

**SUPPORTING STATEMENT FOR THE
INFORMATION-COLLECTION REQUIREMENTS IN THE
VARIANCE REGULATIONS (29 CFR 1905.10, 1905.11 and 1905.12)¹
(OMB Control No. 1218-0265 (January 2015))**

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The principal objective of the Occupational Safety and Health Act of 1970 (“the OSH Act”) is “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources” (29 U.S.C. 651). In fulfilling this objective, the OSH Act authorizes the implementation of “such rules and regulations as [the Assistant Secretary of Labor for Occupational Safety and Health] may deem necessary to carry out [his/her] responsibilities under the Act” (29 U.S.C. 657).

Under several provisions of the OSH Act, employers may apply for four different types of variances from the requirements of OSHA standards. Employers submit variance applications voluntarily to OSHA, and the applications specify alternative means of complying with the requirements of OSHA standards. The four types of variances are: temporary variances (Section 6(b)(6)(A) of the OSH Act; 29 U.S.C. 655); experimental variances (Section 6(b)(6)(C) of the OSH Act; 29 U.S.C. 655); permanent variances (Section 6(d) of the OSH Act; 29 U.S.C. 655); and national-defense variances (Section 16 of the OSH Act; 29 U.S.C. 665).² OSHA codified these statutory provisions under 29 CFR part 1905 (“Rules of Practice for Variances, Limitations, Variations, Tolerances, and Exemptions under the William-Steiger Occupational Safety and Health Act of 1970”).³ The following paragraphs further describe each of these four types of variances.

Types of Variances

Temporary variance. This variance delays the date on which an employer must comply with requirements of a newly issued OSHA standard. The employer must submit the variance application to OSHA after OSHA issues the standard, but prior to the effective date of the standard. In the variance application, the employer must

¹The purpose of this Supporting Statement is to analyze and describe the burden hours and costs associated with provisions of the variance regulations that contain paperwork requirements; it does not provide information, advice, or guidance on how to comply with, or enforce, these regulations.

²See Appendix A.

³See Appendix B.

demonstrate an inability to comply with the 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” (see Section 6(A)(i) of the OSH Act; 29 U.S.C. 655). Employers also must establish that they are “taking all available steps to safeguard [their] employees against the hazards covered by the standard,” and that they have “an effective program for coming into compliance with the standard as quickly as practicable” (see Section 6(A)(ii) and (iii) of the OSH Act; 29 U.S.C. 655).

Experimental variance. OSHA may grant this variance as an alternative to complying with the requirements of a standard whenever it determines that the variance “is necessary to permit an employer to participate in an experiment . . . designed to demonstrate or validate new and improved techniques to protect the health or safety of employees” (see Section 6(C) of the OSH Act; 29 U.S.C. 655).

Permanent variance. This variance authorizes employers (or groups of employers) to use alternative means of complying with the requirements of OSHA standards when the employers demonstrate, with a preponderance of evidence, that the proposed alternative protects employees at least as effectively as the requirements of the standard.

National-defense variance. Under this variance, OSHA, after notice and an opportunity for a hearing, “may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, or exceptions to and from” the requirements of its standards that it “finds are necessary and proper to avoid serious impairment of the national defense” (see Section 16 of the OSH Act; 29 U.S.C. 665). Such variances can be in effect no longer than six months without notifying the affected employees and affording them an opportunity for a hearing.

Information Requirements for Each Type of Variance

No specific forms are prescribed under the OSH Act and the Rules of Practice for Variances (29 CFR 1905) for requesting these variances. The following paragraphs describe the information required when applying for each type of variance.⁴

Temporary variance. Under 29 CFR 1905.10, employers must provide OSHA with the following information when applying for this variance:

- The name and address of the employer (1905.10(b)(1))
- The address of the place or places of employment involved (1905.10(b)(2))
- A specification of the standard, or portion thereof, from which the employer seeks a variance (1905.10(b)(3))
- A statement by the employer, supported by representations from qualified individuals having first-hand knowledge of the facts represented, that the employer is unable to comply with the standard, or portion thereof, by its effective date, and a detailed statement of the reasons therefore (1905.10(b)(4))

⁴See also Appendix B of this Supporting Statement.

