

**VOSH PROGRAM DIRECTIVE: 02-009B****ISSUED: 15 January 2014****SUBJECT**                    **Prison Inmate Form Letter**

**Purpose**                      This Directive updates procedures for handling workplace safety and health complaints filed by prisoners in Virginia correctional institutions and local government prisons and jails.

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

**Scope**                      This Directive applies VOSH-wide with a focus on Regional Directors.

**Reference**                    VOSH FOM, Appendix A-38, *Response to Inmate or Prison Complaint Letter*  
VOSH FOM, Appendix A-40, *Complaint Notification to Correctional Personnel Letter*

**Cancellation**                VOSH Program Directive 02-009A, (01 April 2003)

**Effective Date**              01 December 2013

**Expiration Date**            Not Applicable

**Action**                      Directors and Managers shall ensure that policies and procedures established in this Directive are uniformly enforced and the requirements included in this Directive are complied with.

*William P. Burge*  
Acting Commissioner

Attachment:    VOSH FOM Appendix A Form Letters:  
                          "Response to Inmate or Prisoner Complaint Letter" (A-38)  
                          "Complaint Notification to Correctional Personnel Letter" (A-40)

Distribution: Commissioner of Labor and Industry  
Assistant Commissioner - Programs  
VOSH Directors and Managers  
VOSH Legal Support & IMIS Staffs

Cooperative Programs Manager  
VOSH Compliance & Cooperative Programs Staffs  
OSHA Region III & OSHA Norfolk Area Offices

**A. Basis** (Underlining added for emphasis)

1. As defined by §40.1- 2, of the *Code of Virginia*:

*"Employee" means any person who, in consideration of wages, salaries or commissions, may be permitted, required or directed by any employer to engage in any employment directly or indirectly.*

2. The Virginia Minimum Wage Act at §40.1-28.9.B.7 excludes such incarcerated individuals to be considered as employees:

*"... B. "Employee" includes any individual employed by an employer, except the following...7. Any person confined in any penal or corrective institution of the State or any of its political subdivisions or admitted to a state hospital or training center operated by the Department of Behavioral Health and Developmental Services;"*

3. The VOSH Administrative Regulations Manual at 16VAC25-60-10 specifies an exception to this (based upon work release provisions in the *Code of Virginia* noted below) within the ARM's definition of "Public Employee" which states:

*"... [p]risoners confined in jails controlled by any political subdivision of the Commonwealth and prisoners in institutions controlled by the Department of Corrections are not public employees unless employed by a public employer in a work-release program pursuant to §§53.1-60 or 53.1-131 of the Code of Virginia."*

**B. Background**

On occasion, VOSH may receive complaints from prisoners in Virginia correctional institutions. This Directive updates the established policy for evaluating the validity of such complaints and how to address them should they be determined to be valid and under VOSH's jurisdiction.

**Except for the exception noted in Subsection A.3., above, VOSH has no jurisdiction regarding conditions to which prisoners are exposed in Virginia correctional institutions or local government prisons and jails.**

However, historical experience indicates that oftentimes when prisoners are exposed to hazardous working conditions, correctional facility personnel may also be exposed to the same or similar conditions. Therefore, VOSH may choose to provide the information contained in complaints to the appropriate correction and local government personnel for review and investigation in accordance with the following procedures in Section C. of this Directive.

### C. Procedures

Upon receipt of a complaint from a prisoner, the Regional Director shall:

1. Evaluate the complaint to determine if the hazardous conditions alleged involve a work-release program under §§53.1-60 or 53.1-131. Consultation with the VOSH Director or DLS may be advisable in some cases to make this determination.
2. If the complaint does involve a work-release program, follow the complaint processing procedures in the FOM.
3. If the complaint does not involve an applicable work-release program, send the "Response to Inmate or Prisoner Complaint Letter" (*Appendix A-38 of the VOSH FOM*) to the prisoner.
4. The Regional Director shall use his discretion as to whether it may be appropriate to send the related "Complaint Notification to Correctional Personnel Letter" (*Appendix A-40 of the VOSH FOM*), also known as the "warden's form letter", to the warden (or other titled person in charge) of the correctional institution or jail involved. If sent, correction officials are given 10 working days from time of receipt of the letter in which to do their own investigation of the complaint, take action if employee exposure to a hazard is uncovered, and then respond to VOSH.
5. If VOSH fails to receive a response mailed, or otherwise delivered, within the 10 working days from the prison official, the Regional Director has the option to initiate a VOSH inspection.

