

State of Alaska Occupational Safety and Health



AKOSH Procedures

**Inspections, Citations, Penalties, Appeals,
Recordkeeping, Variances**

Statutes and Regulations



**ALASKA DEPARTMENT OF LABOR
& WORKFORCE DEVELOPMENT**

Title 18. Health, Safety, and Housing

Chapter 60. Safety

Article 01. Prevention of Accident and Health Hazards

Sec. 18.60.020. Regulations.

(a) The Department of Labor and Workforce Development shall issue the orders and adopt the regulations necessary to carry out the purposes of AS 18.60.010 - 18.60.105.

(b) Upon adopting a regulation or standard, or granting any variance under this chapter, the commissioner shall include a statement of the reasons for the action, forward a copy to the OSHA Review Board, cause a copy to be published in newspapers, and submit a news release to the electronic news media in the state so as to receive statewide coverage.

Sec. 18.60.030. Duties of Department of Labor and Workforce Development.

The Department of Labor and Workforce Development shall

(1) study ways and means for prevention of accidents to persons on the streets and highways, in and on the water, in aircraft usage, in homes, on the farms, at schools, in industrial and commercial plants, and in public places;

(2) plan and execute safety programs, including educational campaigns, designed to reduce accidents in every field of activity;

(3) work in cooperation with official and unofficial organizations and instrumentalities in the state that are interested in the promotion of safety so that

possible resources can be marshaled and utilized to reduce the menace of accidental death and injury;

(4) work toward obtaining better observance and enforcement of laws governing street and highway traffic, and assist in bringing about, wherever feasible, the application of modern engineering measures for the prevention of traffic accidents;

(5) confer with the public agencies responsible for safeguarding the people against accidents, and especially with the Department of Transportation and Public Facilities, the Department of Public Safety, the Department of Education and Early Development, the Department of Natural Resources, the Department of Health and Social Services, and the heads or representatives of federal departments and agencies operating in the state particularly concerned with safety programs and accident prevention;

(6) establish and enforce occupational safety and health standards that prescribe requirements for safe and healthful working conditions for all employment, including state and local government employment, and the requirements are to be at least as effective as those requirements adopted by the United States Secretary of Labor under 29 U.S.C. 655 (Sec. 6 of P.L. 91-596);

(7) require an employer to maintain records and submit reports to the department which records and reports are necessary or appropriate for the enforcement of AS 18.60.010 - 18.60.105 and to maintain records and submit reports to the United States Secretary of Labor in the same

manner and to the same extent as set out in federal law and regulations;

(8) require an employer to maintain records and submit reports appropriate for use in developing information regarding the causes and prevention of occupational accidents and illnesses;

(9) require an employer to make periodic inspections when necessary to carry out the record and reporting requirements of (7) and (8) of this section;

(10) participate in occupational safety and health programs if it finds they are necessary to meet the occupational health and safety needs of the state;

(11) execute on behalf of the state agreements or contracts necessary or desirable to enable the state to participate in occupational safety and health programs, and to receive and expend funds made available for programs of the state;

(12) annually publish a list of toxic and hazardous substances and physical agents;

(13) maintain a current set of OSHA form 20's or equivalent information for toxic and hazardous substances and for physical agents, and other information relevant to toxic and hazardous substances and physical agents;

(14) assist employers, upon request, to develop employee safety education programs and to identify and obtain information on toxic and hazardous substances and physical agents.

Sec. 18.60.040. Report.

Before the sixth day of each regular legislative session, the department shall prepare a report showing the accomplishments in this state toward reductions in accidents of all types, and recommendations for legislation, together with a plan for the proposed safety program for the succeeding year. Copies of the report shall be available for public information, and the department shall notify the legislature that the report is available.

Sec. 18.60.050. Employment for education and enforcement purposes. *[Repealed, Sec. 9 ch 72 SLA 1973].*

Repealed or Renumbered

Sec. 18.60.055. Division of Labor Standards and Safety.

As established by AS 23.10.075 , there is in the department a division of labor standards and safety. Minimum qualifications shall be established for employees of the department acting as safety inspectors under AS 18.60.010 - 18.60.105. These qualifications must include, as a minimum requirement, at least five years general work experience in the field they are assigned to inspect. Training in safety principles, codes, and standards may be substituted for work experience up to a maximum of three years.

Sec. 18.60.057. Occupational Safety and Health Review Board.

(a) There is created the Occupational Safety and Health Review Board within the Department of Labor and Workforce Development, referred to in this chapter as the OSHA Review Board. The board shall consist of three members appointed by the

governor and confirmed by the legislature in joint session. One member of the board shall represent labor, one member shall represent industry, and the other shall represent the public. Each appointee must have adequate experience in the area of appointment. A member of the board may not be an employee of the state in another capacity nor may a member of the OSHA Review Board be a member or officer of another board or commission for which compensation other than per diem and travel expenses is paid.

(b) The members of the board serve staggered terms of four years. A vacancy caused by the death, resignation, or removal of a member before the expiration of the term for which the member was appointed shall be filled only for the remainder of the unexpired term. A member of the board may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office.

(c) The governor shall designate one member of the board as chairman. This member shall serve as chairman for a term of one year, but may be appointed for successive terms.

(d) Members of the board are entitled to compensation in the amount of \$50 a day for each day or portion of each day spent in actual meeting or on authorized official business incident to their duties and, in addition, they are entitled to all other transportation and per diem as provided by law for members of other state boards and commissions.

(e) The board may employ persons, subject to legislative appropriation, it considers necessary for the purpose of performing its duties under this chapter.

Sec. 18.60.058. Reporting of injuries and illnesses.

(a) In the event of an employment accident that is fatal to one or more employees or that results in the in-patient hospitalization of one or more employees, the employer shall report the accident orally by telephone or in person to the nearest office of the division of labor standards and safety or by telephone to the federal toll-free number provided by the division. The report must relate the name of the establishment, the location of the accident, the time of the accident, a contact person and the telephone number of the contact person, a brief description of the accident, the number of fatalities or hospitalized employees, and the extent of any injuries. The report must be made immediately but in no event later than eight hours after receipt by the employer of information that the accident has occurred. However, if the employer first receives information of a fatality or in-patient hospitalization of one or more employees eight or more hours after the accident but within 30 days after the accident, the employer must make the report within eight hours after receiving information of the fatality or in-patient hospitalization. This subsection does not apply to an employer that first receives information of a fatality or in-patient hospitalization more than 30 days after the accident.

(b) In the event of an employment accident that is fatal to one or more employees or that results in in-patient hospitalization of two or more employees, equipment, material, or product related to the injury or fatality may not be moved or altered until clearance is given by the department, except when compliance with this requirement would interfere for an unreasonable length of time with work or create additional hazards. If

equipment, material, or products must be moved or altered before department clearance, the employer shall submit a detailed investigative report of the accident to the division.

Sec. 18.60.059. Legal counsel.

(a) The attorney general is legal counsel for the OSHA Review Board. The attorney general shall advise the board on legal matters arising in the discharge of its duties and represent the board in actions to which it is a party. If, in the opinion of the board, the public interest is not adequately represented by counsel in a proceeding, the attorney general, upon request of the board, shall represent the public interest.

(b) Subject to the approval of the attorney general, the board may employ temporary legal counsel from time to time in matters in which the board is involved.

Sec. 18.60.060. Cooperation by other state agencies.

The agencies of the state shall cooperate with the department in its program of safety activities and shall make available information needed by the department relative to the accident problems and methods employed or recommended for accident prevention. The agencies may lend the personnel who may be spared from their regular duties for short periods to assist in safety programs.

Sec. 18.60.065. Importation of toxic and hazardous substances.

Toxic and hazardous substances imported into the state shall be accompanied by a federal Occupational Safety and Health Administration (OSHA) form 20 or

equivalent information. This requirement does not apply to a substance for which the in-state purchaser has already received the most current information.

Sec. 18.60.066. Employee safety education programs.

(a) An employer shall conduct a safety education program for an employee before the employee performs a new work assignment that may result in the employee being exposed to a toxic or hazardous substance or a physical agent for which the employee has not received safety instruction as provided under (b) of this section.

(b) An employee safety instruction program shall inform the employee of

(1) the location, properties, and known or suspected acute and chronic health effects of the hazardous or toxic substances or physical agents to which the employee is exposed in the workplace;

(2) the nature of the operations that could result in exposure to hazardous or toxic substances or physical agents as well as any necessary handling or hygienic practices or precautions; and

(3) the location, purpose, proper use, and limitations of personal protective equipment used in the workplace.

Sec. 18.60.067. Information provided on employee's request.

(a) An employer shall make available to an employee on request a copy of the most recent OSHA form 20 or equivalent written information for a toxic or hazardous substance or for a physical agent to which the employee may be exposed. If the

employer does not have the copy or information requested, the employer shall request a copy from the department or the manufacturer of the substance within three state government working days after receiving the request.

(b) If the copy or information requested under (a) of this section is not made available to the employee within 15 calendar days after the request is received, the employer shall take measures to assure that employees are not exposed to the substance to which the copy or information pertains until the copy or information is made available to the employee who made the request. This subsection applies only to substances for which an OSHA form 20 or equivalent information is required under OSHA regulations. This subsection does not alter, deny, or abrogate any right an employee may have under law to refuse to work under hazardous circumstances.

Sec. 18.60.068. Posting of information in workplace.

(a) The department shall print and make available to employers posters that contain notice of the provisions of this chapter relating to toxic and hazardous substances and physical agents.

(b) An employer whose employees are or may be exposed in the workplace to a toxic or hazardous substance or a physical agent shall display the following information in a manner designed to notify the employees:

(1) a poster printed by the department under (a) of this section; and

(2) an OSHA form 20 or equivalent information for each toxic or hazardous substance and for each physical agent to

which an employee may be exposed in the workplace

(A) under normal conditions of work; or

(B) during a reasonably foreseeable emergency, including equipment failure and rupture of containers.

(c) Instead of posting the information required under (b)(2) of this section, an employer may post a list of the chemical name and product name of each toxic or hazardous substance and each physical agent to which an employee may be exposed in the workplace, together with an identification of a location, in or near the workplace and accessible to employees, where an employee may inspect the information listed under (b)(2) of this section.

Sec. 18.60.070. Use of funds and contributions.