- A statement by the employer of the steps taken and planned, with specific dates, to protect employees against the hazards covered by the standard (1905.10(b)(5))
- A statement of when the employer expects to be able to comply with the standard, and the steps taken and planned, with specific dates, to come into compliance with the standard (1905.10(b)(6))
- A statement of the facts establishing that the employer is unable to comply with the standard by its effective date because (1) the professional or technical personnel, or materials and equipment, needed to come into compliance with the standard are unavailable, or the employer cannot complete necessary construction or alteration of facilities, by the effective date; (2) the employer is taking all available steps to safeguard employees against the hazards covered by the standard; and (3) the employer has an effective program for coming into compliance with the standard as quickly as practicable (1905.10(b)(7))
- A statement for requesting a hearing as provided in this part (29 CFR 1905.10(b)(8));
- A statement that the employer informed affected employees of the application by: (1) giving a copy thereof to their authorized representative; (2) posting a statement, giving a summary of the application, and specifying where employees can examine a copy of the application at the place or places where notices to employees are normally posted; and (3) other appropriate means (1905.10(b)(9))
- A description of how the employer informed affected employees of the application and of their right to petition OSHA for a hearing (1905.10(b)(10))
- For a variance that is 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 OSH Act, and involves a standard, or portion thereof, identical to a State standard effective under such plan (1905.10(b)(11)), provide: (1) a side-by-side comparison of the Federal OSHA standard, or portion thereof, and the State standard, or portion thereof, that are identical in substance and requirements (1905.10(b)(11)(i)); (2) a certification that the employer has not filed for a permanent variance on the same material facts for the same employment or place of employment with any State authority having jurisdiction under an approved State plan over any employment or place of employment covered in the application (1905.10(b)(11)(ii)); and (3) a description, including identification, of any pending citation issued to the employer for violations of the State standard, or portion thereof, by any State authority enforcing the standard under a State plan (1905.10(b)(11)(iii)).

Temporary variance interim-order application. Under 29 CFR 1905.10(c)(1), employers may apply for an interim order. Such an application must provide OSHA with the following information:

- A statement requesting an interim order, and that the order be effective until a decision is rendered on the application for the temporary variance filed previously or concurrently
- At the employer's discretion, the application for an interim order may include statements of fact and arguments as to why OSHA should grant the order.

Experimental variance. Section 6(b)(6)(C) of the OSH Act (29 U.S.C. 655) does not specify information requirements when applying for this variance. Moreover, 29 CFR 1905(1)(c) states, “The rules of practice in [29 CFR part 1905] do not apply to the granting of variances under section 6(b)(6)(C) [of the OSH Act],” and “Whenever appropriate, the procedure for granting such a variance shall be published in the Federal Register.” However, based on the information specified for temporary, permanent and national-defense variances, OSHA requires that applications for this variance provide the following information:

- The name and address of the employer,
- The address of the place(s) of employment where the employer will perform the proposed experiment,
- A general description of the proposed experiment,
- An explanation of how the experiment will demonstrate or validate new and improved techniques to safeguard the health or safety of workers,
- An explanation of why a variance from a standard, or part thereof, is necessary to permit the employer to participate in the proposed experiment,
- A detailed description of the plan of the proposed experiment, including: (1) the names and qualifications of the supervisor of the experiment, and the supervisor’s staff; and (2) the proposed duration of the experiment (in days), employee work time (in hours), and hours of machine operation (if applicable),
- A statement describing similar experiments or related research conducted by the employer, or by another party (if known); this statement should be detailed, and contain any available data, summaries, reports, and evaluations (or references thereto) of such experiments and research,
- A statement that the employer has sufficient technological, economic, and personnel resources to perform the experiment properly, including proper controls,
- If applicable, a description of the employer’s past or pending OSHA citations, and dispositions thereof, and any judicial and administrative proceedings involving breaches of the OSH Act or OSHA regulations to which the applicant is or was a party,
- A copy of the written statement of voluntary participation signed by each worker who has knowingly and willingly agreed to participate in the proposed experiment,
- Certification that the employer informed affected workers of the application by: (1) giving a copy of the application to the workers’ authorized representative; (2) posting (at the place or places where the employer normally posts notices to workers) a statement giving a summary of the application and specifying where workers can examine a copy of it (instead of a summary statement, the employer may post a copy of the application); and (3) other appropriate means,
- A description of how the employer informed affected workers of the application and their right to petition OSHA for a hearing,

