ALASKA DEPARTMENT OF LABOR

DIVISION OF LABOR STANDARDS AND SAFETY

OSH Program Directive No. 85-6

September 9, 1985

To: All OSH Personnel

Subject: Variance Policy and Procedures

1. Purpose: This program directive consolidates the procedures for handling variance applications.

2. Directives Affected: DOSH Program Directive 77-3 is cancelled.

3. Background: Federal OSHA Instruction STD 6.1 requires the State to develop procedures for handling variance applications that establish time frames within which certain action will occur and for establishing or formalizing certain other variance procedures. Most of these procedures apply to requests for both temporary and permanent variances.

4. Procedures:

A. Timetable: The final decision on a valid variance application will normally be made within 120 days of its receipt. This period is normally broken down as follows:

Receipt to Publication - 30 days
Public Comment Period - 30 days

Final order forwarded for publication

No comments received and no hearing requested - 45 days
Comments received and/or hearing requested - 60 days

B. Variance Inspection: Variance inspections shall be conducted by the Consultation and Training (C&T) unit on valid variance applications. Such inspections will, if possible, be performed within 30 days of the receipt of the variance application. A variance inspection is a single purpose pre-announced, voluntary compliance inspection that is limited to gathering information concerning the variance. It will be conducted following established consultive inspection proce-dures.

C. Denials.

1. A variance application which does not state an alternative method of compliance will be denied as procedurally inadequate within 30 days of receipt. The Commissioner is given this

authority under 8 AAC 61.360. This time frame will also be used for procedural denials of temporary variances, such as requests for temporary variances from a standard already in effect, or one in which the steps to safeguard employees are not stated.

2. Letters denying or otherwise closing variance applications will be sent by certified mail to applicants, with copies to the director, deputy director and section supervisors. If there has been contact with employees or employee groups or other interested parties, a copy will also be sent to these groups.

3. Letters denying or otherwise closing variance applications will include a statement describing any potential hazard and referring the applicant to the C&T Unit for further guidance.

4. All letters of denial or otherwise closing a formal application will contain a requirement that they be posted for employees to read.

5. If no citation was previously involved and the variance request has been denied, the supervisor of the compliance section, will schedule an inspection of the worksite(s) within 30 days of the denial.

D. Public Notices and Files: Public notices and internal files will contain the information on which a decision was based. This will include the results of the variance inspection.

E. Employee Complaints: An employee complaint concerning safety under a granted variance or non-compliance with the terms of the granted variance will be handled under the established complaint procedures (See Chapter IX of the Compliance Manual).

F. Temporary Variances: Temporary variances are available only during that period between promulgation of a standard and its effective date for employers unable to come into compliance within that time. Temporary variances cannot be used for extension of abatement periods. If the employer requires an extension of the abatement period, a petition for modification of abatement period (8 AAC 61.135) should be filed by the employer. Since a petition must specify the steps taken to guarantee worker safety, it provides the same degree of protection to employees as a variance, the Chief of Compliance shall schedule a follow-up inspection.

G. Interpretations: All variance applications will be carefully studied to determine if the employer does in fact require a variance. All variance applications will be scrutinized to insure that the employer's understanding of the standard is correct and that the variance application is appropriate. This review may include a variance inspection.

5. Action: This directive is effective immediately.

6. Filing: This directive will remain in effect until modified, superseded or rescinded.

Robert J. Bacolas, Director

Reviewed and Approved

Jim Robison, Commissioner