

APPENDIX B

29 CFR PART 1905

RULES OF PRACTICE FOR VARIANCES, LIMITATIONS, VARIATIONS, TOLERANCES, AND EXEMPTIONS UNDER THE WILLIAMS-STEIGER OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Excerpts from the Variance Application Regulations

29 CFR 1905.1 Purpose and scope

1905.1(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.

1905.1(b)

These rules shall be construed to secure a prompt and just conclusion of proceedings subject thereto.

1905.1(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.

29 CFR 1905.7 Form of documents; subscription; copies

1905.7(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.

1905.7(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.

29 CFR 1905.10 Variances and other relief under section 6(b)(6)(A) [of the OSH Act, for temporary variances]

1905.10(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.

1905.10(b)

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

1905.10(b)(1)

The name and address of the applicant;

1905.10(b)(2)

The address of the place or places of employment involved;

1905.10(b)(3)

A specification of the standard or portion thereof from which the applicant seeks a variance;

1905.10(b)(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 thereof;

1905.10(b)(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;

1905.10(b)(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;

1905.10(b)(7)

A statement of the facts the applicant would show to establish that

1905.10(b)(7)(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;

1905.10(b)(7)(ii)

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

1905.10(b)(7)(iii)

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

1905.10(b)(8)

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

1905.10(b)(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

1905.10(b)(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.

1905.10(b)(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:

1905.10(b)(11)(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;

1905.10(b)(11)(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

1905.10(b)(11)(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.

1905.10(c)

Interim order—

1905.10(c)(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.

29 CFR 1905.11 Variances and other relief under section 6(d) [of the OSH Act, for permanent variances]

1905.11(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.

1905.11(b)

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

1905.11(b)(1)

The name and address of the applicant;

1905.11(b)(2)

The address of the place or places of employment involved;

1905.11(b)(3)

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

1905.11(b)(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:

1905.11(b)(5)

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

1905.11(b)(5)(i)

giving a copy thereof to their authorized representative;

1905.11(b)(5)(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

1905.11(b)(5)(iii)

by other appropriate means;

1905.11(b)(6)

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

1905.11(b)(7)

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

1905.11(b)(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:

1905.11(b)(8)(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;

1905.11(b)(8)(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

1905.11(b)(8)(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.

1905.11(c)

Interim order—

1905.11(c)(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.

29 CFR 1905.12 Limitations, variations, tolerances, or exemptions under section 16 [of the OSH Act, for national-defense variances]

1905.12(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.

1905.12(b)

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

1905.12(b)(1)

The name and address of the applicant;

1905.12(b)(2)

The address of the place or places of employment involved;

1905.12(b)(3)

A specification of the provision of the Act to or from which the applicant seeks a limitation, variation, tolerance, or exemption;

1905.12(b)(4)

A representation showing that the limitation, variation, tolerance, or exemption sought is necessary and proper to avoid serious impairment of the national defense;

1905.12(b)(5)

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

1905.12(b)(6)

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

1905.12(c)

Interim order—

1905.12(c)(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.