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REPORT TO THE CONGRESS  
GENERAL ACCOUNTING OFFICE

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BY THE COMPTROLLER GENERAL  
OF THE UNITED STATES

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# Worker Protection Must Be Insured When Employers Request Permission To Deviate From Safety And Health Standards

Occupational Safety and Health Administration  
Department of Labor

Employers must comply with an established occupational safety and health standard unless they can provide equal or better protection to workers by other means.

The Occupational Safety and Health Administration and the States need to insure that workers are protected when employers ask permission to deviate from a standard.

*Occupational Safety and Health Administration  
Division of Standards*

MWD-76-19

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DEC. 31, 1975



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-163375

To the President of the Senate and the  
Speaker of the House of Representatives

This is our report on the need to insure that workers are protected when employers ask permission to deviate from established occupational safety and health standards.

The Occupational Safety and Health Act of 1970 (29 U.S.C. 651) is intended to assure to the extent possible a safe and healthful work environment. The act authorizes the Secretary of Labor to establish and enforce occupational safety and health standards and to permit an employer to vary from specific requirements of a standard. We evaluated whether worker protection was insured when variance from a standard was requested.

We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent to the Director, Office of Management and Budget, and to the Secretary of Labor.

A handwritten signature in black ink, reading "James A. Stants".

Comptroller General  
of the United States

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ABBREVIATIONS

GAO	General Accounting Office
OSHA	Occupational Safety and Health Administration

COMPTROLLER GENERAL'S  
REPORT TO THE CONGRESS

WORKER PROTECTION MUST BE  
INSURED WHEN EMPLOYERS REQUEST  
PERMISSION TO DEVIATE FROM  
SAFETY AND HEALTH STANDARDS  
Occupational Safety and  
Health Administration  
Department of Labor

D I G E S T

Employers are required to comply with occupational safety and health standards set by the Department of Labor or by States operating under plans approved by Labor.

Through 1974, Labor and these States received about 6,500 applications requesting permission for employers to deviate from certain standards.

Such variance may be granted if the employer takes adequate alternative steps to protect his employees. About 2,700 requests were granted. (See p. 3.)

IMPROVED PROCEDURES RECOMMENDED

GAO is making several recommendations to the Secretary of Labor to require that better Federal and State procedures be established for evaluating variance requests. These recommendations aim to insure worker protection by requiring (1) sound and timely decisions on variance requests and (2) the communication of such requests and decisions to affected employers and employees and Federal and State compliance inspection officers. (See pp. 20 to 22.)

As a result of inadequate procedures for evaluating variance requests, GAO found instances where:

--Because of long delays in denying variance requests which did not show how workers were or would be protected, there were long delays in notifying employers that they were to comply with Federal or State standards. (See p. 4.)

- Affected employers and employees and Federal or State compliance inspection officers were not notified when variance applications indicated potentially unsafe or unhealthful working conditions. (See p. 7.)
- Workplace inspections were not made when variance requests indicated potentially hazardous conditions or when temporary variance permission had expired. (See pp. 8 and 13.)
- Sound and timely decisions were not made on the effectiveness of the means of protection furnished by employers who had received interim approvals of variance applications. (See p. 10.)
- Decisions were made on variance applications without onsite evaluations of working conditions or the adequacy of the proposed protection. (See p. 18.)

GAO's recommendations, if effectively implemented, should help to insure that Labor and the States:

- Act promptly on variance requests and other matters, so that if an employer's alternative to a standard is not as effective as the standard, he can promptly be required to comply with the standard.
- Notify employers and workers and Federal and State inspectors of those variance applications that are not approved, so they can initiate action, including inspections, to insure compliance.
- Make onsite evaluations, when appropriate, rather than merely evaluate the applicant's written request and documentation, to insure that the proposed alternative will be at least as effective as the standard.
- Review past variance requests granted, denied, or otherwise closed to determine whether unsafe or unhealthful working conditions may have existed at the worksites

and, if so, whether such conditions have since been corrected.

AGENCY ACTIONS ON GAO  
RECOMMENDATIONS ARE INADEQUATE

The Department of Labor said that, as a result of discussions with GAO during the review, it appeared that many of GAO's recommendations had already been accomplished. Labor also indicated general agreement with the remaining GAO recommendations and described its plans to implement them. (See app. I.)

However, GAO does not consider Labor's actions adequate, because:

- The only evidence that many of GAO's recommendations have "already been accomplished" was a rough, unsigned listing of procedural statements and related comments prepared in response to GAO's report. None of the procedures discussed have been issued as directives.
- To help States improve their variance programs Labor only indicated it would notify the States of changes in its program. GAO's recommendation is that Labor require the States to adopt the needed improvements.
- Even if fully implemented, the proposed actions described in the unsigned listing will fall short of the actions GAO believes are needed. (See pp. 22 to 27.)

## CHAPTER 1

### INTRODUCTION

Occupational safety and health has been a concern for many years. The Congress found that, in addition to the individual human tragedies involved, the economic impact of occupational deaths and disabilities--in terms of lost production, lost wages, medical expenses, and disability compensation payments--was substantial. The Congress passed the Occupational Safety and Health Act of 1970 (29 U.S.C. 651) to insure, to the extent possible, safe and healthful working conditions to every worker.

The act authorizes the Secretary of Labor to establish occupational safety and health standards and to enforce them by inspecting workplaces and setting penalties and correction deadlines for violations.

The Secretary has promulgated hundreds of safety and health standards. Section 6 of the act authorizes the Secretary to permit an employer to vary from the specific requirements of a standard if the employer takes other acceptable measures to protect employees from the hazard covered by the standard.

The Secretary's responsibilities and authority under the act are carried out by the Occupational Safety and Health Administration (OSHA). We made this review to evaluate whether OSHA had adequate policies and procedures to insure worker protection at workplaces of employers who request permission to vary from OSHA standards.

#### LEGAL AUTHORITY FOR VARIANCES

Under section 6, either temporary or permanent variances may be granted. A temporary variance may be granted to allow an employer time to comply with a standard. The Secretary may approve an application for a temporary variance if the employer establishes that he:

- Cannot comply with the standard by its effective date because of the unavailability of professional or technical staff, materials, or equipment or because construction or alteration of facilities cannot be completed in time.
- Is taking all available steps to safeguard his employees against the hazard covered by the standard.

--Has an effective program for complying with the standard as soon as practicable.

A permanent variance from a standard may be granted if OSHA determines, after an opportunity for an inspection where appropriate and a hearing, that the employer has conclusively proved that an alternative means of protecting employees from the hazard will be as effective as complying with the standard. The Secretary may modify or revoke a permanent variance any time after 6 months following its authorization.

STATUS OF VARIANCE APPLICATIONS  
RECEIVED BY OSHA AND STATES

Variance applications are submitted either to OSHA or, in many instances, to States operating their own occupational safety and health programs under plans approved by OSHA as authorized in section 18 of the act.

