

CR 84-76

RULES CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPT. OF INDUSTRY,)
LABOR & HUMAN RELATIONS)

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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Howard S. Bellman, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to ch. ILHR 3 - Petition for Variance Procedures were duly approved and adopted by this department on _____.

(Subject)

(Date)

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 8:30 am in the city of Madison, this 9th day of October A.D. 1984.

Howard S. Bellman
Secretary

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ORDER OF ADOPTION

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 101.02 (6) (e), Stats., the Department of Industry, Labor and Human Relations hereby creates; amends; repeals and recreates; and repeals and adopts rules of Wisconsin Administrative Code chapter(s):

ILHR 3

(Number)

Petition for Variance Procedures

(Title)

The attached rules shall take effect on the first day of the month
following publication, pursuant to section
227.026, Stats.

Adopted at Madison, Wisconsin, this 9th
day of October, A.D., 1984.

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

Howard S. Bellman

Secretary



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RULES in FINAL DRAFT FORM

Rule: Ch. ILHR 3

Relating to: Petition for Variance Procedures

Clearinghouse Rule No.: 84-76

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Administrative rules to create ch. LLHR 3, relating to petition for variance procedures.

ANALYSIS OF RULES

The rules establish internal processing procedures for reviewing and acting on petition for variances.

The rules state that petition for variances must be submitted on forms furnished by the division along with a fee as specified in ch. Ind 69 and where applicable, a completed position statement from the chief of the fire department having jurisdiction. The position for variance request must include a clear and concise written statement of the specific provisions of the code that are being petitioned and what is being provided in lieu of the requirement of the rule.

The division will act on the petitions and may approve the petition which would include a conditional approval, temporary variance or experimental variance; or may deny the petition for variance.

In accordance with s. 101.055 (4) of the Stats., rules covering public employer variances have also been included in this chapter.

The rules specify time limits in which the division has to review the petition for variances and time limits for the petitioner to appeal if they are not satisfied with the division's final order. The rules also allow a person, other than the owner, aggrieved by a petition decision to request a hearing on the decision.

Pursuant to the authority vested in the state of Wisconsin's Department of Industry, Labor and Human Relations by s. 101.02 (6) (e), Stats., the department hereby creates rules interpreting s. 101.02 (6) (e), Stats., as follows:

SECTION 1. Chapter ILHR 3 is created to read:

CHAPTER ILHR 3
PETITION FOR VARIANCE PROCEDURES

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ILHR 3.001 PURPOSE. The purpose of this chapter is to specify procedures for applying for a variance from a rule administered and enforced by the division.

ILHR 3.002 SCOPE. This chapter specifies who may apply for a petition for variance from a rule, the procedures that must be followed for applying and processing a petition for variance; and includes procedures for appealing a decision on a petition for variance.

ILHR 3.01 PETITION PROCEDURES. Except as specified in s. ILHR 3.04, all petitions for variance from rules of the division shall be processed as provided for in s. ILHR 3.03. Appeals will be handled as set forth in s. ILHR 3.05.

ILHR 3.02 DEFINITIONS. (1) "Administrator" means the administrator of the division of safety and buildings in the department of industry, labor and human relations.

(2) "Department" means the department of industry, labor and human relations.

(3) "Division" means the division of safety and buildings.

(4) "Equivalency" means the same intent and degree of safety is being provided in lieu of the requirements being specified in the rule.

(5) "Public employe" means any employe of the state, of any state agency or of any political subdivision of the state.

(6) "Public employer" means the state, any state agency or any political subdivision of the state.

(7) "Secretary" means the secretary of the department of industry, labor and human relations.

(8) "Significant ownership rights" means any person having ownership, control or custody of any place of employment or public building, or of the construction repair or maintenance of any place of employment or public building.

ILHR 3.03 PETITION FOR A VARIANCE. Any person having significant ownership rights may petition for a variance on any rule of the division. The petition for variance shall establish an equivalency which meets the intent of the rule being petitioned.

