

Clearinghouse Rule 14-060

STATE OF WISCONSIN Department of Safety and Professional Services

IN THE MATTER OF RULEMAKING : NOTICE OF PUBLIC HEARING FOR
PROCEEDINGS BEFORE THE : PROPOSED PERMANENT RULES,
DEPARTMENT OF SAFETY AND : AND PROPOSED ORDER ADOPTING
PROFESSIONAL SERVICES : PERMANENT RULES

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Safety and Professional Services by sections 101.055 (3) and 227.11 (2) (a) of the Wisconsin Statutes, and by interpreting section 101.055 (3) of the Statutes, the Department will hold a public hearing at the time and place shown next below to consider the proposed order below for chapter SPS 332, relating to public-employee safety and health standards.

Hearing Date, Time, and Location

Date: December 1, 2014
Time: Commencing at 1:00 P.M.
Location: 1400 East Washington Avenue
Room 121B
Madison, Wisconsin (enter at 55 North Dickenson street)

APPEARANCE AT THE HEARING:

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions, and arguments in writing as well. Facts, opinions, and arguments may also be submitted in writing without a personal appearance, by e-mail to sam.rockweiler@wi.gov or by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366. Written comments must be received at or before the public hearing to be included in the record of rulemaking proceedings.

The proposed rulemaking order and rules and an analysis of the rules follow. Copies of the proposed rules are also available upon request to the Rules Coordinator shown above, or on the Department's website at <http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49da-8fde-046713617e9e>, through links to SPS 332: Public Employee Safety And Health.

PROPOSED ORDER

An order of the Department of Safety and Professional Services to repeal SPS 332.06, 332.11 (2), 332.16 (3) and (4), 332.22 (1) (b) and (2) (a), 332.26 (1), 332.28 (1) and (2), 332.32 (2), 332.35, 332.36, 332.38 (1) and (2), 332.39, and 332.50 (1) and Table 332.50-2;

to renumber SPS 332.01 (8) (a) to (e), 332.205, 332.22 (1) (a) and (2) (b), and 332.32 (1);

to renumber and amend SPS 332.01 (8) (intro.), 332.10, 332.11 (1), 332.22 (2) (intro.), 332.23 (intro.) and (1), 332.25 (intro.) and (1), 332.26 (intro.), 332.28 (intro.) and (3), 332.30 (intro.) and (1), 332.32 (intro.), 332.37 (intro.) and (1), 332.38 (intro.) and (3), 332.40, and 332.50 (2) and Table 332.50-1;

to amend SPS 332.003 (1); 332.05 (1) (intro.) and (a); 332.16 (14) and (16); 332.29 (intro.), (1), and (2); 332.33 (intro.); and 332.34 (intro.) and (2);

to repeal and recreate SPS 332.002, 332.003 (2), 332.01 (1) and (5) to (7), 332.05 (2) to (4), 332.21, and 332.24; and

to create SPS 332.003 (3), 332.01 (8) and (9), and 332.205 (3), relating to public-employee safety and health standards.

ANALYSIS

Statutes interpreted:

Section 101.055 (3).

Statutory authority:

Section 101.055 (3) and 227.11 (2) (a).

Explanation of agency authority:

Section 101.055 (3) of the Statutes requires the Department to adopt, by rule, standards to protect the safety and health of public employees. The standards must provide protection that is at least equal to the protection which is provided to private-sector employees under standards promulgated by the federal Occupational Safety and Health Administration (OSHA) and must be revised as necessary to maintain that equivalent protection.

Section 227.11 (2) (a) authorizes the Department to promulgate rules interpreting any statute that is enforced or administered by the Department, if the rules are considered necessary to effectuate the purpose of the statute.

Related statute or rule:

Section 101.02 (15) (j) of the Statutes requires the Department to promulgate rules for constructing, altering, adding to, repairing, and maintaining safe public buildings and places of employment. Under this authority, the Department has promulgated chapters SPS 361 to 366, which establish statewide, uniform requirements for design, construction, maintenance, and repair of public buildings and places of employment – and chapter SPS 314, which establishes statewide minimum requirements for preventing unwanted fires in public buildings and places of employment.

Chapter SPS 330 contains Wisconsin's statewide safety and health requirements for public-sector fire department employees. That chapter applies to those employees in addition to the requirements in chapter SPS 332.