- A description, including identification, of any past or pending citations issued to the employer for violations of the State standard, or portion thereof, by any State authority enforcing the standard under a State plan approved under Section 18 of the OSH Act,
- Certification by the employer that the information contained in the application is, to the best of the employer's knowledge, accurate and true.

Experimental variance Interim Order Application: Section 6(b)(6)(C) of the OSH Act (29 U.S.C 655) does not specify information requirements when applying for an experimental variance interim order. However, OSHA determined such an application must provide OSHA with the following information:

- A statement requesting an interim order and that the order be effective until a decision is rendered on the application for the experimental variances filed previously or concurrently, and
- At the employer's discretion, the application for an interim order may include statements of fact and arguments as to why OSHA should grant the order.

Permanent variance. Under 29 CFR 1905.11, employers must provide OSHA with the following information when applying for this variance:

- The name and address of the employer (1905.11(b)(1)),
- The address of the place or places of employment involved (1905.11(b)(2)),
- A description of the conditions, practices, means, methods, operations, or processes used or proposed for use by the employer (1905.11(b)(3)),
- A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed for use would provide employment and places of employment to workers that are as safe and healthful as the requirements specified by the standard from which a variance is sought (1905.11(b)(4)),
- Certification that the employer informed affected workers of the application (1905.11(b)(5)) by: (1) giving a copy of the application to the workers' authorized representative (1905.11(b)(5)(i)); (2) posting (at the place or places where the employer normally posts notices to workers) a statement giving a summary of the application and specifying where workers can examine it (instead of a summary statement, the employer may post a copy of the application) (1905.11(b)(5)(ii)); and (3) other appropriate means (1905.11(b)(5)(iii)),
- Any request for a hearing (1905.11(b)(6)),
- A description of how the employer informed affected workers of the application and their right to petition OSHA for a hearing (1905.11(b)(7)),
- For a variance that is 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 OSH Act, and involves a standard, or portion thereof, identical to a State standard effective under such plan (1905.11(b)(8)), provide: (1) a side-by-side comparison of the Federal OSHA standard, or portion thereof, and the State standard, or portion thereof, that are identical in substance and requirements (1905.11(b)(8)(i)); (2) a certification that the employer has not filed for a permanent variance on the same material facts for the same employment or place of employment with any State authority having jurisdiction under an approved

State plan over any employment or place of employment covered in the application (1905.11(b)(8)(ii)); and (3) a description, including identification, of any pending citation issued to the employer for violations of the State standard, or portion thereof, by any State authority enforcing the standard under a State plan (1905.11(b)(8)(iii)).

Permanent variance Interim Order Application. Under 29 CFR 1905.11(c)(1), employers may apply for an interim order. Such an application must provide OSHA with the following information:

- A statement requesting an interim order, and that the order be effective until a decision is rendered on the application for the permanent variance filed previously or concurrently, and
- At the employer's discretion, the application for an interim order may include statements of fact and arguments as to why OSHA should grant the order.