(1) APPLICATION FOR PETITION FOR VARIANCE. Application for a petition for variance of a rule shall be made on forms furnished by the division. The following shall be submitted when requesting a variance from a rule:

(a) A completed and notarized petition for variance form including a clear and concise written statement of the specific provisions of the rule from which the variance is requested along with a specific statement of the procedures and materials to be used if the variance is granted;

(b) A petition for variance fee as specified in ch. Ind 69; and

(c) A completed position statement on the petition for variance from the chief of the fire department having jurisdiction, where applicable.

Note: See Appendix for examples of petition for variance forms and position statement.

(2) DIVISION ACTION. Upon receipt of the petition for variance form, applicable fee and the position statement, and any other documents as the petitioner may wish to submit, the administrator shall evaluate the petition for variance and determine if the petition for variance provides for an equivalency which meets the intent of the rule being petitioned.

(a) If additional information is needed by the division to review the petition for variance and make a determination, the division shall notify the owner of the specific information required.

(b) If it is determined that the petition for variance provides an equivalency, the petition for variance shall be approved by the administrator.

(c) If it is determined that the petition for variance does not provide an equivalent protection as provided by the original rule, the administrator:

1. May approve the petition for variance subject to specific conditions determined by the division which shall establish an equivalency which meets the intent of the rule;

2. May grant a temporary variance to delay enforcement of a rule to a specified date, not to exceed one year. The petitioner shall demonstrate that all available steps are being taken to safeguard employes and frequenters against the hazard covered by the rule from which the variance is sought and shall possess and describe a program for coming into compliance with the rule as quickly as possible. A temporary variance may be renewed no more than twice, and only if the petitioner files an application for renewal at least 90 calendar days before expiration of the temporary variance;

3. May grant an experimental variance to allow the petitioner to participate in an experiment approved by the division to demonstrate or validate new or improved techniques to safeguard the health or safety of the public and employes; or

4. May deny the petition for variance.

(3) NOTIFICATION OF PETITION FOR VARIANCE DETERMINATION. The administrator shall notify the petitioner in writing of the petition for variance determination. Any denial shall include the reason for denial, and information on the appeals procedure.

(4) TIME LIMIT FOR PROCESSING. Except for priority petitions, the division shall approve or deny a petition for variance and shall mail notification of the determination to the petitioner after receipt of the completed and notarized petition for variance form and applicable fees, and any additional information as may be required by the department within 30 business days. The division shall process priority petitions within 10 business days.

(5) REVOCATION. The division may revoke any petition for variance where it is determined that the variance was obtained through fraud or deceit or where the petitioner has violated the specific conditions on which the variance was approved.

ILHR 3.04 PUBLIC EMPLOYER VARIANCES. (1) TYPES OF VARIANCES. Pursuant to s. 101.055 (4), Stats., a public employer may apply to the division for a temporary, experimental or permanent variance on occupational safety and health issues affecting public employes:

(a) Temporary variance. The division may grant a temporary variance before a rule goes into effect if the public employer complies with this section and establishes that it is unable to comply with a rule by the rule's effective date because of unavailability of professional or technical personnel or of necessary materials or equipment or because necessary construction or alteration of facilities cannot be completed by the effective date:

1. The employer shall also show that it is taking all available steps to safeguard employes against the hazard covered by the rule from which the variance is sought and shall possess and describe a program for coming into compliance with the rule as quickly as possible.

2. If a hearing is requested, the division may state in writing that non-compliance with the rule is permitted for 180 calendar days or until a decision is made after the hearing, whichever is earlier.

3. A temporary variance shall be in effect for the period of time needed by the employer to achieve compliance with the rule or for one year, whichever is shorter.

4. A temporary variance may be renewed no more than twice, and only if the public employer files an application for renewal at least 90 calendar days before expiration of the temporary variance.

