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Document Title: Variance Requests

Approval Authority: Bureau Chief

A. PURPOSE AND SCOPE

This Bureau Operating Procedure (BOP) defines the process for the evaluation and approval of requests for variances from North Carolina Department of Labor (NCDOL) Occupational Safety and Health (OSH) standards. This procedure applies to the Education, Training and Technical Assistance (ETTA) Standards section.

B. ACTION STEPS

1. The Standards Supervisor assigns the variance request for review to a Standards Officer and initiates the variance tracking log entry.
2. The Field Information System (FIS) Coordinator inputs the variance request in the Variance Tracking Log, located on the OSH One Stop Shop, and updates the initial variance status.
3. The Standards Officer reviews and evaluates variance request, including the following actions:
 - a. Review federal and state specific rules regarding variances as well as the most current version of Operational Procedure Notice (OPN) 118 - Variance Requests, which provides detailed instructions for the evaluation of the variance request and filing instructions.
 - b. Determine completeness of variance application.
 - c. Determine whether a variance is necessary, if interpretive guidance already exists, or if interpretive guidance can be created to address the issues instead.
 - i. If interpretive guidance already exists which addresses the issue, submit to Standards Supervisor for review. Standards Supervisor will update Variance Tracking Log via the FIS Coordinator and will close the file.
 - ii. If interpretive guidance is more appropriate and will need to be created, follow BOP D.05.S06 - State-Specific Policy Documents.
 - iii. If variance is appropriate, contact NCDOL Legal Affairs to address legal posting requirements.
 - d. In accordance with OPN 118, conduct:
 - i. Technical review and analysis of application.
 - ii. Develop strategy for assessing employee safety and health.
 - iii. On-site assessments, if appropriate, to assure accuracy of application.

- e. Throughout the variance process, and as necessary, maintain contact with the following:
 - i. Standards Supervisor
 - ii. ETTA Bureau Chief
 - iii. OSH Director/Assistant OSH Director
 - iv. NCDOL Chief of Staff
 - v. Commissioner of Labor
 - vi. State Plan Coordinator
 - vii. NCDOL Legal Affairs Division
 - viii. Variance Requestor
- f. After variance evaluation is complete, forward determination to “approve” or “deny” variance request to the Standards Supervisor, who will initiate review by the ETTA Bureau Chief, OSH Assistant Director, OSH Director, and Commissioner of Labor.
- g. If variance request is approved, create “Order” for OSH Director’s signature and mailing to requestor. Refer to OPN 118 for additional instructions on completing the Order.
 - i. Submit final “Order” to NCDOL Legal Affairs for publication in North Carolina Register, if applicable.
- h. If variance request is denied, prepare correspondence to the applicant, including statement of the grounds for the denial. Typically, such correspondence should be prepared for signature by the OSH Division director. However, if the original application was addressed to the commissioner, or there is another compelling reason, the director or assistant director should be consulted to determine the appropriate responder.
 - i. File all variance paperwork in the FIS file cabinet per instructions in OPN 118.

C. REFERENCES

1. OPN 118 - Variance Requests (most current version)
2. 13 North Carolina Administrative Code (NCAC) 07A .0700 - Rules of Practice for Variances: Limitations: Variations: Tolerances and Exemptions
3. North Carolina General Statutes (NCGS) §95-132 -Variances
4. 29 CFR 1902 - State Plans for the Development and Enforcement of State Standards
5. 29 CFR 1905.10(b) - Rules of Practice, Variances and Other Relief Under Section 6(b)(6)(A)
6. Variance Tracking Log (located on the OSH One Stop Shop)

D. ATTACHMENTS

None

E. REVISIONS

1. March 1, 2009 clarified process.

Reviewed: March, 2011. No changes.

2. May 25, 2017 minor updates.

3. June 22, 2018 minor updates.

4. June 27, 2019 minor updates.

Reviewed: June 17, 2021. No changes.