Funds appropriated by the legislature for AS 18.60.010 - 18.60.105 and contributions shall be spent only for the purposes of AS 18.60.010 - 18.60.105.

Sec. 18.60.075. Safe employment.

(a) An employer shall do everything necessary to protect the life, health, and safety of employees including, but not limited to

(1) complying with all occupational safety and health standards and regulations adopted by the department;

(2) furnishing and prescribing the use of suitable protective equipment, safety devices, and safeguards as are prescribed for the work and work place;

(3) adopting and prescribing control or technological procedures, and monitoring and measuring employee exposure in connection with hazards, as may be necessary for the protection of employees; and

(4) furnishing to each employee employment and a place of employment that are free from recognized hazards that, in the opinion of the commissioner, are causing or are likely to cause death or serious physical harm to the employees.

(b) An employee shall comply with occupational safety and health standards and all regulations issued under AS 18.60.010 - 18.60.105 that are applicable to the employee's own actions and conduct.

(c) *[Repealed, Sec. 9 ch 72 SLA 1973].*

Sec. 18.60.077. Variance from a standard.

(a) An employer who is affected by AS 18.60.010 - 18.60.105 may apply to the commissioner for a variance from a provision of the safety and health standards adopted by the department. Employees who are affected by an application for variance shall be given notice of the application for variance and an opportunity to participate in the hearing. The commissioner shall issue the variance if the commissioner determines on the basis of the hearing record, after opportunity for an inspection where appropriate, 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 employees that are as safe and as healthful as those that would prevail if the employer

complied with the provisions of the safety and health standards adopted by the department. The variance shall prescribe the conditions the employer must maintain and the practices, means, methods, operations, and processes that the employer must adopt and utilize to the extent they differ from the standard in question. The variance may be modified or revoked upon application by an employer, by employees, or by motion of the commissioner, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(b) When the commissioner grants a variance, the commissioner shall include in this grant a statement of the reasons for the action, and the statement shall be published in a newspaper of statewide circulation and in a newspaper of local circulation in the area where the variance will be implemented. A copy of the statement shall be sent to the OSHA Review Board.

Sec. 18.60.080. Contributions.

The department may accept contributions of funds, property, materials, supplies, and other forms of aid from business firms, organized groups, or individuals for furthering the safety program.

Sec. 18.60.081. Temporary variance.

(a) An employer who is affected by AS 18.60.010 - 18.60.105 may apply to the commissioner for a temporary variance from a provision of the safety and health standards adopted by the department. A temporary variance shall be issued only if the employer files an application fulfilling the requirements of (b) of this section and the employer establishes that the employer

(1) is unable to comply with a standard by its effective date because of unavailability of the professional or technical personnel or of the materials and equipment needed to come into compliance or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) is taking all available steps to safeguard employees against the hazards covered by the standard; and

(3) has an effective program for coming into compliance with the standards as quickly as practicable.

(b) An application for a temporary variance must contain

(1) a specification of the standard from which the employer seeks a temporary variance;

(2) a representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that the employer is unable to comply and a detailed statement of the reasons for this inability;

(3) a statement of the steps the employer has taken and will take, including specific dates, to protect employees against the hazard covered by the standard;

(4) a statement of when the employer expects to be able to comply with the standard and what steps the employer has taken and what steps the employer will take, including specific dates, to come into compliance;

(5) a certification that the employer has informed employees of the application

for temporary variance and of their right to request a hearing by giving a copy of the application and a written statement of the right to a hearing to the employees' authorized representative, by posting a statement giving a summary of the application and stating the employees' right to a hearing and specifying where a copy of the application and notice of right to a hearing may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

(c) A temporary variance issued under this section must prescribe the practices, means, methods, operations, and processes that the employer shall adopt and use while the variance is in effect and state in detail the employer's program for coming into compliance with the standard. A temporary variance may be granted only after notice to affected employees and an opportunity for hearing. However, the commissioner may issue one interim order to be effective until a decision is made on the basis of a hearing. A temporary variance may not 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 a temporary variance may be renewed no more than twice if the requirements of (a) and (b) of this section are met and the application for renewal is filed at least 90 days before the expiration date of the variance. An interim renewal of an order may not remain in effect for longer than 180 days.

Sec. 18.60.083. Right of entry and inspection.

(a) A representative of the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, may

(1) enter without delay and at reasonable times a factory, plant, establishment, construction site, or other area, work place, or environment where work is performed by an employee of an employer; and

(2) inspect and investigate during regular working hours and at other reasonable times, and with reasonable limits and in a reasonable manner, a place of employment and all pertinent conditions, structures, machines, devices, equipment, and materials, and question privately an employer, owner, operator, agent, or employee.

(b) In making inspections and investigations under (a) of this section, the department may issue subpoenas compelling the attendance of witnesses and the production of papers and records. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the state. If a person fails to grant a right of entry and inspection, the department may seek an order from the superior court compelling the person to submit to entry and inspection. If a person fails to comply with a subpoena or a witness refuses to testify to a matter regarding which the witness may be lawfully interrogated, a superior court may compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify before it.

Sec. 18.60.085. Prohibition of unauthorized notice of inspection.

A person may not give unauthorized notice of a department safety or health inspection. A person who gives unauthorized notice of a safety or health inspection, upon conviction, is punishable by a fine of not more than

\$7,000, or by imprisonment for not more than 180 days, or by both.

Sec. 18.60.087. Employer and employee participation in inspections.

(a) A representative of the employer and a representative authorized by the employees shall be given an opportunity to accompany the representative of the department during the physical inspection of a work place for the purpose of aiding the inspection. If the authorized representative is an employee, time spent aiding the inspection shall be considered as time worked and the employee shall be compensated accordingly. When there is no authorized employee representative, there shall be consultation with a reasonable number of employees concerning matters of health and safety in the work place.

(b) Comments relating to an employer's compliance with the provisions of AS 18.60.010 - 18.60.105 made by an employee or an employee representative to the representative of the department during the course of an inspection, and the name of any employee or employee representative making these comments to a representative of the department, are confidential and may not be made available by the department to the employer without the consent of the employee or the employee representative.

Sec. 18.60.088. Employee requests for special inspection.

(a) An employee or a representative of employees who believes that a violation of a safety or health standard exists that threatens physical harm or that an imminent danger exists may request an inspection by giving notice of the violation or danger to the department. The notice must be in writing

and set out with reasonable particularity the grounds for the notice and be signed by the employee or the representative of the employees. If, upon receipt of the notice, the department determines that there are reasonable grounds to believe that a violation or danger exists, the department shall make a special inspection as soon as practicable. If the department determines there are no reasonable grounds to believe that a violation exists, the department shall notify in writing the employee or the representative of the employees of that determination.

(b) If the department makes a special inspection, or an inspection under AS 18.60.083 , a copy of an employee notice shall be provided the employer no later than at the time of the inspection. Unless expressly consented to by the person giving the notice, the person's name and the name of employees referred to in the notice shall be kept confidential and may not appear in the copy provided the employer or in any record available to the employer.

(c) The department shall furnish the notifying person a written explanation of why a citation was not issued after a special inspection.

(d) The department shall, by regulation, establish a review procedure for a failure to issue a citation after a special inspection and shall provide the employees requesting a review a written statement of the final disposition of the case.

Sec. 18.60.089. Prohibition against retribution.

(a) A person may not discharge or discriminate against an employee because the employee has filed a complaint or

instituted or caused to be instituted a proceeding related to the enforcement of occupational safety and health standards, or has testified or is expected to testify in a proceeding relating to occupational safety and health or because an employee has exercised personally or on behalf of others a right afforded under AS 18.60.010 - 18.60.105.

(b) An employee who has been discharged or discriminated against by a person in violation of this section may, within 30 days after the violation occurs, file a complaint with the commissioner alleging the discrimination. Upon receipt of the complaint, the commissioner shall investigate the matter as the commissioner considers appropriate. If, upon investigation, the commissioner determines that this section has been violated, the commissioner shall request the attorney general to bring an action in the superior court against the violator. The superior court has jurisdiction to restrain violations of (a) of this section and to order all appropriate relief, including rehiring or reinstatement of the employee to the employee's former position with back pay.

(c) Within 90 days of the receipt of a complaint filed under this section, the commissioner shall notify the complainant of the determination under (b) of this section.

Sec. 18.60.090. Penalty for violations.
[Repealed, Sec. 9 ch 72 SLA 1973].

Repealed or Renumbered

Sec. 18.60.091. Citations.

(a) If, upon inspection or investigation, the department believes that an employer has

violated a provision of AS 18.60.010 - 18.60.105 that is applicable to the employer, the department shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and must describe with particularity the nature of the violation, including reference to the provisions of AS 18.60.010 - 18.60.105 or any order or regulation alleged to have been violated, and must fix a reasonable time for abatement of the violation. The department may prescribe procedures for the issuance of a notice instead of a citation with respect to minor violations that have no direct or immediate relationship to safety or health, or violations that are not serious and that the employer agrees to correct within a reasonable time. If an employer does not, within a reasonable time set out in the notice, correct a violation that is not serious, the department shall issue a citation to the employer.

(b) Upon receipt by the employer, each citation issued under this section, or a copy of the citation shall be immediately and prominently posted, at or near each place the violation referred to in the citation occurred.

(c) A citation may not be issued for a particular violation under this section after the expiration of 180 days following the discovery of the violation by the department or correction of a violation.

Sec. 18.60.093. Enforcement procedures.

(a) If, after an inspection or investigation, or after an employer's failure to correct a violation for which the employer has been issued a notice, the department issues a citation, the commissioner shall, at a reasonable time after the termination of the inspection or investigation, or expiration of the time period set out in the notice, notify

the employer by certified mail of the penalty proposed to be assessed and that the employer has 15 working days within which to notify the commissioner and the OSHA Review Board that the employer wishes to contest the citation or proposed assessment of penalty. If, within 15 working days after receipt of the penalty notice issued by the commissioner, the employer fails to notify the OSHA Review Board that the employer intends to contest the citation or proposed assessment of penalty, the citation and the assessment, as proposed, are considered final and not subject to review by any court.

