

WISCONSIN LEGISLATIVE COUNCIL STAFF

**RULES CLEARINGHOUSE**

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**CLEARINGHOUSE REPORT TO AGENCY**

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[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 99-139**

AN ORDER to repeal Comm 32.24 (2) (b) and Note and 32.24 Figure 32.24; to renumber Comm 32.24 (2) (c); to renumber and amend Comm 32.24 (2) (d); to amend Comm 32.24 (2) (a), (4) (c) and (5) (a) and (c) 2.; to repeal and recreate Comm 32.50 Table 32.50-2; and to create Comm 32.24 (5) (d) and (6), 32.33 (4) and (5) and 32.50 Table 32.50-1 items 7. to 10., relating to public employe safety and health.

Submitted by **DEPARTMENT OF COMMERCE**

09-23-99 RECEIVED BY LEGISLATIVE COUNCIL.

10-21-99 REPORT SENT TO AGENCY.

RS:DF:jal;rv

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO

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## CLEARINGHOUSE RULE 99-139

### 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.]**

#### **2. Form, Style and Placement in Administrative Code**

- a. In s. Comm 32.24 (5) (d), substitute "may" for "are permitted to." [See s. 1.01 (2), Manual.]
- b. In s. Comm 32.33 (4), delete "provision shall be made to prevent machines" and substitute "machines shall be prevented."



State of Wisconsin \ Department of Commerce

# HEARING DRAFT of PROPOSED RULES

**Rule No.:** Chapter Comm 32

**Relating to:** Public Employee Safety and Health

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The Department of Commerce proposes an order to repeal Comm 32.24 (2)(b) and Note, and Comm 32.24 Figure 32.24; to renumber Comm 32.24 (2)(c); to renumber and amend Comm 32.24 (2)(d); to amend Comm 32.24 (2)(a), Comm 32.24 (4)(c), Comm 32.24 (5)(a), and Comm 32.24 (5)(c)2.; to repeal and recreate Comm 32.50 Table 32.50-2; and to create Comm 32.24 (5)(d), Comm 32.24 (6), Comm 32.33 (4) and (5), and Comm 32.50 Table 32.50-1 items 7. to 10., relating to public employe safety and health.

\*\*\*\*\*

Analysis of Proposed Rules

Statutory Authority: ss. 101.02 (1) and 101.055 (3), Stats.  
Statutes Interpreted: s. 101.055 (3), Stats.

The Department of Commerce is responsible for adopting standards to protect the safety and health of public employes in the state of Wisconsin. The adopted standards must provide protection at least equivalent to that afforded to private sector employes under standards administered and enforced by the federal Occupational Safety and Health Administration (OSHA).

Chapter Comm 32 currently contains general safety and health standards for all public employes through the incorporation by reference of several OSHA standards. Chapter Comm 32 also contains requirements that add to or modify the OSHA standards.

The proposed rules consist of revisions in chapter Comm 32, including the incorporation by reference of the new OSHA standards adopted since July 1, 1998. Those standards cover powered industrial truck operator training, permit-required confined spaces, and methylene chloride.

The proposed rules also contain revisions to current requirements relating to recirculation of contaminated air, ventilation for kilns, and ventilation for laboratory fume hoods.

\*\*\*\*\*

SECTION 1. Comm 32.24 (2)(a) is amended to read:

**Comm 32.24 (2) EXHAUST VENTILATION AT SOURCE OF CONTAMINATION AND MAKE-UP AIR.**  
(a) ~~Local~~ Except as provided in sub. (5)(d), local exhaust ventilation ductwork specifically designed for the removal of harmful dusts, fumes, vapors and gases shall be maintained at a negative pressure through occupied areas.

SECTION 2. Comm 32.24 (2)(b) and Note are repealed.

SECTION 3. Comm 32.24 (2)(c) is renumbered (2)(b).

SECTION 4. Comm 32.24 (2)(d) is renumbered (2)(c) and amended to read:

**Comm 32.24 (2) (c)** Tempered make-up air shall be installed to insure that the flow of exhaust air effectively picks up harmful dusts, fumes, vapors and gases ~~prior to being exhausted.~~

SECTION 5. Comm 32.24 (4)(c) is amended to read:

**Comm 32.24 (4) (c)** Recirculation of contaminated air from local exhaust ventilation systems may be permitted where the exhaust system washes, scrubs or filters the air. Systems of this type shall ~~be designed in accordance with the criteria established in part 2 of the national institute for occupational safety and health (NIOSH) standard "Recirculation of Exhaust Air", HEW Publication (NIOSH) #76-186 perform in accordance with ANSI/AIHA Z9.7.~~ Cleaning systems designed in accordance with other standards may be permitted if approved by the department. ?

SECTION 6. Comm 32.24 (5)(a) is amended to read:

**Comm 32.24 (5) VENTILATION FOR KILNS.** (a) *General.* 1. ~~Local~~ Except as provided in subd. 2., local exhaust ventilation shall be provided for all fuel-fired and electric kilns. ~~Ventilation systems shall be designed in accordance with the best practices of the industry and are subject to acceptability by the department.~~

2. Local exhaust ventilation need not be provided where the kilns can be isolated in a separate room and the room is ventilated by means of a dedicated system at ~~the~~ a minimum rate of 10 air changes per hour.

**Note:** Ventilation capacity for 10 air changes per hour can be calculated as follows:

$$\frac{\text{Room volume (cu. ft.)} \times 10}{60} = \text{cfm needed}$$

**Note:** Reduced atmosphere firing produces high concentrations of carbon monoxide and caution should be exercised when entering the kiln room.

3. ~~Canopy hood exhaust systems shall be designed in accordance with the requirements specified in par. (b) and Figure 32.24.~~ Exhaust ventilation systems for kilns shall be designed to

remove harmful quantities of air contaminants generated during the firing process in order to comply with s. Comm 32.35.

Note: For examples of canopy hood exhaust systems, see the American Conference of Governmental Industrial Hygienists "Industrial Ventilation Manual".

~~4. Movable kilns shall be positioned under an exhaust hood during the firing cycle.~~

SECTION 7. Comm 32.24 Figure 32.24 is repealed.

SECTION 8. Comm 32.24 (5)(c)2. is amended to read:

Comm 32.24 (5) (c) 2. Kilns shall not may be located in boiler or furnace rooms if adequate combustion air is maintained for the boiler or furnace and the kiln under all operating conditions.

