

INTRODUCTION

Purpose and Structure

The Legislature, by s. 35.93 and ch. 227, Stats., directed the publication of the rules of executive agencies having rule-making authority in a loose-leaf, continual revision system known as the Wisconsin Administrative Code. The Code is kept current by means of new and replacement pages. The pages are issued monthly, together with notices of hearings, notices of proposed rules, emergency rules, instructions for insertion of new material, and other information relating to administrative rules. This service is called the Wisconsin Administrative Register, and comes to the subscriber near the middle and at the end of each month. Code pages are issued to subscribers only with the end of the month Register. The editing and publishing of the Register and Code is done by the Revisor of Statutes Bureau, Suite 800, 131 W. Wilson St., Madison, Wisconsin, 53703. (608-266-7275).

Availability

The complete code and the upkeep service are distributed to the county law libraries; to the libraries of the University of Wisconsin Law School and Marquette University Law School; to the State Historical Society; to the Legislative Reference Bureau and to the State Law Library, and to certain designated public libraries throughout the state.

The sale and distribution of the Register, Code and of its parts is handled by Department of Administration, Document Sales, P.O. Box 7840, Madison, Wisconsin 53707. (608-266-3358 information) (1-800-362-7253 or 608 264-9419 charge card orders).

Table of Contents

Each code with more than one chapter will have a table of chapters. After the title of each chapter will be the page numbers on

which the chapter begins. Each chapter will have a table of sections.

History Notes

Each page of the code as it was originally filed and printed pursuant to the 1955 legislation, had a date line 1-2-56. A rule which is revised or created subsequent to the original printing date is followed by a history note indicating the date and number of the Register in which it was published and the date on which the revision or creation of the rule became effective. Additions to a section's history note will be shown in **bold face** when those affected code sections are first released. The absence of a history note at the end of a section indicates that the rule has remained unchanged since the original printing in 1956. The date line at the bottom of the page indicates the month in which the page was released, but does not necessarily mean a substantive change has occurred on that page. Some common abbreviations used in the history notes are: cr. - created, am. - amend, r. - repeal, recr. - recreate, renum. - renumber, eff. - effective and emerg. - emergency.

In some instances an *entire* chapter has been repealed and recreated or renumbered subsequent to the original printing date. When this occurs a note has been placed at the beginning of the chapter after the table of sections to contain this information. A separate history note appears after each section indicating the date when the revision or creation became effective.

Index

The index for the complete Wisconsin Administrative Code will be found in the last volume of the complete set. It will be recompiled, reprinted and distributed at least 3 times a year. Some codes have a separate index prepared by the agency involved. See the Uniform Dwelling Code (chs. ILHR 20-25) and the Building and Heating Code (chs. ILHR 50-64) as examples.

Chapter Comm 8

MINES, PITS AND QUARRIES

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Note: Chapter Ind 3 as it existed on June 30, 1983 was renumbered as ch. ILHR 8 and revised, effective July 1, 1983; chapter ILHR 8 as it existed on September 30, 1994, was repealed and a new chapter ILHR 8 was created effective October 1, 1994.

Note: Chapter ILHR 8 was renumbered chapter Comm 8 under s. 13.93 (2m) (b) 1. and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, August, 1997, No. 500.

Subchapter I — Administration and Enforcement

Comm 8.01 Purpose. Pursuant to s. 101.15 (2) (e), Stats., the purpose of this chapter is to establish rules to effect the safety of mines, quarries and related activities.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Comm 8.02 Scope. (1) COVERED. This chapter covers openings or excavations in the earth for the purpose of extracting minerals or other materials and the equipment related to processing or manufacturing of ores, aggregates, cements, lime, clay and silica sands in a mine, pit or quarry.

Note: The department of natural resources has administrative rules concerning metallic mineral exploration, metallic mineral prospecting and metallic mineral mining.

(2) NOT COVERED. This chapter does not cover openings or excavations in the earth created by a person for domestic or farm use at his or her residence or farm.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Comm 8.03 Application. This chapter applies to both new and existing mines, pits and quarries, unless specifically stated otherwise.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Comm 8.04 Petitions for variance. (1) PROCEDURE. The department shall consider and may grant a variance from any requirement in this chapter upon receipt of a fee and a completed petition for variance form from the owner, provided an equivalency is established in the petition for variance which meets the intent of the rule being petitioned. The department may impose specific conditions in a petition for variance to promote the protection of the health, safety or welfare of the employees or the public. A violation of any condition under which the petition for variance is granted constitutes a violation of this chapter.

