographs, videos, or other recordings taken as part of the investigation; the reports of any investigators hired as part of the investigation; and,

45.3524. The insurer's opinion as to whether fraudulent activity has occurred.

45.3525. The insurer shall provide the Department with a status report on its investigation every 30 days, until a final report is submitted.

45.3526. The investigation and report shall be in addition to any actions related to adjusting the claim.

45.3530. Upon receipt of the insurer's report the Commissioner shall determine whether it is complete, or whether additional information is necessary. Once a completed report is received, the Commissioner shall provide the claimant with an opportunity to respond in person or in writing within 30 days.

45.3540. After providing the claimant an opportunity to respond, the Commissioner shall make a determination as to whether fraud has occurred, and may assess penalties and order reimbursement as appropriate.

45.4000. Administrative Citation and Penalty Hearing.

45.4100. A person contesting a citation and penalty issued pursuant to Rule 45.3000 shall be entitled to a hearing before the Commissioner within 60 days of filing the notice to contest. The 60-day time frame may be extended by the Commissioner if the person makes a written request for additional time to prepare for the hearing.

45.4200. Hearing Notice.

The hearing notice shall include the following:

45.4210. A statement of the time, place, and nature of the hearing;

45.4220. A statement of the legal authority and jurisdiction under which the hearing is to be held;

45.4230. A reference to the specific statute, rule, or order involved in the hearing; and

45.4240. A short and plain statement of the matters at issue.

45.4300. The Commissioner shall appoint a hearing officer to hear the evidence, prepare findings, and issue a decision. The procedures set forth in 3 V.S.A. §§ 809-813, and § 815 shall apply to all hearings conducted under these rules.

45.4400. The person may appear at the hearing with counsel, present evidence, and examine and cross-examine witnesses.

45.4500. Evidence shall be admitted at the hearing as provided in 3 V.S.A. § 810.

45.4600. The hearing officer may compel by subpoena the attendance and testimony of witnesses and the production of books and records in accordance with 21 V.S.A. § 603(a), and 3 V.S.A. §§ 809a and 809b.

45.4700. Nothing in this section shall prohibit the informal disposition of a citation by stipulation, agreed settlement, consent order, or default. An informal disposition of the citation

may proceed using clear and simple documentation without complete adherence to the requirements of this section.

45.5000. Administrative Penalties.

45.5100. False Statement or Representation.

45.5110. A person who willfully makes a false statement or representation for the purpose of obtaining any benefit or payment either for himself or herself or another person shall be assessed an administrative penalty of not more than \$20,000.00, in accordance with 21 V.S.A. § 708.

45.5120. Except as provided in 45.5160 – 45.5190, the Commissioner shall not reduce a penalty imposed under rule 45.5110 if:

45.5130. The false statement or representation was made to establish the compensability of the claim; or

45.5140. The false statement or representation involved falsifying medical records; or

45.5150. The false statement or representation was sworn testimony.

45.5160. Penalty Reduction Factors.

The Commissioner may reduce the penalty if the person demonstrates:

45.5170. That the person has repaid or entered into an agreement to repay the benefits or amounts received as a result of the false statement or representation; and

45.5180. The benefit or payment gained was less than the amount of the penalty; or

45.5190. The person has agreed to forfeit any claim for additional Workers' Compensation benefits based on the alleged workplace injury.

45.5200. Forfeiture of Benefits.

45.5210. An employee who willfully makes a false statement or representation of material fact for the purpose of obtaining a Workers' Compensation benefit shall forfeit all or a portion of his or her right to benefits based on the alleged workplace injury.

45.5220. Partial Forfeiture of Benefits.

45.5230. In the Commissioner's discretion, an employee may forfeit only a portion of his or her Workers' Compensation benefits if:

45.5240. The employee has repaid the benefits or entered into an agreement to repay the benefits received as a result of the false statement or representation; or

45.5250. The benefit or payment to be gained was less than \$1,000.00; or

45.5260. The benefit or payment to be gained was limited to one portion of the Workers' Compensation benefit to which the employee was entitled. In this instance, the benefits owed the employee that were not received as a result of the false statement or representation shall not be forfeit.

