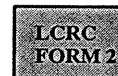


AUG 14 2000



WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-115

AN ORDER to repeal and recreate chapter Comm 8, relating to mines, pits and quarries.

Submitted by **DEPARTMENT OF COMMERCE**

07-14-00 RECEIVED BY LEGISLATIVE COUNCIL.

08-11-00 REPORT SENT TO AGENCY.

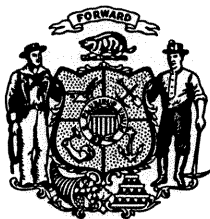
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CLEARINGHOUSE RULE 00-115

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section 101.15 (2) (f) 1., Stats., provides that the Department of ~~Workforce Development~~ ^{Commerce (sic)} "shall cause the inspections of underground mines and similar establishments at least once every 2 months and shall cause the inspections of surface mines and similar establishments at least once each year." In contrast, s. Comm 8.14 simply provides that the department may inspect mines, pits and quarries in order to determine compliance with ch. Comm 8 and, if a statutorily required inspection has not been performed, the department must notify the federal government that an inspection is due. In partial explanation of this rule provision, the analysis states that: "The requirements for inspections are revised by indicating that the department will not duplicate inspections performed by MSHA, but will notify MSHA when a required inspection has not been performed." If the rule indicates that it is the intent of the department to not make the statutorily required inspections, what other statutory authority exists for the rule provision?

2. Form, Style and Placement in Administrative Code

a. In s. Comm 8.13 (3) and (4), each sentence should conclude with the phrase "under sub. (1)." Also, in sub. (3), the word "their" should be replaced by the phrase "the person's."

b. In s. Comm 8.15 (intro.), the federal code citation should be abbreviated as "30 CFR Parts 1 to 99." A similar change should be made in the note so that the citation is "Title 30 CFR Parts 46, 56 and 57."

c. The definitions section, s. Comm 8.16, should be placed after the purpose and scope sections of the rule. [See s. 1.02 (3), Manual.]

d. Current subch. III of ch. Comm 8 places references to federal standards in rule section titles and the rule text. Why is this form abandoned in s. Comm 8.21?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. Comm 8.06 (1), "any person" may petition the department for a hearing; however, in s. 101.02 (6) (e), Stats., cited in the rule, "any employer or other person" may petition the department for a hearing. "Employer" is defined in s. 101.01 (4), Stats., to include any firm, corporation, state, county, town, city, village, school district, sewer district, drainage district and other public or quasi-public corporation. Was "any employer" deliberately excluded from the rule? If it should be included, the definition of "employer" could be added in a note.

b. In s. Comm 8.06 (2), the definition of "local order" under s. 101.01 (8), Stats., should be included in a note.

c. In s. Comm 8.13 (4), "Mine Safety and Health Administration" should not be capitalized. [See s. 1.01 (4), Manual.] A similar change should be made in s. Comm 8.14 (2).



State of Wisconsin \ Department of Commerce

HEARING DRAFT of PROPOSED RULES

Rule No.: Chapter Comm 8

Relating to: Mines, Pits and Quarries

The Department of Commerce proposes an order to repeal and recreate chapter Comm 8, relating to mines, pits and quarries.

Analysis of Proposed Rules

Statutory Authority: Section 101.15 (2)(e), Stats.
Statutes Interpreted: Section 101.15 (2)(e), Stats.

The Safety and Buildings Division within the Department of Commerce is responsible for adopting and enforcing rules to effect the safety of mines, explosives, quarries and related activities. Chapter Comm 8 contains safety and health standards for the operation of all new and existing mines, pits and quarries in the state.

The proposed rules consist of a complete update of chapter Comm 8. Because the federal Mine Safety and Health Administration (MSHA) issues extensive safety and health regulations covering the operation of surface and underground mines, chapter Comm 8 contains a reference to those MSHA regulations along with basic administrative requirements relating to the operation of mines, pits and quarries. The proposed rules update and clarify several administrative procedures, such as the notification to begin operation, the payment of fees and the performance of inspections.