Plain language analysis:

These proposed changes to chapter SPS 332 would primarily incorporate the July 1, 2010, editions of the following OSHA standards as replacements to the currently incorporated July 1, 2003, editions of these standards:

- Title 29 of the *Code of Federal Regulations*, Part 1904 – Recording and Reporting Occupational Injuries and Illnesses.
- 29 CFR 1910 – Occupational Safety and Health Standards.
- 29 CFR 1915 – Occupational Safety and Health Standards for Shipyard Employment.
- 29 CFR 1917 – Occupational Safety and Health Standards for Marine Terminals.
- 29 CFR 1926 – Occupational Safety and Health Regulations for Construction.
- 29 CFR 1928 – Occupational Safety and Health Standards for Agriculture.

These 2010 OSHA editions contain numerous revisions to the 2003 editions. Many of these revisions simply improve clarity and consistency; correct errors; update cross-references to other industry standards; and add new cross-references to other contemporary industry standards. Other revisions that are more substantive include (1) establishing the employer's responsibilities to provide personal protective equipment and training; (2) considerably reducing the permissible exposure limit for hexavalent-chromium compounds, from 0.5 to 0.005 mg/m³; (3) changing the repeat-exposure monitoring periods for acrylonitrile, vinyl chloride, 1-2-dipromo-3-chloropropane, and cotton dust; (4) changing the employer's responsibility for exposure-monitoring notification for acrylonitrile, vinyl chloride, 1-2-dipromo-3-chloropropane, coke-oven emissions, and cotton dust; (5) lengthening the cycle for updating the compliance program for inorganic arsenic, vinyl chloride, 1-2-dipromo-3-chloropropane, and coke-oven emissions; (6) lengthening the minimum timeframe for medical examinations for vinyl chloride and coke-oven emissions; (6) replacing general fire-prevention provisions for shipyards with comprehensive fire-protection provisions; and (7) reinstating roll-over protective-structure provisions from 1996 for tractors used in agricultural operations.

These proposed rule changes would also clarify and update the chapter's scope, application, definitions, inspection criteria, and incorporation-of-standards provisions – and would update the Department's current modifications of the incorporated OSHA standards. These updates to these modifications include (1) improving the clarity, consistency, format, and organization of these modifications; (2) clarifying which safety vests or other clothing provide adequate visibility protection for roadway workers; (3) clarifying that traffic-control devices for warning traffic and protecting roadway workers are required by other authorities to comply with the Uniform Traffic Devices Manual produced by the American Traffic Safety Services Association; (4) replacing the additional criteria for securing the footing of ladders, with reference to the standards that are available from the American National Standards Institute for construction and use of portable ladders; (5) repealing the ventilation requirements that overlap with the design requirements in Wisconsin's uniform Commercial Building Code; (6) replacing the plan submittal

requirements for spray booths with an informational Note that refers to the corresponding building-design requirements in the Commercial Building Code; (7) clarifying the first-aid and resuscitation training that is acceptable for work in confined spaces; (8) repealing the additional criteria for sampling devices and air monitoring, for confined spaces; (9) clarifying which emergency eyewash and shower facilities provide adequate protection for exposure to materials that are corrosive or can cause irreversible eye or body injury; (10) replacing the additional requirements that overlap with the requirements in chapter SPS 314 for separating incompatible materials from each other, with a revised informational Note that refers to SPS 314; (11) no longer replacing the air-contaminant maximums in 29 CFR 1910 with the maximums from the 1992 edition of 29 CFR 1910, and no longer requiring the additional monitoring relating to those 1992 maximums; (12) requiring dump bodies of all vehicles, rather than just on trucks, to have a locking mechanism for preventing accidental lowering of the body while maintenance or inspection work is being done or while the vehicle is left unattended; (13) repealing the additional requirements for providing guarding along the edge of an excavation; and (14) repealing the additional requirements to provide yellow warning lights for nighttime exposure to excavations.

Summary of, and comparison with, existing or proposed federal regulation:

In Wisconsin, OSHA applies its above requirements to private-sector employees but not to public-sector employees. The requirements in chapter SPS 332 apply to public-sector employees but not to private-sector employees. Consequently, although the two sets of requirements are nearly but not entirely identical, they do not overlap in where or how they apply.

This update of chapter SPS 332 does not include consideration of any changes to the above OSHA standards that have occurred after July 1, 2010. The Department plans to consider those changes during its next update of this chapter.