(b) If the commissioner has reason to believe that an employer has failed to correct, within the period allowed, a violation for which a citation has been issued, the commissioner shall notify the employer by certified mail of the failure, of the penalty proposed to be assessed because of the failure, and that the employer has 15 working days within which to notify the commissioner and the OSHA Review Board of a wish to contest the commissioner's notification of the proposed assessment of penalty. If, within 15 working days from the receipt of the notification issued by the commissioner, the employer fails to give notice of an intention to contest the notification or proposed assessment of penalty, the notification and assessment as proposed shall be considered a final order and not subject to review by any court.

(c) If an employer gives notice of an intention to contest the citation or notification issued under (a) or (b) of this section, the OSHA Review Board shall afford an opportunity for a hearing and thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the original citation or proposed penalty, or

directing other appropriate relief, and the order is final 30 days after its issuance.

(d) The OSHA Review Board shall notify the authorized representative of the affected employees that an employer is contesting a citation or notification issued under (a) or (b) of this section and afford the representative an opportunity to participate in the hearing on the matter.

(e) An employer, an affected employee, or a representative of affected employees has 15 working days from the receipt of a citation within which to notify the commissioner and the OSHA Review Board that the period of time fixed in the citation for the abatement of a violation is unreasonable. The OSHA Review Board shall afford an opportunity for a hearing and thereafter issue an order, based on findings of fact, affirming or modifying the original period for abatement, and the order is final 30 days after its issuance. If the contest is initiated by the employer, the OSHA Review Board shall notify the employees in the same manner as provided by (d) of this section. If the contest is initiated by the employees, the OSHA Review Board shall notify the employer and afford the employer an opportunity to participate in the hearing on the matter.

(f) If an employer fails without good cause to appear at a hearing held under this section after receiving proper notice of the hearing, the OSHA Review Board may order the employer to pay all reasonable expenses incurred by the board for the hearing, including the board's actual travel expenses and per diem.

(g) The board shall request the chief administrative law judge (AS 44.64.020) to appoint an administrative law judge employed or retained by the office of

administrative hearings to preside at a hearing conducted under this section. AS 44.64.060 and 44.64.070 do not apply to the hearing. The administrative law judge who presided at the hearing shall be present during the consideration of the case and, if requested by the board, shall assist and advise the board. A member of the board who has not heard all of the evidence may not vote on the decision.

Sec. 18.60.095. Penalties.

(a) An employer who willfully or repeatedly violates a provision of AS 18.60.010 - 18.60.105 that is applicable to the employer or a standard or regulation adopted under AS 18.60.010 - 18.60.105 may be assessed by the commissioner a civil penalty of not more than \$70,000 for each violation. Except when a settlement is negotiated, the commissioner shall assess a minimum penalty of \$5,000 for a violation under this subsection that was committed willfully.

(b) An employer who receives a citation for a serious violation of a provision of AS 18.60.010 - 18.60.105 that is applicable to the employer or of a standard or regulation adopted under AS 18.60.010 - 18.60.105 shall be assessed by the commissioner a civil penalty of up to \$7,000 for each violation. For purposes of this subsection, a serious violation is considered to exist if the violation creates in the place of employment a substantial probability of death or serious physical harm. However, a serious violation is not considered to exist if the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(c) An employer who receives a citation for a violation of a provision of AS 18.60.010 - 18.60.105 that is applicable to the employer

or a standard or regulation adopted under AS 18.60.010 - 18.60.105, and the violation is specifically determined not to be of a serious nature, may be assessed by the commissioner a civil penalty of up to \$7,000 for each violation.

(d) An employer who fails to correct a violation within the period permitted for its correction for which a citation has been issued may be assessed by the commissioner a civil penalty of not more than \$7,000 for each day during which the failure to correct the violation continues.

(e) An employer who willfully or repeatedly violates a provision of AS 18.60.010 - 18.60.105 that is applicable to the employer or a standard or regulation adopted under AS 18.60.010 - 18.60.105, and the violation causes death to an employee, upon conviction, is punishable by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both. However, upon a second conviction after a prior conviction for a violation causing death, an employer is punishable by a fine of not more than \$20,000, or by imprisonment for not more than one year, or by both. This subsection does not preclude prosecution of the employer under AS 11.

(f) A person who knowingly makes a false statement, representation, or certification with the intent to mislead in an application, record, report, plan or other document filed or required to be maintained under AS 18.60.010 - 18.60.105 is guilty of unsworn falsification in the second degree.

(g) An employer who violates the posting requirements of AS 18.60.010 - 18.60.105 shall be assessed by the commissioner a civil penalty of up to \$7,000 for each violation.

(h) In assessing a civil penalty, the commissioner shall give due consideration to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

Sec. 18.60.096. Imminent dangers.

(a) The commissioner, or a designated agent as authorized by the commissioner, may issue orders restraining a particular condition or practice in any place of employment that constitutes a danger that could reasonably be expected to immediately cause death or serious physical harm. The terms of an order issued under this section may require steps to be taken as necessary to avoid, correct, or remove the imminent danger and may prohibit the employment or presence of an individual in locations or under conditions where imminent danger exists. The terms of the order may allow the presence of individuals necessary to avoid, correct, or remove the imminent danger.

(b) When and as soon as a representative of the department concludes that conditions or practices described in (a) of this section exist in any place of employment, the representative shall inform the affected employees and employer of the danger and that the representative is recommending to the commissioner, or a designated agent as authorized by the commissioner, the issuance of a restraining order.

(c) The attorney general shall, when requested by the commissioner, seek an injunction in superior court to enforce a restraining order issued under this section.

(d) If the commissioner arbitrarily or capriciously fails to issue a restraining order

under this section, an employee who may be injured by reason of the failure, or the representative of the affected employees, may bring an action against the commissioner in superior court to compel the commissioner to issue a restraining order and for further relief as may be appropriate.

Sec. 18.60.097. Judicial review.

(a) A person affected by an order of the OSHA Review Board under AS 18.60.093 (c) or (e) or of the commissioner under AS 18.60.096 may obtain a review of the order by filing a notice of appeal in the superior court as provided in the Alaska Rules of Appellate Procedure.

(b) The department may obtain review of an order of the OSHA Review Board under AS 18.60.093 (c) or (e) by filing a notice of appeal in the superior court as provided in the Alaska Rules of Appellate Procedure.

(c) An order of the OSHA Review Board under AS 18.60.093 (c) or (e) or of the commissioner under AS 18.60.096 becomes final and is not subject to review by any court if a notice of appeal is not filed with the superior court within the period provided for by the Alaska Rules of Appellate Procedure.

(d) An employer seeking judicial review of an order of the OSHA Review Board or of the commissioner must inform the affected employees of the fact that the employer is seeking judicial review.

(e) The court shall review an order of the OSHA Review Board or of the commissioner on a substantial-evidence basis.

Sec. 18.60.098. Employee compensation for appearances.

(a) The employer shall compensate any of the employer's employees who appear at a board hearing under AS 18.60.010 - 18.60.105 for loss of wages if the employee appears at the hearing as the result of a request of the employer or as the result of a subpoena issued at the employer's request.

(b) The employer shall compensate any of the employer's employees who appear at a judicial proceeding under AS 18.60.010 - 18.60.105 for loss of wages if the employee appears at the proceeding as the result of a request of the employer or as the result of a subpoena issued at the employer's request.

(c) An employee who appears at a board hearing under AS 18.60.010 - 18.60.105 as the result of a request of the state or the OSHA Review Board or as the result of a subpoena issued at the request of the state or the OSHA Review Board shall be compensated at the rate of \$30 a day and transportation costs.

Sec. 18.60.099. Confidentiality of trade secrets.

Information obtained by the department in connection with an inspection or proceeding related to enforcement of occupational safety and health standards that contains or that might reveal a trade secret referred to in 18 U.S.C. 1905 is confidential. However, the information may be disclosed to other officers or employees concerned with carrying out occupational safety and health enforcement activities. In a proceeding, the commissioner or the court as may be applicable shall issue orders as may be appropriate to protect the confidentiality of trade secrets.

Sec. 18.60.100. Nonabrogation of powers of Department of Health and Social Services.

AS 18.60.010 - 18.60.105 are not intended to abrogate the powers, duties, and responsibilities of the Department of Health and Social Services in carrying out the provisions of this title and AS 17.

Sec. 18.60.105. Definitions.

(a) Except as provided in (b) of this section, in AS 18.60.010 - 18.60.105,

(1) "be exposed" means to ingest, inhale, or absorb through the skin or eyes a substance or physical agent, or fumes or other potentially harmful aspect of a substance or physical agent;

(2) "commissioner" means the commissioner of labor and workforce development;

(3) "department" means the Department of Labor and Workforce Development;

(4) "employee" means a person who works for an employer;

(5) "employer" means a person, including the state and political subdivisions of the state, who has one or more employees;

(6) "OSHA" means the federal Occupational Safety and Health Administration;

(7) "physical agent" means a physical agent that exceeds the threshold established in the 1986-1987 edition of "Threshold Limit Values for Chemical Substances and

Physical Agents in the Work Environment" published by the American Conference of Governmental Industrial Hygienists;

(8) "suitable protective equipment" includes such personal protective equipment as is required by regulation issued under this chapter;

(9) "toxic or hazardous substance"

(A) includes

(i) a chemical listed in 29 CFR Part 1910, Subpart Z, Toxic and Hazardous Substances, "General Industry Standards", Occupational Safety and Health Administration;

(ii) a chemical listed in "Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment", American Conference of Governmental Industrial Hygienists (Latest Edition);

(iii) a substance for which an OSHA form 20 or equivalent information is required under OSHA regulations; and

(iv) a substance determined by the department, in accordance with AS 44.62 (Administrative Procedure Act), to be a health hazard to an employee who is exposed to the substance, including a carcinogen, reproductive toxin, irritant, corrosive, sensitizer, hepatotoxin, nephrotoxin, neurotoxin, agent that acts on the hematopoietic system, agent that damages the lungs, a cutaneous hazard, and an eye hazard;

(B) does not include

(i) substances that because of their physical state, volume, or concentration do not pose a health hazard upon exposure;

(ii) substances that are goods, food, drugs, cosmetics, or tobacco products intended for personal consumption; or

(iii) substances in transit;

(10) "transit" means conveyed in a sealed or unopened container by a mode of transportation.

