



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Department of Labor and Industry/Safety and Health Codes Board
Virginia Administrative Code (VAC) citation	16VAC25-60, <i>et seq.</i>
Regulation title	Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program
Action title	Correcting Amendment to update the Department of Labor and Industry's Mailing Address for Petitions for Variance Hearings or written comments
Final agency action date	May 24, 2012
Document preparation date	June 6, 2012

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

In Paragraph B.2. of §190, General Provisions, of the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, reference is made for petitions for a variance hearing or written comments to be sent to the Commissioner of Labor and Industry at the "Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219-4101".

On April 2, 2012, the Virginia Department of Labor and Industry moved its headquarters from 13 South Thirteenth Street, Richmond, Virginia to Main Street Centre, 600 East Main Street, Suite 207, Richmond, Virginia 23219-2430. The reference to the old address is being replaced with the new address.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

At its meeting on May 24, 2012, the Safety and Health Codes Board authorized the Department of Labor and Industry to amend Paragraph B.2. of §190, General Provisions, of the Administrative Regulation for the VOSH Program, 16, VAC25-60, *et seq.*, to delete the old address of the Virginia Department of Labor and Industry and to insert the new address. This correcting amendment is exempt from the state administrative procedures for adoption of regulations contained in §2.2-4006.A.3. of the Administrative Process Act as it was a change in form, style, and was a technical correction. The effective date is September 15, 2012.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

This regulatory action has no impact on the institution of the family and family stability.

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

As Adopted by the
Safety and Health Codes Board

Date: May 24, 2012



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: September 15, 2012

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

Part IV
Variances

16VAC25-60-190. General provisions.

A. Any employer or group of employers desiring a permanent or temporary variance from a standard or regulation pertaining to occupational safety and health may file with the commissioner a written application which shall be subject to the following policies:

1. A request for a variance shall not preclude or stay a citation or bill of complaint for violation of a safety or health standard;
2. No variances on record keeping requirements required by the U.S. Department of Labor shall be granted by the commissioner;
3. An employer, or group of employers, who has applied for a variance from the U.S. Department of Labor, and whose application has been denied on its merits, shall not be granted a variance by the commissioner unless there is a showing of changed circumstances significantly affecting the basis upon which the variance was originally denied;
4. An employer to whom the U.S. Secretary of Labor has granted a variance under OSHA provisions shall document this variance to the commissioner. In such cases, unless compelling local circumstances dictate otherwise, the variance shall be honored by the commissioner without the necessity of following the formal requirements which would otherwise be applicable. In addition, the commissioner will not withdraw a citation for violation of a standard for which the Secretary of Labor has granted a variance unless the commissioner previously received notice of and decided to honor the variance; and
5. Incomplete applications will be returned within 30 days to the applicant with a statement indicating the reason or reasons that the application was found to be incomplete.

B. In addition to the information specified in [16VAC25-60-200](#) A and [16VAC25-60-210](#) A, every variance application shall contain the following:

1. A statement that the applicant has informed affected employees of the application by delivering a copy of the application to their authorized representative, if there is one, as well as having posted, in accordance with [16VAC25-60-40](#), a summary of the application which indicates where a full copy of the application may be examined;

2. A statement indicating that the applicant has posted, with the summary of the application described above, the following notice: "Affected employees or their representatives have the right to petition the Commissioner of Labor and Industry for an opportunity to present their views, data, or arguments on the requested variance, or they may submit their comments to the commissioner in writing. Petitions for a hearing or written comments should be addressed to the Commissioner of Labor and Industry, ~~Powers-Taylor Building, 13 South Thirteenth Street~~ Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219-~~4101~~2430. Such petitions will be accepted if they are received within 30 days from the posting of this notice or within 30 days from the date of publication of the commissioner's notice that public comments concerning this matter will be accepted, whichever is later."

3. A statement indicating whether an application for a variance from the same standard or rule has been made to any federal agency or to an agency of another state. If such an application has been made, the name and address of each agency contacted shall be included.

C. Upon receipt of a complete application for a variance, the commissioner shall publish a notice of the request in a newspaper of statewide circulation within 30 days after receipt, advising that public comments will be accepted for 30 days and that an informal hearing may be requested in conformance with subsection D of this section. Further, the commissioner may initiate an inspection of the establishment in regard to the variance request.

D. If within 30 days of the publication of notice the commissioner receives a request to be heard on the variance from the employer, affected employees, the employee representative, or other employers affected by the same standard or regulation, the commissioner will schedule a hearing with the party or parties wishing to be heard and the employer requesting the variance. The commissioner may also schedule a hearing upon his own motion. The hearing will be held within a reasonable time and will be conducted informally in accordance with §§ [2.2-4019](#) and [2.2-4021](#) of the Code of Virginia unless the commissioner finds that there is a substantial reason to proceed under the formal provisions of § [2.2-4020](#) of the Code of Virginia.

E. If the commissioner has not been petitioned for a hearing on the variance application, a decision on the application may be made promptly after the close of the period for public comments. This decision will be based upon the information contained in the application, the report of any variance inspection made concerning the application, any other pertinent staff reports, federal OSHA comments or public

records, and any written data and views submitted by employees, employee representatives, other employers, or the public.

F. The commissioner will grant a variance request only if it is found that the employer has met by a preponderance of the evidence, the requirements of either [16VAC25-60-200](#) B 4 or [16VAC25-60-210](#) B 4.

1. The commissioner shall advise the employer in writing of the decision and shall send a copy to the employee representative if applicable. If the variance is granted, a notice of the decision will be published in a newspaper of statewide circulation.

2. The employer shall post a copy of the commissioner's decision in accordance with [16VAC25-60-40](#).

G. Any party may within 15 days of the commissioner's decision file a notice of appeal to the board. Such appeal shall be in writing, addressed to the board, and include a statement of how other affected parties have been notified of the appeal. Upon notice of a proper appeal, the commissioner shall advise the board of the appeal and arrange a date for the board to consider the appeal. The commissioner shall advise the employer and employee representative of the time and place that the board will consider the appeal. Any party that submitted written or oral views or participated in the hearing concerning the original application for the variance shall be invited to attend the appeal hearing. If there is no employee representative, a copy of the commissioner's letter to the employer shall be posted by the employer in accordance with the requirements of [16VAC25-60-40](#).

H. The board shall sustain, reverse, or modify the commissioner's decision based upon consideration of the evidence in the record upon which the commissioner's decision was made and the views and arguments presented as provided above. The burden shall be on the party filing the appeal to designate and demonstrate any error by the commissioner which would justify reversal or modification of the decision. The issues to be considered by the board shall be those issues that could be considered by a court reviewing agency action in accordance with § [2.2-4027](#) of the Code of Virginia. All parties involved shall be advised of the board's decision within 10 working days after the hearing of the appeal.