SECTION 9. Comm 32.24 (5)(d) is created to read:

X Comm 32.24 (5) (d) *Downdraft ventilation.* Electric kilns with downdraft ventilation are permitted to have the ventilation ductwork maintained at a positive pressure through occupied areas provided the ductwork is sealed to prevent any leakage. may

SECTION 10. Comm 32.24 (6) is created to read:

Comm 32.24 (6) VENTILATION FOR LABORATORY FUME HOODS. (a) *General.* 1. Except as provided in par. (b), laboratory fume hoods during use shall be operated with a minimum average 100 feet per minute face velocity at full open sash or sash stop position. fume hood

2. Vertical sash fume hoods shall not be operated with sash stop positions lower than 18 inches above the work surface.

Sounds 3. Vertical sash fume hoods operated at sash stop positions shall have an alarm that annunciates when the sash is raised above the sash stop position. Combination vertical/horizontal sash fume hoods shall have an alarm that annunciates when the sash is vertically raised from the fully lowered position.

(b) *Alternate operation.* Fume hoods operating at minimum average face velocities less than 100 feet per minute shall achieve a spillage rate less than 0.1 ppm at 4.0 liters per minute gas release for an "as used" condition in accordance with the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) standard 110 - Method of Testing Laboratory Fume Hoods. The minimum allowable average face velocity for fume hoods achieving the ASHRAE 110 containment criteria shall be 40 feet per minute at full open sash.

Note: For further information regarding fume hood operation, see ANSI/AIHA standard Z9.5 - Laboratory Ventilation.

(c) *Testing.* Operable fume hoods shall be tested annually for minimum average face velocity.

SECTION 11. Comm 32.33 (4) and (5) are created to read:

*machines shall be prevented*

**Comm 32.33 (4) PREVENTION OF AUTOMATIC RESTARTING.** On applications where injury to the operator might result if motors were to restart after power failures, provision shall be made to prevent machines from automatically restarting upon restoration of power.

**(5) MAINTENANCE.** All equipment, machine tools, guards and power-driven machinery shall be operated and maintained in safe condition.

**Note:** For information regarding operation and maintenance of hoists, see ANSI/ASME standard B30.16 – Overhead Hoists (Underhung).

SECTION 12. Comm 32.50 Table 32.50-1 items 7. to 10. are created to read:

**Table 32.50-1  
(Partial Table)**

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OSHA	Occupational Safety and Health Administration Superintendent of Documents 310 West Wisconsin Avenue, Suite 150 Milwaukee, WI 53203 Telephone: 414/297-1304
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7.	Methylene Chloride, Title 29 CFR Part 1910, Federal Register, Vol. 63, No. 183, September 22, 1998.
8.	Powered Industrial Truck Operator Training, Title 29 CFR Part 1910, Federal Register, Vol. 63, No. 230, December 1, 1998.
9.	Permit-Required Confined Spaces, Title 29 CFR Part 1910, Federal Register, Vol. 63, No. 230, December 1, 1998.
10.	Powered Industrial Truck Operator Training; Correction to Final Rule, Title 29 CFR Part 1910, Federal Register, Vol. 64, No. 80, April 27, 1999.

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SECTION 13. Comm 32.50 Table 32.50-2 is repealed and recreated to read:

**Table 32.50-2**

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ANSI	American National Standards Institute Attn: Customer Service 11 West 42 <sup>nd</sup> Street New York, NY 10036 Telephone: 212/642-4900
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1.	Recirculation of Air from Industrial Process Exhaust Systems, ANSI/AIHA Z9.7-1998.
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(END)

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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.

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SENATOR JUDITH B. ROBSON  
CO-CHAIR  
PO BOX 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR  
PO BOX 8952  
MADISON, WI 53708-8952  
(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

To: Members of the Joint Committee for Review of Administrative Rules

Re: Clearinghouse Rule 99-139

Date: February 17, 2000

Clearinghouse Rule 99-139 makes revisions to administrative code Comm 32, relating to public employe safety and health. The rule is proposed by the Department of Commerce.

The rule was the subject of public hearings in Madison on October 25, 1999 and in Eau Claire on October 26, 1999. The Department also received written comments on the rule. A summary of the public comments and the Department's responses, prepared by the Department, is attached.

The rule was submitted to the Legislature for review on December 22, 1999. The Senate Committee on Labor requested modifications to the rule. The Department refused to make the modifications and the Committee then voted to object to the rule in its entirety. The Committee vote was 3-2. A copy of the committee record is attached.

The Senate Committee on Labor objected to clearinghouse rule 99-139 because the Department refused to include in the rule public employe health and safety standards established by the American Conference of Governmental Industrial Hygienists (ACGIH). These standards are threshold limit values and biological exposure indices for certain toxic chemicals.

The ACGIH standards were previously included in the Wisconsin Administrative Code as ILHR 32.17 and 31.50-3. Subsequently, the duties of the Department of Industry, Labor and Human Relations were split between the new Department of Workforce Development and the Department of Commerce. The ACGIH provisions were taken out of the administrative code when ILHR 32 was re-promulgated as Comm 32.

The Department says that inclusion of the ACGIH standards is not possible because Commerce rules are put together by an advisory council that makes recommendations on a consensus basis. Administrative Code ILHR 32 was only reviewed within DILHR and did not go through the advisory council process. According to the Department, "the necessary discussion and study was not conducted to determine the impact of implementing the ACGIH recommendations." Further,

the Department says that administrative code Comm 32 is reviewed on an annual basis and the Department will consider inclusion of the ACGIH standards during the next review.

Finally, the Department disputes that the ACGIH standards are meant to be enforceable in their own right. According to the Department, the ACGIH standards are merely recommendations to the federal Occupational Safety and Health Administration (OSHA) and are not meant to be enforceable.

Under current law, the Department incorporates by reference and enforces industrial hygienist standards that are promulgated by the federal OSHA. Proponents of the inclusion of the ACGIH standards argue that these standards provide a greater degree of protection than the current OSHA rules.

Moreover, proponents say that inclusion of the standards is backed by industrial hygienists within the Department.

Finally, proponents say that the Department's offer to consider including the ACGIH standards in other reviews of Comm 32 is a sham because the Department's advisory council has more employer representatives than employee representatives and therefore the council will never approve greater health protections for employees.

The JCRAR has three options. It may concur in the objection of the Senate Committee on Labor; it may non-concur; and it may ask the Department to include the ACGIH standards in Comm 32.

If the committee concurs in the objection, the rule will be suspended and the committee will introduced legislation to support the objection.

If the committee non-concurs, the rule will go into effect.

If the committee asks the Department to include the ACGIH standards and the Department agrees, the rule will be changed. If the Department does not agree, the committee would still have to decide whether or not to suspend the rule.

If you have questions about clearinghouse rule 99-139, please contact David Austin in Senator Robson's office. He can be reached at 6-2253.