National Defense variance. Under 29 CFR 1905.12, employers must provide OSHA with the following information when applying for this variance:

- The name and address of the employer (1905.12(b)(1)),
- The address of the place or places of employment involved (1905.12(b)(2)),
- The standard, or portion thereof, from which the employer seeks a limitation, variation, tolerance, or exemption (1905.12(b)(3)),
- A statement showing that the limitation, variation, tolerance, or exemption sought is necessary and proper to avoid serious impairment of the national defense (1905.12(b)(4)),
- Any request for a hearing (1905.12(b)(5)), and
- A description of how the employer informed affected employees the application and of their right to petition OSHA for a hearing (1905.12(b)(6)).

National Defense variance Interim Order Application. Under 29 CFR 1905.12(c)(1), employers may apply for an interim order. Such an application must provide OSHA with the following information:

- A statement requesting an interim order, and that the order be effective until a decision is rendered on the application for the national defense variance filed previously or concurrently, and
- At the employer's discretion, the application for an interim order may include statements of fact and arguments as to why OSHA should grant the order.

Finally, OSHA developed optional standardized variance application forms and obtained the required OMB approval for the information collection requirement (OMB Control No. 1218-0265) in order to assist employers in meeting the paperwork requirements contained in these regulations. Additionally, in order to facilitate and simplify the completion of the complex variance applications and reduce the information collection burden on applicants, OSHA made the variance application forms accessible from its "How to Apply for a Variance" web site (<http://www.osha.gov/dts/otpca/variances/index.html>).

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the Agency has made of the information received from the current collection.

Generally, OSHA uses the information provided in these optional standardized variance applications to: (1) evaluate the employer's claim that the proposed alternate means of compliance would provide affected workers with the requisite level of health and safety protection; (2) assess the technical feasibility of the proposed means of compliance; (3) determine that the employer notified affected workers of the variance application and their right to a hearing; and (4) verify that the application contains the administrative information required by the applicable variance regulations. The following paragraphs further describe how, by whom, and for what purpose the information provided in each of the four types of variances are to be used.

Temporary variance. The application allows OSHA to: (1) review and determine the efficacy of the employer's description of the steps taken and to be taken (including specific dates when appropriate) to protect workers against the hazards covered by the standard from which the employer is requesting the temporary variance; (2) evaluate the statement of when the employer expects to be able to comply with the standard, and the steps taken and to be taken by the employer (with specific dates when appropriate) to come into compliance with the standard; and (3) determine that the employer properly notified affected workers of the variance application and their right to a hearing. The application also contains the administrative information required by 1905.10(b).

Experimental variance. The application allows OSHA to: (1) review and determine the efficacy of the employer's explanation of how the experiment will demonstrate or validate new and improved techniques to safeguard the health or safety of workers, including a detailed description of the steps taken and/or to be taken to protect workers against the hazard(s) covered by the standard from which the experimental variance is sought; (2) evaluate the employer's claim that the experimental conditions would provide affected workers with health and safety protection that is at least as effective as the requirements specified by the standard from which the employer is requesting the experimental variance; and (3) determine that the employer properly notified affected workers of the variance application and their right to a hearing. The application also contains the administrative information specified by OSHA in Item 1 of this Information Collection Request (ICR).

Permanent variance. The application allows OSHA to: (1) evaluate the employer's claim that the alternative means of compliance would provide affected workers with health and safety protection that is at least equivalent to the means of compliance specified by the standard from which the employer is requesting the variance; (2) assess the technical feasibility of the alternative means of compliance; and (3) determine that the employer properly notified affected workers of the variance application and their right to a hearing. The application also contains the administrative information required by 1905.11(b).

National-defense variance. The application allows OSHA to: (1) evaluate the validity and appropriateness of the specification of the provision of the OSH Act to or from which the applicant seeks a limitation, variation, tolerance, or exemption; (2) evaluate the validity and appropriateness of showing that the limitation, variation, tolerance, or exemption sought is necessary and proper to avoid serious impairment of the national defense; and (3) determine that the employer properly notified affected workers of the variance application and their right to a hearing. The application also contains the administrative information required by 1905.12(b).

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burdens.