Section 18 requires that a State plan must provide for the development and enforcement of standards at least as effective as OSHA's. Accordingly, OSHA regulations provide that States may grant variances if their approved plans meet this requirement.

Applications to OSHA are reviewed and either granted, denied, or otherwise closed by OSHA's headquarters office in Washington, D.C. Applications to States are reviewed and decided upon by the States with no direct involvement by OSHA in individual cases.

The following schedule shows the status of variance applications received by OSHA as of December 31, 1974, and applications received by 17 States which had been operating OSHA-approved plans. We obtained the data shown for Oregon and Washington during visits to these States. The data for the other 15 States is presented as reported to OSHA by the States.

	Applications received	Status of applications			
		Granted	Denied	Closed (note a)	Pending
OSHA	640	41	55	391	153
Alaska	17	4	2	0	11
California	95	43	18	7	27
Colorado	3	1	1	0	1
Hawaii	3	1	0	0	2
Illinois					
(note b)	2	0	1	0	1
Indiana	1	0	1	0	0
Iowa	10	1	0	0	9
Kentucky	2	1	0	0	1
Maryland	5	2	0	0	3
Michigan	<u>c/793</u>	679	114	0	<u>c/0</u>
Minnesota	4	1	0	2	1
Nevada	2	2	0	0	0
New York					
(note b)	<u>c/4,564</u>	1,814	637	2,113	<u>c/0</u>
Oregon	118	27	10	13	68
South					
Carolina	34	27	4	2	1
Vermont	1	0	1	0	0
Washington	<u>199</u>	<u>60</u>	<u>4</u>	<u>11</u>	<u>124</u>
Total	<u>6,493</u>	<u>2,704</u>	<u>848</u>	<u>2,539</u>	<u>402</u>

a/ These applications were neither granted nor denied, but were closed for such reasons as failure of applicants to respond to followup inquiries, withdrawal of applications, changes in or revocation of standards after the applications were submitted, and determinations that the variances applied for were not needed.

b/ As of July 1, 1975, these States had withdrawn their OSHA-approved plans and had ceased or planned to cease operations under the plans.

c/ Because New York and Michigan did not report variance applications pending, the figures shown here may be significantly understated.

The act authorizes OSHA to pay States up to 50 percent of operational costs under approved plans. The States in the table received 50-percent grants.

#### SCOPE OF REVIEW

We made our review at OSHA headquarters in Washington, D.C.; OSHA's regional office in Seattle, Washington; area offices in Portland, Oregon, and Bellevue, Washington; and State offices in Oregon and Washington. We talked with OSHA and State officials and examined laws, procedures, directives, and records.

## CHAPTER 2

### OSHA DID NOT INSURE PROTECTION OF WORKERS

#### AFFECTED BY VARIANCE APPLICATIONS

OSHA had not established procedures or required States to do so, to provide for sound and timely decisions on variance applications and to notify affected employers and employees and OSHA and State compliance officers of the applications and decisions. We found instances where:

- Denying variance applications took 6 months or longer even though applicants failed to describe what they were doing or planning to protect workers from the hazards covered by the standards.
- Affected employers and employees and OSHA or State compliance officers were not notified of variance applications which indicated potentially unsafe or unhealthful working conditions.
- Compliance inspections were not made when variance applications indicated potential hazards or after temporary variance permission had expired.
- Sound and timely decisions were not made on the effectiveness of the protection authorized in interim approvals of variance applications.
- Variance applications were approved without onsite evaluations of working conditions and the adequacy of the protection proposed by the applicants.  
(Criteria had not been established for deciding when onsite evaluations should be made.)

#### PROMPT DENIALS NEEDED FOR WORKER PROTECTION

Employers can apply for variances if they need more time to comply or if they believe their preferred method provides protection as effectively as the standard. Because an employer may not be complying with the established standard when he applies for a variance, workers may be exposed to hazards. We believe, therefore, that applications not describing an alternative means of worker protection should be promptly denied.

OSHA had not set a deadline for denying such applications and had not required the States to do so. OSHA and Oregon

and Washington held many such applications for several months before denying them.

The Occupational Safety and Health Act requires that variance applications describe what the employers are doing or plan to do to protect workers. The means of worker protection must also be described in any order issued by OSHA approving a variance application. The act does not specify how quickly such an application should be acted upon.

OSHA regulations do not require prompt denial of applications which fail to describe how workers will be protected, and OSHA had not established procedures to insure prompt denial.

As of December 31, 1974, 34 of the 55 applications denied by OSHA were denied because they did not state what the employers were doing or planned to do to protect their workers. The remaining applications were denied for such reasons as (1) the alternative means did not adequately protect employees from the hazards covered by the standards and (2) the applicant was a manufacturer rather than a user of the equipment covered by the standard and was not eligible for a variance. In the 34 cases, OSHA took an average of 6 months to deny the applications.

In some cases, before denying the application, OSHA advised the applicant of the deficiencies in its application and requested additional information as to the alternative means to be provided. The application was then placed in a file pending a response from the applicant. In other cases, an OSHA official explained that the delay in denial was due to OSHA not having sufficient manpower to process the applications.

In one case, OSHA took 18 months before denying a variance from the safety standard requiring guards on table saws. This standard aimed to prevent employees from being cut on saw blades or struck by debris thrown by the blades. The employer's variance application, dated March 19, 1973, did not describe the alternative means for protecting his employees. Between March 19, 1973, and February 8, 1974, OSHA asked the employer several times to describe this alternative means. The employer responded but gave no description.

On February 20, 1974, almost 1 year after the initial application, OSHA's headquarters office requested its regional office to evaluate working conditions at the workplace. The evaluation showed the employer was using neither the guarding

required by the standard nor an alternative means. The evaluation resulted in a report dated March 6, 1974, to OSHA headquarters recommending that the application be denied because the employer was not providing an alternative means that would protect his employees at least as effectively as the standard.

On September 3, 1974, approximately 18 months after the initial receipt of the application and 6 months after the recommendation for denial, OSHA denied the application for the reasons stated in the March 6 report to OSHA headquarters. Thus, OSHA had allowed a hazardous condition to exist for 18 months.

OSHA had not required States operating under OSHA grants to promptly deny variance applications which did not show how the workers would be protected from the hazards covered by the standards. Accordingly, neither Washington nor Oregon had done so.

Under Oregon's procedures, an employer has up to 45 days to respond to the State's proposal to deny an application. As of December 31, 1974, Oregon had denied 10 applications, 4 because no alternative means of worker protection was specified. In these four cases, it took 1, 1-1/2, 2, and 4 months, respectively, to deny the applications.

Washington adopted OSHA's procedures for evaluating variance applications. These procedures did not require prompt denial of applications not specifying an alternative means of protection.

Two of the four variance applications denied by Washington through December 31, 1974, were denied because an alternative means of protection was not specified. It took the State 2 and 5 months, respectively, to deny the applications.