The requirements relating to the notification to begin operation are clarified by specifying that the person responsible for the crushing work is the person who must notify the department that work is about to begin. The payment of fees is made consistent with the department's fee schedule by clarifying that the safety service fee is to be paid by the person or firm operating the crushing, screening or washing equipment. The fee rules are also revised by clarifying that an inspection fee and a training fee are only paid by persons who do not pay the safety service fee. The requirements for inspections are revised by indicating that the department will not duplicate inspections performed by MSHA, but will notify MSHA when a required inspection has not been performed.

The proposed rules have been developed with the assistance of the Mines, Pits and Quarries Code Advisory Council. At the time the proposed rules were developed, the members of that citizen advisory council were as follows:

<u>Name</u>	<u>Representing</u>
Christine K. Culligan	Wisconsin Underground Contractors Association
Michael Erickson	Aggregate Producers of Wisconsin
Todd Every	Wisconsin County Highway Association
Scott Janssen	Aggregate Producers of Wisconsin
Robert M. Shea	Wisconsin Ready Mixed Concrete Association
Carl Thiesen	Wisconsin Asphalt Pavement Association
Robert B. Willder	Wisconsin Transportation Builders Association

SECTION 1. Chapter Comm 8 is repealed and recreated to read:

Chapter Comm 8

MINES, PITS AND QUARRIES

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.

Comm 8.02 Scope. (1) COVERED. This chapter ~~covers~~^{applies to} 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 of resources has administrative rules concerning metallic mineral exploration, metallic mineral prospecting, mineral mining and mine reclamation.

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

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

Comm 8.04 Petition for variance. The department shall consider and may grant a variance to a provision of this chapter in accordance with ch. Comm 3. The petition for variance shall include, where applicable, a position statement from the fire department having jurisdiction.

Note: Chapter Comm 3 requires the submittal of a petition for variance form (SBD-9890) and a fee, and that an equivalency is established in the petition for variance that meets the intent of the rule being petitioned. Chapter Comm 3 also requires the department to process regular petitions within 30 business days and priority petitions within 10 business days.

Note: Form SBD-9890 is available at no charge from the department at the Safety and Buildings Division, P.O. Box 2509, Madison WI 53701-2509, telephone 608/266-1818.

Comm 8.05 Penalties. The department may impose penalties and obtain additional remedies for violations of this chapter, as provided in ss. 101.02 (12) and (13) (a) and 101.15 (2) (f) 2., Stats.

Note: Section 101.02 (12), Stats., indicates that every day during which any person, persons, corporation or any officer, agent or employe thereof, fails to observe and comply with an order of the department will constitute a separate and distinct violation of such order.

Note: Section 101.02 (13) (a), Stats., indicates that if any employer, employe, 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, employe, 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.

Comm 8.06 Appeals. (1) APPEAL OF DEPARTMENT ORDER. Pursuant to s. 101.02 (6)(e), Stats., any person who owns or occupies a property that is affected by an order of the department may petition the department for a hearing on the reasonableness of the order.

(2) APPEAL OF LOCAL ORDER. Pursuant to s. 101.02 (7)(b), Stats., any person affected by a local order that is in conflict with an order of the department may petition the department for a hearing on the local order.

(3) PETITION OF 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 the rule.

Subchapter II - General Requirements

Comm 8.10 Notification to begin crushing operation. Each year before crushing work is commenced in a mine, pit or quarry, the person responsible for the crushing work shall notify the department that work is about to begin. The notification shall be made to the department at least 10 days prior to the beginning of crushing work in each mine, pit or quarry.

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

Note: Notification may be made on form SBD-6736, Notice to Begin Operation, which is available at no charge from the department at the Safety and Buildings Division, P.O. Box 2509, Madison, Wisconsin 53701-2509, telephone 608/266-1818.

Comm 8.11 Arrangements for medical assistance. Each year before any work is commenced in a mine, pit or quarry, the mine, pit or quarry operator shall make arrangements for obtaining emergency medical assistance and transportation for injured persons. ?

Comm 8.12 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 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: Form SBD-52, Mine Shaft Excavation Permit Application, is available at no charge from the department at the Safety and Buildings Division, P.O. Box 2509, Madison, Wisconsin 53701-2509, telephone 608/266-1818.