(b) In AS 18.60.030 (14), 18.60.065 - 18.60.068, and (a)(9) of this section,

(1) "employee" means a person who works for an employer, but not in a place used primarily as a personal residence;

(2) "employer" means a person, including the state and a political subdivision of the state, who has one or more employees working in a place not used primarily as a personal residence;

(3) "health hazard" means a substance or physical agent capable of causing acute or chronic adverse effects to health;

(4) "workplace" means a place of employment other than a place used primarily as a personal residence.

ALASKA ADMINISTRATIVE CODE

8 AAC 61.020. Inspections

(a) The right of entry to conduct inspections will be exercised in accordance with AS 18.60.083 . For the purposes of AS 18.60.083 , "appropriate credentials" means an employee identification card indicating

that the person is an employee of the department.

(b) Upon refusal to permit a department representative, in the exercise of his official duties, to enter without delay and at reasonable times, any place of employment, to inspect, review records, or to question any employer, owner, operator, agent, or employee in accordance with AS 18.60.083, or to permit an employee representative to accompany the department representative during the physical inspection of any workplace in accordance with AS 18.60.087, the department representative shall end the inspection or confine it to other areas where permission to inspect is granted. The department representative shall try to find out the reason for being denied permission to inspect, and immediately report his findings to the director. The director then shall consult with the appropriate assistant attorney general who shall take appropriate action, including compulsory process, if necessary. Where compulsory process is relied on to seek entry to a workplace under this section an ex parte inspection warrant is the preferred form.

(c) Compulsory process may be sought before an attempted inspection or investigation if, in the judgment of the director and the assistant attorney general, circumstances exist which make such pre-inspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process before an attempt to inspect or investigate include, but are not limited to

(1) when the employer's past practice either implicitly or explicitly puts the commissioner on notice that a warrantless inspection will not be allowed;

(2) when circumstances exist which would, as determined by the commissioner or his designee, require considerable expenditure of time and money to return to the office for the purpose of obtaining a warrant; or

(3) when an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant before attempting to inspect would alleviate the difficulties or costs encountered in coordinating the availability of that equipment or expert.

(d) Department representatives will, in their discretion, take environmental samples and take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. As used in this subsection, the term "employ other reasonable investigative techniques" includes using devices to measure employee exposures and attaching personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

(e) At the beginning of the inspection the department's representative shall explain the nature, purpose, and scope of the inspection and which employer records required by this chapter he intends to review. However, this explanation does not preclude expansion of the scope of the inspection or access to additional employer records required by this chapter.

(f) In taking photographs and samples, the department's representative shall take reasonable precautions to ensure that his

actions with flash, spark-producing, or other equipment will not be hazardous. The department's representative shall comply with all employer safety and health rules and use appropriate protective clothing and equipment.

(g) At the conclusion of the inspection, the department's representative shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During this conference, the employer may bring to the attention of the department's representative any pertinent information regarding conditions of the workplace. (Eff. 1/10/75, Register 53; am 11/25/75, Register 56; am 3/31/82, Register 81; am 10/2/83, Register 87)

Authority: AS 18.60.020 AS 18.60.075
AS 44.62.130

8 AAC 61.030. Objections to inspections

Upon a refusal to permit the department's representative, in the exercise of his official duty, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, review records, or to question an employer, owner, operator, agent in charge, or employee in accordance with 8 AAC 61.020, the department's representative will terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objections are raised. The department's representative will endeavor to ascertain the reason for the refusal and immediately report the refusal and the reason therefore to the commissioner or his designee. In the event of a refusal of entry for inspection, the department may seek an appropriate order

from the superior court compelling entry and inspection. (Eff. 1/10/75, Register 53)

Authority: AS 18.60.020 AS 18.60.083

8 AAC 61.040. Advance notice of inspections

No advance notice of inspection will be given, except in the following situations:

(1) in cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;

(2) in circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

(3) where necessary to assure the presence of representative(s) of the employer or employees or the appropriate personnel needed to aid in an effective inspection;

(4) in other circumstances where the commissioner or his designee determines that the giving of advance notice would enhance the probability of an effective and thorough inspection. (Eff. 1/10/75, Register 53; am 11/22/75, Register 56)

Authority: AS 18.60.020 AS 18.60.085

8 AAC 61.050. Representatives of the employers and employees

(a) A representative of the employer and a representative authorized by the employees will be given an opportunity to accompany the department's representative during the inspection of any place of employment for the purpose of aiding the inspection. Additional employer representatives and additional representatives authorized by

employees may accompany the department's representative when he determines that additional representatives will further aid the inspection. Different employer and employee representatives may accompany the department's representative during each different phase of an inspection if this will not interfere with the conduct of the inspection.

(b) The department's representative will resolve all disputes as to who is the representative authorized by the employer or employees. If there is no authorized representative of employees, or if the department's representative is unable to determine with reasonable certainty who is the representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(c) The department's representative may deny the right of accompaniment to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets is subject to AS 18.60.099 . With regard to information classified by an agency of the United States government in the interest of national security, only persons authorized to have access to this information may accompany a department representative in areas containing the information. (Eff. 1/10/75, Register 53; am 11/22/75, Register 56)

Authority: AS 18.60.020 AS 18.60.087

8 AAC 61.060. Trade secrets

(a) At the commencement of an inspection the employer must identify areas of work which contain or which might reveal a trade secret. If the department's representative has no reason to question such identification,

information obtained in such areas, including all negatives and prints of photographs, and environmental samples, will be labeled "Confidential Trade Secret" and will not be disclosed except in accordance with AS 18.60.099.

(b) Upon the request of an employer, the employees' representative authorized by 8 AAC 61.050, in an area containing trade secrets will be an employee in that area or an employee authorized by the employer to enter that area. Where there is no representative of employees, the department representative will consult with a reasonable number of employees who work in that area concerning matters of safety and health. (Eff. 1/10/75, Register 53)

Authority: AS 18.60.020 AS 18.60.099

8 AAC 61.070 Consultation with employees

The department's representative may consult with employees concerning matters of occupational safety and health to the extent he deems necessary for the conduct of an effective and thorough inspection. During the course of an inspection, employees will be afforded an opportunity to bring any violations of AS 18.60.010 - 18.60.105 or regulations, standards, rules or orders promulgated pursuant thereto which exist in the place of employment to the attention of the department's representative. (Eff. 1/10/75, Register 53)

Authority: AS 18.60.020 AS 18.60.083
AS 18.60.087 AS 18.60.088

8 AAC 61.080. Special inspection

(a) An employee or a representative of employees who believes that a violation of a safety or health standard exists that threatens physical harm or that an imminent danger exists may request an inspection by giving

notice of the violation or danger to the department. The notice must be in writing setting out with reasonable particularity the grounds for the notice, and must be signed by the employee or the representative of employees. Special inspections will be made in accordance with AS 18.60.088.

(b) If upon receipt of a notice under (a) of this section the commissioner determines that the complaint meets the requirement of that subsection and that there are reasonable grounds to believe that the alleged violation exists, the commissioner will conduct an inspection as soon as practicable to determine if the alleged violation exists. Inspections under this section will not necessarily be limited to matters referred to in the complaint.

(c) Before or during any special inspection of a place of employment, an employee or representative of employees may inform the department's representative of any violation of AS 18.60.010 - 18.60.105 or regulations, standards, rules or orders promulgated pursuant to those statutes which exist in the place of employment.

(d) The party requesting a special inspection will be informed of the results of the special inspection. (Eff. 1/10/75, Register 53; am 11/22/75, Register 56; am 1/26/78, Register 65)

Authority: AS 18.60.020 AS 18.60.088

8 AAC 61.090. Special inspection, review

(a) If, after conducting a special inspection, the department does not issue a citation, the person giving the notice required by sec. 80 of this chapter will be informed within 30 days and in writing of the reason a citation was not issued. The notifying party may

obtain a review of the department's decision by submitting a written statement of position to the director within 30 days of receiving notification that a citation was not issued. The director will notify the person requesting the review within 15 days of the results of his review.

(b) If the department determines, based on the notice required by sec. 80 of this chapter, that there are no reasonable grounds to believe that a violation of a safety regulation exists, and does not conduct a special inspection, the notifying party will be informed in writing of this determination within 30 days. Review of this determination may be obtained by the notifying party by submitting a written statement of position to the director within 30 days of receiving notification that a special inspection was not conducted. The director will notify the person requesting the review within 15 days of the results of his review.

(c) If the director upholds the department's decision, the notifying party may obtain a review of the determination by submitting a written statement of position to the commissioner within 10 days of receipt of the director's review. The commissioner may affirm, modify or reverse the director's determination. The commissioner will inform the notifying party of his final disposition of a notice for special inspection within 15 days of receipt of the request for review of the director's decision. (Eff. 1/10/75, Register 53; am 11/22/75, Register 56)

Authority: AS 18.60.020 AS 18.60.088

8 AAC 61.100. Imminent danger

(a) When a representative of the department concludes that a condition or practice exists

in a place of employment which creates an imminent danger, he will immediately request the commissioner or an agent authorized by the commissioner to issue an order restraining the condition or practice creating the imminent danger. If a restraining order is issued, it will be immediately and prominently posted by the department's representative at or near the condition or practice that creates the imminent danger.

(b) When the department's representative concludes that a practice or condition exists that creates an imminent danger, he will immediately inform the employer, employees, and the employees' authorized representative, when known and readily available, of the danger and the action he has taken or recommended. For the purpose of this subsection, verbal notice is sufficient.

(c) Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger, even though after notice of the danger the employer immediately eliminates the immediacy of the danger and institutes steps to abate it.

(d) An imminent danger is a condition or practice in a place of employment which could reasonably be expected to cause death or serious physical harm, either immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter. (Eff. 1/10/75, Register 53)

Authority: AS 18.60.020 AS 18.60.096

8 AAC 61.110. Citations

(a) If on the basis of an inspection the department believes that the employer has violated a requirement of AS 18.60.010 - 18.60.105 or any regulation, standard, rule,

or order promulgated pursuant thereto, the department will with reasonable promptness issue a citation to the employer. The contents of the citation will conform with the requirements of AS 18.60.091.

