

SUBPART A—GENERAL

1905.1—PURPOSE AND SCOPE

(a) This part contains rules of practice for administrative proceedings (1) to grant variances and other relief under sections 6(b) (6) (A) and 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970, and (2) to provide limitations, variations, tolerances, and exemptions under section 16 of the Act.

prompt and just conclusion of proceedings subject thereto.

(c) The rules of practice in this part do not apply to the granting of variances under section 6(b) (6) (C). Whenever appropriate, the procedure for granting such a variance shall be published in the FEDERAL REGISTER.

(b) These rules shall be construed to secure a

1905.2—DEFINITIONS

As used in this part, unless the context clearly requires otherwise—

(a) "Act" means the Williams-Steiger Occupational Safety and Health Act of 1970.

(b) "Secretary" means the Secretary of Labor.

(c) "Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health.

(d) "Person" means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or an agency, authority, or instrumen-

ality of the United States or of a State.

(e) "Party" means a person admitted to participate in a hearing conducted in accordance with Subpart C of this part. An applicant for relief and any affected employee shall be entitled to be named parties. The Department of Labor, represented by the Office of the Solicitor, shall be deemed to be a party without the necessity of being named.

(f) "Affected employee" means an employee who would be affected by the grant or denial of a variance, limitation, variation, tolerance, or exemption, or any one of his authorized representatives, such as his collective bargaining agent.

1905.3—PETITIONS FOR AMENDMENTS TO THIS PART

Any person may at any time petition the Assistant Secretary in writing to revise, amend, or revoke any provisions of this part. The petition should set forth either the terms or the

substance of the rule desired, with a concise statement of the reasons therefor and the effects thereof.

1905.4—AMENDMENTS TO THIS PART

The Assistant Secretary may at any time revise, amend, or revoke any provisions of this

part, on his own motion or upon the written petition of any person.

1905.5—EFFECT OF VARIANCES

All variances granted pursuant to this part shall have only future effect. In his discretion, the Assistant Secretary may decline to entertain an application for a variance on a subject or issue concerning which a citation has been issued to the employer involved and a proceeding on the cita-

tion or a related issue concerning a proposed penalty or period of abatement is pending before the Occupational Safety and Health Review Commission or appropriate State review authority until the completion of such proceeding.

[40 F.R. 25449, June 16, 1975.]

1905.6—PUBLIC NOTICE OF A GRANTED VARIANCE, LIMITATION, VARIATION, TOLERANCE, OR EXEMPTION

Every final action granting a variance, limitation, variation, tolerance, or exemption under this part shall be published in the FEDERAL

REGISTER. Every such final action shall specify the alternative to the standard involved which the particular variance permits.

1905.7—FORM OF DOCUMENTS; SUBSCRIPTION; COPIES

(a) No particular form is prescribed for applications and other papers which may be filed in proceedings under this part. However, any applications and other papers shall be clearly legible. An original and six copies of any application or other papers shall be filed. The original shall be typewritten. Clear carbon

copies, or printed or processed copies are acceptable copies.

(b) Each application or other paper which is filed in proceedings under this part shall be subscribed by the person filing the same or by his attorney or other authorized representative.

**SUBPART B—APPLICATIONS FOR VARIANCES, LIMITATIONS, VARIATIONS,
TOLERANCES, EXEMPTIONS AND OTHER RELIEF****1905.10—VARIANCES AND OTHER RELIEF UNDER
SECTION 6(b)(6)(A)****(a) Application for variance.**

Any employer, or class of employers, desiring a variance from a standard, or portion thereof, authorized by section 6(b)(6)(A) of the Act may file a written application containing the information specified in paragraph (b) of this section with the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

(b) Contents.

An application filed pursuant to paragraph (a) of this section shall include:

- (1) The name and address of the applicant;
- (2) The address of the place or places of employment involved;
- (3) A specification of the standard or portion thereof from which the applicant seeks a variance;
- (4) A representation by the applicant, supported by representations from qualified persons having first-hand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof by its effective date and a detailed statement of the reasons therefor;
- (5) A statement of the steps the applicant has taken and will take, with specific dates where appropriate, 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 of what steps he has taken and will take, with specific dates where appropriate, to

come into compliance with the standard;

(7) A statement of the facts the applicant would show to establish that

(i) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(ii) He is taking all available steps to safeguard his employees against the hazards covered by the standard; and

(iii) He has an effective program for coming into compliance with the standard as quickly as practicable;

(8) Any request for a hearing, as provided in this part;

(9) A statement that the applicant has informed his affected employees of the application by giving a copy thereof to their authorized representative, posting a statement, giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted, and by other appropriate means; and

(10) A description of how affected employees have been informed of the application and of their right to petition the Assistant Secretary for a hearing.

