

CR 84-204

# 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 Exemptions Under the Employes Right to Know Law were duly approved and adopted by this department on April 8, 1985.  
(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 10:30 am in the city of Madison, this 8<sup>th</sup> day of April A.D. 1985.

Howard S. Bellman  
Secretary

# ORDER OF ADOPTION

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Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 101.02 (1) & 101.598 (2), 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 in the Wisconsin Administrative Register \_\_\_\_\_, pursuant to section 227.026, Stats.

Adopted at Madison, Wisconsin, this 8<sup>th</sup>

day of April, A.D., 1985.

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

Howard S. Bellman

Secretary



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# RULES in FINAL DRAFT FORM

**Rule:** ILHR 3.05

**Relating to:** Exemptions Under the Employes Right to Know Law

**Clearinghouse Rule No.:** 84-204

An Order to renumber ILHR 3.05; to amend ILHR 3.01; and to create ILHR 3.05 relating to petition for variance procedure for toxic substances under the Employes Right to Know Law.

\* \* \* \* \*

ANALYSIS OF RULES

Pursuant to s. 101.598 (2), Stats., the Department of Industry, Labor and Human Relations may grant an exemption to employers from retaining data sheets, as required in s. 101.583 (1), Stats., regarding any mixture containing a toxic substance, if it is unlikely that the mixture poses a health hazard. The rules propose to establish an administrative procedure by which the department will review and act upon applications for these types of exemption request.

The proposed rules specify the procedures for applying for an exemption and the responsibilities of the department, including processing times, notification and appeal procedures.

\* \* \* \* \*

Pursuant to the authority vested in the State of Wisconsin, Department of Industry, Labor and Human Relations by ss. 101.02 (1) and 101.598 (2), Stats., the department hereby creates rules interpreting s. 101.598 (2), Stats., as follows:

Section 1. ILHR 3.01 is amended to read:

ILHR 3.01 PETITION PROCEDURES. Except as specified in ~~ss.~~ ss. ILHR 3.04 and 3.05 all petitions for variance from rules of the division shall be processed as provided for in s. ILHR 3.03. Appeals ~~will~~ shall be handled as set forth in s. ~~ILHR 3.05~~ ILHR 3.06.

Section 2. ILHR 3.05 is renumbered ILHR 3.06

Section 3. ILHR 3.05 is created to read:

ILHR 3.05 EXEMPTIONS UNDER THE RIGHT-TO-KNOW LAW. (1) DEFINITIONS. In this section:

(a) "Employee" means any person as defined in s. 101.58 (2) (c), Stats.

(b) "Employee representative" means any individual or organization as defined in s. 101.58 (2) (d), Stats.

(c) "Employer" means any person as defined in s. 101.58 (2) (e), Stats.

(2) PETITIONS. Pursuant to s. 101.598 (2), Stats., an employer may petition the division for an exemption from retaining a data sheet or maintaining an identification list as specified in s. 101.583 (1), Stats., regarding any mixture containing a toxic substance.

(a) A petition for the exemption shall be in writing. Petitions for exemption shall be sent to: Division of Safety and Buildings, Bureau of Safety Inspection, P.O. Box 7969, Madison, Wisconsin 53707.

(b) The petition shall be accompanied by the appropriate information and documentation indicating:

1. that any toxic substance present in the mixture is highly unlikely to pose an unreasonable acute or chronic health hazard to an employee who works with or is likely to be exposed to the mixture; and

2. the specific conditions and procedures under which the mixture is to be used if the exemption is granted.

(c) An employer requesting an exemption shall provide a copy of the petition to the appropriate certified collective bargaining agents and shall post a statement at the place where notices to employees are normally posted. The posted statement shall summarize the petition, specify a place where employees may examine it and inform employees of their right to request a hearing on it.

(3) DIVISION ACTION. Upon receipt of a petition for exemption, the applicable fee and any other documents the employer may wish to submit, the division shall evaluate the petition and determine if the exemption may be granted.

(a) If additional information is needed by the division to review the petition in order to make a determination, the division shall notify the employer of the specific information required.

(b) Upon receipt of a written request from the employer, an affected employe or employe representative, the division shall schedule a hearing on the petition and inform the interested parties about the date, time and place for the hearing. If a hearing has been requested, the division shall not act on the petition for exemption until the hearing has been held.

(c) The division shall grant or deny a petition for exemption and shall mail notification of the determination to the employer within 60 business days, but no sooner than 15 business days, after receipt of the petition and any additional information which may be required by the department or after a hearing is held in accordance with par. (b).

(d) The division shall notify the employer and any interested parties as to the determination of the petition.

(e) The division may grant the petition for exemption subject to specific conditions.

(f) A denial of the exemption shall include the reason for the denial and information on the appeals procedure.

(g) If the petition for exemption is granted, the employer shall post a statement at the place where notices to employes are normally posted. The posted notice shall summarize the exemption and the specific conditions under which the exemption is granted and inform employes of their right to appeal the exemption under s. ILHR 3.06.

(4) REVOCATION. The division may revoke an exemption when it is determined that the exemption was obtained through fraud or deceit, where the employer has violated the specific conditions of the exemption or new information repudiates the original information on which the exemption was granted.

\* \* \* \* \*

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.

\* \* \* \* \*

## The Wisconsin Department of Industry, Labor and Human Relations

April 8, 1985

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

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. 84-204

RULE NO. ILHR 3.05

RELATING TO: Exemptions Under the Employees Right to Know Law

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

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