45.5300. Referral to Department of Financial Regulation.

Whenever the Commissioner has reason to believe that an employer has willfully made a false statement or representation for the purpose of obtaining a lower Workers' Compensation premium, written notice and any supporting documentation shall be provided to the Commissioner of Financial Regulation along with a request to investigate and take any appropriate action on the matter.

45.5400. Debarment; False Statement or Representation.

45.5410. In addition to the penalties listed in rule 45.5110 above, the Commissioner shall prohibit an employer who willfully makes a false statement or representation for the purpose of deriving any benefit, including a lower insurance premium, from contracting, directly or indirectly, with the State or any of its subdivisions, for up to three years.

45.5420. Any prohibition from contracting with the State shall be made only after consultation with the Commissioner of Buildings and General Services or the Secretary of Transportation, or other agencies as appropriate. When the Commissioner believes that debarment is appropriate, the Commissioner shall provide written notice and supporting documentation to the Commissioner of Buildings and General Services or the Secretary of Transportation or other Agency or Department head as appropriate. The debarment shall be ordered if no objection is raised by the Department or Agency consulted within five business days of receiving notice of the proposed debarment. If an objection is raised, the Commissioner shall consider it, but in his or her discretion may order the debarment nevertheless.

45.5430. An administrative determination shall be issued to advise the employer of the debarment period and his or her appeal rights.

45.5440. An initial violation shall subject the employer to a debarment period of one year.

45.5450. A second violation occurring within three years of the previous violation shall subject the employer to a debarment period of two years.

45.5460. A third or subsequent violation occurring within three years of the most recent violation shall subject the employer to a debarment period of three years.

45.5470. The Commissioner may reduce the period of debarment if the employer demonstrates that the non-compliance was the result of a good faith misunderstanding of the law's requirements, excusable neglect, or other mitigating factor.

45.5500. Administrative Penalty; Failure to Insure.

45.5510. An employer that fails to comply with the requirements of 21 V.S.A. § 687 (maintaining workers' compensation insurance or self-insurance as required by law) shall be assessed an administrative penalty of not more than \$100.00 per day for the first seven days that the employer neglected to secure coverage and not more than \$150.00 for every day thereafter. An employer shall ensure that any subcontractor it has hired for a particular job is in compliance with 21 V.S.A. § 687.

The per day penalty shall be based on the annual-*North American Classification System (NAICS)* for the employer. *NAICS groupings for Industry Sector* may be found in the appendix to this rule.

45.5511. For employers with *NAICS Industry Sectors 11, 51, 52, 53, 54, 55, 61, 71, 92*, the penalty shall be \$30 per day for each day without insurance for an initial violation. If a second violation occurs within three years of the initial violation, the per day penalty shall be doubled. If a third violation occurs within three years of the initial violation the penalty shall be assessed at the full statutory rate.

45.5512. For employers with *NAICS Industry Sectors 31, 32, 33, 42, 44, 45, 62* the penalty shall be \$40 per day for each day without insurance for an initial violation. If a second violation occurs within three years of the initial violation, the per day penalty shall be doubled. If a third violation occurs within three years of the initial violation the penalty shall be assessed at the full statutory rate.

45.5513. For employers with *NAICS Industry Sectors 21, 22, 23, 48, 49, 56, 72, 81* the penalty shall be \$50 per day for each day without insurance for an initial violation. If a second violation occurs within three years of the initial violation, the per day penalty shall be doubled. If a third violation occurs within three years of the initial violation the penalty shall be assessed at the full statutory rate.

45.5520. Penalty Reduction Factors.

The Commissioner may reduce the penalty assessed under section 45.5500 if the employer demonstrates:

45.5530. That the failure to secure or maintain Workers' Compensation insurance was inadvertent or the result of excusable neglect and was promptly corrected;

45.5540. That the penalty amount significantly exceeds the amount of any premium expenditures that would have been paid if an insurance policy had been properly secured or maintained; or

45.5550. That the small size of the employer and the non-hazardous nature of the employment presented minimal risk to employees.

