

- 5 A statement of the steps the applicant has taken and will take, with dates, to protect employees against the hazard covered by the standard.
- 6 A statement of when the applicant expects to be able to comply with the standard and what steps he has taken, with dates, to come into compliance with the standard
- 7 A certification that he has informed his employees of the application. A description of how employees have been informed is to be included in the certification. Information to employees must also inform them of their right to petition for a hearing

An employer may also apply for a permanent variance from a standard. A variance order can be granted if OSHA determines that an employer has demonstrated by a preponderance of evidence that he will provide a place of employment as safe and healthful as that which would prevail if he complied with the standard.

Employer applications for an order for a permanent variance must contain at least the following

- 1 Name and address of the applicant.
- 2 Address(es) of the place(s) of employment involved
- 3 A description of the countermeasures used or proposed to be used by the applicant
- 4 A statement showing how such countermeasures would provide a place of employment which is as safe and healthful as that required by the standard for which the variance is sought
- 5 Certification that he has informed his employees of the application
- 6 Any request for a hearing
7. A description of how employees were informed of the application and of their right to petition for a hearing

The model shown in Fig 2-2 is intended to serve as a guide for a permanent variance application.

An employer may request an interim order permitting either kind of variance until his formal application can be acted upon. Again, the request for an interim order must contain

statements of fact or arguments why such interim order should be granted. If a request for an interim order is denied, the applicant will be notified promptly and informed of the reasons for the decision. If the order is granted, all concerned parties will be informed and the terms of the order will be published in the *Federal Register*. In such cases, the employer must inform the affected employees regarding the interim order in the same manner used to inform them of the variance application.

Upon filing an application for a variance, OSHA will publish a notice of such filing in the *Federal Register* and invite written data, views, and arguments regarding the application. Those affected by the petition may request a hearing. After review of all the facts, including those presented during the hearing, OSHA publishes its decision regarding the application in the *Federal Register*.

The enforcement process

The Department of Labor compliance officers (CO) may enter, at any reasonable time and without delay, any establishment covered by the OSHAct to inspect the premises and all its facilities.* CO's also have the right to question privately any employer, owner, operator, agent or employee.

The OSHAct authorizes an employer representative as well as an authorized employee representative to accompany the CO during the official inspection of the premises and all its facilities. Usually the authorized employee representative will be the union steward or the chairman of the employee safety committee. Occasionally there may be no authorized employee representative, especially in those establishments which are nonunion shops. In the absence of an employee representative, the CO will confer with employees picked at random.

Representatives of the Department of Health, Education and Welfare, although not authorized to enforce the OSHAct, are authorized to make inspections and to question

* The regulations governing enforcement procedures, including inspections, citations, and proposed penalties, are codified in Title 29, C.F.R., Chapter XVII, Part 1903