Note: The petition for variance application (form SBD-9890) is available from the Division of Safety and Buildings, Customer Service Center, P.O. Box 7969, Madison, Wisconsin 53707, telephone 608/266-3151.

Note: Section 101.02 (6), Stats., and ch. ILHR 3 outline the procedures for submitting petitions to the department and the department procedures for hearing petitions.

(2) PETITION PROCESSING TIME. Except for priority petitions, the department shall review and make a determination on a petition for variance within 30 business days of receipt of all calculations, documents and fees required to complete the review. The

department shall process priority petitions within 10 business days.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Comm 8.05 Penalties. The department may impose penalties and obtain additional remedies for violations of this chapter, as provided in ss. 101.02 (13) and 101.15 (2) (f) 2., Stats.

Note: Section 101.02 (13) (a), Stats., indicates that if any employer, employee, owner, or other person violates ss. 101.01 to 101.25, Stats., or fails or refuses to perform any duty lawfully enjoined, within the time prescribed by the department, for which no penalty has been specifically provided, or fails, neglects or refuses to obey any lawful order given or made by the department, or any judgment or decree made by any court in connection with ss. 101.01 to 101.25, Stats., for each such violation, failure or refusal, such employer, employee, owner or other person shall forfeit and pay into the state treasury a sum not less than \$10 or more than \$100 for each such offense.

Note: Section 101.15 (2) (f) 2., Stats., indicates that the department may apply to a court of record for the closing of any underground mine, quarry, pit, zinc works or other excavation where the same is being operated in violation of any of its rules or orders, and the owners or operators have failed within a reasonable time to correct any unsafe methods of operation. The failure of any owner or operator to comply with the order or judgment of the court shall subject such party or parties to criminal contempt proceedings.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Comm 8.06 Appeals. (1) APPEAL OF LOCAL ORDER. Any person affected by a local order which may be in conflict with a rule of this chapter may petition the department for a hearing on the grounds that the local order is unreasonable and in conflict with the rule.

Note: Section 101.01 (8), Stats., defines "local order" as any ordinance, order, rule or determination of any common council, board of alderpersons, board of trustees or the village board, of any village or city, or the board of health of any municipality, or an order or direction of any official of such municipality, upon any matter over which the department has jurisdiction.

(2) PETITION OF AN ADMINISTRATIVE RULE. Pursuant to s. 227.12, Stats., any municipality, corporation or any 5 or more persons having an interest in an administrative rule may petition the department requesting the adoption, amendment or repeal of that rule.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Subchapter II — General Requirements

Comm 8.10 Notification to begin operation.

(1) Each year before work is commenced in a pit or quarry, the pit or quarry operator shall complete and return to the department form SBD-6736 for each pit or quarry. The notification shall be returned to the department at least 10 days prior to the beginning of work in each pit or quarry.

Note: The notice is required from the operator for all pits and quarries where work is performed, whether or not the operator owns the pit or quarry. Only one initial notice is required for a pit or quarry where work is performed on an intermittent basis during the year.

Note: Copies of form SBD-6736, Notice to Begin Operation, are available from the Division of Safety and Buildings, Customer Service Center, P.O. Box 7969, Madison, Wisconsin 53707, telephone 608/266-3151.

(2) Each year before work is commenced in a pit or quarry, the pit or quarry operator shall make arrangements for obtaining emergency medical assistance and transportation for injured persons.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Comm 8.11 Permits. (1) **GENERAL.** Before an excavation of a shaft may be commenced, a permit shall be obtained from the department. As provided by s. 101.15 (2) (c), Stats., this section does not apply to shafts less than 50 feet in depth wherein persons are not employed, shafts not equipped with power driven hoists used for hoisting persons in and out of the shafts, or shafts not covered with a flammable building.

(2) **APPLICATION FOR PERMIT.** Application for a shaft excavation permit shall be made on form SBD-52 together with the payment of the permit fee.

Note: Copies of form SBD-52, Mine Shaft Excavation Permit Application, are available from the Division of Safety and Buildings, Customer Service Center, P.O. Box 7969, Madison, Wisconsin 53707, telephone 608/266-3151.

(3) **PLANS AND SPECIFICATIONS.** Plans and specifications shall be submitted with the application for a shaft excavation permit which show that the shaft, excavation and workings are in compliance with this chapter.