As noted in 29 CFR 1905.7(a), no specific form was required or made available for preparing a variance application. However, under 1905.7(a), employers choosing voluntarily to complete a variance application were required to submit a typewritten original and six copies of the application,⁵ which provides the information required for the specific type of variance requested. Employers also had the option to submit supporting documents (e.g., protocols for safe-work practices, engineering schematics, procedures for using personal protective equipment). Under the provisions of 29 CFR 1905.7(b), requires that “[e]ach application . . . shall be subscribed by the [employer] filing the same or by [the employer’s] attorney or other authorized representative.”

In this ICR, OSHA is requesting that OMB extend its approval of the optional standardized variance application forms covering the four types of variances. As noted earlier, OSHA made these forms available to the public on its web site. Each form lists the information required for the specific variance covered by that form (see the information requirements for each type of variance under Item 2 of this supporting statement), along with instructions for completing the form and explanatory material. Employers applying for a variance can complete and submit the appropriate application form online or download and complete the appropriate form, and mail it to OSHA. These forms serve to standardize, simplify and expedite the application process for employers, and also to ensure that the information provided on the application is complete and accurate.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item A.2 above.

The paperwork requirements of the variance regulations are specific to each employer involved, and no other source or agency duplicates these requirements, or can make the required information available to OSHA (i.e., the required information is available only from employers choosing to voluntarily complete and submit a variance application).

⁵As a matter of practice, OSHA accepts original applications, written in any format, without additional copies.

5. If the collection of information impacts small businesses or other small entities describe any methods used to minimize burden.

The information collection requirements of the variance regulations do not have a significant impact on a substantial number of small entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The variance application process is voluntary on the part of employers. Without the information provided by a variance application, OSHA could not determine the efficacy of, and safety and health protection afforded by, an employer's alternative means of compliance.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the Agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in less than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

Only conditions 3 and 8 (from the question 7 bullets above) apply to the submission of variance applications. Regarding condition 3, 1905.7(a) requires employers that choose to file a variance application to submit a typewritten original and six copies of the application document. However, as a matter of practice and significant reduction of the paperwork burdens, OSHA accepts variance applications completed and submitted online (from OSHA's "How to Apply for a Variance" web site

(<http://www.osha.gov/dts/otpcal/variances/index.html>) or single copies of original applications, written in any format. Regarding condition 8, the variance application process does not require employers to submit proprietary, trade secret, or confidential information. However, an employer must provide sufficient information about the alternative means of compliance for OSHA to determine its efficacy, as well as the safety and health protection it affords workers. If this information is proprietary, a trade secret, or confidential, OSHA has regulations that will protect this information (i.e., 29 CFR 1903.9 (“Trade secrets”) and 29 CFR part 70 (“Production or disclosure of information or materials”)).

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), OSHA published a notice in the Federal Register on August 20, 2014 (79 FR 49342, Docekt No. OSHA-2009-0024) soliciting comments on its proposal to extend the Office of Management and Budget's approval of the information collection requirements specified by the Standards on Variances and Other Relief Under Section 6(b)(6)(A), (29 CFR 1905.10); Variances and Other Relief Under Section 6(d), (29 CFR 1905.11); and Limitations, Variations, Tolerances or Exemptions Under Section 16, (29 CFR 1905.12). This notice was part of a preclearance consultation program that provides the general public and government agencies with an opportunity to comment. The Agency received no comments in response to its notice to comment on this request.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

The Agency will not provide payments or gifts to the respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

OSHA provides no assurance of confidentiality regarding the information included in paperwork required by the variance regulations. As noted above in Item 7, if employers provide proprietary, trade-secret, or confidential information in describing the alternative means of compliance, OSHA has regulations that will protect this information (i.e., 29

CFR 1903.9 (“Trade secrets”) and 29 CFR part 70 (“Production or disclosure of information or materials”).