(b) A citation will be issued for every violation that has a direct or immediate relationship to safety or health. The citation will be issued even though after notice of the violation the employer immediately abates or initiates steps to abate the violation. (Eff. 1/10/75, Register 53)

Authority: AS 18.60.020 AS 18.60.091

8 AAC 61.120 Posting of Citations

(a) Upon receipt of a citation issued under sec. 110 of this chapter, the employer shall immediately post the citation, or an unedited copy thereof, at or near each place an alleged violation referred to in the citation occurred. When, because of the nature of the employer's operation, it is not practicable to post a citation at or near each place of alleged violation, the citation shall be posted in a prominent place where it will be readily observable by all affected employees. The employer shall take steps to insure the citation is not altered, defaced or covered by other material.

(b) Each citation must remain posted until the violation has been abated, or for five working days, whichever is later. The filing by the employer of a notice of intention to contest under sec. 150 of this chapter does not affect his posting responsibilities under this section unless or until the board issues a final order vacating the citation.

(c) An employer who has filed a notice of intention to contest under sec. 150 of this chapter may post in the same location as the citation a notice that the citation is being

contested before the board. The notice may explain the reasons for the contest and may indicate what specific steps have been taken to abate the violation. (Eff. 1/10/75, Register 53)

Authority: AS 18.60.020 AS 18.60.091

8 AAC 61.130. Failure to abate a violation for which a citation has been issued

If the commissioner has reason to believe that an employer has failed to correct, within the abatement period fixed by the citation, a violation of AS 18.60.010 - 18.60.105, or any regulation, standard, rule or order promulgated pursuant thereto, for which a citation has been issued, the commissioner will notify the employer by certified mail of the failure. The notice may contain an additional penalty proposed to be assessed because of the failure to abate. (Eff. 1/10/75, Register 53)

Authority: AS 18.60.020 AS 18.60.095

8 AAC 61.135. Petitions for modification of abatement period

(a) An employer may file a petition for modification of an abatement date when that employer has made a good faith effort to comply with the abatement requirements of a citation, but the abatement has not been completed because of factors beyond the employer's reasonable control.

(b) A petition for modification of an abatement date must be in writing and must include the following information:

(1) all steps taken by the employer and the dates of that action, in an effort to achieve compliance during the prescribed abatement period;

(2) the specific additional abatement time necessary in order to achieve compliance;

(3) the reasons the additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date;

(4) all available interim steps being taken to safeguard the employees against the cited hazard during the abatement period;

(5) a certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with (d) of this section, and a certification of the date upon which the posting and service were made.

(c) A petition for modification of an abatement date must be filed with the director no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition must be accompanied by the employer's statement of exceptional circumstances explaining the delay.

(d) At the time of filing the petition with the director, a copy of the petition must be posted in a conspicuous place where all affected employees will have notice of it or near each location where the violation occurred. The petition must remain posted for a period of 10 days. Where affected employees are represented by an authorized representative, the representative must be served with a copy of the petition.

(e) Affected employees or their representatives may file an objection in writing to the petition with the director. Failure to file an objection within 10 working days of the date of posting of the petition or of service upon an authorized representative will constitute a waiver of any further right to object to the petition.

(f) The commissioner or his authorized representative will not act on the petition until the expiration of at least 15 working days from the date the petition was filed with the director.

(g) If a petition is objected to by the commissioner, his authorized representative, or affected employees, the petition, citation, and any objections will be forwarded to the board for a hearing and decision on the petition within three days after the expiration of the 15-day period set out in (f) of this section.

(h) An employer whose petition for modification of an abatement date is heard by the board will have the burden of proof to demonstrate that it has made a good-faith effort to comply with the abatement requirements of the citation but that abatement has not been completed because of factors beyond the employer's reasonable control. (Eff. 11/22/75, Register 56; am 1/4/78, Register 64; am 2/1/85, Register 93)
Authority: AS 18.60.020 AS 18.60.093

8 AAC 61.140. Assessment of penalties for citations

(a) The department will, in the department's discretion, assess a civil penalty when it issues a citation under 8 AAC 61.110. The department will assess a penalty for any violation classified as a serious, repeat, willful, or failure-to-abate violation. The

department will, in the department's discretion, assess a penalty for any other-than-serious violation.

(b) The maximum civil penalty that the department may assess is set out in AS 18.60.095.

(c) For purposes of the department's classifying a violation, handling a citation, and assessing a civil penalty for a violation; the department adopts by reference sections (C)(2)(a) - (f), (C)(3), and (C)(5) of chapter III and section (C) of chapter IV of the U.S. Department of Labor, Occupational Safety and Health Administration Instruction CPL 2.103 Field Inspection Reference Manual, revised as of September, 1994.

(d) The commissioner will determine the amount of any proposed penalty, giving due consideration to the size of the employer's business, gravity of the violation, good faith of the employer, and the employer's previous history of violations based on the criteria adopted by reference in (c) of this section. The commissioner will, in the commissioner's discretion, also consider the recommendations of a representative of the department who has consulted with the employer concerning the factors that the commissioner will consider in assessing a penalty.

(e) The department will notify the employer of the penalty proposed according to the requirements set out in AS 18.60.093. A notice will be sent even if no penalty is proposed.

(f) The department will, in the department's discretion, propose a penalty with respect to an alleged violation even though the employer immediately abates the alleged violation.

(g) Failure to abate a violation within the period allowed by the department will subject the employer to liability on the full amount of the proposed penalty as well as a possible additional proposed penalty, as provided by 8 AAC 61.130.

(h) In deciding cases contested under 8 AAC 61.150 - 8 AAC 61.220, the board is not bound by the chapters in the Federal Inspection Reference Manual adopted by reference in (c) of this section when it decides the classification of a violation or the assessment of a penalty for a violation.

(i) Unless the context in which a term is used clearly requires a different meaning, the following revisions are necessary to make requirements adopted by reference in (c) of this section technically feasible in this state:

(1) all references to "Section 5(a)(1)" are revised to read "AS 18.60.075 (a)(4)";

(2) all references to "Section 17" are revised to read "AS 18.60.095 ";

(3) all references to "29 C.F.R. Part 1903.2" are revised to read "8 AAC 61.1940 - 8 AAC 61.1950";

(4) all references to "29 C.F.R. Part 1903.16" are revised to read "8 AAC 61.120";

(5) repealed 10/6/2002;

(6) repealed 10/6/2002;

(7) repealed 10/6/2002;

(8) all references to "29 C.F.R. Part 1904.7" are revised to read "8 AAC 61.270";

(9) all references to "29 C.F.R. Part 1904.8" are revised to read "AS 18.60.058";

(10) all references to "29 C.F.R. Part 1910.20" are revised to read "8 AAC 61.270";

(11) all references to "Area Director" are revised to read "director of the Division of Labor Standards and Safety";

(12) all references to "Assistant Area Director" are revised to read "Chief of Alaska Occupational Safety and Health (AKOSH)";

(13) all references to "Regional Solicitor" are revised to read "Department of Law, Civil Division";

(14) all references to "U.S. Department of Justice" are revised to read "Department of Law, Criminal Division"; and

(15) all references to "Secretary" are revised to read "Commissioner of Labor and Workforce Development". (Eff. 1/10/75, Register 53; am 11/22/75, Register 56; am 11/12/93, Register 128; am 3/27/96, Register 137; am 9/27/98, Register 147; am 10/6/2002, Register 164)

Authority: AS 18.60.020 AS 18.60.091
AS 18.60.095

Editor's note: Copies of the Federal Inspection Reference Manual (the "FIRM") are available from the Alaska Department of Labor and Workforce Development, division of labor standards and safety, occupational safety and health section, P.O. Box 21149, Juneau, Alaska 99802-1149. In addition, the FIRM is available on the Internet at <http://www.osha.gov/readingroom.html>

As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125 (b)(6) to reflect the name change of the Department of Labor to the Department of Labor and Workforce Development made by ch. 58, SLA 1999 and the corresponding title change of the commissioner of labor.

8 AAC 61.142. Abatement verification

(a) 29 C.F.R. 1903.19, as amended is adopted by reference, except as provided in (b) and (c) of this section.

(b) 29 C.F.R. 1903.19(b)(4)(ii), as amended, is revised to read: 'Final order date for a contested citation means the 30th day after the date on which the Alaska Occupational Safety and Health Review Board issues its decision or order disposing of all or pertinent part of a case. If a decision of the Alaska Occupational Safety and Health Review Board is stayed under Rule 603 of the Alaska Rules of Appellate Procedure, the final order date means the date that the court issues its decision affirming the violation.'

(c) Unless the context in which a term is used clearly requires a different meaning, the following revisions are necessary to make requirements adopted by reference in (a) of this section technically feasible in this state:

(1) all references to "29 C.F.R. 1903.16" are revised to read "8 AAC 61.120";

(2) all references to "Occupational Safety and Health Act of 1970" are revised to read "AS 18.60.010 - 18.60.105";

(3) all references to "OSHA" are revised to read "Alaska Occupational Safety and Health (AKOSH)";

(4) all references to "Occupational Safety and Health Review Commission" are revised to read "Alaska Occupational Safety and Health Review Board"; and

(5) all references to "Area Director" are revised to read "director of the Division of Labor Standards & Safety." (Eff. 9/27/98, Register 147)

Authority: AS 18.60.020 AS 18.60.091
AS 18.60.095

8 AAC 61.145 Abatement period for contested violations

The period for abatement of a violation does not begin until the issuance of a final order by the review board in any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties. (Eff. 1/26/78, Register 65)

Authority: AS 18.60.020 AS 18.60.093

8 AAC 61.150. Notice of contest

(a) A citation, notice of proposed penalty, or notice of abatement date is final unless the employer, an affected employee, or an authorized employee representative files a notice of contest. An affected employee or an authorized representative may contest only abatement dates.

(b) A notice of contest must be in writing and must be postmarked or personally delivered to the department within 15 working days of receipt by the employer of the citation, notice of proposed penalty, or notice of abatement date. A notice of contest must contain

(1) a specification of the citation, proposed penalty, or abatement date being contested;

(2) a concise statement of fact giving the reason for the contest; and

(3) any views or arguments on any issue of fact or law presented.

(c) For the purposes of this section, the term "proposed penalty" includes a notice of assessment of additional penalty for failure to abate.

(d) Mailing or personally delivering a notice of contest with the department satisfies the requirement of filing the notice of contest with the board. The department will transmit the notice of contest to the board or its authorized designee in accordance with procedures that the board may establish. If a notice of contest is filed by an employer, a copy of it must be mailed or personally delivered by the employer to any authorized employee representatives and must be posted at the place of employment where notices to employees are customarily posted. If a notice of contest is filed by an employee or employee representative, a copy of it must be mailed or personally delivered by the employee or employee representative to the employer.