In addition, Washington had granted permanent variances to employers who did not specify an alternative means of worker protection. An OSHA internal evaluation report on the State's program stated that, through May 31, 1974, the State had granted 47 permanent variances, of which 37 resulted from applications which did not specify an alternative means. OSHA reported that the permanent variances granted covered the following subjects:

Circular saws	17
Rollover protective devices	5
Overhead protection in industrial trucks	3
Medical and first aid	3
Protective clothing	2
Sanitation	3
Gantry cranes	2
Other	<u>12</u>
Total	<u>47</u>

As of December 31, 1974, the State had granted seven additional permanent variances. All of the applications involved described an alternative means of worker protection.

As of June 6, 1974, Washington, at OSHA's request, had begun to evaluate all variances granted to determine the adequacy of worker protection. According to State officials, all variances not providing adequate protection were to be modified or revoked. The State, however, had not established procedures to insure prompt denial of such applications in the future.

NEED TO COMMUNICATE AND REQUIRE CORRECTION  
OF POTENTIALLY HAZARDOUS CONDITIONS

OSHA had not required that it and the States operating under its grants notify employers, employees, and employee representatives of variance applications indicating possible unsafe or unhealthful conditions at worksites.

Further, OSHA did not require that its regional and State offices be notified of denials or that subsequent compliance inspections be made by either OSHA or State inspectors, when necessary, to ascertain whether potentially hazardous conditions existed and should be corrected.

The act recognizes the importance of employee awareness of actions by OSHA and the States on variances from the occupational safety and health standards. Section 6 requires that, before any variance is granted, the employer notify the affected employees of the application. This alerts the employees to the request and allows them to comment. Similarly, when a proposal is denied, employees should be made aware that the potentially hazardous condition may still exist. Employee knowledge can contribute to prompt, voluntary compliance by the employer.

In denying 55 variance applications, OSHA sent letters to the applicants notifying them of the denials and the

reasons for them. However, it did not notify the affected employees or their representatives, nor require the applicant to notify them, of any potential hazards involved. In one case, the applicant was an industrial association representing several employers; OSHA neither notified the employers nor required the association to notify them.

In addition, OSHA's records showed that it had closed applications without issuing a formal acceptance or denial. These included cases in which employers failed to respond to OSHA followup letters, withdrew their applications, or requested a variance from the standard without providing an alternative means. Because of OSHA recordkeeping procedures before July 1974, OSHA could readily account for 391 closed applications. However, an OSHA official told us there were many more. In such cases, variance records did not show, and an OSHA official could not tell us, whether the employers and employees had been notified of potentially hazardous conditions.

OSHA procedures do not provide that OSHA or State field compliance offices either inspect the worksite where a potential hazard is indicated or record why an inspection is unnecessary. We noted many instances where OSHA and the two States did not make such inspections nor record their reasons for not doing so. An example demonstrating the need for improved procedures follows.

OSHA has promulgated standards to protect workers from cotton dust. The legislative history of the Occupational Safety and Health Act of 1970 shows that:

- Exposure to cotton dust causes a lung disease called byssinosis.
- This disease results in continuous shortness of breath, chronic cough, and total disablement.
- As many as 100,000 active or retired American cotton workers suffer from this disease.

On September 14, 1973, OSHA denied an application for a temporary variance from the requirements of a health standard established to protect employees from cotton dust. The application was made by an association on behalf of cotton textile manufacturers operating at 146 worksites in 8 States.

In denying the variance, OSHA noted that the applicant did not demonstrate that the proposed alternative means of

employee protection would be adequate for all of the employees at the 146 worksites listed in the application. Further, the application contained information indicating that the employers affected by the application were probably not complying with the standard. OSHA notified the association of the denial and the reasons for it. OSHA did not, however, notify the affected employers, employees, or employee representatives nor require the association to do so.

The 146 worksites affected were in the jurisdictional areas of 11 OSHA area offices in 3 OSHA regions and of 3 States operating their own programs under OSHA grants. The OSHA headquarters office sent the denial letter to only one regional office, one area office, and none of the States. The headquarters office did not require compliance inspections at the worksites.

Of the 146 worksites, 97 were in the 3 States operating under OSHA grants. These States were responsible for inspecting workplaces in their respective jurisdictions. OSHA could not tell us whether these worksites had been inspected during the 12 months following the denial.

OSHA inspected only 17 of the remaining 49 worksites during the same 12-month period. Air samples, which are needed to determine compliance with the standard, were taken at only 7 of the 17 worksites. All seven were in violation of the standard. Citations ordering elimination of the hazards were issued. OSHA officials could not explain why air samples were not taken at the remaining 10 worksites.

Neither Washington nor Oregon had required that (1) all affected parties be notified of potentially hazardous conditions noted in variance applications and (2) compliance inspections be made at the worksites involved.

Under Oregon's regulations and procedures, a notification of the State's proposal to grant or deny a variance application must be posted at the worksite for at least 15 days and employees are given an opportunity for a hearing on the proposal. The State then sends a final letter of grant or denial to the employer. The State does not require a compliance inspection at the worksite after a denial.

As of December 31, 1974, Oregon had sent final denial letters to five applicants. However, the State's notices of proposed action and the letters of denial had not clearly shown (1) the protection required by the standard, (2) what the applicant was doing or proposed to do in lieu of complying with the standard, and (3) why the action proposed in the variance request was not as safe as the protection provided by the standard.

For example, for an application denied by the State on August 29, 1974, the State's notice of proposed action had not explained what was required by the standard, but had stated that the employer had not provided an alternative means of worker protection. Although copies of the final denial letter were sent to responsible OSHA and State officials, the letter did not describe possible hazards at the worksite. Neither the State nor OSHA had inspected the worksite as of December 31, 1974.

Washington's variance procedures do not describe how to handle denials. Our review of the two most recent denials showed that the State had sent notification letters to the applicants (1) describing the protection requirements of the standard, what the applicants were doing or proposed to do in lieu of compliance, and why the requested variances were not as safe as the standard and (2) informing the applicants that they must notify their employees of the denial by posting the letter at the worksite. Copies of the letters were sent to responsible OSHA and State compliance officials. Although the letters described potential hazards at the worksites, neither OSHA nor the State made compliance inspections.

TIMELY FINAL DECISIONS NEEDED  
WHEN INTERIM ORDERS GRANTED

OSHA granted interim orders allowing employers to deviate from OSHA standards, but it did not determine the adequacy of worker protection. It granted these orders for indefinite periods of time and gave interested parties the opportunity to comment or request hearings. In some cases, representatives of the affected employees requested hearings because they believed that the interim orders did not protect workers as effectively as did the standards, but hearings were not held. Washington was also granting interim orders for variances without making timely decisions on the effectiveness of the alternative means of worker protection.

