

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 99-029

### 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. The rule restricts the applicability of ch. Comm 7 to public buildings and places of employment. Are there any other locations at which explosive materials are used that should be covered by the chapter? [See, for example, ss. Comm 7.01 and 7.64 (3) (a) and (4) (a). Are the examples in s. Comm 7.64 all, by definition, public buildings or places of employment?]

b. The entire rule should be reviewed for conformance to proper drafting style regarding mandatory and permissive actions. Specifically, the rule should avoid use of a negative subject with an affirmative “shall.” For example, in s. Comm 7.25 (2) (a), the phrase “Explosive materials shall not be carried . . .” should be changed to “No person may carry explosive materials . . . .”

c. What is meant by the term “high explosives” in s. Comm 7.25 (2) (c) (intro.)? Could a defined term be used instead?

d. In s. Comm 7.25 (5), the second occurrence of par. (b) should be changed to par (c).

e. In s. Comm 7.34 (1) (b), it appears that the following phrase should be added at the beginning of the first sentence: “Before any surface blast is fired.”

f. The material added to the note following s. Comm 7.45 is substantive and should be included in the text of the rule. [See s. 1.09, Manual.]

g. The provisions of the note following s. Comm 7.61 (1) which set forth the required elements of a preblasting survey are substantive and should be set forth in the text of the rule. [See s. 1.09, Manual.]

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. The note following s. Comm 7.42 (1) should contain a cross-reference to the Department of Transportation (DOT) rules which regulate the use of mobile mixing vehicles on public highways.

b. The note following s. Comm 7.25 should contain a cross-reference to the DOT rules which regulate the transportation of explosive materials on public highways.

c. Section Comm 7.35 (1) should contain a cross-reference to the rules, if any exist, which set forth the various classifications of blasters.

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

a. In item 3. of the analysis, the comma should be deleted.

b. The analysis should explain why the requirement to obtain a storage permit from the Department of Commerce for storing explosive materials in a community is eliminated.

c. In s. Comm 7.04 (27), should the phrase “or any other place” be inserted after “construction site”?

d. In s. Comm 7.25 (3) (c), should “may” be changed to “shall”?

e. In s. Comm 7.25 (4) (a), who approves the automatic fire suppression system? In sub. (5) (b), what constitutes a “competent” driver?

f. The term “blast pattern area,” used in s. Comm 7.30 (2) (e) is not a defined term. What is meant by that term?

g. In s. Comm 7.30 (3), how is it to be determined if “adequate ventilation” has been provided?

h. In s. Comm 7.32 (3) (e), the phrase “or methods” should be changed to “by a method.”

i. In s. Comm 7.36 (2) (c), should the phrase “in charge” be inserted after the word “blaster”?

j. Section Comm 7.61 should be rewritten to specify all of the following:

- (1) The form of notice which must be given to residents and owners of affected dwellings or other structures. For example, must the notice be provided in writing?

- (2) May blasting be carried out if the owner or resident of an affected dwelling or other structure has not actually received the notice? For example, what is the result if the person is out of town when notice is given?
- (3) What penalty is imposed upon a blaster who does not comply with the notice requirement?
- (4) Under what conditions may the department approve less than 24 hours notification for construction blasting? What is the procedure for requesting this approval? What are the conditions under which it may be granted?
- (5) Must the blaster deliver the preblasting survey to the person who has requested it before blasting may take place?

k. In s. Comm 7.64 (4) (c), who must provide the seismograph record and to whom must it be provided?