(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. *cross ref.*

Comm 8.13 Fees. (1) SAFETY SERVICE FEE. An annual safety service fee as specified in ch. Comm 2 shall be paid by the person or firm operating the crushing, screening or washing equipment.

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

(3) INSPECTION FEE. A miscellaneous inspection fee as specified in ch. Comm 2 shall be paid by the person requesting a consultation inspection of ~~their~~ operation, if that person is not required to pay a safety service fee. *under sub. (1). the persons*

(4) TRAINING FEE. A training fee as specified in ch. Comm 2 shall be paid by the person receiving department training that is required by the federal Mine Safety and Health Administration, if that person is not required to pay a safety service fee. *cross ref. under sub. (1).*

Comm 8.14 Inspections. (1) GENERAL. Pursuant to ss. 101.02 (15)(g) and 101.15 (2)(f) 1., Stats., the department may enter and cause the inspections of mines, pits and quarries in order to determine compliance with this chapter. *why the change stat. with*

(2) OVERDUE INSPECTIONS. If the department determines that an inspection of a mine, pit or quarry as required under s. 101.15 (2)(f) 1., Stats., has not been performed, the department shall notify the federal Mine Safety and Health Administration that an inspection is due. *then what?*

Comm 8.15 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 the Code of Federal Regulations, Title 30 Parts 1 to 199.

Note: Authority over mines is given to the federal government under the federal Mine Safety and Health Act. The safety and health related requirements for the operation of surface and underground mines are contained in the Code of Federal Regulations issued by the Mine Safety and Health Administration, Department of Labor, under Title 30 Parts 46, 56 and 57.

Comm 8.16 Definitions. In this chapter:

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

(2) "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.

} Pot in subch.

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

(4) "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.

(5) "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.

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

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

(8) "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.

Subchapter III - Additions to Federal Regulations

Comm 8.20 Additions to federal regulations. The additions to the federal Mine Safety and Health Administration regulations are specified in this subchapter and are rules of the department.

Comm 8.21 Abandoned mine openings. (1) PROTECTION. All abandoned mine openings in this state shall comply with s. 167.27 (5) and (6), Stats.

(2) 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.

*others
has
to be
needed*

(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.

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2)(intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.



OCT 09 2000

P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018
TDD#: (608) 264-8777
www.commerce.state.wi.us

Tommy G. Thompson, Governor
Brenda J. Blanchard, Secretary

October 9, 2000

Senate Chief Clerk
Room 501
119 Martin Luther King Blvd
Madison, Wisconsin 53703

Assembly Chief Clerk
Room 402
1 East Main Street
Madison, Wisconsin 53703

Dear Chief Clerks:

**TRANSMITTAL IN FINAL DRAFT FORM OF ADMINISTRATIVE
RULES AND REPORT**

CLEARINGHOUSE RULE NO.: 00-115

RULE NO.: Chapter Comm 8

RELATING TO: Mines, Pits and Quarries

Pursuant to section 227.19, Stats., agencies are required to submit, in triplicate, copies of the proposed administrative rules in final draft form together with a rule report and an analysis. The recommendations received from the Legislative Council are also to be submitted.

At this time, this material, together with cover letters to the President of the Senate and the Speaker of the Assembly, is being transmitted for referral to the standing committees for legislative review.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brenda J. Blanchard', written over a horizontal line.

Brenda J. Blanchard
Secretary



P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018
TDD#: (608) 264-8777
www.commerce.state.wi.us

Tommy G. Thompson, Governor
Brenda J. Blanchard, Secretary

October 9, 2000

Senator Fred Risser
President of the Senate
Room 220 South, State Capitol
Madison, Wisconsin 53702

Representative Scott Jensen
Speaker of the Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53702

Dear Senator Risser and Representative Jensen:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 00-115

RULE NO.: Chapter Comm 8

RELATING TO: Mines, Pits and Quarries

Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer of each house for referral to the appropriate legislative standing committees.

