

§ 1905.2

29 CFR Ch. XVII (7-1-05 Edition)

§ 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, and organized group of individuals, or an agency, authority, or instrumentality 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 citation 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.

[36 FR 12290, June 30, 1971, as amended at 40 FR 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, DC 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 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 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 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.

(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 paragraph (c)(1) of this section 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

§ 1905.11

29 CFR Ch. XVII (7-1-05 Edition)

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.

[36 FR 12290, June 30, 1971, as amended at 40 FR 25449, June 16, 1975]

§ 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, DC 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 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.

(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 paragraph (c)(1) of this section 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