Comparison with rules in adjacent states:

An Internet-based search of state-level rules for public-employee safety and health standards in the adjacent states yielded the following results:

Illinois: The Illinois Department of Labor mostly adopts the OSHA standards without any modifications, for protecting all public-sector employees in the state, but has a unique standard for recordkeeping. OSHA has approved the Illinois State Plan, as established under section 18 of the federal Occupational Safety and Health Act of 1970, but maintains jurisdiction over all private-sector workplaces, federal agencies, maritime employers (e.g., shipyards, marine terminals, and longshoring), military facilities, Indian-sovereignty workplaces, and the United States Postal Service.

Iowa: The Iowa Division of Labor Services administers the OSHA-approved Iowa State Plan, which applies to all public and private sector workplaces in the state, with the exception of private-sector maritime activities, marine terminals, and longshoring; federal-government-owned and contractor-operated military facilities; bridge construction projects spanning the Mississippi and Missouri Rivers between Iowa and other states; federal government employers and employees; and the United States Postal Service (these fall under OSHA jurisdiction). The State Plan includes the following state-specific standards in addition to the OSHA standards: Sanitation and Shelter Rules for Railroad Employees, Hazardous Chemical Risks Right to Know – General

Provisions, Community Right to Know, Public Safety/Emergency Response Right to Know, and Asbestos Removal and Encapsulation.

Michigan: The Michigan Occupational Safety and Health Administration (MIOSHA) administers the OSHA-approved Michigan State Plan, which applies to all places of employment in the state, with the exception of federal-government employees, the United States Postal Service, maritime and mining activities, and domestic employment, which are subject to OSHA jurisdiction. MIOSHA has adopted most of the OSHA standards by reference, but has a unique standard for child labor.

Minnesota: The Minnesota Occupational Safety and Health Administration (MNOSHA) administers the OSHA-approved Minnesota State Plan, which applies to all places of employment in the state, with the exception of federal government employees, the United States Postal Service, and certain agricultural operations (those pertaining to the field sanitation standard and temporary labor camps), which are subject to federal jurisdiction. MNOSHA has adopted most of the OSHA standards by reference, and has the following unique standards: Toxic Chemical Handling and Exposure, Agriculture, Repetitive Motion Injuries, Heat Exposure, and Noise Exposure.

Wisconsin does not have an OSHA-approved State Plan.

Summary of factual data and analytical methodologies:

These proposed rule changes were developed primarily by comparing the July 1, 2003, editions of the six OSHA standards that are currently incorporated into chapter SPS 332 – to the July 1, 2010, editions which are proposed to be incorporated in place of the 2003 editions. All of the Department’s current modifications of the 2003 editions were then analyzed in comparison to the 2010 editions, and in comparison to current best practices. These comparisons and analyses were then presented to and discussed with the Department’s Public Safety Advisory Council, and the Council’s resulting recommendations were incorporated into these proposed rule changes. The following organizations and agencies were represented on this Council:

City of Milwaukee
Department of Administration, Division of State Facilities
Department of Administration, State Risk Management
League of Wisconsin Municipalities
Madison Metropolitan Sewerage District
Municipal Electric Utilities of Wisconsin
University of Wisconsin System
Wisconsin Alliance of Cities
Wisconsin Association of School Boards
Wisconsin Counties Association
Wisconsin Rural Water Association
Wisconsin Towns Association

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

These rule changes would apply only to public-sector employees and their employers, so any economic impacts on small business are expected to only be indirect.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These rule changes are not expected to have an economic impact on small businesses as defined in section 227.114 (1) of the Statutes. The Department's Regulatory Review Coordinator may be contacted by e-mail at Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Sam Rockweiler, Rules Coordinator, at the Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI, 53708-8366; or at telephone (608) 266-0797; or by e-mail at sam.rockweiler@wi.gov; or by telecommunications relay services at 711.

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

Comments may be submitted to the agency contact person listed immediately above. Comments must be received on or before December 1, 2014, to be included in the record of rulemaking proceedings.

TEXT OF RULE

SECTION 1. SPS 332.002 is repealed and recreated to read:

SPS 332.002 Scope. This chapter applies to all workplaces of public employers, except it does not apply to any of the following:

1. Workplaces under federal jurisdiction, Indian-sovereignty workplaces, or workplaces of the United States Postal Service.