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

None of the provisions in the variance regulations requires employers to include sensitive information in variance applications or related documents.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimate for estimates for each form..**
- **Provide estimates of annualized cost to respondents for the hour burdens for collection of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

Based on its experience, OSHA estimates that it receives approximately 12 variance applications each year; over 83% of variance applications are for permanent variances. Table 1 below provides a summary of the annual burden hours and cost required for employers to perform each of the tasks necessary to complete the paperwork requirements associated with variance applications.

Table 1

Summary of Annual Estimated Burden Hours and Cost for Employers to Complete the Required Paperwork

Information Collection Task	No. of Employers ¹	Burden Hours per Employer ²	Total Burden Hours	Cost ³
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Locate and assemble information required to complete the variance application, including devising an alternative means of compliance, gathering or developing supporting documentation (e.g., safety policies, safe-work procedures, work-area exposure monitoring data, training materials)	12	16	192	\$5,460
Inform affected workers of decision to seek a variance	12	4	48	\$1,365
Complete the variance application (either online or hard copy)	12	8	96	\$2,730
Assemble the application documents, including copying or scanning, collating, and electronically submitting or mailing	12	2	24	\$683
Host an OSHA site visit	0.25 ⁴	24	6	\$171
Totals	-	-	366	\$10,409

¹These figures assume one variance application per employer.

²OSHA assumes that burden hours are similar for each of the four types of variances.

³Based on an average hourly rate of \$28.44 (wages and benefits) for a service employee. For private industry, the average hourly rate is based on those employees in service-providing industries. This information is from Table 6 (Employer costs per hour worked for employee compensation and cost as a percentage of total compensation: Private industry workers, by major industry group, December 2013) appearing in the Bureau of Labor (BLS) report titled, "Employer Cost for Employee Compensation – December 2013"⁶).

⁴OSHA conducts about one site visit every 4 years.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14.)

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**

If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

⁶ Employer Costs for Employee Compensation Archived News Releases – http://www.bls.gov/schedule/archives/eccec_nr.htm.

- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995; (2) to achieve regulatory compliance with requirements not associated with the information collection; (3) for reasons other than to provide information or keep records for the government; or (4) as part of customary and usual business or private practices.

The cost determination made under Item 12 accounts for the total annual cost burden to respondents or recordkeepers resulting from these collection of information requirements.

14. Provide estimates of the annualized costs to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

The total annual cost to the Federal government associated with processing variance applications submitted by employers is \$67,142. In determining this cost, OSHA assumes that the typical staff member processing a variance application is an industrial hygienist at the 13/5 pay grade and step level, with an hourly wage rate of \$39.31⁷. Other occupational expenses, such as equipment, overhead, and support-staff expenses, would occur without the existence of these collection-of-information requirements; therefore, the Agency considers these expenses to be normal operating expenses and does not include them in estimating cost. Table 2 below provides a summary of the estimated annual hours and cost to the Federal government to perform each of the tasks associated with the paperwork requirements specified by the variance regulations.

Table 2
Summary of Annual Estimated Hours and Cost
To the Federal Government to Process the Required Paperwork

Information-Collection Task	Number of Variances	Hours per Task	Total Hours	Total Cost ¹
Receive and initially process variance application	12	4	48	\$1,887
Establish and maintain a variance-application case file	12	4	48	\$1,887
Conduct initial administrative review of variance application	12	5	60	\$2,359
Draft and send letter to employer acknowledging receipt of application	12	3	36	\$1,415
Contact employer to obtain missing information or to correct minor errors in application	12	3	36	\$1,415

⁷ Occupational Employment Statistics – May 2013 National Occupational Employment and Wage Estimates – http://www.bls.gov/oes/current/oes_nat.htm#11-0000.

Information-Collection Task	Number of Variances	Hours per Task	Total Hours	Total Cost ¹
Conduct technical review of application	12	80	960	\$37,738
Draft and send a denial letter	11	10	110	\$4,324
Plan and conduct OSHA site visit	.25	40	10	\$393
Draft application and interim order for publication	1	200	200	\$7,862
Review comments and draft variance grant for publication	1	200	200	\$7,862
Totals	-	-	1,708	\$67,142

¹Based on an average staff cost of \$39.31 per hour.