DEC 27 1999 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

December 20, 1999

Senate Chief Clerk  
Room 402  
1 East Main Street  
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.: 99-139

RULE NO.: Chapter Comm 32

RELATING TO: Public Employee Safety and Health

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,

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

December 20, 1999

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.: 99-139

RULE NO.: Chapter Comm 32

RELATING TO: Public Employe Safety and Health

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



State of Wisconsin \ Department of Commerce

# **RULES in FINAL DRAFT FORM**

**Rule No.:** Chapter Comm 32

**Relating to:** Public Employe Safety and Health

**Clearinghouse Rule No.:** 99-139

The Department of Commerce proposes an order to repeal Comm 32.24 (2)(b) and Note, and Comm 32.24 Figure 32.24; to renumber Comm 32.24 (2)(c); to renumber and amend Comm 32.24 (2)(d); to amend Comm 32.24 (2)(a), Comm 32.24 (4)(c), Comm 32.24 (5)(a), and Comm 32.24 (5)(c)2.; to repeal and recreate Comm 32.50 Table 32.50-2; and to create Comm 32.24 (5)(d), Comm 32.24 (6), Comm 32.33 (4) and (5), and Comm 32.50 Table 32.50-1 items 7. to 10., relating to public employe safety and health.

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Analysis of Proposed Rules

Statutory Authority: ss. 101.02 (1) and 101.055 (3), Stats.

Statutes Interpreted: s. 101.055 (3), Stats.

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Chapter Comm 32 currently contains general safety and health standards for all public employes through the incorporation by reference of several OSHA standards. Chapter Comm 32 also contains requirements that add to or modify the OSHA standards.

The proposed rules consist of revisions in chapter Comm 32, including the incorporation by reference of the new OSHA standards adopted since July 1, 1998. Those standards cover powered industrial truck operator training, permit-required confined spaces, and methylene chloride.

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SECTION 1. Comm 32.24 (2)(a) is amended to read:

**Comm 32.24 (2) EXHAUST VENTILATION AT SOURCE OF CONTAMINATION AND MAKE-UP AIR.**  
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SECTION 2. Comm 32.24 (2)(b) and Note are repealed.

SECTION 3. Comm 32.24 (2)(c) is renumbered (2)(b).

SECTION 4. Comm 32.24 (2)(d) is renumbered (2)(c) and amended to read:

**Comm 32.24 (2) (c)** Tempered make-up air shall be installed to insure that the flow of exhaust air effectively picks up harmful dusts, fumes, vapors and gases ~~prior to being exhausted.~~

SECTION 5. Comm 32.24 (4)(c) is amended to read:

**Comm 32.24 (4) (c)** Recirculation of contaminated air from local exhaust ventilation systems may be permitted where the exhaust system washes, scrubs or filters the air. Systems of this type ~~shall be designed in accordance with the criteria established in part 2 of the national institute for occupational safety and health (NIOSH) standard "Recirculation of Exhaust Air", HEW Publication (NIOSH) #76-186~~ perform in accordance with ANSI/AIHA Z9.7. Cleaning systems designed in accordance with other standards may be permitted if approved by the department.

SECTION 6. Comm 32.24 (5)(a) is amended to read:

**Comm 32.24 (5) VENTILATION FOR KILNS.** (a) *General.* 1. ~~Local~~ Except as provided in subd. 2., local exhaust ventilation shall be provided for all fuel-fired and electric kilns. ~~Ventilation systems shall be designed in accordance with the best practices of the industry and are subject to acceptability by the department.~~

2. Local exhaust ventilation need not be provided where the kilns can be isolated in a separate room and the room is ventilated by means of a dedicated system at ~~the~~ a minimum rate of 10 air changes per hour.

**Note:** Ventilation capacity for 10 air changes per hour can be calculated as follows:

$$\frac{\text{Room volume (cu. ft.)} \times 10}{60} = \text{cfm needed}$$

**Note:** Reduced atmosphere firing produces high concentrations of carbon monoxide and caution should be exercised when entering the kiln room.

3. ~~Canopy hood exhaust systems shall be designed in accordance with the requirements specified in par. (b) and Figure 32.24.~~ Exhaust ventilation systems for kilns shall be designed to

remove harmful quantities of air contaminants generated during the firing process in order to comply with s. Comm 32.35.

Note: For examples of canopy hood exhaust systems, see the American Conference of Governmental Industrial Hygienists "Industrial Ventilation Manual".

~~4. Movable kilns shall be positioned under an exhaust hood during the firing cycle.~~

SECTION 7. Comm 32.24 Figure 32.24 is repealed.

SECTION 8. Comm 32.24 (5)(c)2. is amended to read:

**Comm 32.24 (5) (c) 2.** Kilns ~~shall not~~ may be located in boiler or furnace rooms if adequate combustion air is maintained for the boiler or furnace and the kiln under all operating conditions.

SECTION 9. Comm 32.24 (5)(d) is created to read:

**Comm 32.24 (5) (d) *Downdraft ventilation.*** Electric kilns with downdraft ventilation may have the ventilation ductwork maintained at a positive pressure through occupied areas provided the ductwork is sealed to prevent any leakage.

SECTION 10. Comm 32.24 (6) is created to read:

**Comm 32.24 (6) VENTILATION FOR LABORATORY FUME HOODS.** (a) *General.* 1. Except as provided in par. (b), laboratory fume hoods during use shall be operated with a minimum average 100 feet per minute face velocity at full open sash or sash stop position. When determining the minimum flow rate through the fume hood, the sash stop position may not be lower than 18 inches above the work surface.

**Note:** When operating the fume hood, the sash should be positioned to maximize the protection to the user.

2. Vertical sash fume hoods operated at sash stop positions shall have an alarm that gives a warning when the sash is raised above the sash stop position. Combination vertical/horizontal sash fume hoods shall have an alarm that gives a warning when the sash is vertically raised from the fully lowered position.

(b) *Alternate operation.* 1. Fume hoods operating at minimum average face velocities less than 100 feet per minute shall achieve a spillage rate less than 0.1 ppm at 4.0 liters per minute gas release for an "as used" condition in accordance with the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) standard 110 - Method of Testing Laboratory Fume Hoods. The minimum allowable average face velocity for fume hoods achieving the ASHRAE 110 containment criteria shall be 40 feet per minute at full open sash.

2. Fume hoods operating at minimum average face velocities less than 100 feet per minute shall have a continuous flow meter with an alarm.

**Note:** For further information regarding fume hood operation, see ANSI/AIHA standard Z9.5 - Laboratory Ventilation.

(c) *Testing.* Operable fume hoods shall be tested annually for minimum average face velocity.

SECTION 11. Comm 32.33 (4) and (5) are created to read:

**Comm 32.33 (4)** PREVENTION OF AUTOMATIC RESTARTING. On applications where injury to the operator might result if motors were to restart after power failures, machines shall be prevented from automatically restarting upon restoration of power.

**(5)** MAINTENANCE. All equipment, machine tools, guards and power-driven machinery shall be operated and maintained in safe condition.

**Note:** For information regarding operation and maintenance of hoists, see ANSI/ASME standard B30.16 – Overhead Hoists (Underhung).