Section 6 of the act authorizes OSHA to issue an interim order pending the outcome of hearings and OSHA's final decision on an application for a temporary variance. This provision is to allow the employer to operate during the interim period in the manner specified in his application without being subject to a citation for violating the standard involved. The act requires that an application for a temporary variance state when the employer expects to comply with the standard.

For permanent variances, the act requires that affected employees be notified of the application and given an opportunity to participate in a hearing. A permanent variance shall be granted if OSHA determines, after an inspection if appropriate and a hearing, that the applicant has proved conclusively that the safety measures used or proposed in lieu of the standard will not reduce worker protection. Although the act does not specifically authorize interim orders on applications for permanent variances, OSHA regulations do. However, these regulations do not specify how long an interim order for a permanent variance can remain in effect.

As of December 31, 1974, OSHA had granted 95 interim orders to employers seeking variances--11 were for temporary and 84 were for permanent variances. Most applicants, therefore, were not merely asking for additional time to comply with a standard, but wanted to operate in a manner different from that required by a standard. All of the interim orders were granted for an indefinite period of time, pending a final decision on the requests. Hearings would be held during this time, if requested.

As of December 31, 1974, OSHA had canceled 37 of the 95 interim orders for reasons shown below. Many of these had been in effect for prolonged periods of time.

<u>Number of interim orders canceled</u>	<u>Reasons for cancellation</u>	<u>Average effective time (months)</u>
26	OSHA granted the requested variances	11
2	OSHA denied the requested variances	10
3	Employers withdrew variance requests	4-1/2
6	Other (note a)	9

a/ In these cases, OSHA determined that the interim orders and requested variances were not necessary.

The 58 interim orders remaining in effect as of December 31, 1974, had been in effect for an average of 9 months.

As the following two examples demonstrate, OSHA's interim orders on temporary and permanent variances did not insure worker protection.

## Temporary variance

In January 1974 OSHA established a standard to protect workers from exposure to bis-chloromethyl ether--a cancer-causing chemical. The standard required, among other things, that laboratory exhaust containing bis-chloromethyl ether not be discharged to any work area or to the environment, unless decontaminated. The standard was based on research findings that exposure to the chemical was extremely dangerous, resulting in a high probability of lung cancer.

On February 25, 1974, an employer applied for a temporary variance from OSHA's bis-chloromethyl ether standard. The application stated that the employer was not able to comply with the standard because during the short time between the standard's issuance and effective date, the employer was unable to design and install the necessary decontamination equipment. The application stated that the employer expected to comply by February 25, 1975, and set forth the alternative measures to be used to protect employees from the chemical until that date.

The information in the application was published in the Federal Register on May 21, 1974, along with an interim order allowing the employer to use the alternative means until a decision on the application was made.

The Federal Register notice gave affected employees and others until June 20, 1974, to submit comments and request a hearing. In a letter dated June 18, 1974, an employee union representative advised OSHA that the alternative safety measures in the application and the interim order did not adequately protect some of the maintenance personnel from the chemical. He expressed concern that there was no provision to insure that there was no concentration of the chemical still in the area or on the exhaust system that might be worked on by maintenance employees. He requested that OSHA withdraw the interim order, pending investigation, and that OSHA hold a hearing on the matter.

After discussing the situation with OSHA, the employer agreed to adopt additional measures to protect maintenance employees if deemed necessary by OSHA. OSHA did not, however, revise the interim order to require additional measures. Further, OSHA did not visit the workplace to evaluate the situation nor hold a hearing as requested by the union representative.

An OSHA official told us that, during a telephone conversation, the union representative expressed concern for the safety of maintenance employees entering the roof area. The official said that, because the system would be shut down during maintenance activities, employees on the roof would be safe. Because OSHA did not document the discussion or have the union representative clarify his concern in writing, the record did not show that his concern was limited to maintenance employees entering the roof area. As previously stated, the union representative's letter expressed concern for protection of maintenance employees working "in the area or on the exhaust system."

On December 17, 1974, the U.S. Court of Appeals for the Third Circuit (Docket no. 74-1129) nullified that part of the standard from which the variance was sought--namely, the part dealing with protective measures in laboratory activities. The court said that the Secretary, in promulgating the standard, had not given interested parties an opportunity for comment and hearing. Other parts of the standard were not affected by the court decision.

On December 31, 1974, OSHA wrote the applicant that, in view of the court decision:

--OSHA was holding the application for the temporary variance in abeyance, pending the Secretary's possible appeal of the decision.

--The interim order was rescinded because it was no longer necessary.

As discussed above, the problem raised regarding the employer's application and OSHA's interim order was that maintenance personnel who may have been exposed to the chemical may not have been adequately protected. OSHA headquarters officials said that the requirements in the OSHA standard for employee protection from the chemical during maintenance activities were not affected by the court decision. For maintenance activities, the standard requires that any authorized employee entering an area where contact with bis-chloromethyl ether could result shall be (1) provided with and required to wear clean impervious garments, including gloves, boots, and continuous-air supplied hood, (2) decontaminated before removing the protective garments and hood, and (3) required to shower upon removing the garments and hood.

As of September 1975, OSHA had not inspected the work-site to see whether maintenance employees were being protected as required by the standard.

In commenting on this case, by letter dated September 23, 1975 (see app. I), the Department of Labor indicated that maintenance employees at the workplace were adequately protected because (1) the union representative's concern was for maintenance employees entering the roof area, (2) the interim order required that the exhaust system would be shut down during maintenance activities, and (3) bis-chloromethyl ether completely evaporates upon contact with the air.

As previously stated, OSHA had no record of having isolated the union representative's concern to employees entering the roof area. Further, although the interim order said that "no hood operations are allowed while maintenance on the hood exhaust system is being carried out," it did not make it clear that the exhaust system would be turned off before employees entered the roof area for maintenance work other than on the exhaust system. Labor's comment that bis-chloromethyl ether evaporates upon contact with the air seems contrary with the standard's provisions which required decontamination before the air could be released to any work area or the environment.

In summary, OSHA allowed the interim order to remain in effect for about 7 months and made neither an onsite evaluation nor held a hearing to see if conditions were safe. As of October 1975--about 20 months after the application for variance and about 16 months after the union representative's letter--the questions concerning the safety of maintenance employees had not been resolved through an onsite inspection.

#### Permanent variance

On November 10, 1972, an industry association applied for a permanent variance on behalf of many wood-processing plants. The application involved an OSHA standard requiring that hydraulic logloaders be equipped with positive devices to prevent uncontrolled lowering of the logs in case the hydraulic system failed.

The application and subsequent correspondence from the industry association stated that the plants would follow one of two alternative means for protecting employees. On August 23, 1973, OSHA published the notice of application, including the two alternative means of protection and an interim order allowing the plants to follow either of the alternatives in the Federal Register. The Federal Register also included a list of 380 plants affected by the application and the order.