15. Explain the reasons for any program changes or adjustments.

OSHA is requesting a revision to this ICR since OSHA is including web-based variance application forms in this submission. There are no burden hours or cost associated with these web-based application forms. The Agency is requesting that it retain its previous estimate of 366 burden hours. While use of the forms is not mandatory, OSHA believes that use of the forms is effective in eliminating inefficiencies within the program and fosters a better understanding of the program application requirements and procedures.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of the report, publication dates, and other actions.

OSHA will not publish the information collected under the variance regulations.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

OSHA is not seeking such approval.

18. Explain each exception to the certification statement.

OSHA is not seeking an exception to the certification statement.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS.

This Supporting Statement does not contain any collection of information requirements that employ statistical methods.

APPENDIX A

Occupational Safety and Health Act of 1970

Variance-Related Excerpts

Section 6. Occupational Safety and Health Standards

(a) Without regard to chapter 5 of title 5, United States Code, or to the other subsections of this section, the Secretary shall, as soon as practicable during the period beginning with the effective date of this Act and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees.

(b) The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner:

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health and Human Services, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this Act, the Secretary may request the recommendations of an advisory committee appointed under section 7 of this Act. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health and Human Services, together with all pertinent factual information developed by the Secretary or the Secretary of Health and Human Services, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than two hundred and seventy days.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments. Where an advisory committee is appointed and the Secretary determines that a rule should be issued, he shall publish the proposed rule within sixty days after the submission of the advisory committee's recommendations or the expiration of the period prescribed by the Secretary for such submission.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed rule, stating the grounds thereof and requesting a public hearing on such objections. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

(4) Within sixty days after the expiration of the period provided for the submission of written data or comments under paragraph (2), or within sixty days after the completion of any hearing held under paragraph (3), the Secretary shall issue a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Secretary determines may be necessary to insure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

(5) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(6)(A) Any employer may apply to the Secretary for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (B) and establishes that –

(i) he 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.

Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing: Provided, That the Secretary may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more that twice (I) so long as the requirements of this paragraph are met and (II) if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than 180 days.

(B) An application for temporary order under this paragraph (6) shall contain:

(i) a specification of the standard or portion thereof from which the employer seeks a variance,

(ii) a representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore,

(iii) a statement of the steps he has taken and will take (with specific dates) to protect employees against the hazard covered by the standard,

(iv) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard, and

(v) a certification that he has informed his 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.

A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the Secretary for a hearing.

(C) The Secretary is authorized to grant a variance from any standard or portion thereof whenever he determines, or the Secretary of Health and Human Services certifies, that such variance is necessary to permit an employer to participate in an

experiment approved by him or the Secretary of Health and Human Services designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(7) Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health and Human Services, such examinations may be furnished at the expense of the Secretary of Health and Human Services. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health and Human Services, and, at the request of the employee, to his physician. The Secretary, in consultation with the Secretary of Health and Human Services, may by rule promulgated pursuant to section 553 of title 5, United States Code, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

(8) Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall, at the same time, publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard.

(c)(1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines --

(A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and

(B) that such emergency standard is necessary to protect employees from such danger.

(2) Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register the Secretary shall commence a proceeding in accordance with section 6 (b) of this Act, and the standard as

published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the emergency standard as provided in paragraph (2) of this subsection.

(d) Any affected employer may apply to the Secretary for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Secretary shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(e) Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this Act, he shall include a statement of the reasons for such action, which shall be published in the Federal Register.

(f) Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.

(g) In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health and Human Services regarding the need for mandatory standards in determining the priority for establishing such standards.

Section 16. Variations, Tolerances, and Exemptions

The Secretary, on the record, after notice and opportunity for a hearing may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as he may find necessary and proper to avoid serious impairment of the national defense. Such action shall not be in effect for more than six months without notification to affected employees and an opportunity being afforded for a hearing.

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.