The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
 - a) Rule Report.
 - b) Public Hearing Attendance Record.
 - c) Public Hearing Comment and Agency Response Form.
 - d) Legislative Council Rules Clearinghouse Report.
 - e) Response to Legislative Council Rules Clearinghouse Report.
 - f) Fiscal Estimate.
 - g) Final Regulatory Flexibility Analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,

Brenda J. Blanchard
Secretary

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Chapter Comm 8
Amendment No. if Applicable

Subject
Mines, Pits and Quarries

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- | | |
|--|---|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> Create New Appropriation | |

- Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No
- Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
- Counties Others _____
- School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

None

Assumptions Used in Arriving at Fiscal Estimate

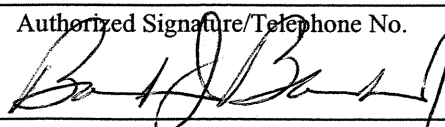
The Safety and Buildings Division is responsible for administering and enforcing chapter Comm 8. The proposed rules do not contain any changes in the Division's fees charged for administering and enforcing chapter Comm 8. Also, the proposed rules will not create any additional workload costs. Therefore, the proposed rules will not have any fiscal effect on the Division.

Long-Range Fiscal Implications

None known.

Agency/Prepared by: (Name & Phone No.)
Commerce/Ronald Acker 267-7907

Authorized Signature/Telephone No.



Date

7/12/00

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect
DOA-2047(R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Chapter Comm 8

Amendment No.

Subject

Mines, Pits and Quarries

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

None known.

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs By Category	\$ 0	\$ -0
State Operations - Salaries and Fringes		
(FTE Position Changes)	(0 FTE)	(- 0 FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs By Category	\$ 0	\$ -0
B. State Costs By Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$ -
FED		-
PRO/PRS	0	-0
SEG/SEG-S		-
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS	0	-0
SEG/SEG-S		-
TOTAL State Revenues	\$ 0	\$ -0

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

\$ 0

\$ 0

NET CHANGE IN REVENUES

\$ 0

\$ 0

Agency/Prepared by: (Name & Phone No.)

Commerce/Ronald Acker 267-7907

Authorized Signature/Telephone No.



Date

7/12/00

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 00-115

RULE NO.: Chapter Comm 8

RELATING TO: Mines, Pits and Quarries

Final regulatory flexibility analysis not required. (Statement of determination required.)

Section 101.15 (2) (e), Stats., requires the Department to promulgate rules prescribing minimum safety standards for mines, explosives, quarries and related activities. The proposed rules of Clearinghouse Rule No. 00-115 are minimum requirements to meet the directives of the Statutes, and any exceptions from compliance for small businesses would be contrary to the Statutory objectives which are the basis for the rules.

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.
2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.

3. Nature and estimated cost of preparation of any reports by small businesses.
4. Nature and estimated cost of other measures and investments required of small businesses.
5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small businesses.
6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.

RULE REPORT

Department of Commerce

Rule No.: Chapter Comm 8

Relating to: Mines, Pits and Quarries

Agency contact person for substantive questions:

Name Eric Hands

Title Program Manager

Telephone Number 608/267-4434

Agency contact person for internal processing:

Name Ronald Acker

Title Code Consultant

Telephone Number 608/267-7907

1. Agency statutory authority under which the agency intends to promulgate the rule(s).

Section 101.15 (2) (e), Stats.

2. Citation of federal regulations which require adoption or which are relevant to the proposed rule(s).

Federal regulations which are relevant to the proposed rules are contained in the Code of Federal Regulations issued by the Mine Safety and Health Administration, Department of Labor, under Title 30 Parts 46, 56 and 57.

3. Citation of court decisions which are applicable to the proposed rule(s).

None known.

4. Description of the proposed rule(s).

The proposed rules consist of a complete update of chapter Comm 8. Because the federal Mine Safety and Health Administration (MSHA) issues extensive safety and health regulations covering the operation of surface and underground mines, chapter Comm 8 contains a reference to those MSHA regulations along with basic administrative requirements relating to the operation of mines, pits and quarries. The proposed rules update and clarify several administrative procedures, such as the notification to begin operation, the payment of fees and the performance of inspections.