The interim order was to remain in effect until a final decision was made on the application. The Federal Register notice gave affected employees and others until September 24, 1973, to submit comments and request a hearing.

In a letter to OSHA dated October 5, 1973, an employee union representative stated that an OSHA headquarters official had granted a 2-week extension on the deadline for commenting and requesting a hearing. He stated that:

--The alternative means described in the Federal Register did not provide as much protection as the standard.

--The circumstances warranted open hearings on the full arguments as to why the variance should be denied.

On December 4, 1973, OSHA headquarters requested the Seattle regional office to inspect 4 of the 380 plants affected by the application to evaluate the adequacy of the alternative safety measures. In addition to visiting three of the plants, the regional office talked with representatives of the employee union and equipment manufacturers. In its February 22, 1974, report, the regional office stated:

--At least one plant which belonged to the industry association and wanted the variance was not included in the list published in the Federal Register.

--Many of the plants included in the published list were not members of the industry association.

--At least one plant on the published list did not need a variance because it did not have a hydraulic log-loader, and the plant representative was not aware that the plant was on the list.

--Truck drivers were exposed more than any other employees to the logloader hazard. Most drivers were not employees of the plants; the contractors of companies for which they worked were not included in the published list; and no evidence was found that truck drivers were notified of the interim order. Truck drivers who were not employees of a plant could not be directed by plant management to adhere to the alternative safety measures in the interim orders.

--At least one plant's unloading area was so near a road that passersby were exposed to the hazard of spilled logs.

--Devices designed to lock and hold the load, which some employers believed necessary to comply with the standard, actually created serious hazards for the loader operator and the mechanic.

Because of these problems, the OSHA regional office recommended that OSHA:

--Publish an interpretation defining a positive device for preventing an uncontrolled lowering of the load or forks as a device which will positively prevent the load or forks from lowering at a speed greater than 10 centimeters per second if the hydraulic system fails.

--Terminate the interim order.

--Alert the 380 plants that temporary variances would be granted if the application contained evidence that equipment needed for compliance with the standard, as interpreted, had been ordered.

On August 22, 1974, an employee union representative wrote OSHA that, instead of scheduling a hearing as requested in the union's October 5, 1973, letter, OSHA had referred the matter to the Seattle regional office for investigation. He said that the union had not been informed of the status of the variance.

OSHA's reply to the union on September 19, 1974, said that a review of the regional office findings showed that modification of the standard was needed and that a proposed modification would be published shortly. The reply said, furthermore, that the interim order published in the Federal Register on August 23, 1973, was still in effect and had to be complied with by the employers listed.

An OSHA headquarters official told us in February 1975 that OSHA had decided not to modify the standard. At that time, OSHA had not yet scheduled a hearing on the permanent variance application, nor had it inspected 377 of the 380 plants to see whether the workers were adequately protected. It had not decided on the application, which had been submitted about 26 months earlier; the interim order, which had been granted about 18 months earlier, remained in effect.

In commenting on this case, Labor said that, because of a recent OSHA program directive, the requested variance was no longer necessary and the interim order was moot. The September 8, 1975, OSHA program directive states that OSHA

plans to modify the standard to make it applicable only to the hydraulic boom lifting cylinders on machines that lift logs with wire rope. The directive states that, pending such modification of the standard, any violations of the standard involving mobile logloaders with hydraulically operated lifts will not be cited or be required to be abated. Once the standard is modified, such mobile logloaders will not be subject to any standard to prevent the uncontrolled lowering of logs in case the hydraulic system fails.

Although the variance application and interim order may be moot in view of OSHA's actions, such actions did nothing to resolve the safety questions. The first question involved the danger of employees being hit by spilled logs if the hydraulic system failed and there was no device to prevent uncontrolled lowering of the logs. The second involved the danger to the loader operator when the safety device locked and held the load in place. Both of these hazards exist with respect to mobile hydraulic logloaders, which, according to the September 1975 OSHA directive, will no longer be subject to the OSHA standard. The OSHA headquarters office had not responded to the OSHA regional office's recommendations for dealing with these hazards. (See p. 16.)

Need for procedures to insure  
protection of workers under  
interim orders

The cases discussed above demonstrate a need for OSHA and the States, after issuing interim orders, to make sound and timely decisions on the basis of onsite evaluations and hearings. OSHA and the States should require, within specific time frames, that:

- An onsite evaluation be made when employees or unions complain about the safety of operations under an interim order or request a hearing.
- Requested hearings be held as provided for in the act.
- A final decision be made on a variance application.
- An inspection be made to insure that an employer operating under a temporary variance or an interim order for a temporary variance is providing adequate worker protection.

Oregon officials said they had not used and did not intend to use an interim order procedure for granting variances. As of December 31, 1974, Oregon had granted 27 variances and in each case had decided that the alternative means of worker protection was as effective as the standard's.

Washington uses an interim order procedure for granting variances. As of December 31, 1974, Washington had issued 49 interim orders, but had not established time frames within which final decisions were to be made.

As of December 31, 1974, one of the interim orders had been canceled through the granting of a variance. The interim order, in this case, had been in effect for about 4 months. Of the remaining 48 interim orders granted and in effect as of March 24, 1975, 2 had been in effect for about 7 to 8 months and the remaining 46 had been in effect for about 3 months.

ONSITE EVALUATIONS NEEDED  
BEFORE GRANTING VARIANCES

Although an onsite evaluation may not be necessary in all cases, criteria should be established for deciding when such an evaluation should be made and for documenting, when appropriate, the reasons for not making one.

The act authorizes the Secretary to make an onsite evaluation to determine whether granting a variance would reduce worker protection. OSHA had neither established criteria for deciding when such an evaluation was needed nor required States operating under OSHA grants to do so. Oregon and Washington, therefore, had not established criteria.

As of December 31, 1974, OSHA had granted 41 variances. Onsite evaluations were not made beforehand in any case. As the following example demonstrates, an onsite evaluation could have prevented the granting of a variance when an employer did not provide adequate worker protection from the hazards involved.

An employer applied for a permanent variance from the OSHA standard requiring secured guarding of hand-fed cross-cut table saws. OSHA granted the variance without an onsite evaluation of the protection afforded the workers. A subsequent OSHA inspection showed that four of the eight saws subject to the variance were unguarded and posed serious hazards to employees.

The OSHA Area Director told us that, if an evaluation had been made at the worksite before authorizing the variance, the evaluation would have shown that the alternative guarding for four of the saws was not secured, as it was for the other four, and could be easily removed--thereby creating hazardous conditions for the workers. He said that data he had developed over the years showed that unguarded saws had been responsible for numerous amputations.

He further noted that the employer, before the variance request, was violating the standard requiring the guarding and an employee's arm had been amputated when he had fallen onto one of the saws.