SECTION 12. Comm 32.50 Table 32.50-1 items 7. to 10. are created to read:

**Table 32.50-1  
(Partial Table)**

---

OSHA	Occupational Safety and Health Administration Superintendent of Documents 310 West Wisconsin Avenue, Suite 150 Milwaukee, WI 53203 Telephone: 414/297-1304
7.	Methylene Chloride, Title 29 CFR Part 1910, Federal Register, Vol. 63, No. 183, September 22, 1998.
8.	Powered Industrial Truck Operator Training, Title 29 CFR Part 1910, Federal Register, Vol. 63, No. 230, December 1, 1998.
9.	Permit-Required Confined Spaces, Title 29 CFR Part 1910, Federal Register, Vol. 63, No. 230, December 1, 1998.
10.	Powered Industrial Truck Operator Training; Correction to Final Rule, Title 29 CFR Part 1910, Federal Register, Vol. 64, No. 80, April 27, 1999.

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SECTION 13. Comm 32.50 Table 32.50-2 is repealed and recreated to read:

**Table 32.50-2**

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ANSI	American National Standards Institute Attn: Customer Service 11 West 42 <sup>nd</sup> Street New York, NY 10036 Telephone: 212/642-4900
1.	Recirculation of Air from Industrial Process Exhaust Systems, ANSI/AIHA Z9.7-1998.

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**(END)**

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**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.

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**DEPARTMENT OF COMMERCE  
PUBLIC HEARING COMMENT AND AGENCY RESPONSE**

Clearinghouse Rule No.: 99-139		Hearing Location: Madison	
Rule Number: Chapter Comm 32		Hearing Date: October 25, 1999	
Relating to: Public Employee Safety and Health			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Oral	William Deppen Self Madison, WI	The Environmental Assessment indicates that the proposed action would adopt the 1998 OSHA standards. This should be changed to adopt the July 1999 OSHA standards.	Agree.
1	Ron Kent AFSCME Madison, WI	The proposed rules strike out ILHR 32.17 and 32.50 that protected public employees with appropriate ACGIH standards and allowed Department inspectors to cite ACGIH standards. Previously all Department Industrial Hygienists have supported inclusion of ILHR 32.17 and 32.50 (submitted letter from Department Industrial Hygienists). ILHR 32.17 and 32.50 must be retained in the text of the new code in order to be enforceable. The inclusions in a footnote is not enforceable coverage, nor is the assertion that the general duty clause covers this matter; it does not as attested to by Professor Niell DeClercq (submitted letter from Professor DeClercq).	Disagree. The proposed rules do not remove ILHR 32.17 and 32.50 relating to the ACGIH standards; these provisions are not in the current code. The ACGIH standards can be enforced through Department orders as allowed under section 101.055 (6)(a) 1. of the Wisconsin Statutes.
2	Bob Stigsell Environmental Management Consulting, Inc. Lake Mills, WI	There are some things the Department could do to be more accessible and helpful to those abiding by regulations. Our company has submitted questions to the Department and has not received an answer. It is frustrating when we are assisting school districts with compliance issues and cannot give them an answer. There should be educational sessions when rule changes come out. There should be a full-time, knowledgeable individual who would be at a central office location with a phone who would be available during business hours to field questions. Field representatives have been very helpful when we are able to get in contact with them.	Agree. Field representatives should remain the first point of contact regarding compliance issues. Educational sessions on the administrative code are provided, but the frequency varies within geographical areas. Questions about the public safety and health program can be directed to the program supervisor or the program manager during normal business hours. The contact information for the program persons can be obtained from the field representatives.

**DEPARTMENT OF COMMERCE  
PUBLIC HEARING COMMENT AND AGENCY RESPONSE**

Clearinghouse Rule No.: 99-139		Hearing Location: Eau Claire	
Rule Number: Chapter Comm 32		Hearing Date: October 26, 1999	
Relating to: Public Employee Safety and Health			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
		No comments/recommendations were presented.	

**DEPARTMENT OF COMMERCE  
PUBLIC HEARING COMMENT AND AGENCY RESPONSE**

Clearinghouse Rule No.: 99-139		Hearing Location: Mailed-in Comments	
Rule Number: Chapter Comm 32		Hearing Date: N/A	
Relating to: Public Employee Safety and Health			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
3	Alan J. Schultz UW Capital Planning and Budget Madison, WI	<p>1. Comm 32.24 (6)(a)2. This sentence implies that during operation the sash must not be less than 18 inches above the work surface. This should be revised to read: "Sash stops that are provided for vertical sash fume hoods shall not be less than 18 inches above the work surface."</p> <p>2. Comm 32.24 (6)(a)3. Annunciating implies an alarm that produces an audible sound. These devices are very annoying not only to the user but others nearby and are often overridden by the users. Bright red indicating lamps would be less obtrusive and likely more acceptable to the user. If the alarms are to be audible, the alarms should be provided with an "alarm silence" feature that automatically resets every 2 minutes.</p> <p>3. Comm 32.24 (6)(b) The use of the term "as used" requires the test procedure be performed after the hood is installed in its final location, presumably resulting in "real life" operating conditions and performance. However, in order to demonstrate compliance with the code, each hood after it is installed and after the exhaust, supply and air transfer systems are completed, balanced and brought under control would require the performance of the ASHRAE 110 test. Fume hoods specifically designed for low flow face velocity make use of solid state sensors and controls technology that can lose calibration or fail. Manufacturers claim that the hood fails in a safe condition. Such hoods should be tested by simulating a failure of the controls to demonstrate code compliant performance in a fail-safe condition.</p> <p>4. Comm 32.24 (6)(c) This rule cannot be enforced. Documentation is not requested. If the intent is to enforce annual testing, statements regarding testing and documentation are needed.</p>	<p>1. Agree in part. The sentence in question has been removed. A sentence has been added to Comm 32.24 (6)(a)1. in order to clarify the 18-inch sash stop requirement.</p> <p>2. Agree. The rule has been revised to read "...an alarm that gives a warning when the sash ..."</p> <p>3. Agree. The rule has been revised by creating Comm 32.24 (6)(b)2. requiring a continuous flow meter with an alarm.</p> <p>4. Disagree. The rule is enforceable by the owner providing a written record that the test was conducted.</p>
4	George Gruetzmacher Division of Public Health Madison, WI	Comm 32.24 (6)(a)2. is not clear. Should this read "Vertical sash fume hoods shall be operated with the sash stop positions lower than 18 inches above the work surface"?	Agree in part. See response no. 1 to Exhibit No. 3.