2. A workplace while no employee is authorized to be there.

Note: A private-sector employer's workplace is not considered to be a workplace of a public employer while any public-sector employees perform their work there, such as a safety inspection or investigation.

Note: See chapter SPS 330 for additional safety and health standards for public-sector fire department employees.

SECTION 2. SPS 332.003 (1) is amended to read:

SPS 332.003 (1) RETROACTIVITY. The provisions of this chapter shall apply to all ~~places of employment and public buildings~~ workplaces of a public employer whether existing prior to the effective date of this chapter or subsequently established ~~or built~~, unless otherwise specified in this chapter.

SECTION 3. SPS 332.003 (2) is repealed and recreated to read:

SPS 332.003 (2) CONFLICTS. (a) Where any rule written by the department differs from a requirement within a document referenced in this chapter, the rule written by the department shall govern.

(b) Where a provision of this chapter prescribes a general requirement and another provision of this chapter prescribes a specific or more detailed requirement regarding the same subject, the specific or more detailed requirement shall govern, except as provided in par. (a).

(c) Where different sections of this chapter specify conflicting requirements, the most restrictive requirement, as determined by the department, shall govern, except as provided in pars. (a) and (b).

Note: The Department and other state agencies may have additional rules that affect the design, construction, maintenance and use of places of employment, including chapters SPS 305, Licenses, Certifications, and Registrations; SPS 307, Explosives and Fireworks; SPS 314, Fire Prevention; SPS 316, Electrical; SPS 318, Elevators, Escalators, and Lift Devices; SPS 340, Gas Systems; SPS 341, Boilers and Pressure Vessels; SPS 343, Anhydrous Ammonia; SPS 345, Mechanical Refrigeration; SPS 375 to 379, Buildings Constructed Prior to 1914; SPS 381 to 387, Plumbing; SPS 390, Public Swimming Pools; and SPS 391, Sanitation. The Department's Division of Industry Services administers all of these listed codes. Under chapter SPS 314, fire chiefs – who are authorized deputies of the Department – are responsible for providing semiannual fire-prevention inspections of places of employment.

SECTION 4. SPS 332.003 (3) is created to read:

SPS 332.003 (3) INTERPRETATIONS. Under s. 101.02 (1), Stats., the department reserves the right to interpret the requirements in this chapter and in all adopted codes and standards.

Note: Section 101.02 (1) of the Statutes reads as follows: “The 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 5. SPS 332.01 (1) is repealed and recreated to read:

SPS 332.01 (1) “Agency” has the meaning specified under s. 101.055 (2) (a), Stats.

Note: Under s. 101.055 (2) (a), Stats., “agency” means an office, department, independent agency, authority, institution, association, society, or other body in state government created or authorized to be created by the constitution or any law, and includes the legislature and the courts.

SECTION 6. SPS 332.01 (5) to (7) are repealed and recreated to read:

SPS 332.01 (5) “Public employee” or “employee” has the meaning specified under s. 101.055 (2) (b), Stats.

Note: Under s. 101.055 (2) (b), Stats., “public employee” or “employee” means any employee of the state, of any agency or of any political subdivision of the state.

(6) “Public employee representative” or “employee representative” has the meaning specified under s. 101.055 (2) (c), Stats.

Note: Under s. 101.055 (2) (c), Stats., “public employee representative” or “employee representative” means an authorized collective bargaining agent, an employee who is a member of a workplace safety committee or any person chosen by one or more public employees to represent those employees.

(7) “Public employer” or “employer” has the meaning specified under s. 101.055 (2) (d), Stats.

Note: Under s. 101.055 (2) (b), Stats., (d) “public employer” or “employer” means the state, any agency or any political subdivision of the state.

SECTION 7. SPS 332.01 (8) (intro.) to (e) are renumbered SPS 332.17 (intro.) to (5), and SPS 332.17 (intro.), as renumbered, is amended to read:

SPS 332.17 ~~“Secretary” means the secretary of the department of safety and professional services or appointed representative, unless otherwise specified.~~ For the purpose of this chapter, substitute the term secretary ~~shall be substituted~~ for the following titles referenced in the adopted standards of s. SPS 332.50:

SECTION 8. SPS 332.01 (8) and (9) are created to read:

SPS 332.01 (8) “Secretary” means the secretary of the department of safety and professional services or an authorized representative.