The requirements relating to the notification to begin operation are clarified by specifying that the person responsible for the crushing work is the person who must notify the department that work is about to begin. The payment of fees is made consistent with the department's fee schedule by clarifying that the safety service fee is to be paid by the person or firm operating the crushing, screening or washing equipment. The fee rules are also revised by clarifying that an inspection fee and a training fee are only paid by persons who do not pay the safety service fee. The requirements for inspections are revised by indicating that the department will not duplicate inspections performed by MSHA, but will cause the required inspections to be made by notifying MSHA when a required inspection has not been performed.

5. Reason for the proposed rule(s).

The proposed rules have been developed in order to update and clarify several administrative procedures, such as the notification to begin operation, the payment of fees and the performance of inspections.

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

CLEARINGHOUSE RULE NO.: 00-115

RULE NO.: Chapter Comm 8

RELATING TO: Mines, Pits and Quarries

Agency contact person for substantive questions.

Name: Eric Hands

Title: Program Manager

Telephone No. 608/267-4434

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority [s. 227.15(2)(a)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

2. Review of rules for form, style and placement in administrative code [s. 227.15(2)(c)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

(Continued on reverse side)

3. Review rules for conflict with or duplication of existing rules [s. 227.15(2)(d)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

4. Review rules for adequate references to related statutes, rules and forms [s. 227.15(2)(e)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

5. Review language of rules for clarity, grammar, punctuation and plainness [s. 227.15(2)(f)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

6. Review rules for potential conflicts with, and comparability to, related federal regulations [s. 227.15(2)(g)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

7. Review rules for permit action deadline [s. 227.15(2)(h)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

**COMMENTS ON LEGISLATIVE COUNCIL
CLEARINGHOUSE REPORT**

Clearinghouse Rule No.: 00-115
Rule No.: Chapter Comm 8
Relating to: Mines, Pits and Quarries

1. Statutory Authority

It is not the intent of the Department "to not make the statutorily required inspections". The statutory requirement stating that the Department "shall cause the inspections" does not mean that the Department has to physically perform the inspections. Since there is a federal regulation that requires inspection, the Department is causing inspections by reporting inspection lapses to the proper federal authority. The Department does not have and does not need any additional or different statutory authority to implement the rule provision. The analysis has been revised to clarify this intent.

2. Form, Style and Placement in Administrative Code

d. The reference to federal standards in rule section titles and rule text is not included in s. Comm 8.21 because it is not needed. Section Comm 8.20 indicates that the rules in s. Comm 8.21 are additions to all of the federal regulations, not one specific part of the regulations.

DEPARTMENT OF COMMERCE
PUBLIC HEARING COMMENT AND AGENCY RESPONSE

Clearinghouse Rule No.: 00-115		Hearing Location: Eau Claire, Green Bay and Madison	
Rule Number: Chapter Comm 8		Hearing Date: August 16, 17 and 18, 2000	
Relating to: Mines, Pits and Quarries			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
		No comments or recommendations were presented.	

DEPARTMENT OF COMMERCE
PUBLIC HEARING ATTENDANCE RECORD

RULE NO.: Chapter Comm 8

DATE: Wednesday, August 16, 2000

RELATING TO: Mines, Pits and Quarries

TIME: 11:00 a.m.

LOCATION: Room 105, Eau Claire State Office Building

CITY: Eau Claire

Name	Representation (Business, Assoc., Group, Self, etc.)	City and State	Appearing in Support	Appearing in Opposition	Appearing for Information

DEPARTMENT OF COMMERCE PUBLIC HEARING ATTENDANCE RECORD

RULE NO.: Chapter Comm 8

DATE: Thursday, August 17, 2000

RELATING TO: Mines, Pits and Quarries

TIME: 11:00 a.m.

LOCATION: Room 152A, Green Bay State Office Building

CITY: Green Bay

Name	Representation (Business, Assoc., Group, Self, etc.)	City and State	Appearing in Support	Appearing in Opposition	Appearing for Information

DEPARTMENT OF COMMERCE
PUBLIC HEARING ATTENDANCE RECORD

RULE NO.: Chapter Comm 8 DATE: Friday, August 18, 2000

RELATING TO: Mines, Pits and Quarries TIME: 10:00 a.m.

