

# Experimental Variance Application Checklist

Use of this checklist can assist applicants to determine if an application for an experimental variance is complete and appropriate.

Does the written application contain the following information?

## Applicant Information

- Yes Name and address of the applicant company.
- Yes Name of, and contact method for, the applicant's authorized representative and primary point of contact (if different from authorized representative).
- Yes  NA Address of place or places of employment involved (for multiple sites).

## Support Information

- Yes List of the OSHA standard(s) from which the applicant is requesting the experimental variance.
- Yes Detailed explanation of why the proposed experimental variance is necessary, and a description of the risks and hazards associated with the experiment and how the applicant will provide an equivalent level of protection to workers during the experiment.
- Yes Detailed explanation of how the experimental variance will demonstrate or validate new and improved techniques to safeguard the health and safety of workers.
- Yes Detailed description of the proposed experiment, which must include:
  - Yes Names and qualifications of the supervisor(s) of the experiment, and the supervisor's(s') staff involved in the experiment; and
  - Yes Proposed steps and duration of the experiment (in days), employee work time (in hours), and hours of machine operation (if applicable).
- Yes Detailed statement describing similar experimentation or related research conducted by the applicant or another party (if known). The statement should include, if available, data, summaries, reports, and evaluations (or a reference thereto) of such experimentation or research.
- Yes Statement that demonstrates that the applicant has sufficient technological, economic, and labor resources to perform the experiment properly, with proper controls.
- Yes  NA Signed letter or an official document indicating approval of the experiment by the Secretary of the U.S. Department of Health and Human Services (if available).
- Yes Copy of a written statement(s) signed by each employee who agrees to participate in the proposed experiment that he/she does so knowingly, willingly, and voluntarily.  
  
Certification that the applicant informed the employees volunteering to participate in the experiment of the plan of the proposed experiment, its attendant risks, their right to terminate participation in the experiment, and their right to petition the Assistant Secretary for a hearing, by using one or more of the means identified below:
  - Yes Giving a copy of the experimental variance application to the authorized employee representative(s), and providing instructions concerning the employees' right to petition the Assistant Secretary for a hearing;
  - Yes Posting a statement where the applicant normally posts notices to employees giving a summary of the variance application and specifying where its employees may examine a copy of it, and providing instructions

concerning the employees' right to petition the Assistant Secretary for a hearing (or, instead of a summary, posting the application itself); and

- Yes If the applicant used an alternate means (other than the means specified in statements (a) and/or (b) above) to inform its employees of the application and their right to petition the Assistant Secretary for a hearing, then providing a detailed description of the alternate means used.

If the variance application involves one (or more) states covered by Federal OSHA, and one (or more) State Plan state(s),<sup>1</sup> the application provides the following information for each standard from which the applicant is requesting the experimental variance:

- Yes Side-by-side comparison of the OSHA standard(s) and the state standard(s) that is/are identical to the OSHA standard;<sup>2</sup>
- Yes Statement certifying that the applicant has not filed an application for an experimental variance on the same material facts for the same place(s) of employment with the State Plan state/states in question; and
- Yes Statement identifying any pending citations issued to the applicant by a State Plan state for violating the state standard(s) that is/are the subject of this variance application.

Yes Statement describing in detail any:

- Yes Past or pending citations, including identification and the disposition thereof, issued to the applicant by Federal OSHA or a State Plan state; and
- Yes Judicial and administrative proceedings to which the applicant is or was a party involving breaches of the Occupational Safety and Health Act of 1970, or violations of standards or regulations issued by Federal OSHA or a State Plan state.

Yes Signed certification that the information contained in the application is accurate and true to the best of the applicant's knowledge.

### Appropriateness of the Variance Application

A "Yes" response to any of the items below indicates that the application may not be appropriate:

- Yes  No The variance the applicant is requesting is from a "performance" standard, which is one that does not specify methods or actions that the employer must implement to meet the requirements of the standard.
- Yes  No The variance the applicant is requesting is from a "definition" in a standard. Definitions are not enforceable portions of a standard since they do not specify means, methods, or actions the employer must implement for meeting the requirements of the standard.
- Yes  No The application requests an exemption or waiver from the requirements of the standard.
- Yes  No The variance is a request for review and approval of a design or product developed for manufacture and commercial use.

<sup>1</sup>The following are states and territories with approved state plans: AK, AZ, CA, CT,\* HI, IA, IL,\* IN, KY, MD, MI, MN, NC, NJ,\* NM, NV, NY,\* OR, PR, SC, TN, UT, VA, VT, VI,\* WA, and WY. \*Plans cover public-sector employees only; the remaining states cover both public- and private-sector employees.

<sup>2</sup>If the state standard(s) is/are not identical to the OSHA standard(s), the applicant must apply to the state for an experimental variance.

Yes  No There exists an OSHA letter of interpretation that governs the acceptability of the requested alternative.

Yes  No There is an updated edition of the nationally recognized consensus standard upon which OSHA based the standard that is the subject of the variance request, and the updated consensus standard permits the requested alternative (and that protects employees at least as effectively as the OSHA standard).

Yes  No The application involves workplace locations that are solely in State Plan states.