As of December 31, 1974, Washington had granted 60 variances. The State had made onsite inspections in six cases beforehand. Of the 124 variance applications pending as of December 31, 1974, the variance administrator had requested onsite inspections in 36 cases. State records, however, did not explain why the inspections had been made or requested in some cases and not in others.

As of December 31, 1974, Oregon had granted 27 variances. Onsite inspections had been made before granting 17 of these. State records did not show the relationship, if any, between the 17 inspections and the corresponding applications or why inspections had not been made on the remaining applications. Oregon officials explained that it was up to the judgment of the variance administrator to make inspections in some cases but not in others.

## CHAPTER 3

### CONCLUSIONS, RECOMMENDATIONS, AGENCY

#### COMMENTS, AND OUR EVALUATION

#### CONCLUSIONS

OSHA's procedures for processing requests for variances from occupational safety and health standards have not insured the safest and most healthful working conditions.

OSHA had not required OSHA and the States to make sound and timely decisions on variance applications. We found instances where:

- Applications were not promptly denied even though the applicants failed to describe what they were doing or planning to protect the workers from the hazards covered by the standards.
- Affected employers, employees, and employee representatives and OSHA and State compliance officers were not notified when variance applications indicated potentially unsafe or unhealthful working conditions.
- Compliance inspections were not made when applications indicated potential hazards or after temporary variance permission had expired.
- Sound and timely decisions were not made on the effectiveness of the employee protection authorized in interim orders on temporary and permanent variance applications.
- Decisions were made on variance applications without onsite evaluations having been made of working conditions and the adequacy of the proposed protection.

Procedures to prevent the above situations are necessary to insure sound decisions on variance requests and timely correction of hazardous workplace conditions.

#### RECOMMENDATIONS

To insure that prompt decisions are made on variance requests, we recommend that the Secretary of Labor have OSHA establish and require States to establish specific time frames within which:

--A final decision should normally be made on an application, particularly when interim approval has been granted.

--Applications which do not describe an alternative means of worker protection will be promptly denied.

--Hearings requested by persons or groups concerning an application or an interim approval will be held.

So that employers, employees, and employee representatives and OSHA and State compliance officers are notified when a variance application indicates potentially unsafe and unhealthful working conditions, we recommend that, for variance applications denied or closed without a formal acceptance or denial, the Secretary of Labor have OSHA and the States require that:

--Letter of denial and letters closing an application, or copies thereof, be sent to applicants, employers, employees, and OSHA regional and area offices and State offices having compliance jurisdiction in the employer's area of operation.

--Letters denying or closing applications describe the nature of the hazards which may exist at the worksites and advise employers to contact responsible OSHA or State compliance officials to determine how to comply with the standards from which the variances were sought, if they have not already done so.

--Employers, including those affected by applications submitted by trade associations, notify affected employees of potential hazards by posting copies of the letters at the worksites.

To provide that onsite evaluations or compliance inspections are made when needed, we recommend that the Secretary of Labor have OSHA and the States require that:

--Compliance officers inspect worksites where denied or closed applications have indicated potential hazards that should be corrected.

--Criteria be established for determining whether an onsite evaluation should be included in the variance evaluation process.

- The application files and Federal Register or other public notice of variances granted include the information used in making the decision and, when applicable, the reasons why an alternative means of employee protection was approved without an onsite evaluation of the working conditions.
- Inspections be made within an established time frame when employees or others complain about safety or request a hearing on an application or an interim approval.
- Timely inspections be made to insure that an employer who has operated under a temporary variance or an interim approval has complied with the standard.

To determine whether working conditions involved in variances previously granted, denied, or otherwise closed are hazardous, we recommend that the Secretary of Labor have OSHA and the States review the applications previously granted without onsite evaluations and applications previously denied or closed to identify such conditions so that compliance officials can inspect the worksites involved and require corrections.

In view of the number of actions needed and the number of OSHA and State offices involved, we recommend that the Secretary of Labor have OSHA establish target dates and a followup mechanism so that OSHA and the States can promptly implement our recommendations.

#### AGENCY COMMENTS AND OUR EVALUATION

The Department of Labor, by letter dated September 23, 1975 (see app. I), stated that, in view of actions taken as a result of discussions with us during our review, it appeared that OSHA had already accomplished many of our recommendations. Labor generally agreed with those recommendations not already acted upon. The first enclosure to Labor's letter states the actions which Labor said it had taken or would take to implement our recommendations.

We do not believe that Labor's actions are or will be adequate because:

- The only evidence provided by OSHA that many of our recommendations have "already been accomplished" was a rough, unsigned listing of procedural statements and related comments prepared in response to our recommendations. None of the procedures discussed have been issued in the form of program directives.

--To help States improve their variance programs, OSHA only indicated it would notify the States of changes in its program. We recommend that OSHA require States to adopt the needed improvements.

--Even if fully implemented, the proposed actions described in the unsigned listing will fall short of the actions needed.

Discussed below are those actions OSHA has taken or plans to take which we believe are not sufficient to insure the best possible worker protection when employers request permission to deviate from safety and health standards.

#### Insuring prompt decisions on variance actions

Regarding our recommendation for prompt decisions on variance requests, Labor stated that OSHA will decide a variance request within 45 days after notice of filing in the Federal Register if it does not receive comments. However, this time frame does not consider the time from (1) receipt of application to publication in the Federal Register, (2) receipt of comments to response, or (3) completion of a hearing to final decision. To insure that prompt decisions are made on variance requests, specific time frames are necessary for each segment of a variance processing action.

Until time frames are established within which all possible variance activities can be measured, persons processing variance requests will not have a comprehensive guide for making timely decisions.

Regarding our recommendation that OSHA establish, and require States to establish, time standards to insure that applications which do not describe an alternative means of worker protection are promptly denied, Labor responded that OSHA would deny them within 15 days after receipt if the variance application requested an exemption from a standard. We discussed this matter with an OSHA official who told us that employers requesting a variance without providing for an alternative means of worker protection would have such requests denied within 15 days after receipt and that OSHA's variance processing procedures would be revised to state this more clearly.

Need to communicate and require  
correction of potentially hazardous conditions

Regarding our recommendation that for variance applications denied or closed without a formal acceptance or denial, OSHA notify applicants, employers, employees, and OSHA regional and area offices and State offices having compliance jurisdiction in the employer's area of operation, Labor commented that "appropriate parties" would be notified by a copy of the letter of denial. The reply did not address those applications which were or might be closed without formal acceptance or denial.

OSHA should specify in its procedures who the appropriate parties are and should require that they be notified of applications closed without a formal acceptance or denial. States will not know who should be notified unless appropriate parties are specified in the procedures and potentially hazardous conditions may be overlooked.

Regarding our recommendation that OSHA and the States advise employers to contact OSHA and State compliance officials to determine how to comply with standards from which variances are sought when such requests are denied or closed, Labor replied that it would advise employers to contact their OSHA Area Director. Because there may be instances when a State will have jurisdiction for compliance in a plant for which an employer has requested a variance from OSHA, employers should be advised to contact State compliance officials in such cases.

