

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT
DEPARTMENT OF SAFETY AND : ADOPTING RULES
PROFESSIONAL SERVICES : (CLEARINGHOUSE RULE 17-034)

PROPOSED ORDER

An order of the department to repeal SPS 307.43 (2) (Note), 307.44 (4) (d), and 308.10 (Note 1); to renumber and amend SPS 307.31 (2) (b) and 307.41 (1); to amend SPS 307.20 (21), 307.21 and (Note), 307.31 (2) (intro.), (a), and (b) (Note) and (4) (c) 2., 307.43 (1) and (2), 307.51 (3), 308.05 (Note 1) and (Note 2), 308.10 and (Note 2), and 308.12 (2) and (Note); and to create SPS 307.20 (15g), (15r), and (17m), 307.31 (2) (b) 2., 307.41 (1) (b) and (c), and 307.44 (5) and (Note), relating to explosives, fireworks, mines, pits, and quarries.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 101.15 and 167.10 (6m), Stats.

Statutory authority:

Sections 101.02 (1), 101.15 (2) (e), and 167.10 (6m) (e), Stats.

Explanation of agency authority:

Section 101.02 (1), Stats., provides “[t]he department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings.”

Section 101.15 (2) (e), Stats., provides “[t]he department shall promulgate rules to effect the safety of mines, explosives, quarries and related activities. Such rules shall provide for the establishment of uniform limits on permissible levels of blasting resultants to reasonably assure that blasting resultants do not cause injury, damage or unreasonable annoyance to any person or property outside any controlled blasting site area.”

Section 167.10 (6m) (e), Stats., provides “[t]he department of safety and professional services shall promulgate rules to establish safety standards for the manufacture in this state of fireworks and devices listed under sub. (1) (e), (f) or (i) to (n).”

Related statutes or rules:

None.

Plain language analysis:

The proposed rules update Wisconsin's standards for the use of blasting materials and blasting resultants to the 2013 edition of the National Fire Protection Agency's (NFPA) 495, Explosive Materials Code, with certain specified modifications to the requirements of NFPA 495. On June 20, 2017, the Attorney General's Office consented to incorporation of 2013 NFPA 495 into ch. SPS 307.

Provisions concerning blasting notifications, preblasting surveys, and reporting of adverse effects of blasting have been updated to provide clarity and to reflect current industry and enforcement practices.

Current rules require the department to annually inspect a fireworks manufacturing premises. The proposed rules revise this requirement to require an inspection at least once every 3 years and specify the fee for these periodic inspections will be assessed at a flat rate of \$80, \$120, or \$160.

Summary of, and comparison with, existing or proposed federal statutes and regulations:

Explosives and fireworks

Chapter 40 of 18 USC 1102 regulates the importation, manufacture, distribution, and storage of explosive materials. Title 27 CFR Part 555 regulates commerce in explosives. The provisions of ch. SPS 307, Explosives and Fireworks, do not duplicate or conflict with these federal statutes and regulations.

Mines, pits, and quarries

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. The provisions of ch. SPS 308, Mines, Pits and Quarries, do not duplicate or conflict with these federal statutes and regulations.

Comparison with rules in adjacent states:

Illinois:

Part 200 of 62 Ill. Adm. Code implements the Illinois Explosives Act [225 ILCS 210] and applies to all acquisition, storage, use, transfer, and disposal of explosive materials. These rules do not adopt or incorporate by reference NFPA 495, Explosive Materials Code.

The Fireworks Regulation Act of Illinois [425 ILCS 30] provides the Office of the Illinois State Fire Marshal with the authority to inspect fireworks plants. The Act does not specify a required frequency of inspections.

Iowa:

Iowa Code chapter 101A provides for the regulation of explosive materials, including provisions for licensing, inspections, and disposal, and notice and reporting requirements. 661 IAC 235 establishes a commercial explosive licensing program in the State Fire Marshal Division of the Iowa Department of Public Safety. These statutes and rules do not adopt or incorporate by reference NFPA 495, Explosive Materials Code.