45.5560. Failure to Insure; Stop-Work Order.

45.5570. If an employer fails to comply with the requirements of 21 V.S.A. § 687 after investigation by the Commissioner, the Commissioner shall issue an emergency stop-work order to the employer. Additionally, an employer that fails to secure Workers' Compensation coverage after being ordered in writing to do so by the Commissioner shall be assessed an administrative penalty of up to \$250.00 for every day the employer fails to obtain coverage after being ordered to do so, and may also be assessed an administrative penalty of up to \$250.00 per employee for every day that the employer has failed to secure the ordered Workers' Compensation coverage.

45.5571. The stop-work order shall clearly state the name of the employer, the penalties for violating the order, the process for having the order rescinded, and the method to appeal the order.

45.5572. A stop-work order may be appealed pursuant to VRCP 75.

45.5580. Debarment; Violation of Stop-Work Order.

45.5590. In addition to the penalties listed in Rule 45.5570 above, the Commissioner shall prohibit an employer that has been issued a stop-work order pursuant to 21 V.S.A. § 692(b) from contracting, directly or indirectly, with the State or any of its subdivisions, for up to three years.

45.5591. Prior to issuing any debarment penalty, the Commissioner shall consult with the Commissioner of Buildings and General Services and the Secretary of Transportation, or other agencies as appropriate. The consultation may occur informally provided that a written or electronic record of that consultation naming the employer involved, a description of the violation(s), the proposed debarment period, and any response received from the Commissioner of Buildings and General Services or the Secretary of Transportation is maintained. The debarment shall be ordered if no objection is raised by the Department or Agency consulted within five business days of receiving notice of the proposed debarment. If an objection is raised, the Commissioner shall consider it, but in his or her discretion may order the debarment nevertheless.

45.5592. An administrative determination shall be issued to advise the employer of the debarment period and the employer's appeal rights.

45.5593. In establishing a debarment period under this section, the Commissioner may consider any relevant mitigating factors, including the employer's good faith or excusable neglect, or the impact of debarment on public health and safety.

45.5594. An initial violation shall result in a debarment period of one year, prior to consideration of any mitigating factors.

45.5595. A second violation occurring within three years from the previous violation shall result in a debarment period of two years, prior to consideration of any mitigating factors.

45.5596. A third or subsequent violation occurring within three years from the most recent violation shall result in a debarment period of three years, prior to consideration of any mitigating factors.

45.5597. Notwithstanding any mitigating factors, the debarment period shall not be less than the period during which the employer was in violation of 21 V.S.A. § 687.

45.6600. Other Penalties.

45.6610. Non-compliance with an interim or final order.

Any person, including an employer or Workers' Compensation insurance carrier who fails to comply with an interim or final order of the Commissioner shall be assessed a penalty of \$500.00. An additional penalty of \$100.00 per day shall be assessed for each day the person fails to comply after the date set for compliance. The total penalty shall not exceed \$5,000.00. The Commissioner may reduce the penalty if the person demonstrates that non-compliance was the result of excusable neglect.

45.6620. A self-insured employer or Workers' Compensation insurance carrier that fails to ensure that any of its agents or subcontractors complies with the Workers' Compensation statute or rules, or with an interim or final order of the Department, shall be assessed a penalty of \$500.00 for a first offense. A first offense shall be defined as one instance of failing to comply with the statute, rule, or order in one claim. The employer or a Workers' Compensation insurance carrier shall be assessed an additional penalty of \$500.00 for each additional instance of failing to comply but shall not be assessed a penalty in excess of \$5,000.00. In addition, the agent or subcontractor of an employer or insurer who refuses or neglects to comply shall be assessed a penalty of \$50.00 for each instance of refusing or neglecting to comply with the Act, but shall not be assessed a penalty in excess of \$5,000.00.

45.6630. Penalty; Failure to Submit Forms or Reports; Technical Violations

45.6635. An employer that fails to submit a First Report of Injury (Form 1) within 72 hours of receiving notice or knowledge of a claimed work-related injury causing an absence of one day or more, or necessitating medical attendance, shall be assessed a penalty of \$100.00 for each violation.