(b) Experimental variance. The division may grant an experimental variance if the public employer complies with this section and it is determined that the variance is necessary to permit the employer to participate in an experiment approved by the division to demonstrate or validate new or improved techniques to safeguard the health or safety of employes.

(c) Permanent variance. The division may grant a permanent variance if the public employer complies with this section and it finds the employer has demonstrated by a preponderance of the evidence that the conditions and methods the employer uses or proposes to use provide employment or a place of employment which is as safe and healthful as that provided under the rule from which the employer seeks a permanent variance. A permanent variance may be modified or revoked upon application by the employer, an affected employe, a public employe representative or the department and after opportunity for a hearing, but not sooner than 6 months after issuance of the permanent variance.

(2) APPLICATION FOR PETITION FOR VARIANCE. Application for a petition for variance of a rule shall be made on forms furnished by the division. The following shall be submitted when requesting a variance from a rule:

(a) A completed and notarized petition for variance form including a clear and concise written statement of the specific provisions of the code from which the variance is requested and a specific statement of the procedures and materials to be used if the variance is granted; and

(b) A petition for variance fee as specified in ch. Ind 69.

(3) NOTIFICATION TO EMPLOYEES. The employer shall provide a copy of the application for petition for variance to the appropriate public employe representatives.

(a) A copy of the petition for variance shall be posted by the employer at places where notices to employes are normally posted.

(b) The notice shall:

1. Summarize the application; and

2. Inform public employes of the right to request a hearing.

(c) The public employer shall furnish evidence to the division that conditions specified in par. (b) have been satisfied and that public employes have no interest in requesting a hearing from the division.

(4) HEARING. Upon a written request for a hearing from a public employer, an affected public employe or a public employe representative, the division shall hold a hearing.

(a) Upon a written request for a hearing, the administrator shall schedule a hearing and inform the parties about the date, time and place for the hearing.

(b) Where a hearing is requested, no decision will be made by the division until a hearing has been held.

(5) DIVISION ACTION. Unless a hearing is requested upon receipt of the petition for variance form, the administrator shall evaluate the petition for variance and determine if the petition for variance provides for an equivalent degree of safety or health. The petition shall prescribe the methods and conditions which the employer must adopt and maintain while the variance is in effect.

(a) If additional information is needed by the division to review the petition for variance and make a determination, the division will notify the owner of the specific information requested.

(b) If it is determined that the petition for variance provides an equivalent degree of safety or health, the petition for variance shall be approved by the administrator.

(c) If it is determined that the petition for variance does not provide an equivalent degree of safety or health, the administrator:

1. May approve the petition for variance subject to specific conditions determined by the division which will establish an equivalent degree of safety or health as specified in the rule; or

2. May deny the petition for variance.

(6) NOTIFICATION OF PETITION FOR VARIANCE DETERMINATION. The administrator shall notify the petitioner and affected parties in writing of the petition for variance determination. Any denial shall include the reason for denial, and information on the appeals procedure.

(7) TIME LIMIT FOR PROCESSING. Except for priority petitions, the division shall approve or deny a petition for variance and shall mail notification of the determination to the petitioner within 30 business days after receipt of the completed and notarized petition for variance form and applicable fees, and any additional information as may be required by the department. The division shall process priority petitions within 10 business days.

(8) REVOCATION. The division may revoke any petition for variance where it is determined that the variance was obtained through fraud or deceit or where the petitioner has violated the specific conditions on which the variance was approved.

ILHR 3.05 APPEALS ON PETITIONS FOR VARIANCES. (1) PETITION FOR A HEARING. Any person who wishes to contest a determination on a petition for variance made by the administrator may file an appeal with the secretary for a hearing.

(a) The petition for a hearing shall contain a statement of the specific reasons why the person believes a hearing should be held.

(b) A petition for a hearing must be received within 30 calendar days from the date of the notification of determination.