(e) Repealed 12/2/94.

(f) A notice of contest that is not timely filed in accordance with this section must include a statement of the reasons why the notice of contest was untimely filed. The department will promptly transmit a late notice of contest to the board and will state in writing

whether it opposes the board's acceptance of the late notice of contest. After review of the submissions, the board shall issue a written order accepting or rejecting the late notice of contest. (Eff. 1/10/75, Register 53; am 1/4/78, Register 64; am 10/2/83, Register 87; am 12/2/94, Register 132)

Authority: AS 18.60.020 AS 18.60.057
AS 18.60.093

Editor's note: The address for mailing or personally delivering notices of contest to the department is Department of Labor and Workforce Development, division of labor standards and safety, occupational safety and health section, 3301 Eagle Street, Suite 305, Anchorage, Alaska 99503-4149.

As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125 (b)(6) to reflect the name change of the Department of Labor to the Department of Labor and Workforce Development made by ch. 58, SLA 1999 and the corresponding title change of the commissioner of labor.

8 AAC 61.155. Informal conference

(a) Within 15 working days of receipt of a citation, an affected employer, employee, or representative of employees may request the director to hold an informal conference for the purpose of reviewing and discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest.

(b) During the conference, the director or his designee, acting for the commissioner, may change the citation, proposed penalty, or abatement dates.

(c) If the conference is requested by the employer, affected employees or their

representative may be afforded an opportunity to participate, at the discretion of the director. If the conference is requested by an employee or representative of employees, the employer may be afforded an opportunity to participate, at the discretion of the director.

(d) Any party may be represented by counsel at the informal conference.

(e) An informal conference or request for an informal conference does not operate as a stay of any 15-working-day period for filing a notice of intention to contest prescribed in AS 18.60.093 (e). (Eff. 11/22/75, Register 56)

Authority: AS 18.60.020 AS 18.60.091

Article 3

Occupational Safety and Health Review Board

Section

- 160. Powers and duties of the board.
- 165. Filing and service of documents.
- 170. Rules of procedure.
- 175. Pleadings and parties.
- 180. Prehearing conferences.
- 185. Withdrawal of citations, proposed penalty, or notices of contest.
- 190. (Repealed).
- 195. Settlements.
- 200. Discovery of information.

205. Hearings.

210. (Repealed).

220. Decisions of the board.

8 AAC 61.160. Powers and duties of the board

(a) When a notice of contest is filed in accordance with 8 AAC 61.150, the board shall conduct a full and impartial hearing.

(b) During the course of the proceedings in a contested case, the board may

(1) administer oaths and affirmations;

(2) hold conferences for the settlement or simplification of the issues by consent of the parties;

(3) make, or cause to be made, an inspection of the place of employment involved; and

(4) issue subpoenas to compel the attendance of witnesses and the production of records.

(c) During the course of the proceedings in a contested case, the board shall

(1) rule upon offers of proof and receive relevant evidence;

(2) rule upon discovery requests and determine their scope;

(3) regulate the course of the hearing and the conduct of the parties and their counsel; and

(4) consider and rule upon procedural requests.

(d) A board member may not discuss the merits of any pending matter with any person or party unless notice and an opportunity to participate is given to all parties.

(e) A board member may disqualify himself or herself from participating in a hearing by giving notice to the remaining board members.

(f) A party may request disqualification or removal of a board member. The party shall file with the board a motion requesting disqualification or removal of a board member. A motion to disqualify must be supported by an affidavit setting forth the reasons why the board member should be disqualified from participating or continuing to participate in the proceedings. The challenged board member may not vote on the motion. The motion to disqualify will be granted only if both of the other board members vote to disqualify the challenged board member.

(g) A quorum of the board consists of two members. If only two board members hear a case and, after deliberation, are unable to reach a decision, the absent board member shall review the entire record and shall deliberate with the other board members to reach a decision in the case.

(h) The board may authorize a hearing officer to preside over contested cases, including ruling on prehearing motions, discovery disputes, and procedural requests, issuing subpoenas, regulating the course of the hearing, ruling on evidentiary matters, preparing decisions and orders for the board's review and performing other acts

requested by the board. (Eff. 1/10/75, Register 53; am 1/4/78, Register 64; am 12/2/94, Register 132)

Authority: AS 18.60.020 AS 18.60.057
AS 18.60.093 AS 23.05.050

8 AAC 61.165. Filing and service of documents

(a) Documents filed with the board must be mailed to the Alaska Occupational Safety and Health Review Board. The date of filing is the date of receipt of the documents by the board.

(b) When a party files documents with the board, the party shall mail or personally deliver copies of the documents to all parties of record. Documents filed with the board must be accompanied by a statement giving the names of all parties served and the date and manner of service.

(c) Documents may be filed with the board or served on a party by means of facsimile transmission. Copies of all documents filed by facsimile transmission must be concurrently mailed or personally delivered to the board and to all parties of record. The date of filing is the date of receipt of the facsimile transmission by the board. (Eff. 12/2/94, Register 132)

Authority: AS 18.60.020 AS 18.60.057
AS 18.60.093

Editor's note: The address for mailing documents to the Alaska Occupational Safety and Health Review Board is P.O. Box 111149, Juneau, Alaska 99811-1149.

8 AAC 61.170. Rules of procedure

(a) The rules of procedure in this chapter govern the proceedings for notices of contest before the board. In the absence of a specific

provision, procedure is governed by the rules of civil procedure. The board may make other rulings of procedure in a specific case if the board finds that the ruling is necessary for the fair and orderly conduct of the proceeding.

(b) The board's rules of procedure are intended to facilitate business and promote a speedy and just resolution of contested cases. The board may relax the rules of procedure if strict adherence to them would work an injustice to one or more of the parties. (Eff. 1/10/75, Register 53; am 11/22/75, Register 56; am 1/4/78, Register 64; am 1/26/78, Register 65; am 12/31/80, Register 76; am 12/2/94, Register 132)

Authority: AS 18.60.020 AS 18.60.057
AS 18.60.093

8 AAC 61.175. Pleadings and parties

(a) Within 30 days of receipt by the department of a timely notice of contest, if the matter has not been settled or otherwise resolved, the department will file a complaint with the board. The complaint must specify the alleged violations, proposed penalties, and abatement dates that are contested. A copy of the complaint must be mailed or personally delivered to the party filing the notice of contest and to all parties of record.

(b) Within 30 days of receipt of the department's complaint, the party against whom the complaint was issued shall file an answer with the board. The answer must contain a statement responding to the allegations in the department's complaint and must include any affirmative defenses known to the party. A copy of the answer must be mailed or personally delivered to the department and to all parties of record.

(c) An employer, affected employee, or authorized employee representative, who has not filed a notice of contest, may participate as a party in the proceedings before the board by filing a written notice of participation with the board at least 20 days before the hearing. The notice of participation must contain the name, address and telephone number of the employer, affected employee, or authorized employee representative requesting to participate as a party and must be mailed or personally delivered to all parties of record. Failure to give notice of participation as a party does not prevent an employer, affected employee, or authorized employee representative, from attending the hearing or testifying as a witness for a party to the hearing.

(d) A party may appear in person or through an attorney. The board may allow a person who is not an attorney to assist a party, for no compensation, in the presentation of the party's case. A corporation may be represented by an authorized officer or agent. (Eff. 12/2/94, Register 132)

Authority: AS 18.60.020 AS 18.60.057
AS 18.60.093

8 AAC 61.180. Prehearing conferences

(a) Upon a motion by any party, or on its own motion, the board may require the parties to participate in a prehearing conference for the purpose of clarifying and simplifying the issues or procedures in a contested case. At the prehearing conference, the board may require the parties to

(1) state their positions on the issues in dispute;

(2) submit witness and exhibit lists;

(3) address any disputes regarding discovery of information;

(4) discuss scheduling matters that will facilitate the hearing process; and

(5) discuss any other matter that may expedite the proceedings and assure a just conclusion.

(b) After a prehearing conference, the board may issue an order regarding matters discussed at the conference and setting out the procedures to be followed at the hearing. The order controls the subsequent course of the proceedings unless modified by the board.

(c) At any stage of the proceedings in a contested case, the parties may enter into stipulations regarding issues, facts, applicable law, witnesses, exhibits, or any other relevant matters. A stipulation must be submitted in writing to the board unless it is made verbally on the record in a board proceeding. (Eff. 1/10/75, Register 53; am 1/4/78, Register 64; am 12/2/94, Register 132)

Authority: AS 18.60.020 AS 18.60.057
AS 18.60.093

8 AAC 61.185. Withdrawal of citations, proposed penalty, or notices of contest

(a) The department will, in its discretion, withdraw a citation or proposed penalty at any stage in the proceedings in a contested case. If a citation or proposed penalty is withdrawn before the hearing in a contested case, a notice of withdrawal must be submitted in writing to the board and copies must be mailed or personally delivered to all parties of record. In addition, the employer shall mail or personally deliver a copy of the notice of withdrawal to any authorized

employee representatives and shall post a copy of the notice of withdrawal, for not less than 10 days, at the place of employment where notices to employees are customarily posted. Proof of the mailing or delivery and posting at the place of employment must be made by the employer in an affidavit submitted to the board.

(b) An employer, affected employee, or authorized employee representative that has filed a notice of contest may withdraw the notice of contest at any stage in the proceedings in a contested case. A notice of withdrawal must be submitted in writing to the board and copies must be mailed or personally delivered to all parties of record.

(c) Upon the filing of a notice of withdrawal of a citation, proposed penalty, or notice of contest, the board shall issue an order dismissing the case. (Eff. 12/2/94, Register 132)

Authority: AS 18.60.020 AS 18.60.057
AS 18.60.093

8 AAC 61.190. Consent findings and rules or orders

Repealed. (Eff. 1/10/75, Register 53; repealed 12/2/94, Register 132)

8 AAC 61.195 Settlements

(a) At any stage in the proceedings in a contested case, the parties may enter into a settlement agreement disposing of part or all of a contested case. A settlement agreement must be in writing and must be filed with the board.