The State of Iowa has no specific regulations concerning the manufacture of fireworks.

Michigan:

Mich Admin Code, R 338.2371 adopts by reference the provisions of Federal Occupational Safety and Health Administration (OSHA) Regulation CFR 1910.109, Explosives and Blasting Agents. CFR 1910.109 applies to the manufacture, keeping, having, storage, sale, transportation, and use of explosives, blasting agents, and fireworks. It does not apply to the sale and use (public display) of fireworks. These rules do not adopt or incorporate by reference NFPA 495, Explosive Materials Code.

Mich Admin Code, R 29.2901 to 29.2929 provides general rules for fireworks safety, including authorizing the Bureau of Fire Services of the Michigan Department of Licensing and Regulatory Affairs to conduct inspections of fireworks manufacturing plants. The rules do not specify a required frequency of inspections.

Minnesota:

Minnesota Rules, chapter 7500 adopts safety standards for the manufacture, storage, and use of explosives and blasting agents, consistent with Minnesota Statutes, sections 299F.71 to 299F.83. It applies to the manufacture, retention, possession, storage, sale, and use of explosives, blasting agents, and fireworks. These rules do not adopt or incorporate by reference NFPA 495, Explosive Materials Code.

The Minnesota Fire Code (Minnesota Rules, chapter 7511) applies to fireworks manufacturing plants. Minnesota Statutes, section 299F.011 authorizes the Minnesota Department of Public Safety to conduct inspections of fireworks manufacturing plants as part of its enforcement of the Minnesota Fire Code. These statutes and rules do not specify a required frequency of inspections.

Summary of factual data and analytical methodologies:

The methodology for updating Wisconsin's standards for the use of blasting materials and blasting resultants in ch. SPS 307 was a review and assessment of the latest edition of the NFPA standard that serves as the basis for Wisconsin's standards. With the participation of the Explosives, Fireworks, Mines, Pits and Quarries Code Advisory Committee, staff compared the changes in the 2010 and 2013 editions of NFPA 495, Explosive Materials Code, to the 2006 edition currently adopted under ch. SPS 307. Chapters SPS 307 and 308 were also reviewed in their entirety to ensure consistency with current industry and enforcement practices and applicable Wisconsin statutes.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rules were posted on the Department of Safety and Professional Services' website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rules.

Comments were received from 17 individuals indicating that, although the proposed rules revise the requirement to annually inspect a fireworks manufacturing plant to require an inspection at least once every 3 years, the fees associated with inspections will have a negative impact on hobbyist fireworks manufacturers licensed by the department. These comments were taken into consideration in the department's analysis of the economic impact of the proposed rules.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at Kirsten.Reader@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, WI 53708-8935, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held at 9:00 a.m. on June 6, 2017, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 307.20 (15m) and (17m) are created to read:

SPS 307.20 (15m) "GPS" means the Global Positioning System.

(17m) "Municipality" means a city, village, or town in this state.

SECTION 2. SPS 307.20 (21) is amended to read:

SPS 307.20 (21) "Unreasonable annoyance" means an excessive, repeated noise, action, or other disturbance caused by use of explosive materials that is not ~~justified by reason~~ in compliance with the standards under this chapter.

SECTION 3. SPS 307.21 and (Note) are amended to read:

SPS 307.21 Adoption of standards. NFPA 495, Explosive Materials Code, ~~2006~~ 2013, subject to the modifications specified in this chapter, is hereby incorporated by reference into this chapter.

Note: A copy of NFPA 495, Explosive Materials Code is on file in the offices of the department and the legislative reference bureau. Copies of NFPA 495, Explosive Materials Code, may be purchased from the National Fire Protection Association, 1 Batterymarch Park, ~~Box 9101, Quincy, MA, 02269-9101~~ 02169-7471.