(11) Where the requested variance would be applicable to employment or places of employment in more than one State, including at least

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one State with a State plan approved under section 18 of the Act, and involves a standard, or portion thereof, identical to the State standard effective under such plan:

(i) A side-by-side comparison of the Federal standard, or portion thereof, involved with the State standard, or portion thereof, identical in substance and requirements;

(ii) A certification that the employer or employers have not filed for such variance on the same material facts for the same employment or place of employment with any State authority having jurisdiction under an approval plan over any employment or place of employment covered in the application; and

(iii) A statement as to whether, with an identification of, any citation for violations of the State standard, or portion thereof, involved have been issued to the employer or employers by any of the State authorities enforcing the standard under a plan, and are pending.

[40 F.R. 25449, June 16, 1975.]

(c) *Interim order.*

(1) *Application.* An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The Assistant Secretary may rule ex parte upon the application.

(2) *Notice of denial of application.* If an application filed pursuant to subparagraph (1) of this paragraph is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefor.

(3) *Notice of the grant of an interim order.* If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties and the terms of the order shall be published in the *FEDERAL REGISTER*. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

1905.11—VARIANCES AND OTHER RELIEF UNDER SECTION 6(d)

(a) *Application for variance.*

Any employer, or class of employers, desiring a variance authorized by section 6(d) of the Act may file a written application containing the information specified in paragraph (b) of this section, with the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

(b) *Contents.*

An application filed pursuant to paragraph (a) of this section shall include:

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;

(4) A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and

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healthful as those required by the standard from which a variance is sought;

(5) A certification that the applicant has informed his employees of the application by

(i) Giving a copy thereof to their authorized representative;

(ii) Posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and

(iii) By other appropriate means;

(6) Any request for a hearing, as provided in this part; and

(7) A description of how employees have been informed of the application and of their right to petition the Assistant Secretary for a hearing.

(8) Where the requested variance would be applicable to employment or places of employment in more than one State, including at least one State with a State plan approved under section 18 of the Act, and involves a standard, or portion thereof, identical to a State standard effective under such plan:

(i) A side-by-side comparison of the Federal standard, or portion thereof, involved with the State standard, or portion thereof, identical in substance and requirements:

(ii) A certification that the employer or employers have not filed for such variance on the same material facts for the same employment or place of employment with any State authority having jurisdiction under an

approved plan over any employment or place of employment covered in the application; and

(iii) A statement as to whether, with an identification of, any citations for violations of the State standard, or portion thereof, involved have been issued to the employer or employers by any of the State authorities enforcing the standard under a plan, and are pending.

[40 F.R. 25449, June 16, 1975.]

(c) Interim order.

(1) **Application.** An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The Assistant Secretary may rule ex parte upon the application.

(2) **Notice of denial of application.** If an application filed pursuant to subparagraph (1) of this paragraph is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefor.

(3) **Notice of the grant of an interim order.** If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published in the FEDERAL REGISTER. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

1905.12—LIMITATIONS, VARIATIONS, TOLERANCES, OR EXEMPTIONS UNDER SECTION 16

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(a) Application.

Any person, or class of persons, desiring a limitation, variation, tolerance, or exemption authorized by section 16 of the Act may file an application containing the information specified in paragraph (b) of this section, with the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

(b) Contents.

An application filed pursuant to paragraph (a) of this section shall include:

- (1) The name and address of the applicant;
- (2) The address of the place or places of employment involved;
- (3) A specification of the provision of the Act to or from which the applicant seeks a limitation, variation, tolerance, or exemption.
- (4) A representation showing that the limitation, variation, tolerance, or exemption sought is necessary and proper to avoid serious impairment of the national defense;
- (5) Any request for a hearing, as provided in this part; and
- (6) A description of how employees have

been informed of the application and of their right to petition the Assistant Secretary for a hearing.

(c) Interim order.

(1) **Application.** An application may also be made for an interim order to be effective until a decision is rendered on the application for the limitation, variation, tolerance, or exemption filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The Assistant Secretary may rule ex parte upon the application.

(2) **Notice of denial of application.** If an application filed pursuant to subparagraph (1) of this paragraph is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied, by a brief statement of the grounds therefor.

(3) **Notice of the grant of an interim order.** If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published in the FEDERAL REGISTER. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

1905.13—MODIFICATION, REVOCATION, AND RENEWAL OF RULES OR ORDERS

(a) Modification or revocation.