We also recommended that employers, including those affected by applications submitted by trade associations, notify affected employees of potential hazards by posting, at the worksites, copies of the letters denying or closing an application. Labor said it would advise applicants of a class action variance request to tell each participating employer to notify its employees. We believe that Labor should require the applicant, or the employers directly, to notify the employees. Without such a requirement, Labor's proposed action appears discretionary rather than mandatory.

Further, the proposed OSHA procedures do not require that notification be posted in the workplace. Unless notification is posted there is no assurance that all potentially affected employees are being notified of the decision to deny or close the variance request and consequently they may not be aware of the potentially hazardous condition in their workplace.

## Need for onsite evaluations and compliance inspections

We recommended that OSHA (1) inspect worksites where denied or closed applications have indicated a potential hazard, (2) establish criteria for determining whether an onsite evaluation might be included in the variance process, (3) record why an onsite evaluation was not made, (4) inspect workplaces within an established time frame when employees or others complain about safety or request a hearing, and (5) inspect worksites to insure that an employer granted a temporary variance or an interim approval subsequently has complied with the standard.

Labor's response, while aimed at these objectives, does not adequately insure they will be accomplished.

Labor stated that workplaces where variance requests have been denied or closed are subject to inspections just as any other employer under OSHA's regular compliance program. Under the regular program such workplaces might never be inspected. We believe that OSHA should require inspections whenever applications indicate that hazardous conditions might exist. OSHA compliance inspectors do not now make inspections based on the possibility of a hazard existing at the worksite as shown by a variance application.

Labor's comment that it did not have authority until September 1973 to make onsite inspections before making a variance decision is inaccurate. In September 1973 the Solicitor of Labor stated that OSHA had this authority under the 1970 act.

Labor indicated that criteria have been established, as we recommended, for determining whether an onsite evaluation should be included in the variance evaluation process. However, OSHA's proposed criteria are limited to permanent variance applications. We believe these criteria should be applied to temporary variance applications as well so that an onsite evaluation will be made whenever the adequacy of the protection afforded workers is questioned.

OSHA's criteria list various types of hazards or industries for which variance requests will usually result in a variance inspection. OSHA's criteria can be strengthened if they also include other conditions warranting inspection, such as when (1) an applicant does not provide additional information requested by OSHA or (2) the safety and health of the workers is in doubt.

Labor also indicated in response to our recommendation that, when an onsite visit is not made, OSHA will include a statement in the record that such visit was not deemed necessary. Labor appears to have misunderstood the intent of our recommendation. We believe that OSHA should state the reason for not inspecting to insure that ample consideration is given to the criteria when making the decision on the variance request and to give evidence that sufficient reason existed for not making an inspection.

Regarding our recommendation that timely inspections be made when employees or others either complain to OSHA about safety conditions or request a hearing, Labor stated that OSHA will immediately contact a party who requests a hearing. Labor's response, however, does not address complaints received which do not request hearings. If OSHA can resolve a complaint or request for hearing to the satisfaction of the party making the complaint or requesting the hearing without making an inspection, OSHA should record this fact to insure that such resolution of the concern is documented and accurately depicted in the file so that the matter can properly be considered closed.

We also recommended that timely inspections be made to insure that an employer who operated under a temporary variance or an interim approval ultimately complies with the standard. Labor's comments do not assure that compliance will be ascertained. OSHA's procedures indicate it will maintain continuous contact with the employer while operating under an interim approval on a request for temporary variance.

Our recommendation is to insure that the employer has complied with the standard after his interim period for coming into compliance has expired. Such compliance inspections are necessary to insure that employers who have been granted a period of time to comply with a standard eventually do satisfactorily comply.

Reviewing prior variance actions  
to determine whether hazardous  
conditions may exist

We recommended that OSHA review and require the States to review applications previously granted without onsite evaluations and applications previously denied or closed to identify possible unsafe or unhealthful conditions so that those workplaces can be inspected to identify and require correction of the hazards. Labor stated that past variance actions are being reviewed regarding possible hazards. According to an OSHA official, past variance actions would not necessarily include all closed applications. For example, OSHA would

not review applications closed because of lack of clarification as to what the applicant was proposing. Unsafe and unhealthful conditions may still exist at worksites which fail to properly clarify their variance request; therefore, OSHA should review all closed applications.

Also, OSHA has not stated what procedures it will follow when it identifies a potential hazard during its review of applications previously granted, denied, or closed without an onsite inspection. OSHA should establish procedures to insure a compliance inspection is made to identify and require correction of any hazard noted as the result of such a review.

#### Need for prompt implementation of improved procedures

Labor stated that OSHA had established variance procedures incorporating our recommendations. OSHA, however, as discussed above, has not formalized these procedures nor has it included and/or addressed in sufficient detail our recommendations' objectives. OSHA should formalize its variance procedures and require prompt implementation by OSHA and State officials. OSHA should also revise those aspects of its proposed procedures which do not sufficiently insure the best possible employee protection.

We discussed the contents of this report with Washington and Oregon officials. They generally agreed with our recommendations and indicated they had already improved certain aspects of their variance operations, planned other improvements, and would await guidance from OSHA on what new variance procedures OSHA would adopt in response to our recommendations. At the time of OSHA's response OSHA had not notified the States of changes it had made to the Federal variance system as a result of our recommendations.

It is essential that OSHA communicate the changes in Federal procedures to the States operating under approved plans as soon as they are finalized. This should be no later than the June 30, 1976, target date established by OSHA. OSHA should establish a specific time frame within which the States would either adopt OSHA's procedures or develop variance procedures as effective as OSHA's. Regional offices should also be notified of the finalized Federal procedures so they can adequately monitor the States' effectiveness in insuring the protection of workers affected by the States' variance granting activities.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION  
WASHINGTON, D.C. 20210



SEP 23 1975

Mr. Gregory J. Ahart  
Director  
Manpower and Welfare Division  
U. S. General Accounting Office  
Washington, D. C. 20548

Dear Mr. Ahart:

This is in response to your letter of August 5, 1975, requesting the Department of Labor's comments on a General Accounting Office (GAO) proposed report to the Congress on "Need to Insure Worker Protection When Employers Request Permission to Deviate from Safety and Health Standards."

We would like to compliment the GAO on the overall quality and objectivity of the foregoing report. It has contributed materially to our own self-evaluation and remedial activity.

During the Fall of 1974, representatives from GAO met with members of the Occupational Safety and Health Administration (OSHA) program staff to discuss current OSHA/State variance procedures. As a result of those discussions, a number of revisions were made to the Federal Variance Processing System. In light of these revisions, it appears that many of the recommendations now being proposed in the GAO report for establishing additional variance procedures have already been accomplished. Enclosure 1 addresses the recommendations relative to what OSHA's present variance procedures are. In those cases where procedures have not been established, other comments are provided. Enclosure 2 contains specific comments on other information presented in the report.