45.6640 An employer that fails to provide an employee with a copy of the First Report of Injury (Form 1) promptly, after filing it with the Department, shall be assessed a penalty of \$50.00 for each violation.

45.6650. Any person, including an employer or Workers' Compensation insurance carrier who fails to submit any form required by the Workers' Compensation statute or rules to be filed with the Department shall be assessed a penalty of \$100.00 for each violation.

45.6660. An employer or insurance carrier that fails to comply with 21 V.S.A. § 640a shall be assessed a penalty of \$500.00.

45.6670. An employer or Workers' Compensation insurance carrier that fails to file any interim or final report required by 21 V.S.A. §§ 701, 702, or 703 shall be assessed a penalty of \$100.00 for each violation.

45.6680. An employer or Workers' Compensation insurance carrier that fails to file any statistical report requested by the Commissioner or his or her designee pursuant to 21 V.S.A. § 704 shall be assessed a penalty of \$1,000.00.

45.6690. The penalty for any administrative or technical violation not otherwise noted in this section shall be \$500.00.

45.7000. Violations of 21 VSA §690(b)

45.7100. The Commissioner may issue a written request directing an employer to provide a Workers' Compensation Compliance Statement. Upon receipt of a request the employer shall provide all information required by 21 VSA §690(b) within thirty days of receiving the request. An employer may request additional time in which to respond, and if good cause is demonstrated, the Commissioner may grant additional time to respond.

45.7200. An employer that fails to comply with a request for a compliance statement within thirty days, or if an extension is granted, by the extension date may be subject to a penalty of up to \$5000.00 a week until compliance occurs.

45.72100. The penalty for a first offense shall be \$1000.00 for the first week of non-compliance and shall increase \$500.00 for each subsequent week up to a maximum of \$5000.00 per week. The penalty for subsequent failures to comply with a request for a compliance statement shall be \$5000.00 per week

45.72200. Penalty Reduction Factors

The Commissioner may reduce the penalty assessed under this section if the employer demonstrates:

That the failure to provide a compliance statement was inadvertent or the result of excusable neglect and was promptly corrected; or,

The assessed penalty is out of proportion with the small size of the employer.

Falsifying Compliance Statement

45.7300. An employer that falsifies information on a compliance statement shall be subject to an administrative penalty of \$5000.00 for each week that the falsification occurred.

45.8000. Severability

In the event any part or provision of these rules is held invalid, the invalidity shall not affect the remainder of the rules that can be given effect without the invalid provision, and to this end these rules are severable.

45.9000. Effective Date:

These Rules are effective February 13, 2017

APPENDIX TO RULE 45

2012 NAICS

The following table provides a general description of the two digit NAICS sector codes and the corresponding Rule 45 penalty section.

Rule 45 Section	Sector	Description
§ 45.5511	11	Agriculture, Forestry, Fishing and Hunting
§ 45.5513	21	Mining, Quarrying, and Oil and Gas Extraction
§ 45.5513	22	Utilities
§ 45.5513	23	Construction
§ 45.5512	31-33	Manufacturing
§ 45.5512	42	Wholesale Trade
§ 45.5512	44-45	Retail Trade
§ 45.5513	48-49	Transportation and Warehousing
§ 45.5511	51	Information
§ 45.5511	52	Finance and Insurance
§ 45.5511	53	Real Estate and Rental and Leasing
§ 45.5511	54	Professional, Scientific, and Technical Services
§ 45.5511	55	Management of Companies and Enterprises
§ 45.5513	56	Administrative and Support and Waste Management and Remediation Services
§ 45.5511	61	Educational Services
§ 45.5512	62	Health Care and Social Assistance

§ 45.5511	71	Arts, Entertainment, and Recreation
§ 45.5513	72	Accommodation and Food Services
§ 45.5513	81	Other Services (except Public Administration)
§ 45.5511	92	Public Administration

More detailed information on NAICS Codes and industry sectors is available at:
<https://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart=2012>