(9) “Workplace” means any site where public employees are required or directed to be by public employers to carryout assigned duties and functions.

Note: A private-sector employer’s workplace is not considered to be a workplace of a public employer while any public-sector employees perform their work there, such as a safety inspection or investigation.

SECTION 9. SPS 332.05 (1) (intro.) and (a) are amended to read:

SPS 332.05 (1) RIGHT OF ENTRY TO INVESTIGATE OR INSPECT. The authorized representatives of the department, upon presentation of the appropriate credentials to an employer, may perform any of the following activities:

(a) Enter without delay and at reasonable times any building, place of employment or workplace of a public employer, or an environment where work is performed by an employee of an employer; ~~and.~~

SECTION 10. SPS 332.05 (2) to (4) are repealed and recreated to read:

SPS 332.05 (2) INSPECTIONS. (a) Inspections, including the request for inspections, shall be handled in accordance with s. 101.055, Stats.

(b) Any orders shall be issued in accordance with s. 101.055, Stats.

SECTION 11. SPS 332.06 is repealed

SECTION 12. SPS 332.10 (title) is repealed.

SECTION 13. SPS 332.10 is renumbered SPS 332.205 (2) and amended to read:

SPS 332.205 (2) This is a department rule in addition to the requirements in 29 CFR 1904: Pursuant to s. 101.055 (7) (a), Stats., ~~and beginning January 1, 2004,~~ each employer shall report work-related injuries and illnesses to the department for the previous year by March 1 of each year. The report shall be made on form SBD-10710 or equivalent.

SECTION 14. SPS 332.11 (1) (title) and (2) are repealed.

SECTION 15. SPS 332.11 (1) is renumbered 332.203 and amended to read:

SPS 332.203 Safety and health program. This is a department rule in addition to the requirements in 29 CFR 1910, 1915, 1917, 1926 and 1928: Each employer shall develop and implement a safety and health program that describes the procedures, methods, processes and practices used to manage workplace safety and health. The program shall include, ~~but not be limited to,~~ elements for hazard identification and assessment, hazard prevention and control, and information and training.

SECTION 16. SPS 332.16 (3) and (4) are repealed.

SECTION 17. SPS 332.16 (14) and (16) are amended to read:

SPS 332.16 (14) Chapter SPS 334, Amusement Rides ~~and Attractions.~~

(16) Chapter SPS 341, ~~Boiler~~ Boilers and Pressure Vessels.

SECTION 18. SPS 332.17 (title) is created to read:

SPS 332.17 (title) Substitution of “secretary.”

SECTION 19. SPS 332.205 (title) is repealed and recreated to read:

SPS 332.205 (title) Recording and reporting occupational injuries and illnesses [29 CFR 1904].

SECTION 20. SPS 332.205 is renumbered 332.205 (1).

SECTION 21. SPS 332.205 (3) is created to read:

SPS 332.205 (3) Substitute the following wording for the requirements in 29 CFR 1904.39(a): Within eight hours after the death of any employee from a work-related incident or the in-patient hospitalization of three or more employees as a result of a work-related incident, the employer shall orally report the fatality or multiple hospitalization by telephone or in person to the department.

Note: Fatalities and hospitalizations are to be reported to the Division of Industry Services at P.O. Box 7302, Madison, WI 53707-7302. The department can be contacted at telephone 608/266-3151 or 877/617-1565 or 411 (Telecommunications Relay) during normal business hours. The State Division of Emergency Management can be contacted at 800/943-0003 during nonbusiness hours.

SECTION 22. SPS 332.21 is repealed and recreated to read:

SPS 332.21 General requirements [29 CFR 1910.22 and 1926.20]. These are department rules in addition to the requirements in 29 CFR 1910.22 and 1926.20:

(1) Any employee who works on highways, roads, streets or their easements, including any of these workplaces that are not permanent places of employment, shall be provided with and wear an approved traffic-safety vest, or other clothing or equipment that provides equivalent visible protection.

Note: For further information regarding safety vests and clothing that the Department accepts for newly providing to employees, see ANSI/ISEA standard 107 – High-Visibility Safety Apparel and Headwear. Vests and clothing that are accepted under this standard typically do not become unacceptable upon publication of a later edition of the standard.

(2) Traffic control devices shall be provided for the work under sub. (1) to warn traffic and protect employees.

