

5-323. MINIMUM REQUIREMENTS FOR ISSUANCE.

(A) TEMPORARY VARIANCE.

TO QUALIFY FOR A TEMPORARY VARIANCE, AN APPLICANT SHALL ESTABLISH THAT THE APPLICANT:

(1) IS UNABLE TO COMPLY WITH A REGULATION OR PART OF A REGULATION, BY ITS EFFECTIVE DATE, BECAUSE:

(I) EQUIPMENT, MATERIAL, OR PROFESSIONAL OR TECHNICAL STAFF THAT IS NEEDED TO COMPLY IS UNAVAILABLE; OR

(II) ALTERATION OR CONSTRUCTION OF A FACILITY THAT IS NEEDED TO COMPLY CANNOT BE COMPLETED BY THE EFFECTIVE DATE;

(2) HAS AN EFFECTIVE PROGRAM TO COMPLY WITH THE REGULATION OR PART AS SOON AS PRACTICABLE; AND

(3) IS TAKING EACH AVAILABLE STEP TO PROTECT EMPLOYEES AGAINST EACH HAZARD THAT THE REGULATION OR PART COVERS.

(B) PERMANENT VARIANCE.

TO QUALIFY FOR A PERMANENT VARIANCE, AN APPLICANT SHALL SHOW, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE APPLICANT WILL MAINTAIN CONDITIONS, MEANS, METHODS, PRACTICES, PROCEDURES, OR OPERATIONS THAT MAKE EMPLOYMENT AND PLACES OF EMPLOYMENT AT LEAST AS SAFE AND HEALTHFUL FOR EMPLOYEES AS THEY WOULD BE IF THE APPLICANT COMPLIED WITH THE REGULATION FROM WHICH THE PERMANENT VARIANCE IS SOUGHT.

(C) EXPERIMENT.

IN ADDITION TO THE BASES UNDER SUBSECTIONS (A) AND (B) OF THIS SECTION, THE COMMISSIONER MAY GRANT AN EMPLOYER A VARIANCE FROM A REGULATION OR PART OF A REGULATION IF THE COMMISSIONER:

(1) APPROVES AN EXPERIMENT TO SHOW OR VALIDATE A NEW AND IMPROVED METHOD TO PROTECT THE HEALTH OR SAFETY OF EMPLOYEES; AND

(2) DETERMINES THAT THE EMPLOYER NEEDS THE VARIANCE TO PARTICIPATE IN THE EXPERIMENT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 89, § 34(d), the second sentence of (b) as that sentence related to the standard for a variance, and, except for the references to hearings and inspections, the third sentence of (a).