(4) **PERMIT PROCESSING TIME.** The department shall review and make a determination on a shaft excavation permit application within 30 business days of receiving the required information and fees.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Comm 8.12 Fees. (1) **INSPECTION FEES.** The operator shall pay to the department an annual safety inspection service fee, periodic mine inspection fee and drill rig inspection fee as specified in ch. Comm 2. Fees for special inspections, as specified in ch. Comm 2, shall be paid to the department by the person requesting the inspection.

(2) **PERMIT FEE.** A fee as specified in ch. Comm 2 shall be paid to the department by the person applying for a shaft excavation permit.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Comm 8.13 Inspections. (1) **GENERAL REQUIREMENTS.** The authorized inspectors of the department, upon presenting appropriate credentials to the owner, operator or agent in charge, may:

(a) Enter without delay and at reasonable times any mine, pit or quarry where work is performed by an employee of an employer; and

(b) Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any mine, pit or quarry and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any employer, owner, operator, agent or employee.

(2) **REPRESENTATION.** The inspector, before making an inspection, shall contact the employer or employer's representative, who shall be given an opportunity to accompany the inspector during the physical inspection of any workplace under sub. (1).

Note: The department policy is not to give advance notice, but in the scheduling and in the act of inspecting it may not always be possible to avoid advance notice or to obtain accompaniment.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Comm 8.14 Federal requirements. No person may operate a mine, pit or quarry unless the person complies with 30 USC 811, 957 and 961 and the safety and health standards in 30 CFR Parts 56 and 57.

Note: Authority over mines is given to the federal government under the federal Mine Safety and Health Act. The operation of surface and underground mines is regulated by the federal Mine Safety and Health Administration, Department of Labor, under Title 30 CFR Parts 56 and 57.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Subchapter III — Amendments to Federal Regulations

Comm 8.20 Amendments to federal regulations.

The amendments to the federal Mine Safety and Health Administration (MSHA) regulations are specified in this subchapter and are rules of the department.

Note: The referenced MSHA section number, located in brackets, follows the Comm designation and precedes the text of the rule.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Comm 8.21 Definitions [MSHA 56.2 and 57.2].

(1) **ADDITIONS.** The following definitions are in addition to those set forth in MSHA 56.2 and 57.2:

(a) "Department" means the department of commerce.

(b) "Excavation" or "workings" has the meaning given in s. 101.15 (2) (a) 1., Stats.

Note: Section 101.15 (2) (a) 1., Stats., defines "excavation" or "workings" as any or all parts of a mine excavated or being excavated, including shafts, tunnels, drifts, cross cuts, raises, winzes, stopes and all other working places in a mine.

(c) "Mine" means a surface or underground opening or excavation in the earth for the purpose of extracting minerals or other materials.

(d) "Mineral" has the meaning given in s. 101.15 (2) (a) 2., Stats.

Note: Section 101.15 (2) (a) 2., Stats., defines "mineral" as a product recognized by standard authorities as mineral, whether metalliferous or nonmetalliferous.

(e) "Operator" means the person or firm that operates or is responsible for an excavation in the earth for the purpose of extracting minerals or other materials, or for the crushing, screening or washing equipment.

(f) "Pit" means a surface opening or excavation in the earth for the purpose of extracting minerals or other materials.

(g) "Quarry" means a surface opening or excavation in the earth for the purpose of extracting nonmetallic minerals or other nonmetallic materials.

(h) "Sign" means a communication conspicuously posted, legible, having a contrasting background and a legend composed of block letters.

(i) "Trip light" means a light displayed on the opposite end of a train from the locomotive or engine.

(2) **SUBSTITUTIONS.** The following definitions are substituted for the respective definitions in MSHA 56.2 and 57.2:

(a) "Approved" means accepted by the department.

(b) "Blasting agent" means any material or mixture consisting of a fuel and oxidizer intended for blasting, not otherwise classified as an explosive and in which none of the ingredients is classified as an explosive, provided that the material or mixture cannot be detonated by a No. 8 test blasting cap under the conditions specified for the cap sensitivity test.

(c) "Escapeway" means a passageway through which persons may leave if the ordinary exit is obstructed.

(d) "Explosive" means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion unless the compound, mixture or device is otherwise classified by the department.

(e) "Mill" includes any ore mill, sampling works, concentrator, and any crushing, grinding, screening or other preparation plant used at, and in connection with, an excavation, mine, pit or quarry.