SECTION 4. SPS 307.31 (2) (intro.) and (a) are amended to read:

SPS 307.31 (2) (intro.) These are department rules in addition to the requirements in NFPA 495 section 10.1.3 ~~4~~:

(a) *Blaster requirements.* When blasting operations are conducted in ~~communities~~ a municipality, the shots shall be designed and initiated by a properly licensed Class 5, 6, or 7 blaster.

SECTION 5. SPS 307.31 (2) (b) is renumbered SPS 307.31 (2) (b) 1. and amended to read:

SPS 307.31 (2) (b) Notifications. 1. Any person conducting blasting operations in a ~~community~~ municipality at a location other than a mine, pit, or quarry shall notify the department, ~~the~~ local fire department, and ~~the~~ local law enforcement agency of the first date on which blasting is scheduled and the location of the blasting operation. Notification ~~to the department~~ shall be made on forms provided by the department and occur at least 10 days prior to the first date on which blasting is scheduled. Unless notification of subsequent blasting is requested by the local fire department or local law enforcement agency or required by municipal ordinance, only one initial notice is required under this subdivision.

SECTION 6. SPS 307.31 (2) (b) 2. is created to read:

SPS 307.31 (2) (b) 2. Each calendar year before annual blasting begins at a mine, pit, or quarry located in a municipality, the person conducting blasting operations shall notify the department that blasting is about to begin. Notification shall be made on forms provided by the department and occur at least 10 days prior to the date on which blasting is scheduled to begin. Unless notification of annual or subsequent blasting is requested by the local fire department or local law enforcement agency or required by municipal ordinance, only one initial notice to the department each calendar year is required under this subdivision.

SECTION 7. SPS 307.31 (2) (b) (Note) and (4) (c) 2. are amended to read:

SPS 307.31 (2) (b) (Note) ~~Copies of the A notice of blasting in a community (form SBD 7336) are~~ form is available from the department's Division of Industry Services at P.O. Box ~~2658~~ 7302, Madison, WI ~~53701-2658~~ 53707-7302; by email at dsps@wisconsin.gov; ~~or at~~ by telephone at (608) ~~261-8500~~ 266-2112, or (877) 617-1565, or 411 (Telecommunications Relay); or at the ~~Division's Web site~~ division's website at <http://dsps.wi.gov/programs/industry-services>.

(4) (c) 2. Specific blast location, including GPS location or latitude and longitude coordinates, address, and bench and station number if applicable.

SECTION 8. SPS 307.41 (1) is renumbered SPS 307.41 (1) (a) and amended to read:

SPS 307.41 (1) PREBLASTING SURVEY. (a) At least 24 hours prior to initial blasting at a blast site, the blaster in charge shall make a reasonable effort to notify in writing or verbally all residents or owners of affected dwellings or other structures, as determined under sub. (2), that a blasting operation is to begin. The blaster in charge shall offer to perform a preblasting survey for the residents or owners. If a resident or owner requests a copy of the preblasting survey, the blaster in charge shall provide a copy for not more than the actual cost of the copy within 48 hours of the request. Except as provided under pars. (b) and (c), only one initial preblasting survey is required for a blast site.

SECTION 9. SPS 307.41 (1) (b) and (c) are created to read:

SPS 307.41 (1) (b) The blaster in charge shall offer to perform a preblasting survey for the residents or owners of any dwelling or other structure that becomes an affected dwelling or other structure, as determined under sub. (2), after the initial preblasting survey under par. (a) is performed.

(c) The blaster in charge shall offer to perform a preblasting survey for the residents or owners of an affected dwelling or other structure, as determined under sub. (2), constructed or renovated after the initial preblasting survey under par. (a) is performed.

SECTION 10. SPS 307.43 (1) and (2) are amended to read:

SPS 307.43 (1) Seismic frequency range: 2 to 200 Hz, (~~±~~ plus or minus 3 Hz).