**DEPARTMENT OF COMMERCE  
PUBLIC HEARING COMMENT AND AGENCY RESPONSE**

Clearinghouse Rule No.: 99-139		Hearing Location: Mailed-in Comments	
Rule Number: Chapter Comm 32		Hearing Date: N/A	
Relating to: Public Employee Safety and Health			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
5	Phillip L. Neuenfeldt Wisconsin State AFL-CIO Milwaukee, WI	The AFL-CIO supports the statements of Ron Kent and Neill DeClercq urging that the original safety and health codes for public employees be reinstated. All Department industrial hygienists have supported inclusion of ILHR 32.50 and 32.17. The omissions of useful codes from the original foundation code should be remedied.	See response to Ron Kent's comments.
6	Susan Ruggles Wisconsin Committee on Occupational Safety and Health Milwaukee, WI	The proposed changes would have an adverse impact on public employee health and safety. ILHR 32.17, ILHR 32.27(2)(a) - (e) and ILHR 32.50 should be retained in Comm 32. Elimination of ACGIH standards strips away an important safeguard and leaves a gap in coverage. The ACGIH standards afford an extra measure of protection. Previous elimination of ventilation rules pertaining to darkrooms and woodworking is a disturbing trend that is noticeable in the weakening of rules regarding kiln ventilation. Photographers, woodworkers and craft workers deserve the same protections as other employees.	Disagree. The ACGIH standards can be enforced through Department orders as allowed under section 101.055 (6)(a) 1. of the Wisconsin Statutes. Ventilation rules are not being weakened, but are being changed from prescriptive to performance oriented. All workers must be protected from hazardous exposures as required under Comm 32.35.

R.A.h:\HeargComments\Comm32

# RULE REPORT

## Department of Commerce

Rule No.: Chapter Comm 32

Relating to: Public Employee Safety and Health

*Agency contact person for substantive questions:*

Name Eric Hands

Title Program Manager

Telephone Number 267-4434

*Agency contact person for internal processing:*

Name Ronald Acker

Title Code Consultant

Telephone Number 267-7907

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

Sections 101.02 (1) and 101.055 (3), Stats.

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

The proposed rules adopt the following federal regulations:

1. Methylene Chloride, Title 29 CFR Part 1910, Federal Register, Vol. 63, No. 183, September 22, 1998.
2. Powered Industrial Truck Operator Training, Title 29 CFR Part 1910, Federal Register, Vol. 63, No. 230, December 1, 1998.
3. Permit-Required Confined Spaces, Title 29 CFR Part 1910, Federal Register, Vol. 63, No. 230, December 1, 1998.
4. Powered Industrial Truck Operator Training; Correction to Final Rule, Title 29 CFR Part 1910, Federal Register, Vol. 64, No. 80, April 27, 1999.

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

None known.

4. Description of the proposed rule(s).

Chapter Comm 32 currently contains general safety and health standards for all public employes through the incorporation by reference of several federal Occupational Safety and Health Administration (OSHA) standards. Chapter Comm 32 also contains requirements that add to or modify the OSHA standards.

The proposed rules consist of revisions in chapter Comm 32, including the incorporation by reference of the new OSHA standards adopted since July 1, 1998. Those standards cover powered industrial truck operator training, permit-required confined spaces, and methylene chloride. The proposed rules also contain revisions to current requirements relating to recirculation of contaminated air, ventilation for kilns, and ventilation for laboratory fume hoods.

5. Reason for the proposed rule(s).

The proposed rules have been developed in order to update chapter Comm 32 so that public employes are provided safety and health protection at least equivalent to that afforded to private sector employes under the standards administered and enforced by the federal OSHA.

# RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

## Department of Commerce

CLEARINGHOUSE RULE NO.: 99-139

RULE NO.: Chapter Comm 32

RELATING TO: Public Employe Safety and Health

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

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

# FINAL REGULATORY FLEXIBILITY ANALYSIS

## Department of Commerce

CLEARINGHOUSE RULE NO.: 99-139

RULE NO.: Chapter Comm 32

RELATING TO: Public Employe Safety and Health

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

The proposed rules will not affect any small businesses as defined in section 227.114 (1)(a), Stats. The proposed rules apply to public sector employers and employees.

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.







**FISCAL ESTIMATE WORKSHEET**  
Detailed Estimate of Annual Fiscal Effect  
DOA-2047(R02/97)

ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.      Amendment No.  
Ch. Comm 32

**Subject**  
Public Employee Safety and Health

**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
<b>A. State Costs By Category</b>	\$	\$ -
State Operations - Salaries and Fringes		
(FTE Position Changes)	( 0 FTE)	( - 0 FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>TOTAL State Costs By Category</b>	\$ 0	\$ - 0
<b>B. State Costs By Source of Funds</b>		
GPR	\$	\$ -
FED		-
PRO/PRS	0	- 0
SEG/SEG-S		-
<b>III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</b>		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>TOTAL State Revenues</b>	\$ 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.  
*Bruce B...*

Date  
9/17/99

FISCAL ESTIMATE  
DOA-2048 (R02/97)

ORIGINAL  
 CORRECTED

UPDATED  
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
Ch. Comm 32  
Amendment No. if Applicable

Subject  
Public Employe Safety and Health

Fiscal Effect

State:  No State Fiscal Effect

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

Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 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

3.  Increase Revenues  
 Permissive       Mandatory

5. Types of Local Governmental Units Affected:

Towns       Villages       Cities

2.  Decrease Costs  
 Permissive       Mandatory

4.  Decrease Revenues  
 Permissive       Mandatory

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 currently administers and enforces the provisions of chapter Comm 32 as part of the public sector safety and health program. The proposed rules update the existing administrative rules now being enforced, with no new requirements that would affect costs or revenues. Therefore, the proposed rules will not have any fiscal effect on the Division.

At the local government level, there should be no significant fiscal effect. Some of the new requirements may result in additional costs in time and equipment for some local governments; however, these costs should be minimal.

Long-Range Fiscal Implications

None known

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

Authorized Signature/Telephone No.

*B. J. Ball*

Date

9/17/99

February 28, 2000

Senator Judith B. Robson  
Post Office Box 7882  
Madison, WI 53707-7882

Representative Glenn Grothman  
Post Office Box 8952  
Madison, WI 53708-8952

Dear Senator Robson and Representative Grothman:

Thank you for your letter regarding Clearinghouse Rule 99-139 (Comm 32) and the committee hearing held on February 24, 2000.

The Department of Commerce is responsible for the general safety and health standards for all public employees. Annually, the administrative rules are reviewed for modifications in order to ensure that the department remains current with recent changes to OSHA rules.

Before the next review begins, the Department will restructure its committee process. First, we will establish a policy level committee and a technical sub-committee. The policy committee, the Public Safety Advisory Council, will include policy level representatives from major public employer and employee groups. Specifically we will invite representatives of American Federation of State County and Municipal Employees (AFSCME) Councils 24 and 40, Wisconsin Federation of Teachers (WFT) and Wisconsin Education Association Council (WEAC).

The technical sub-committee will consist of industrial hygienists and other experts to look specifically at the substances and conditions that are covered in the ACGIH recommendations but not by OSHA. The purpose of the technical sub-committee is to identify the following:

- Identify chemical substances and conditions covered by ACGIH but not covered by OSHA,
- Identify where such chemicals and conditions may exist in the public sector,
- Identify the known safety and health risks of these chemical substances and the standards, and
- Identify likely mitigation actions and potential costs of implementation.