(1) An affected employer or an affected employee may apply in writing to the Assistant Secretary of Labor for Occupational Safety and Health for a modification or revocation of a rule or order issued under section 6(b) (6) (A), 6(d), or 16 of the Act. The application shall contain:

- (i) The name and address of the applicant;

(ii) A description of the relief which is sought;

(iii) A statement setting forth with particularity the grounds for relief;

(iv) If the applicant is an employer, a certification that the applicant has informed his affected employees of the application by:

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(a) Giving a copy thereof to their authorized representative;

(b) Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the the application itself); and

(c) Other appropriate means.

(v) If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and

(vi) Any request for a hearing, as provided in this part.

(2) The Assistant Secretary may on his own motion proceed to modify or revoke a rule or order issued under section 6(b)(6)(A), 6(d), or 16 of the Act. In such event, the Assistant Secretary shall cause to be published in the FEDERAL REGISTER a notice of his intention, affording interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and shall take such other action as may be appropriate to give actual notice to affected employees. Any request for a hearing shall include a short and plain statement of:

(i) How the proposed modification or revocation would affect the requesting party; and

(ii) What the requesting party would seek to show on the subjects or issues involved.

(b) Renewal.

Any final rule or order issued under section 6(b)(6)(A) or 16 of the Act may be renewed or extended as permitted by the applicable section and in the manner prescribed for its issuance.

(c) Multi-state variances.

Where a Federal variance has been granted with multi-state applicability, including applicability in a State operating under a State plan approved under section 18 of the Act, from a standard, or portion thereof, identical to a State standard, or portion thereof, without filing the information required in §§ 1905.10(b)(11) or 1905.11(b)(8) of this chapter, such variance shall likewise be deemed an authoritative interpretation of the employer(s)' compliance obligations with regard to the State standard, or portion thereof, upon filing the information required under §§ 1905.10(b)(11) or 1905.11(b)(8) of this chapter, provided no objections of substance are found to be interposed by the State authority under § 1905.14 of this chapter.

[40 F.R. 25449, June 16, 1975.]

1905.14—ACTION ON APPLICATIONS

(a) Defective applications.

(1) If an application filed pursuant to § 1905.10(a), § 1905.11(a), § 1905.12(a), or § 1905.13 does not conform to the applicable section, the Assistant Secretary may deny the application.

(2) Prompt notice of the denial of an applica-

tion shall be given to the applicant.

(3) A notice of denial shall include, or be accompanied by, a brief statement of the grounds for the denial.

(4) A denial of an application pursuant to this paragraph shall be without prejudice to the filing of another application.

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(b) Adequate applications.

(1) If an application has not been denied pursuant to paragraph (a) of this section, the Assistant Secretary shall cause to be published in the FEDERAL REGISTER a notice of the filing of the application.

(2) A notice of the filing of an application shall include: (i) the terms, or an accurate summary, of the application; (ii) a reference to the section of the Act under which the application has been filed; (iii) an invitation to interested persons to submit within a stated period of time written data, views, or arguments regarding the application; and (iv) information to affected employers, employees, and appropriate State authority having jurisdiction over employment or places of employment covered in the application of any right to request a hearing on the application.

(3) Where the requested variance, or any proposed modification or extension thereof, involves a Federal standard, or any portion thereof, identical to a State standard, or any portion thereof, as provided in §§ 1905.10(b) (11) and 1905.11 (b) (8) of this chapter, the Assistant Secretary will promptly furnish a copy of the application to the appropriate State authority and provide an opportunity for comment, including the opportunity to participate as a party, on the application by such authority, which shall be taken into consideration in determining the merits of the proposed action.

(4) A copy of each final decision of the Assistant Secretary with respect to an application filed under §§ 1905.10, 1905.11, or 1905.13 shall be furnished, within 10 days of issuance, the State authorities having jurisdiction over the employment or place of employment covered in the application.

[40 F.R. 25449, June 16, 1975.]

1905.15—REQUESTS FOR HEARINGS ON APPLICATIONS

(a) Request for hearing.

Within the time allowed by a notice of the filing of an application, any affected employer, employee, or appropriate State agency having jurisdiction over employment or places of employment covered in an application may file with the Assistant Secretary, in quadruplicate, a request for a hearing on the application.

[40 F.R. 25449, June 16, 1975.]

paragraph (a) of this section shall include:

(1) A concise statement of facts showing how the employer or employee would be affected by the relief applied for;

(2) A specification of any statement or representation in the application which is denied, and a concise summary of the evidence that would be adduced in support of each denial; and

(3) Any views or arguments on any issue of fact or law presented.

(b) Contents of a request for a hearing.

A request for a hearing filed pursuant to

1905.16—CONSOLIDATION OF PROCEEDINGS

The Assistant Secretary on his own motion or that of any party may consolidate or contemporaneously consider two or more proceed-

ings which involve the same or closely related issues.