(2) Acoustic frequency range: 2 to 200 Hz dB, (~~±~~ plus or minus 1 Hz) dB.

SECTION 11. SPS 307.43 (2) (Note) is repealed.

SECTION 12. SPS 307.44 (4) (d) is repealed.

SECTION 13. SPS 307.44 (5) and (Note) are created to read:

SPS 307.44 (5) REPORTING ADVERSE EFFECTS. The blaster in charge shall report to the department any flyrock, airblast, or ground vibration that does not meet the requirements under this section.

Note: Adverse effects may be reported to the department by telephone at (608) 267-9378 or by email to DSPSMineSafety@wisconsin.gov.

SECTION 14. SPS 307.51 (3) is amended to read:

SPS 307.51 (3) PERIODIC INSPECTIONS. The department or the department's designated deputy shall, ~~inspect a fireworks manufacturing plant~~ at least once a year every 3 years, conduct a safety inspection of a permanent explosive materials storage facility located on the premises on which each person licensed under this chapter manufactures fireworks. Fees for an inspection under this subsection shall be assessed as specified in s. SPS 302.18 (2).

SECTION 15. SPS 308.05 (Note 1) and (Note 2) are amended to read:

SPS 308.05 (Note 1) Chapter SPS 303 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 SPS 303 also requires the department to process regular petitions within 30 business days and priority petitions within 10 business days.

(Note 2) ~~Form SBD-9890~~ The petition for variance form is available from the ~~Department's~~ department's Division of Industry Services at P.O. Box 7162, Madison, WI 53707-7162; by email at dsps@wisconsin.gov; ~~or at by telephone 608/266-3151 or 877/617-1565~~ at (608) 266-2112, (877) 617-1565, or 411 (Telecommunications Relay); or at the ~~Division's Web site~~ division's website at <http://dsps.wi.gov/programs/industry-services>.

SECTION 16. SPS 308.10 is amended to read:

SPS 308.10 Notification to begin crushing operation. Each calendar year before crushing work is commenced in a mine, pit, or quarry, the owner of the mine, pit, or quarry or other 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. Only one initial notice is required for a mine, pit, or quarry where crushing work is performed on an intermittent basis during the calendar year.

SECTION 17. SPS 308.10 (Note 1) is repealed.

SECTION 18. SPS 308.10 (Note 2) is amended to read:

~~(Note 2) Notification may be made on form SBD 6736, Notice to Begin Operation, which~~ A notification form is available from the ~~Department's~~ department's Division of Industry Services at P.O. Box ~~7162~~ 7302, Madison, WI 53707-~~7162~~ 7302; by email at dsps@wisconsin.gov; or at by telephone 608/266-3151 or 877/617-1565 at (608) 266-2112, (877) 617-1565, or 411 (Telecommunications Relay); or at the Division's Web site division's website at http://dsps.wi.gov/programs/industry-services. Notification may also be provided by email to DSPSMineSafety@wisconsin.gov.

SECTION 19. SPS 308.12 (2) and (Note) are amended to read:

SPS 308.12 (2) APPLICATION FOR PERMIT. Application for a shaft excavation permit shall be made on ~~form SBD 52~~ forms provided by the department together with the payment of the permit fee.

~~(Note) Form SBD 52, Mine Shaft Excavation Permit Application,~~ The mine shaft excavation permit application is available from the Department's Division of Industry Services at P.O. Box 7302, Madison, WI 53707-7302; by email at dsps@wisconsin.gov; or at by telephone 608/266-3151 or 877/617-1565 at (608) 266-2112, (877) 617-1565, or 411 (Telecommunications Relay); or at the Division's Web site division's website at http://dsps.wi.gov/programs/industry-services.

SECTION 20. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

This Proposed Order of the Department of Safety and Professional Services is approved for submission to the Governor and Legislature.

Dated _____

Agency _____

Secretary
Department of Safety and Professional Services