The report of the sub-committee will be presented to the Advisory Council.

It would be our intent to take any recommended changes to Comm 32 through the public hearing process to gather public comment.

Furthermore, the department will keep Joint Committee members informed of our process on this matter by providing copies of our meeting minutes.

With the Department's commitment to this plan, I respectfully request the Joint Committee for Review of Administrative Rules not to object to Clearinghouse Rule 99-139. Thank you for your consideration of this matter and I look forward to working with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Brenda J. Blanchard". The signature is fluid and cursive, with the first name being the most prominent.

Brenda J. Blanchard  
Secretary

SENATOR JUDITH B. ROBSON  
CO-CHAIR  
PO BOX 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR  
PO BOX 8952  
MADISON, WI 53708-8952  
(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

February 24, 2000

BY HAND DELIVERY

Brenda Blanchard  
Secretary, Department of Commerce  
201 West Washington Avenue

Dear Secretary Blanchard:

We are writing on behalf of the Joint Committee for Review of Administrative Rules and in regards to Clearinghouse Rule 99-139 (Comm 32), relating to public employe safety and health.

The Senate Committee on Labor objected to this proposed rule on February 3, 2000. Today the Joint Committee for Review of Administrative Rules held a public hearing and executive session on the rule.

At the executive session, the committee adopted the following motion:

***Motion:***

That pursuant to section 227.19(5)(b)2, *Wisconsin State Statutes*, the Joint Committee for Review of Administrative Rules requests modifications to Clearinghouse Rule 99-139 (Comm 32), relating to public employe safety and health.

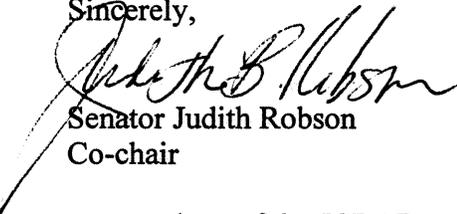
That if the Department does not notify the committee by 5:00 p.m., Monday, February 28, 2000 that it is willing to make modifications, then pursuant to section 227.19(5)(d), *Wisconsin State Statutes*, and for the reason set forth in section 227.19(4)(d)6, *Wisconsin State Statutes*, the committee concurs in the objection of the Senate Committee on Labor to Clearinghouse Rule 99-139.

Please notify us in writing prior to 5:00 p.m. on Monday, February 28, 2000 if the department is willing to consider modifications. If the department is not willing to consider modifications, the committee will be on record as objecting to the proposed rule.

Secretary Brenda Blanchard  
February 24, 2000

Thank you for your attention to this matter.

Sincerely,

  
Senator Judith Robson  
Co-chair

  
Representative Glenn Grothman  
Co-chair

cc: members of the JCRAR  
Ron Sklansky, Legislative Council

***Motion***

That pursuant to section 227.19(5)(b)2, *Wisconsin State Statutes*, the Joint Committee for Review of Administrative Rules requests modifications to Clearinghouse Rule 99-139 (Comm 32), relating to public employe safety and health.

That if the Department does not notify the committee by 5:00 p.m., Monday, February 28, 2000 that it is willing to make modifications, then pursuant to section 227.19(5)(d) , *Wisconsin State Statutes*, and for the reason set forth in section 227.19(4)(d)6, *Wisconsin State Statutes*, the committee concurs in the objection of the Senate Committee on Labor to Clearinghouse Rule 99-139.

# Wisconsin State AFL-CIO



CHARTERED 1958

6333 W. BLUE MOUND RD., MILWAUKEE, WISCONSIN 53213 PHONE (414) 771-0700 FAX (414) 771-1715

David Newby, President • Sara J. Rogers, Exec. Vice President • Phillip L. Neuenfeldt, Secretary-Treasurer

TO: Members of the Joint Committee for Review of Administrative Rules

FROM: Phil Neuenfeldt, Secretary-Treasurer  
Joanne Ricca, Legislative Staff

DATE: February 24, 2000

RE: **CLEARINGHOUSE RULE 99-139: CHANGES TO COMM 32**  
**Relating to Public Employee Safety and Health**

The Wisconsin State AFL-CIO supports the position of AFSCME, the Wisconsin Federation of Teachers, WEAC, Professor Neill DeClerq of the UW Extension School for Workers (a consultant on occupational safety and health for over 20 years), and our own state industrial hygienists who advocate that Rule 99-139 must be amended to strengthen health and safety standards for public employees. **We are asking that language be added that allows the American Conference of Governmental Industrial Hygienists (ACGIH) standards to be used for substances not covered by OSHA standards. This expanded protection was originally included in COMM 32 and there has been no evidence presented to indicate that the ACGIH standards were a problem.**

### **What is the ACGIH and why is it important?**

The American Conference of Government Industrial Hygienists (ACGIH) is a national organization with representatives from industry, the scientific community and government who develop safety and health standards based on careful, long-term studies. The ACGIH updates the Threshold Limit Values (TLVs) and Biological Exposure Indices (BEIs) annually based on the latest scientific information.

### **What provision should be included in COMM 32?**

The proposed language is attached to this memo. It would allow state inspectors to cite ACGIH standards that cover some 190 chemical substances, physical agents and biological hazards that are not covered by OSHA. These threshold limits for exposure apply to: (a) chemicals that are very dangerous with a high level of toxicity in very small amounts (like 0.025 parts per million); (b) pesticides such as atrazine and diazinon; (c) chemicals which are suspected to cause cancer in humans; and (d) more common substances which can have harmful effects,

such as the fumes from asphalt and the vapor from gasoline. The standards also cover the body stress experienced in extreme heat and cold.

It is likely that public employees may not come into contact with many of the chemicals covered by ACGIH standards and not already covered by OSHA, but the standards were helpful in the past in a few cases where OSHA was silent. This would indicate that the standards are not burdensome and yet are valuable to public employee safety and health. Even one case where ACGIH standards are helpful can make a life-saving difference for those workers affected.

The removal of the ACGIH standards from COMM 32 was a step backward in safety and health protection for Wisconsin's public employees. We ask for your support in requiring that Rule 99-139 include the attached language. Clear, recognized and respected standards are beneficial to both public workers and public employers.

PN/JR/mj

Insert before SECTION 1:

SECTION . Comm 32.17 is created to read:

Comm32.17 ACGIH STANDARDS. All places of employment and public buildings of a public employer shall comply with the American Conference of Governmental Industrial Hygienists (ACGIH) threshold limit values and biological exposure indices adopted under s. Comm 32.50. The ACGIH standards apply only to the substances not covered by the OSHA standards specified in s. Comm 32.15.