### D. Summary

- Prison inmates who work within the prison are not considered to be a public employees (unless they participate in a work-release program). This means that if they register a complaint with VOSH regarding a hazardous condition(s) at their workplace, this will not result in an inspection.
- If such prison inmates participate in a work-release program, they are covered by VOSH and the complaint processing procedures of the VOSH FOM are used.
- If a "warden's letter" is sent to the individual in charge of a correctional facility and VOSH fails to receive a response (or it is not mailed) within the above specified 10 day period, VOSH may then investigate.

## SAMPLE LETTER

## Response to Inmate or Prisoner Complaint

Date

Name

Address

City, State Zip

Dear :

This letter is being written in response to a complaint recently received from you regarding a hazardous condition in your area at the \_\_\_\_\_ Correctional Center. Your letter was sent to \_\_\_\_\_ in our \_\_\_\_\_ office, and he in turn forwarded them to this office which is the jurisdictional area for the \_\_\_\_\_ Correctional Center.

I wish to assure you that the Commissioner takes great interest in all complaints which allege unsafe working conditions. Indeed, complaint-initiated inspections are considered a high priority by the Department of Labor and Industry's Virginia Occupational Safety and Health (VOSH) Program. However, in accordance with the Code of Virginia (see paragraph below), VOSH is limited as to the actions it can take in circumstances such as yours.

***Section 40.1-2.1 of the Code of Virginia specifically provides:***

***The provisions of this title and any rules and regulations promulgated pursuant thereto shall not apply to the State or any of its agencies, institutions, or political subdivisions, or any public body, unless, and to the extent that, coverage is extended by specific regulation of the Commissioner or the Safety and Health Codes Board.***

While the Safety and Health Codes Board ("the Board") extended VOSH's enforcement authority over "public employees", VOSH regulations are not applicable to prisoners confined in jails and correctional institutions. Section 10 of the VOSH Administrative Regulations Manual defines a "public employee" as: "**any employee of a public employer....Prisoners confined in jails controlled by any political subdivision of the Commonwealth and prisoners in institutions controlled by the Department of Corrections are not public employees unless employed by a public employer in a work-release program, pursuant to § 53.1-60 or § 53.1-131 of the Code of Virginia.**"

As a program of the Department of Labor and Industry, VOSH is generally limited to initiating an on-site complaint inspection in response to a formally written complaint from a current employee or from the immediate family of a current employee. Since the circumstances you describe are not related to working conditions as a result of being employed by a public employer in one of the above work release programs, VOSH will not be conducting an inspection in response to your letter.

Please note also that VOSH, as a program of a state agency, is not authorized to represent private individuals in personal claims. VOSH is responsible for conducting safety inspections and accident investigations to determine if covered employees are exposed to unsafe or unhealthy working conditions, as defined by Title 40.1 of the Code of Virginia and the Virginia Occupational Safety and Health Standards. In the course of these inspections, if it is determined that an employer has violated the VOSH standards, we would issue citations to the employer which, depending upon the classification of the violations, may result in monetary fines.

Please contact me if you have any further questions concerning this matter.

Sincerely,

VOSH Regional Safety or Health Director  
Virginia Occupational Safety and Health

c: case file

**SAMPLE LETTER****Complaint Notification to Correction Personnel following Inmate Complaint**

DATE

ADDRESS

Dear *(Correction Official)*:

On (date), this Department received a complaint concerning alleged unsafe conditions at (name of prison or institution). The specific nature of the complaint involves: *(describe alleged hazard(s) and location(s) below)*:

- 1.
- 2.
- 3.

The complaint was originally filed by a prisoner, and our jurisdiction over prisoners only extends to those who are “employed by a public employer in a work release program pursuant to §53.1-60 or §53.1-131 of the Code of Virginia” (see reference at 16VAC25-60-10). Our regulations also apply to workplace hazards alleged in the complaint that result in exposure of your guards or other employees to possible injury or illness.

We have not determined whether the hazard, as alleged, exists at your workplace; and we are not conducting an inspection at this time. However, we recommend you investigate the alleged condition(s) to assure that your employees are not exposed to the alleged hazards and make any necessary corrections or modifications within **five (5)** calendar days from receipt of this letter.

Please advise me in writing of your findings and of the action(s) you have taken. Your response should be detailed, stating specifically what action(s) you have taken to abate described conditions. This letter is not a citation. However, if we do not receive a response from you within **five (5)** days that appropriate action has been taken, an inspection may be conducted. Action taken by you in this matter will not remove your workplace from the possibility of an unannounced inspection by duly authorized representatives of the Virginia Department of Labor and Industry.

You are requested to post a copy of this letter and your response to it where it will be readily accessible for review by all of your employees, for three (3) working days. A copy of your response may be forwarded to the complainant.

If you have any questions concerning this matter, please contact this office. Your personal support and interest in the safety and health of your employees is appreciated.

Sincerely,

VOSH Regional Safety or Health Director  
Virginia Occupational Safety and Health

c: case file