LOCATION: Room 3C, Thompson Commerce Center CITY: Madison

Name	Representation (Business, Assoc., Group, Self, etc.)	City and State	Appearing in Support	Appearing in Opposition	Appearing for Information
<i>Pat Osborne</i>	<i>Aggregate Producers of WI</i>	<i>Madison, WI</i>	✓		



State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM

Rule No.: Chapter Comm 8

Relating to: Mines, Pits and Quarries

Clearinghouse Rule No.: 00-115

The Department of Commerce proposes an order to repeal and recreate chapter Comm 8, relating to mines, pits and quarries.

Analysis of Proposed Rules

Statutory Authority: Section 101.15 (2)(e), Stats.
Statutes Interpreted: Section 101.15 (2)(e), Stats.

The Safety and Buildings Division within the Department of Commerce is responsible for adopting and enforcing rules to effect the safety of mines, explosives, quarries and related activities. Chapter Comm 8 contains safety and health standards for the operation of all new and existing mines, pits and quarries in the state.

The proposed rules consist of a complete update of chapter Comm 8. Because the federal Mine Safety and Health Administration (MSHA) issues extensive safety and health regulations covering the operation of surface and underground mines, chapter Comm 8 contains a reference to those MSHA regulations along with basic administrative requirements relating to the operation of mines, pits and quarries. The proposed rules update and clarify several administrative procedures, such as the notification to begin operation, the payment of fees and the performance of inspections.

The requirements relating to the notification to begin operation are clarified by specifying that the person responsible for the crushing work is the person who must notify the department that work is about to begin. The payment of fees is made consistent with the department's fee schedule by clarifying that the safety service fee is to be paid by the person or firm operating the crushing, screening or washing equipment. The fee rules are also revised by clarifying that an inspection fee and a training fee are only paid by persons who do not pay the safety service fee. The requirements for inspections are revised by indicating that the department will not duplicate inspections performed by MSHA, but will cause the required inspections to be made by notifying MSHA when a required inspection has not been performed.

The proposed rules have been developed with the assistance of the Mines, Pits and Quarries Code Advisory Council. At the time the proposed rules were developed, the members of that citizen advisory council were as follows:

<u>Name</u>	<u>Representing</u>
Christine K. Culligan	Wisconsin Underground Contractors Association
Michael Erickson	Aggregate Producers of Wisconsin
Todd Every	Wisconsin County Highway Association
Scott Janssen	Aggregate Producers of Wisconsin
Robert M. Shea	Wisconsin Ready Mixed Concrete Association
Carl Thiesen	Wisconsin Asphalt Pavement Association
Robert B. Willder	Wisconsin Transportation Builders Association

SECTION 1. Chapter Comm 8 is repealed and recreated to read:

Chapter Comm 8

MINES, PITS AND QUARRIES

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.

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, mineral mining and mine reclamation.

(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.

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

Comm 8.04 Definitions. In this chapter:

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

(2) "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.

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

(4) "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.

(5) "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.

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

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

(8) "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.

Comm 8.05 Petition for variance. The department shall consider and may grant a variance to a provision of this chapter in accordance with ch. Comm 3. The petition for variance shall include, where applicable, a position statement from the fire department having jurisdiction.

Note: Chapter Comm 3 requires the submittal of a petition for variance form (SBD-9890) and a fee, and that an equivalency is established in the petition for variance that meets the intent of the rule being petitioned. Chapter Comm 3 also requires the department to process regular petitions within 30 business days and priority petitions within 10 business days.

Note: Form SBD-9890 is available at no charge from the department at the Safety and Buildings Division, P.O. Box 2509, Madison WI 53701-2509, telephone 608/266-1818.

Comm 8.06 Penalties. The department may impose penalties and obtain additional remedies for violations of this chapter, as provided in ss. 101.02 (12) and (13) (a) and 101.15 (2) (f) 2., Stats.