Insert after SECTION 13:

SECTION . Comm 32.50 Table 32.50-3 is created to read:

Table 32.50-3

---

ACGIH    American Conference of Governmental  
          Industrial Hygienists  
          Technical Affairs Office  
          1330 Kemper Meadow Drive  
          Cincinnati, OH 45240  
          Telephone: 513/742-2020

---

1. Threshold Limit Values for Chemical Substances and Physical Agents, and Biological Exposure Indices, 1999-2000 Edition.
- 

SOURCE: Prepared by Dan Fernbach, Legislative Council  
Senate Labor Committee



**University of Wisconsin-Extension • Continuing Education Extension**

422 Lowell Hall 610 Langdon Street Madison, Wisconsin 53703-1195 (608) 262-2111  
FAX (608) 265-2391

**School for Workers**

March 25, 1998

Mr. Ronald H. Acker  
Code Consultant  
Wisconsin Department of Commerce  
Bureau of Program Development  
P.O. Box 2689  
Madison, WI 53701

Dear Mr. Acker:

I am a professor of Labor Education for the University of Wisconsin - Extension. I have been involved in teaching and providing consultation on occupational safety and health in Wisconsin and nationally since 1976. It has come to my attention that the Public Employee Safety and Health regulations in ILHR 32 are under review. In particular, I understand the provisions referring to ACGIH recommended exposure limits may be eliminated from the regulations. I would oppose such a move on the part of the Department for the following reasons.

Currently, only a limited number of chemicals and other hazardous substances are regulated by specific standards. Those standards are adopted from the federal OSHA standards, which are only updated periodically, in some cases not for years. The ACGIH recommended exposure levels on the other hand cover a much larger number of substances, and they are reviewed and updated annually. The ACGIH exposure limits are a well-recognized, scientifically valid set of recommended standards that professionals in the field of industrial hygiene refer to and use regularly in addressing occupational health concerns.

Substances not regulated by specific standards are covered by the "general duty clause" of the state statute (Wis.Stats. 101.055(6)(a)). That provision empowers the department to enforce violations of "a condition which poses a recognized hazard likely to cause death or serious physical harm to a public employe,...." The ACGIH recommended exposure limits are a useful source of evidence for the Department to establish the requisite "recognized hazard" in general duty violations. Thus I am concerned that removing reference to the ACGIH limits from the regulations would jeopardize the Department's ability to use them in those instances where specific standards do not exist.

Sincerely,

Neill DeClercq  
Professor of Labor Education  
Cc: Ron Kent

G:\OSH\ILHR32

# InterOffice Memo

Department of Commerce

Date: March 23, 1998

To Public Safety & Health Council

From Thomas Pritchett, Industrial Hygienist   
Richard Brandt, Industrial Hygienist 

Subject **ACGIH BEI's and Harmful Physical Agents Exposure Indicators**

We are writing this letter to the council so that they may understand the importance in keeping the ACGIH standards codified in COMM 32.

The ACGIH Threshold Limit Values (TLV's) are important in cases where there is no Permissible Exposure Limit (PEL under 1910.1000) for a particular substance, and is only used where there is no PEL. The real importance is in the ACGIH Biological Exposure Indices (BEI's), and the Harmful Physical Agents Indicators sections. We have successfully used the BEI's in cases where, for example at a high school kitchen in Tony, Wis, employees complained about severe headaches and nausea. The employer refused to do anything about the complaints, so employees finally went to the clinic after a severe episode and it was determined that the COHb (carboxyhemoglobin in blood) was far above the BEI of 3.5% of hemoglobin. Based upon this we were able to determine that high exposures of carbon monoxide occurred and exposed these employees. On another occasion, on a worker's compensation investigation (done in both private and public sectors), the BEI of COHb was used to determine occupational exposures to the carbon monoxide also. Clearly the use of the BEI's is extremely important because the fact that only the two of us must do enforcement for the entire state of WI for occupational health matters, very often direct exposure monitoring of the contaminant is difficult due to the distances to travel. Therefore the BEI's allow us to put the burden of exposure determination upon the employer, **even after the exposure has occurred**. The Harmful Physical Agents section is equally important, as it allows us to enforce standards of Heat Stress and Cold Stress, (among others) upon employers whose employees spend a great deal of time outdoors (very often unprotected). Without these standards, very many employees suffer the harmful effects of extreme heat or cold.

It is also important to know that the codification of these ACGIH BEI's gives us direct enforcement "through the front door application," where the employer can look at COMM 32 and know then that he must comply with the sections of the ACGIH standards, versus applying the ACGIH standards through the "back-door" applications of citing the 'general duty clause' first then referencing the ACGIH standards. The employer's defense is that he never knew that the ACGIH standards applied to him, since they were not codified in COMM 32. This section of the code has extremely important applications for us INDUSTRIAL HYGIENISTS, and if the problems associated with keeping them in the code is the misapplication of the ACGIH standards by NON-industrial hygienists, then it is merely an internal management problem that must be corrected. If there has been some other application of the ACGIH standards that have resulted in problems for an employer, we would like to know about it, and if not, then why the problem with keeping this section of the code in force? We have not used the ACGIH TLV's or BEI's very often in the past 3 years, however the few instances that we did, it was extremely useful to have them actually applicable in ILHR ch. 32. With that, it is our intention to persuade the council to keep the ACGIH standards codified in COMM 32.

c. Ron Acker, Dept of Commerce  
: Eric Hands, Dept of Commerce  
: Ron Kent, AFSCME



School for Workers

School for Workers  
Room 422 Lowell Center  
610 Langdon Street  
Madison, WI 53703  
608-262-2112  
608-265-2391 (fax)  
608-265-9317 (TTY)

January 3, 2000

JAN 5 2000

Mr. Ron Kent  
AFSCME  
8033 Excelsior Drive  
Suite A  
Madison, WI 53717-1903

Dear Mr. Kent:

This letter is in support of retaining reference to the ACGIH recommended exposure limits as contained in ILHR 32.50 as part of the Wisconsin Administrative Code for the continued protection of public employee occupational safety and health.

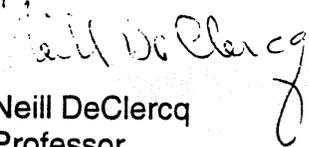
I am a professor of Labor Education at the University of Wisconsin-Extension. I have been involved in teaching, research, and consultation on occupational safety and health (OSH) at the University since 1976. I continue to be opposed to the deletion of reference to the ACGIH Threshold Limit Values (TLVs) and Biological Exposure Indices (BEIs) from the Code for the following reasons:

1. The ACGIH TLVs and BEIs are a well-recognized, scientifically valid set of guidelines that professionals and regulators in the field of industrial hygiene refer to and use regularly in addressing occupational health concerns.
2. The ACGIH TLVs and BEIs provide recommendations and guidance for substances that are not currently covered by OSHA or Wisconsin regulations. Consequently, they encourage broader protection of employee safety and health. This is particularly true in the biological exposure area.
3. The ACGIH TLVs and BEIs are reviewed and republished annually and thus are a source of the most current information on best practices for protecting against potentially hazardous occupational exposures to covered substances. OSHA's Permissible Exposure Limits (PELs) have not been updated in many instances since the 1970s. While I support the proposal for Wisconsin to adopt the 1991-92 proposed OSHA PEL revisions that were not adopted at the federal level, I believe the ACGIH guidelines provide additional and in some cases more current information on exposures. Both sources of information are needed and should be recognized in the Wisconsin code.
4. Under current Wisconsin law, hazards from substances not regulated by specific standards are covered by the "general duty clause" (Wis.Stats. sec. 101.55(6)(a)).