(b) A settlement agreement must include:

(1) an attached copy of each citation being settled;

(2) a statement of the terms of settlement for each citation being settled;

(3) evidence or documentation of abatement for each citation affirmed under the settlement agreement;

(4) a statement of any contested citations or issues that remain for hearing;

(5) a statement that the board may enter a final order having the same force and effect as a final order made after a hearing;

(6) an affidavit completed by the employer verifying that a copy of the settlement agreement was mailed or personally delivered to any authorized employee representatives and was posted for not less than 10 days at the place of employment where notices to employees are customarily posted; and

(7) a waiver of any further proceedings before the board or the department concerning a citation settled under this section.

(c) A settlement agreement mailed or personally delivered to an authorized employee representative and posted at the place of employment must include a cover page containing the following language:

NOTICE OF SETTLEMENT OF ALASKA OSH CITATION

Attached is a settlement agreement concerning occupational safety and health citations issued by the Alaska Department of Labor and Workforce Development. Any affected employee or authorized employee representative may object to the reasonableness of any abatement dates in the settlement agreement by giving written

notice of the objection within 15 days of the receipt or posting of the settlement agreement. Notice of objection to the reasonableness of the abatement date must be mailed to the Alaska Occupational Safety and Health Review Board, P.O. Box 21149, Juneau, Alaska 99802-1149. Upon receipt of an objection, the board may schedule a conference or hearing.

(d) Upon receipt of an objection to the reasonableness of an abatement date in a settlement agreement, the board may schedule a conference or hearing. (Eff. 12/2/94, Register 132)

Authority: AS 18.60.020 AS 18.60.057
AS 18.60.093

Editor's note: As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125 (b)(6) to reflect the name change of the Department of Labor to the Department of Labor and Workforce Development made by ch. 58, SLA 1999 and the corresponding title change of the commissioner of labor.

8 AAC 61.200. Discovery of information

(a) Depositions must be taken in accordance with AS 44.62.440.

(b) The parties may undertake discovery by any other appropriate procedure, including written interrogatories, requests for production, requests for admission, or inspection of the place of employment. Discovery under this subsection must be done in accordance with the rules of civil procedure; however, the mandatory rules of disclosure under Alaska Rules of Civil Procedure 16, 16.1, and 26 do not apply. (Eff. 1/10/75, Register 53; am 12/2/94, Register 132; am 3/27/96, Register 137)
Authority: AS 18.60.020 AS 18.60.057

AS 18.60.093

8 AAC 61.205. Hearings

(a) The board shall conduct hearings on a quarterly basis, unless upon a motion by a party or on its own motion, the board schedules an expedited hearing.

(b) At least 30 days before the hearing, the board shall notify all parties at their addresses of record of the date, time, and place of hearing. In an expedited hearing or if an emergency exists, the board shall notify the parties at least 10 days before the hearing date.

(c) In determining the place of hearing, the board shall consider the convenience and expense to the board, the parties, and their witnesses.

(d) The board may postpone a hearing upon a showing of good cause. A motion to postpone a hearing must be in writing and must set out the reasons for the delay. A motion for postponement filed less than 20 days before the hearing will be denied unless good cause is shown for filing the motion after that time. A party's failure to obtain counsel or make discovery in a timely fashion will not be considered good cause for postponement.

(e) The board or its authorized designee may issue subpoenas under 8 AAC 61.160 upon application by a party. An application for a subpoena must be in writing and must state the name of each witness or describe an item of evidence with sufficient detail so that the witness or item of evidence can be readily identified. The preparation and service of a subpoena, including the payment of applicable witness fees and expenses, are governed by the rules of civil procedure and

are the responsibility of the party requesting issuance of the subpoena.

(f) Unless otherwise ordered by the board, the department will present its case first at the hearing, followed by the party filing the notice of contest, followed by any other parties. Each party shall be permitted to make an opening statement, present evidence, cross-examine witnesses, and make a closing argument.

(g) An unrepresented party may be permitted to testify in a narrative fashion.

(h) Evidence shall be admitted in accordance with AS 44.62.460 - 44.62.480.

(i) The burden of proof for citations, penalties, or abatement dates is on the department by a preponderance of the evidence. The burden of proof for affirmative defenses is on the party asserting those defenses by a preponderance of the evidence. "Preponderance of the evidence" means that it is more likely than not that the asserted proposition is true.

(j) At the request of a party or on its own motion, the board may direct the parties to file posthearing briefs and the board shall establish a schedule for the submission of those briefs.

(k) The board may allow a party, an attorney, a witness, or any other person to participate telephonically in a board proceeding in the absence of a showing of substantial prejudice to opposing parties. A request for telephonic participation must be made at least 10 days before the hearing unless good cause is shown for filing the request after that time. The party requesting telephonic participation is responsible for

arranging the call and paying the associated costs.

(l) The board may allow a board member or a hearing officer to participate telephonically in a board proceeding in the absence of a showing of substantial prejudice to a party to the proceeding.

(m) If a party fails to appear at a hearing without a showing of good cause after receiving proper notice of the hearing, the board may find that party to be in default, may receive any evidence it deems appropriate, and may issue a final decision against that party. In addition, if an employer fails to appear at a hearing without a showing of good cause after receiving proper notice of the hearing, the board may order the employer to pay all reasonable expenses incurred by the board for holding the hearing, including the board's actual travel expenses and per diem. Expenses will be apportioned according to the number of board hearings actually held at the hearing location. A showing of good cause shall be considered by the board if the non-appearing party, within 10 days of the hearing, files with the board a written statement giving the reasons for failing to appear.

(n) A hearing before the board shall be tape recorded. A person may obtain a duplicate audiotape or a typed transcript of a hearing by submitting a request in writing to the board and paying the cost of preparing the duplicate audiotape or typed transcript.

(Eff. 12/2/94, Register 132)

Authority: AS 18.60.020 AS 18.60.057
AS 18.60.093

8 AAC 61.210. Evidence

Repealed. (Eff. 1/10/75, Register 53;
repealed 12/2/94, Register 132)

8 AAC 61.220. Decisions of the board

(a) The board shall prepare and issue a written decision within a reasonable time after the close of the hearing record in a contested case. In reaching its decision, the board shall consider the whole record and shall include in the written decision findings of fact, conclusions of law, and an appropriate order.

(b) The board shall mail or distribute the decision and order to all parties of record. A decision and order of the board becomes final 30 days after mailing or distribution unless a party files a notice of appeal under AS 18.60.097. (Eff. 1/10/75, Register 53; am 1/4/78, Register 64; am 12/2/94, Register 132)

Authority: AS 18.60.020 AS 18.60.057
AS 18.60.093

Article 4
**Recording and Reporting Occupational
Injuries and Illnesses**

Section

225. (Repealed).
230. (Repealed).
240. (Repealed).
250. (Repealed).
260. (Repealed).
270. (Repealed).
275. (Repealed).

277. (Repealed).

280. (Repealed).

285. (Repealed).

290. (Repealed).

295. (Repealed).

Editor's note: Provisions covering the subject matter of the repealed sections in Article 4, on recording and reporting of occupational injuries and illnesses, may be found in 8 AAC 61.1010 - 61.1190.

8 AAC 61.225. Recording and reporting occupational injuries and illnesses

Repealed. (History: Eff. 9/30/76, Register 59; am 1/4/78, Register 64; am 10/2/83, Register 87; repealed 10/6/2002, Register 164)

8 AAC 61.230. Log of occupational injuries and illnesses

Repealed. (Eff. 1/10/75, Register 53; am 11/22/75, Register 56; am 9/30/76, Register 59; am 1/4/78, Register 64; am 10/2/83, Register 87; repealed 10/6/2002, Register 164)

8 AAC 61.240. Annual summary

Repealed. (History: Eff. 1/10/75, Register 53; am 9/30/76, Register 59; am 1/4/78, Register 64; am 12/31/80, Register 76; repealed 10/6/2002, Register 164)

8 AAC 61.250. Maintaining records in an establishment without a fixed location

Repealed. (History: Eff. 1/10/75, Register 53; repealed 10/6/2002, Register 164)

8 AAC 61.260. Retention of records

Repealed. (Eff. 1/10/75, Register 53; am 6/24/79, Register 70; am 2/6/82, Register 81; am 3/30/90, Register 113; repealed 10/6/2002, Register 164)

8 AAC 61.270. Access to records

Repealed. (Eff. 1/10/75, Register 53; am 11/22/75, Register 56; am 6/24/79, Register 70; am 2/6/82, Register 81; am 3/30/90, Register 113; repealed 10/6/2002, Register 164)

8 AAC 61.275. Failure to keep records or reports

Repealed. (Eff. 9/30/76, Register 59; repealed 10/6/2002, Register 164)

8 AAC 61.277. Falsification of records or reports

Repealed. (Eff. 1/4/78, Register 64; repealed 10/6/2002, Register 164)

8 AAC 61.280. Reporting of injuries and illnesses

Repealed. (Eff. 1/10/75, Register 53; am 11/22/75, Register 56; am 1/26/78, Register 65; repealed 10/6/2002, Register 164)

8 AAC 61.285. Annual survey

Repealed. (Eff. 1/10/75, Register 53; repealed 10/6/2002, Register 164)

8 AAC 61.290. Change of ownership

Repealed. (Eff. 1/10/75, Register 53; repealed 10/6/2002, Register 164)

8 AAC 61.295. Recordkeeping variances

Repealed. (Eff. 1/10/75, Register 53; am 1/26/78, Register 65; repealed 10/6/2002, Register 164)

Article 5
Variances

Section

300. (Repealed).

310. (Repealed).

320. Form of documents.

330. Temporary variances.

340. Permanent variances.

350. Modification or revocation of a permanent variance.

360. Action on applications.

365. Effective date of variances.

370. Hearings.

380. Consolidation of proceedings.

390. Notice of hearing.

400. Manner of service.

8 AAC 61.300. Effect of contest

Repealed 1/26/78.

8 AAC 61.310. Public notice of a granted, modified or revoked variance

Repealed 1/26/78.

8 AAC 61.320. Form of documents

(a) No particular form is prescribed for applications and other papers which may be required by secs. 330 - 350 of this chapter.

(b) Each application or other paper filed in proceedings under secs. 330 - 350 of this chapter must be subscribed by the person filing same or by his attorney or other authorized representative. (Eff. 1/10/75, Register 53; am 1/26/78, Register 65)
Authority: AS 18.60.020

8 AAC 61.330. Temporary variances

(a) An employer desiring a temporary variance from a safety or health standard adopted pursuant to AS 18.60.010 - 18.60.105 may file a written application with the commissioner requesting a temporary variance.

