

Variance Fact Sheet

What is a variance?

Generally, a variance is an alternative procedure of compliance with some part of a safety and health standard granted by the Department of Energy (DOE) to one of its contractors. For example, sometimes a contractor may not be able to comply fully and on time with a new safety or health standard because of a shortage of personnel, materials, or equipment. Or a contractor may prefer to use methods, equipment, or facilities that they believe protects workers as well as or better than the safety and health standards required by 10 CFR 851.23. See Title 10 of the Code of Federal Regulations (CFR), Part 851 for more information. In situations like these, a contractor may apply to DOE for a variance. There are three types of variances: temporary, permanent, and national defense.

What is a temporary variance?

A temporary variance allows contractors a short-term (limited time) relief from a standard when they cannot comply with the newly published requirements by the prescribed effective date because the necessary construction or alteration of the facility cannot be completed in time or when technical personnel, materials, or equipment are temporarily unavailable. To be eligible for a temporary variance, a contractor must implement an effective compliance program as quickly as possible. In the meantime, the contractor must demonstrate to DOE that all available steps are being taken to safeguard workers. The inability to afford compliance costs is not a valid reason for requesting a temporary variance. For details on the information required in the application for a temporary variance, see 10 CFR Part 851.31(d)(1).

What is a permanent variance?

A permanent variance grants an alternative means of compliance with the requirements of a standard to contractors who can prove that their methods, conditions, practices, operations, or processes provide workplaces that are as safe and healthful as those that follow the workplace safety and health standards required by 10 CFR 851.23. When applying for a permanent variance, contractors must let workers know they have filed the application and that the workers have the right to request a conference. To decide whether to grant a permanent variance, DOE reviews the contractor's evidence and, if appropriate, visits the workplace to confirm the facts provided in the application. If the request has merit, DOE may grant a permanent variance. Final variance orders detail the contractor's specific responsibilities and requirements and explain exactly how the contractor's method varies from the safety and health requirement. For details on the information required in the application for a permanent variance, see 10 CFR Part 851.31(d)(2).

What is a national defense variance?

DOE will use national defense variances to grant reasonable variations, tolerances, and relief to and from the requirements of 10 CFR 851 to avoid serious impairment of the national defense. For details on the information required in the application for a national defense variance, see 10 CFR Part 851.31(d)(3).

Where do I apply for a variance?

DOE contractors may create and submit a variance application through the Electronic Variance System located at: <https://ehss.energy.gov/HealthSafety/wshp/851variance/default.aspx>, or they may provide a hard copy to the Office of Environment, Health, Safety and Security through their appropriate Cognizant Secretarial Office.