(f) "Shaft" has the meaning given in s. 101.15 (2) (a) 3., Stats.

Note: Section 101.15 (2) (a) 3., Stats., defines "shaft" as an opening made for mining minerals, for hoisting and lowering persons or material, or for ventilating underground workings.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Comm 8.22 Wall, bank and slope stability [MSHA 56.3130]. The following rules are substituted for MSHA 56.3130:

(1) **CONTROL OF WALLS AND BANKS.** Standards acceptable to the department for the safe control of pit walls, including the overall slope of the pit wall, shall be established and followed by the operator. Such standards shall be consistent with prudent engineering design, the nature of the ground and the kind of material and mineral mined, and shall insure safe working conditions according to the degree of slope. Mining methods shall be selected which will insure wall and bank stability, including benching as necessary to obtain a safe overall slope.

(2) **BENCH STABILITY.** To insure safe operation, the width and height of benches shall be governed by the type of equipment to be used and the operation to be performed.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Comm 8.23 Use restrictions [MSHA 56.44 and 57.44]. In addition to MSHA 56.44 and 57.44:

(1) **FLAMMABLE AND COMBUSTIBLE LIQUIDS.** Flammable and combustible liquids shall be stored and handled in accordance with ch. ILHR 10.

(2) **LIQUEFIED PETROLEUM GASES.** Liquefied petroleum gases shall be stored and handled in accordance with ch. Comm 11.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Comm 8.24 Explosives [MSHA 56 and 57 Subparts E]. In lieu of MSHA Parts 56 and 57 Subparts E, the storage, handling and intrastate transportation of explosive materials shall comply with ch. Comm 7.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Comm 8.25 Boilers [MSHA 56.13030 and 57.13030]. In lieu of MSHA 56.13030 and 57.13030, all boilers and pressure vessels shall be constructed, installed and maintained in accordance with chs. ILHR 41 and 42.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Comm 8.26 Safety programs [MSHA 56 and 57 Subparts Q]. In addition to MSHA Parts 56 and 57 Subparts Q:

(1) **ESTABLISHMENT OF SAFETY PROGRAM.** The employer shall establish an ongoing safety program to prevent accidents and increase safety. The employer shall require all employees to actively participate in the safety program.

Note: The MSHA's annual miner refresher training is considered adequate to meet the ongoing safety program requirements.

(2) **SAFETY REGULATIONS.** All employees and officials shall be familiar with company, state and federal safety regulations.

(3) **ACCIDENT PREVENTION.** All supervisors and employees shall be trained in accident prevention.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Comm 8.27 Load end attachments [MSHA 56.19025 and 57.19025]. In addition to MSHA 56.19025 (a) and 57.19025 (a), the U-bolt of each clip shall encircle the short or "dead" end of the rope.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

Comm 8.28 Abandoned mine openings [MSHA 57.20021]. In addition to MSHA 57.20021:

(1) **FENCE OR FILL.** Whenever any mine shaft or exploration shaft is abandoned or its use discontinued, the operator or contractor shall promptly fill in the shaft or well to grade or enclose the shaft or well with a fence. The surface property owner shall be responsible for maintaining the fence or fill in a safe condition.

(2) **FENCE CONSTRUCTION.** Fences shall be constructed of woven wire at least 72 inches wide. The fence shall be constructed so no crawl space exists between the bottom of the fence and the ground. All wires shall be fastened to posts set into the ground and spaced at not more than 8-foot intervals. Woven wire fences shall not be smaller than No. 12 wire gauge. Cross wires and mesh wires shall be not smaller than No. 16 wire gauge. The strands shall be not more than 12 inches apart.

(3) **CAPS.** Where shafts or wells are capped, the cap shall consist of reinforced concrete slabs at least 6 inches in thickness or with a native stone at least 3 times the diameter of the test well, or with a tapered concrete plug. The property owner shall be responsible for maintaining the cap in a safe condition.

(4) **MAPPING OF UNDERGROUND WORKINGS.** (a) All underground workings shall be surveyed and mapped within a reasonable time as work develops. All underground workings shall be surveyed and mapped before they are allowed to become inaccessible. All surveys shall be tied to an exterior quarter section corner.

(b) Before any mine having underground workings is abandoned, the operator of the mine shall have an engineer or surveyor make a map, on a scale not smaller than 100 feet to the inch, showing all underground workings. A print or copy of such a map certified by the operator or designee as being accurate shall be filed with the department.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.