(b) An application filed pursuant to (a) of this section must include

(1) the name and address of the applicant;

(2) the name and address of the place of employment involved;

(3) specification of the standard or portion thereof from which the applicant seeks a temporary variance, with an explanation and description of the variance;

(4) a representation by the applicant supported by representations from qualified persons having first-hand knowledge of the facts represented that he is unable to comply with the standard or portion thereof by its effective date and detailed statement of the reasons therefore;

(5) a statement of the steps the applicant has taken and will take with specific dates where appropriate, to protect employees against the hazard covered by the standard;

(6) a statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standard;

(7) a statement of facts which shows that

(A) 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;

(B) he is taking all available steps to safeguard his employees against the hazards covered by the standard; and

(C) he has an effective program for coming into compliance with the standard as quickly as practicable;

(8) any request for a hearing as provided by sec. 370 of this chapter; and

(9) a certified statement that the applicant has informed his employees of the application; the statement must contain the following:

(A) if the employees have an authorized representative, that a copy of the application, a written statement of the employees' right to a hearing, and any other

supporting documents were furnished to the representative; and

(B) that a summary of the application was posted at or near the condition or practice that would be affected by the variance and at the place or places where notices to employees are customarily posted; the summary shall specify where a copy of the application may be obtained and contain a statement of the employee's right to a hearing on the application.

(c) An application for a temporary variance may contain a request for an interim order ex parte.

(1) If a request for an interim order is denied, the applicant will be given prompt notice of the denial. The notice of denial will contain a brief statement of the reasons therefore.

(2) If an interim order is granted, a copy of the order will be served upon the applicant for the order. It will be a condition of the order that the affected employer must give notice thereof to affected employees by the same means to be used to inform them of an application for a variance. The interim order will be effective until a decision is rendered on the application for a temporary variance. (Eff. 1/10/75, Register 53)
Authority: AS 18.60.020 AS 18.60.081

8 AAC 61.340. Permanent variances

(a) An employer desiring a permanent variance from a safety or health standard, or portion thereof, adopted pursuant to AS 18.60.010 - 18.60.105 may file a written application with the commissioner requesting a permanent variance.

(b) An application filed pursuant to (a) of this section must include

(1) the name and address of the applicant;

(2) the name and address of the place or places of employment involved;

(3) specification of the standard or portion thereof from which the applicant seeks a variance;

(4) a description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;

(5) 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 for employees which are as safe and as healthful as those required by the standard from which a variance is sought;

(6) any request for a hearing, as provided by sec. 370 of this chapter; and

(7) a certified statement that the applicant has informed his employees of the application. The statement must contain the following:

(A) if the employees have an authorized representative, that a copy of the application, a written statement of the employees' right to a hearing, and any other supporting documents were furnished to the representative; and

(B) that a summary of the application was posted at or near the condition or practice that would be affected

by the variance and at the place or places where notices to employees are customarily posted. The summary must specify where a copy of the application may be obtained and contain a statement of the employees' right to a hearing on the application.

(c) An application for a permanent variance may contain a request for an interim order ex parte.

(1) If a request for an interim order is denied, the applicant will be given prompt notice of the denial. The notice of denial will contain a brief statement of the reasons therefore.

(2) If an interim order is granted, a copy of the order will be served upon the applicant for the order. It will be a condition of the order that the affected employer must give notice thereof to affected employees by the same means to be used to inform them of an application for a variance. The interim order will be effective until a decision is rendered on the application for a permanent variance. (Eff. 1/10/75, Register 53)

Authority: AS 18.60.020 AS 18.60.081

8 AAC 61.350. Modification or revocation of a permanent variance

(a) An employer, employee, or the employees' authorized representative may apply in writing to the commissioner for modification or revocation of a permanent variance issued pursuant to AS 18.60.077. An application will not be considered unless the variance has been in effect for six or more months.

(b) The application must contain

(1) the name and address of the applicant and specify if applicant is an

employer, employee, or authorized representative of the employees;

(2) a description of the relief which is sought;

(3) a statement setting forth with particularity the grounds for relief;

(4) if the applicant is an employer, a certification that the applicant has informed his affected employees of the application by

(A) giving a copy thereof to their authorized representative, if any;

(B) posting at the place or places where notices to employees are normally posted a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and

(C) other appropriate means;

(5) if the applicant is an employer, a certification that the applicant has informed his affected employees, and their authorized representative, if any, of their right to request a hearing on the application;

(6) if the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and

(7) any request for a hearing, as provided in 8 AAC 61.370.

(c) The commissioner may on his own motion propose to modify or revoke a permanent variance issued pursuant to AS 18.60.077. In this event, the commissioner will publish in a newspaper of statewide

circulation and in a newspaper of local circulation in the area where the variance is implemented a notice of his intention. The notice will grant to interested persons the opportunity to submit written data, views or arguments regarding the proposal and inform the affected employer, employees and the authorized representative of the employees of their right to request within a stated time limit a hearing. The commissioner may take other action as appropriate to give actual notice to the affected employer and employees. A request for a hearing must include a short and plain statement of

(1) how the proposed modification or revocation would affect the requesting party; and

(2) what the requesting party would seek to show on the subjects or issues involved. (Eff. 1/10/75, Register 53)

Authority: AS 18.60.020 AS 18.60.077

8 AAC 61.360. Action on applications

(a) If an application filed pursuant to 8 AAC 61.330 - 8 AAC 61.350 does not substantially conform to the requirements of the applicable section, the commissioner will, in his discretion, deny the application. If denied, the commissioner will give prompt notice of the denial with reasons for it to the applicant.

(b) If an employer is contesting a citation, proposed penalty, or period of abatement, the commissioner will, at his discretion, refuse to entertain the employer's application for a variance until a final order on the contest is issued by the board.

(c) If an application has been determined to conform substantially to the requirements in

8 AAC 61.330 - 8 AAC 61.350, the commissioner will cause a notice to be published in a newspaper of statewide circulation and in a newspaper of local circulation in the area where the variance would apply. The notice will include

(1) the terms, or an accurate summary, of the application;

(2) the legal authority under which the application has been filed;

(3) a statement that interested persons may submit, within a designated period of time, written data, views, or arguments regarding the application; and

(4) a statement that affected employers or employees have a right to request, within a designated period of time, a hearing on the application.

(d) A summary of every final action granting, modifying or revoking a temporary or permanent variance will be published in a newspaper of statewide circulation and in a newspaper of local circulation in the area where the variance will be implemented. The public notice will include a statement of the reasons for the action and will tell how a copy of the full text of the action may be obtained.

(e) When the commissioner grants, revokes, or modifies a permanent variance, the department will also furnish the board the notice under (d) of this section. (Eff. 1/10/75, Register 53; am 1/26/78, Register 65)

Authority: AS 18.60.020 AS 18.60.077
AS 18.60.081

8 AAC 61.365. Effective date of variances

All variances granted pursuant to 8 AAC 61.330 - 8 AAC 61.350 take effect on the date the order is signed by the commissioner or at a future date as determined by the commissioner and specified in the order.

(Eff. 1/26/78, Register 65)

Authority: AS 18.60.020 AS 18.60.077
AS 18.60.081

8 AAC 61.370. Hearings

(a) Requests for a hearing allowed by 8 AAC 61.330 - 8 AAC 61.350 must be filed with the commissioner within 20 days of the filing of the application required by 8 AAC 61.330 - 8 AAC 61.350. If the commissioner on his own motion intends to modify or revoke a variance, the hearing request must be filed within the time limit established by the public notice published in accordance with 8 AAC 61.350.

(b) No particular form is prescribed for the hearing request. However, any request must contain the following information:

(1) a concise statement of facts showing how the employer or employee would be affected by the relief applied for;

(2) a specification of any statement or representation in the application which is denied, and a concise summary of the evidence that would be supplied in support of each denial; and

(3) any views or arguments on any issue of fact or law presented.

(c) The hearing will be conducted by the commissioner or his designee. The commissioner's decision will be based upon

a consideration of the whole record and will state the facts relied upon. The decision of the commissioner granting, continuing, revoking, or modifying the variance is a final decision. (Eff. 1/10/75, Register 53)

Authority: AS 18.60.020 AS 18.60.077

8 AAC 61.380. Consolidation of proceedings

The commissioner, on his own motion or by motion of any party, may consolidate or contemporaneously consider two or more proceedings which involve the same or closely related issues. (Eff. 1/10/75, Register 53)

Authority: AS 18.60.020

8 AAC 61.390. Notice of hearing

(a) Upon request for a hearing on an application as provided in 8 AAC 61.330 - 8 AAC 61.350, or upon his own initiative, the commissioner will serve the affected parties personally or by registered mail, a notice of the hearing. The notice will be given at least 30 days prior to the date of the hearing.

(b) A notice of hearing served under (a) of this section will include

(1) the time and place and nature of the hearing;

(2) the legal authority under which the hearing is to be held; and

(3) a specification of issues of fact and law. (Eff. 1/10/75, Register 53)

Authority: AS 18.60.020 AS 18.60.077

8 AAC 61.400. Manner of service

Service of a document upon a party may be made by personal delivery or registered mail

to the last known address of the party. The person serving the document shall certify to the manner and the date of the service.

(Eff. 1/10/75, Register 53)

Authority: AS 18.60.020 AS 18.60.077

Article 6

Consultation and Training

Section

- 410. Consultative services.
- 420. Powers of consultants and trainers.
- 425. Exemption from scheduled enforcement inspections.

8 AAC 61.410. Consultative services

(a) Upon request of an employer, the department may provide consultative and training services. Services will be limited to the interpretation and application of AS 18.60.010 - 18.60.105 and the regulations, standards, orders and rules adopted pursuant thereto.

(b) Requests may be verbal or written and must specify the conditions, structures, machines, equipment, devices, methods, means and practices for which the service is requested.

(c) 8 AAC 61.410 - 8 AAC 61.420 are not to be construed as providing immunity to any employer who has requested consultative or training services during the pendency of the granting of such request from an inspection or investigation conducted under AS 18.60.083 or AS 18.60.088. (Eff. 1/10/75, Register 53)

Authority: AS 18.60.020