That provision empowers the Department to enforce violations of "a condition which poses a recognized hazard likely to cause death or serious physical harm to a public employe, ... ." Crucial to application of this provision for health hazards is that the exposures be "recognized" as hazardous, which essentially means the exposure is recognized as hazardous in the scientific community. The ACGIH TLVs and BEIs can provide evidence of such recognition. Their removal from the code undermines their effectiveness in helping to establish a "general duty" violation, and thus weakens protection for public employee occupational health.

For the above reasons I support retention of the ACGIH guidelines for continued use by the Department in carrying out it's responsibility to provide occupational safety and health to protection to public employees in the state of Wisconsin.

Sincerely,

  
Neill DeClercq  
Professor

Insert before SECTION 1:

SECTION . Comm 32.17 is created to read:

Comm32.17 ACGIH STANDARDS. All places of employment and public buildings of a public employer shall comply with the American Conference of Governmental Industrial Hygienists (ACGIH) threshold limit values and biological exposure indices adopted under s. Comm 32.50. The ACGIH standards apply only to the substances not covered by the OSHA standards specified in s. Comm 32.15.

Insert after SECTION 13:

SECTION . Comm 32.50 Table 32.50-3 is created to read:

Table 32.50-3

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ACGIH	American Conference of Governmental Industrial Hygienists Technical Affairs Office 1330 Kemper Meadow Drive Cincinnati, OH 45240 Telephone: 513/742-2020
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1. Threshold Limit Values for Chemical Substances and Physical Agents, and Biological Exposure Indices, 1999-2000 Edition.
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January 27, 2000

Senator James Baumgart  
Post Office Box 7882  
Madison, WI 53707-7882

Dear Baumgart:

The Wisconsin Department of Commerce has recommended the improvements included in Clearinghouse Rule 99-139 and requests approval of the rule as proposed. To address the concerns that have been raised, the Department will create a new advisory council to review the current code and consider ramifications of including the American Conference of Governmental Industrial Hygienists (ACGIH) recommendations in the next review of Comm 32.

We are not aware of an objection to the language in the rule as proposed. However, the issues brought forth at this time relate to a lack of inclusion of interested parties in the administrative code development process and to a request for the inclusion of language not currently being proposed.

We understand and appreciate the need to include additional members in the administrative rule making process. Additional members representing public employee organizations, such as AFSCME and WEAC/AFT will be considered in the membership of the next advisory council.

As for the second concern, we do not support the adoption of the ACGIH recommendations as was once adopted, by chapter ILHR 32 in August 1995. When the ACGIH recommendations were adopted in August of 1995, no formal, advisory council review process existed. The review of chapter ILHR 32 at that time was conducted internally. Furthermore, there never was full implementation of the standard; and therefore, the impact was not realized. Lastly, the ACGIH policy statement on the use of TLVs/BEIs states:

They (Threshold Limit Values) are not developed for use as legal standards, and the American Conference of Governmental Industrial Hygienists (ACGIH) does not advocate their use as such. However, it is recognized that in certain circumstances individuals or organizations may wish to make use of these recommendations or guidelines as a supplement to their occupational safety and health program.

The ACGIH recommendations are not consensus standards. Therefore, the necessary discussion and study was not conducted to determine the impact of implementing the ACGIH recommendations, without full consideration of all ramifications.

The code is on an annual review cycle and a formal advisory council will assist the Department in next update, which is currently scheduled for the end of the year. The Department of Commerce respectfully requests adoption of the rule and will create a new advisory council to review the code and consider the inclusion of the ACGIH recommendations.

Thank you for your consideration of this matter.

Sincerely,

*for*   
Brenda J. Blanchard  
Secretary

## Minnesota Statutes 1999, Table of Chapters

### Table of contents for Chapter 182

#### **182.655 Occupational safety and health standards.**

Subdivision 1. Standards and variances shall be proposed, granted, adopted, modified or revoked by the commissioner in accordance with the procedures of this section. The standards and variances are exempt from the Administrative Procedure Act but, to the extent authorized by law to adopt rules, the commissioner may use the provisions of section 14.386, paragraph (a), clauses (1) and (3). Section 14.386, paragraph (b), does not apply to these rules.

Subd. 2. Whenever the commissioner, in order to serve the objectives of this chapter, determines that a rule should be promulgated under this section, establishing, modifying or revoking an occupational safety and health standard, the commissioner shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard and shall afford interested persons a period of 30 days after publication to submit written data or comments.

On or before the last day of the period provided for the submission of written data or comments, any interested person may file with the commissioner written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. Within 30 days after the last day for filing such objections, the commissioner shall publish a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

Subd. 3. Within 60 days after the expiration of the period provided for the submission of written data or comments or within 60 days after the completion of any hearing, the commissioner shall issue a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be promulgated. Such a rule may contain a provision delaying its effective date for such period, not in excess of 90 days, as the commissioner determines may be necessary to insure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

Subd. 4. The commissioner, in adopting standards dealing with hazardous substances or harmful physical agents under this section, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if the employee has regular exposure to the hazard dealt with by the standard for the period of the employee's working life. Development of standards under this subdivision shall be based upon research, demonstrations, experiments, and other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall

be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard adopted shall be expressed in the terms of objective criteria and of the performance desired.

Subd. 5. Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of subdivision 7 and establishes that:

(a) It is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(b) It is taking all available steps to safeguard employees against the hazards covered by the standard; and

(c) It has an effective program for coming into compliance with the standard as quickly as practicable.

Subd. 6. Any temporary order issued under this section shall prescribe the practices, means, methods, operations and processes which the employer must adopt and use while the order is in effect and state in detail the employer's program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and to employee representative and an opportunity for a hearing; provided, that the commissioner may issue one interim order to be effective until a decision is made on the basis of a hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more than twice. No such order shall be renewed unless the requirements of this section are met and an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim order may remain in effect for longer than 180 days.

Subd. 7. An application for a temporary order under this section shall contain:

(a) A specification of the standard or portion thereof from which the employer seeks a variance;

(b) A representation by the employer, supported by representations from qualified persons having first hand knowledge of the facts represented, that it is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor;

(c) A statement of the steps being taken and which will be taken, with specific dates, to protect employees against the hazards covered by the standard;

(d) A statement of when it expects to be able to comply with the standard and what steps it has taken and will take, with specific dates, to come into compliance with the standard;