If we can be of further assistance please let us know.

Sincerely,

A handwritten signature in cursive script that reads "Fred G. Clark".

FRED G. CLARK  
Assistant Secretary for  
Administration and Management

Enclosures (2)

## COMMENTS ON PROPOSED RECOMMENDATIONS

The following information outlines specific variance procedures which have been established by the Occupational Safety and Health Administration, U.S. Department of Labor relative to the recommendations proposed on pages 31-33 of the GAO report. In those cases where procedures have not been established, other comments are provided.

1. a. A decision on a variance application shall be made within 45 days after notice of filing in the Federal Register when no comments are received. Final order shall be prepared and forwarded to the Solicitor of Labor for review.
- b. A denial of a variance requesting an exemption from a standard shall be made within 15 days after receipt.
- c. When requested in accordance with 1905.15 of the CFR, a hearing shall be scheduled within 60 days after the date of the request.
2. a. A letter of denial of a variance application shall be forwarded to the appropriate parties including a statement that employers shall notify their employees of the denial.
- b. Letters of denial and clarification shall describe the hazards and solutions and advise the employer to contact the Area Director having jurisdiction.

GAO note: Numbers in brackets refer to pages in final report.

- c. Letters of denial and clarification shall advise the applicant of a class action to advise each participating employer to notify his employees of the denial and clarification.
3.
  - a. OSHA did not have authority to conduct variance inspections until September 19, 1973. This authority is presently being utilized as stated below (3. b.). Establishments where variance requests have been denied or closed are inspected in accordance with regular compliance inspection procedures.
  - b. Variance inspections usually shall be made on a variance request concerning: hazardous materials, flammable and combustible liquids, health hazards, explosives, electrical and certain special industries.
  - c. When appropriate, future final orders shall include a statement that an on-site visit was not deemed necessary.
  - d. After receipt of an application for a variance, immediate contact shall be made with any employee, employee representative or other party requesting a hearing to determine the nature of his request. Our experience has shown that an informal conference/hearing, which is held on most applications, can preclude the need for a formal hearing.

e. Continuous contact is maintained with an employer operating under an interim order on a request for temporary variance. These contacts are made to determine if the applicant is on schedule or to determine if there are any engineering problems which may require an extension of the variance period. A variance inspection is considered on a case by case basis on requests for temporary variances.

4. Past variance actions are being reviewed with respect to possible hazards. Based on present manpower, a complete review of past cases will be completed by June 30, 1976.

5. Federal variance procedures have been established as outlined above. In accordance with 1953, Subpart C of the CFR, States with approved plans will be notified of all new and/or revised Federal variance procedures. This action will be completed by the end of Fiscal Year 1976. Also, in accordance with 1954 of the CFR, variance activities in States with approved plans will continue to be monitored.

## COMMENTS ON REPORT

[3]

Page 4

The variances granted by the State of New York are moot, since they are now under Federal jurisdiction. The Michigan regulations concerning variances were promulgated and became effective January 1, 1975, upon passage of enabling legislation for the State approved plan. The GAO report refers to variances granted as of December 31, 1974, under the State's former rules. Excluding New York and Michigan the remaining State approved plans have granted 211 variances according to the GAO report.

[4]

Page 9

The Federal variance staff began formally to deny variance applications by letter during July 1974. Prior to that time it had not been determined if the denial should or should not be published in the Federal Register. At the present time, a request for an exemption from a standard is denied within 15 days.

[8]

Page 13

During 1971 and 1972 most requests for variances were inadequate because employers did not understand the OSHA variance regulations. Employers who requested these variances received telephone instructions and letters advising them of the information needed. In many cases letters of clarification were forwarded to applicants rather than establishing variance files during this period.

[8] [9] and [-]  
Page 13, 14 and 15

This request for a variance from 1910.93, which requested temporary relief from the threshold limit value of cotton dust, caused considerable study in OSHA with respect to an experimental variance under 6(C) and the problems relating to engineering feasibility. If an employer can prove it is not feasible to implement engineering controls to comply, he could then comply by utilizing administrative controls (e.g., employee rotation) and personal protective equipment (e.g., respirators).

The Association in question was attempting to obtain relief for individual members from making large capital expenditures on engineering controls because they felt that the enzyme suspected of causing byssinosis could be isolated. To date, however, they have failed to prove the cause of byssinosis. We have been advised that this Association has awarded a grant to the University of South Carolina to continue to study and identify the cause of byssinosis. Individual members of this Association are aware that they must prove that they cannot provide the necessary engineering controls before utilizing administrative controls and personal protective equipment for the protection of employees.

[12] [13] and [14]  
Page 20, 21 and 22

OSHA made contact with the employee representative who asked if there was an oversight concerning the lack of monitoring prior to the maintenance employee entering the roof area. We advised that it was not since the

system would be shut down during maintenance activities. This is required in the Federal Register notice and interim order dated May 21, 1974. The chemical bis-Chloromethyl scientifically has complete evaporation upon contact with the air. A hearing and modification of the interim order was, therefore, unnecessary

[14] [15] [16] and [17]

Page 22, 23, 24 and 25

An interim order was granted authorizing two specific procedures for the loading and unloading of logs. Since the procedures authorized included adequate measures for the protection of employees, it was felt that a study of the standard was required not a revocation of the interim order. If the order is violated the employee representative may submit an employee complaint to the Area Director having jurisdiction and a compliance inspection on the complaint will be held. This particular standard which has been under considerable study, was recently clarified in OSHA Program Directive #100-37. As a result of this clarification, the variance requested is no longer necessary and the interim order previously granted is now moot.

[18]

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A variance granted to an applicant serves as a specific standard written for that applicant. It is possible, as with any standard, that the terms of a variance might be violated. In the case of such a violation, the employer could be subject to a willful citation. This violation does not, however, negate the validity or safety of the variance as granted, and neither prior inspection nor revocation of the variance would guarantee employee safety.

PRINCIPAL OFFICIALS OF THE  
DEPARTMENT OF LABOR  
RESPONSIBLE FOR ADMINISTERING ACTIVITIES  
DISCUSSED IN THIS REPORT

	<u>Tenure of office</u>	
	<u>From</u>	<u>To</u>
<b>SECRETARY OF LABOR:</b>		
John T. Dunlop	Mar. 1975	Present
Peter J. Brennan	Feb. 1973	Mar. 1975
James D. Hodgson	July 1970	Feb. 1973
<b>ASSISTANT SECRETARY FOR OCCUPATIONAL SAFETY AND HEALTH:</b>		
Morton Corn	Dec. 1975	Present
Vacant	July 1975	Dec. 1975
John H. Stender	Apr. 1973	July 1975
Vacant	Jan. 1973	Apr. 1973
George C. Guenther	Apr. 1971	Jan. 1973

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