**6. Occupational Safety and Health Standards**

**29 USC 655:**

(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 therefore 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 therefor,

(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, Unites States Code, for an emergency temporary standard to

take immediate effect upon publication in the Federal Register if he determines

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(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.