(2) DETERMINATION FOR HEARING. (a) If it is determined by the secretary that insufficient reasons are provided for a hearing, the request for a hearing may be denied. The person who requested the hearing shall be notified of any denial for a request for hearing in writing along with the reasons for denial.

(b) If upon review, it is determined that a hearing shall be granted, the division shall inform the person making the request and, if different, the person who filed the original petition about the date, time and place of the hearing.

(3) HEARING. (a) The secretary may hear and decide the appeal; or

(b) The secretary may designate a hearing examiner to hear the appeal and make a recommended finding to the secretary, who will then make the final decision on the appeal.

(4) FINAL ORDER. Any decision resulting from this hearing shall be the final order of the department. The person who requested the hearing shall be notified of the final order in writing, and be provided with information on the appeal procedure.

(5) PETITION FOR REHEARING. Any person aggrieved by a final order may, within 20 calendar days after service of the final order, file a written petition with the secretary for rehearing. Unless this order was served personally, service occurred on the date of mailing as set forth in the letter of transmittal. The petition for rehearing shall specify the grounds for the relief sought and supporting authorities.

Note: See s. 227.12, Stats., for procedural details regarding petitions for rehearing.

(6) PETITION FOR JUDICIAL REVIEW. Any person aggrieved by a decision is entitled to judicial review. The petition for judicial review shall be served and filed with all parties within 30 calendar days after the service of this decision. The petition for judicial review shall identify the department of industry, labor and human relations as the respondent.

Note: See s. 227.16, Stats., for complete procedural details regarding petitions for judicial review.

EFFECTIVE DATE

Pursuant to s. 227.026 (1) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.

APPENDIX

The material contained in the Appendix is for clarification purposes only.

The following forms (SB-8, SB 8-A, SB 8-B, SBD-6689, SBD-6690) are referred to in s. ILHR 3.03. Copies of these forms are available from the Division of Safety and Buildings, P.O. Box 7969, Madison, Wisconsin 53707.

WISCONSIN DEPARTMENT OF
INDUSTRY, LABOR AND HUMAN RELATIONS
DIVISION OF SAFETY & BUILDINGS
P.O. BOX 7969, MADISON, WI 53707

OFFICE USE ONLY		
Petition No.		
E-Number		
E-		

Name of Owner	Building Occupancy or Use	Agent, Architect or Engineering Firm	
Company	Tenant Name, if any	Street & No.	
Street & No.	Building Location, Street & No.	City	State & Zip
City	State & Zip	City	County
		Phone	

Plan Number(s) >
-IF KNOWN-

1. Rule Ind. _____ of the Wisconsin Administrative code cannot be entirely satisfied because:

2. In lieu of complying exactly with the rule, the following alternative is proposed as a means of providing an equivalent degree of safety:

3. Supporting arguments are:

VERIFICATION BY OWNER-PETITION IS VALID ONLY IF NOTARIZED
For Fee Information See Ind. 69.15 or Contact The Department at (608) 266-1835

_____ being duly sworn, says he is petitioner herein, thus he has read the foregoing petition and that the same is true, as he verily believes.

Signature of Owner
Subscribed and sworn to me this _____ day of 19_____,
_____ County, Wisconsin.

Notary Public
My commission expires: _____

OFFICE USE ONLY		
Date Received	Amount Paid	Receipt No.
Department Action		
Office of The Secretary		Date

POSITION STATEMENT:

To be compiled by
Chief of Fire Department
SB 8-A (2-77)

**WISCONSIN DEPARTMENT OF
INDUSTRY, LABOR AND HUMAN RELATIONS
DIVISION OF SAFETY & BUILDINGS
P.O. BOX 7969 MADISON WI 53707**

Name of Owner	Building Occupancy or Use	Agent, Architect or Engineering Firm
Company	Tenant Name, if any	Street & No.
Street & No.	Building Location, Street & No.	City State & Zip
City State & Zip	City County	Phone

1. I have read the petition for modification of rule: Ind

2. I recommend (Check appropriate box)	Denial	Approval	Conditional Approval	No Comment *
---	--------	----------	----------------------	--------------

3. Explanation for Recommendation:

* If desired, Fire Departments may indicate "No Comment" on non-fire safety issues such as sanitary, energy conservation, structural, barrier free environments, etc.