Note: Section 101.02 (12), Stats., indicates that every day during which any person, persons, corporation or any officer, agent or employe thereof, fails to observe and comply with an order of the department will constitute a separate and distinct violation of such order.

Note: Section 101.02 (13) (a), Stats., indicates that if any employer, employe, 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, employe, 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.

Comm 8.07 Appeals. (1) APPEAL OF DEPARTMENT ORDER. Pursuant to s. 101.02 (6)(e), Stats., any employer or other person who owns or occupies a property that is affected by an order of the department may petition the department for a hearing on the reasonableness of the order.

Note: Section 101.01 (4), Stats., defines "employer" as any person, firm, corporation, state, county, town, city, village, school district, sewer district, drainage district and other public or quasi-public corporations as well as any agent, manager, representative or other person having control or custody of any employment, place of employment or of any employe.

(2) APPEAL OF LOCAL ORDER. Pursuant to s. 101.02 (7)(b), Stats., any person affected by a local order that is in conflict with an order of the department may petition the department for a hearing on the local order.

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, a regulation or order of the local board of health, as defined in s. 250.01 (3), Stats., or an order or direction of any official of a municipality, upon any matter over which the department has jurisdiction.

(3) PETITION OF 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 the rule.

Subchapter II - General Requirements

Comm 8.10 Notification to begin crushing operation. Each year before crushing work is commenced in a mine, pit or quarry, the person responsible for the crushing work shall notify the department that work is about to begin. The notification shall be made to the department at least 10 days prior to the beginning of crushing work in each mine, pit or quarry.

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

Note: Notification may be made on form SBD-6736, Notice to Begin Operation, which is available at no charge from the department at the Safety and Buildings Division, P.O. Box 2509, Madison, Wisconsin 53701-2509, telephone 608/266-1818.

Comm 8.11 Arrangements for medical assistance. Each year before any work is commenced in a mine, pit or quarry, the mine, pit or quarry operator shall make arrangements for obtaining emergency medical assistance and transportation for injured persons.

Comm 8.12 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 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: Form SBD-52, Mine Shaft Excavation Permit Application, is available at no charge from the department at the Safety and Buildings Division, P.O. Box 2509, Madison, Wisconsin 53701-2509, telephone 608/266-1818.

(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.

Comm 8.13 Fees. (1) SAFETY SERVICE FEE. An annual safety service fee as specified in ch. Comm 2 shall be paid by the person or firm operating the crushing, screening or washing equipment.

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

(3) INSPECTION FEE. A miscellaneous inspection fee as specified in ch. Comm 2 shall be paid by the person requesting a consultation inspection of the person's operation, if that person is not required to pay a safety service fee under sub. (1).

(4) TRAINING FEE. A training fee as specified in ch. Comm 2 shall be paid by the person receiving department training that is required by the federal mine safety and health administration, if that person is not required to pay a safety service fee under sub. (1).

Comm 8.14 Inspections. (1) GENERAL. Pursuant to ss. 101.02 (15)(g) and 101.15 (2)(f) 1., Stats., the department may enter and cause the inspections of mines, pits and quarries in order to determine compliance with this chapter.

(2) OVERDUE INSPECTIONS. If the department determines that an inspection of a mine, pit or quarry as required under s. 101.15 (2)(f) 1., Stats., has not been performed, the department shall notify the federal mine safety and health administration that an inspection is due.

Comm 8.15 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 Title 30 CFR Parts 1 to 199.

Note: Authority over mines is given to the federal government under the federal Mine Safety and Health Act. The safety and health related requirements for the operation of surface and underground mines are contained in the Code of Federal Regulations issued by the Mine Safety and Health Administration, Department of Labor, under Title 30 CFR Parts 46, 56 and 57.

Subchapter III - Additions to Federal Regulations

Comm 8.20 Additions to federal regulations. The additions to the federal mine safety and health administration regulations are specified in this subchapter and are rules of the department.

Comm 8.21 Abandoned mine openings. (1) PROTECTION. All abandoned mine openings in this state shall comply with s. 167.27 (5) and (6), Stats.

(2) 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.

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2)(intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.