4. I find no conflict with local rules and regulations
 I find that the petition is in conflict with local rules and regulations

Explanation

Signature of Fire Chief	Date
-------------------------	------

Petition for Modification of an Administrative Rule PRIVATE SEWAGE	WISCONSIN DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS DIVISION OF SAFETY & BUILDINGS P.O. BOX 7969, MADISON, WI 53707	OFFICE USE ONLY Petition No. _____ ID-No. _____
--	--	--

Name of Owner	Building Occupancy or Use	Agent, Architect or Engineering Firm or Master Plumber
Company	Tenant Name, if any	
Street & No.	Building Location, Street & No.	Street & No.
City State & Zip	City County	City State & Zip
Phone	Plan Numbers (If Known)	Phone

Type of Petition Fee \$ _____	<input type="checkbox"/> Set Backs (Soil Absorption and Septic Systems)	<input type="checkbox"/> Experimental and Loading Rates	<input type="checkbox"/> Site Evaluations
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LEGAL DESCRIPTION

_____ 1/4, _____ 1/4, Section _____, T _____ N, R _____ E (or) W, Township _____

Subdivision Name _____ County _____

WISCONSIN ADMINISTRATIVE RULE BEING PETITIONED

1. Rule _____ of the Wisconsin Administrative code cannot be entirely satisfied due to the following reasons:

2. In lieu of complying exactly with the rule, the following alternative is proposed as a means of providing an equivalent degree of safety or health:

3. Supporting arguments (For site evaluations, include Form 115—"Report on Soil Boring and Percolation Tests")

Petition for Modification of an Administrative Rule

PLUMBING

FEE \$ _____

WISCONSIN DEPARTMENT OF
INDUSTRY, LABOR AND HUMAN RELATIONS
DIVISION OF SAFETY & BUILDINGS
P.O. BOX 7969, MADISON, WI 53707

OFFICE USE ONLY

Petition No. _____

E-No. _____

ID-No. _____

Name of Owner	Building Occupancy or Use	Agent, Architect or Engineering Firm or Master Plumber
Company	Tenant Name, if any	
Street & No.	Building Location, Street & No.	Street & No.
City State & Zip	City County	City State & Zip
Phone	Plan Numbers (If Known)	Phone

WISCONSIN ADMINISTRATIVE RULE BEING PETITIONED

1. Rule _____ of the Wisconsin Administrative code cannot be entirely satisfied due to the following reasons:

2. In lieu of complying exactly with the rule, the following alternative is proposed as a means of providing an equivalent degree of safety or health:

3. Supporting arguments (If necessary, use back side of form to provide a detailed drawing.):

The Wisconsin Department of Industry, Labor and Human Relations

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OCT 8 1984

Office of the Secretary
201 E. Washington Avenue
P.O. Box 7946
Madison, Wisconsin 53707
Telephone 608/266-7552

Revisor of Statutes
Bureau

✓ Gary Poulson
Assistant Revisor of Statutes
for Administrative Rules
411 West, State Capitol
Madison, Wisconsin

Douglas LaFollette
Secretary of State
Room 271, GEF-1
201 East Washington Avenue
Madison, Wisconsin

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 84-76

RULE NO. ch. ILHR 3

RELATING TO: Petition for Variance Procedures

Pursuant to section 227.023, Stats., agencies are required to file a certified copy of every rule adopted by the agency in the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you.

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.016 (6), Stats., a summary of the final regulatory flexibility analysis is also included.

Respectfully submitted,



Howard S. Bellman
Secretary

cc: Agency Contact Person