Note: Under s. 349.065, Stats., traffic control devices must be designed, installed and operated in accordance with the uniform traffic control devices manual adopted by the department of transportation under s. 84.02 (4) (e), Stats. The manual may be obtained from the American Traffic Safety Services Association, 15 Riverside Parkway, Suite 100, Fredericksburg, VA 22406-1022, telephone 800/231-3475. Electronic copies are available at the Federal Highway Administration website at <http://mutcd.fhwa.dot.gov/>.

(3) No person may work on the surface of any structural member, floor, or other working platform that has become slippery from ice, snow, frost, paint or other cause, unless the surface is cleaned, sprinkled with sand, or made non-slippery insofar as the nature of the work will permit.

SECTION 23. SPS 332.22 (2) (intro.) is renumbered SPS 332.22 (intro.) and amended to read:

SPS 332.22 Portable ladders [29 CFR 1910.25 and 1910.26]. These are department rules ~~are~~ in addition to the requirements in 29 CFR 1910.25 and 1910.26:

SECTION 24. SPS 332.22 (1) (a) is renumbered SPS 332.22 (1).

SECTION 25. SPS 332.22 (1) (b) and (2) (a) and (Note) are repealed.

SECTION 26. SPS 332.22 (2) (b) is renumbered SPS 332.22 (2).

SECTION 27. SPS 332.22 (2) (b) (Note) is created to read:

SPS 332.22 (2) (b) Note: Further information relating to construction and use of portable ladders is available in the following ANSI standards: A14.1, for wood ladders; A14.2, for metal ladders; and A14.5, for reinforced-plastic ladders.

SECTION 28. SPS 332.23 (intro.) and (1) are renumbered SPS 332.23 and amended to read:

SPS 332.23 Fixed ladders [29 CFR 1910.27]. This is a department rule ~~is~~ in addition to the requirements in 29 CFR 1910.27(e)(2): Fixed ladders of a substandard pitch shall be equipped with handrails on both sides. The handrails shall be installed 30 to 34 inches vertically above the rung or the nose of the tread.

SECTION 29. SPS 332.24 is repealed and recreated to read:

SPS 332.24 Ventilation [29 CFR 1910.94]. These are department rules in addition to the requirements in 29 CFR 1910.94: Laboratory fume hoods shall be operated and maintained in accordance with all of the following:

(1) (a) Except as provided in sub (2), a laboratory fume hood shall be operated at a minimum average face velocity of 100 feet per minute at one of the following positions:

1. A full open sash.

2. A sash stop position.

(b) The minimum face velocity shall be determined with the sash stop position no lower than 18 inches above the work surface.

(2) A fume hood may be operated at less than an average face velocity of 100 feet per minute provided all of the following conditions are met:

(a) A spillage rate of less than 0.1 ppm at 4.0 liters per minute gas release is achieved.

(b) A minimum allowable average face velocity of 40 feet per minute occurs at a full open sash position.

(c) A continuous flow meter with an alarm is provided.

(3) (a) A visual and auditory warning alarm shall automatically occur when a vertical sash fume hood is operated above a sash stop position.

(b) A visual and auditory warning alarm shall automatically occur when a combination vertical and horizontal sash fume hood is operated above a sash stop position.

(4) A test shall be performed annually to determine the face velocity of each fume hood.

SECTION 30. SPS 332.25 (intro.) and (1) are renumbered SPS 332.25 and amended to read:

SPS 332.25 Compressed gases [29 CFR 1910.101]. This is a department rule ~~is in addition to the requirements in 29 CFR 1910.101:~~ All compressed gas cylinders shall be secured around the body of the cylinder to prevent falling.

SECTION 31. SPS 332.26 (intro.) is renumbered SPS 332.26 and amended to read:

SPS 332.26 Spray finishing using flammable and combustible materials [29 CFR 1910.107]. This is a department rule ~~is in addition to~~ informational note to be used under 29 CFR 1910.107:

Note: See chs. SPS 361 to 366 and their incorporated standards, such as the *International Building Code*[®] and *International Fire Code*[®], for building-design requirements relating to spray rooms, spraying spaces, and spray booths.

SECTION 32. SPS 332.26 (1) and (Note) are repealed.

SECTION 33. SPS 332.28 (intro.) and (3) are renumbered SPS 332.28 and amended to read:

SPS 332.28 Permit-required confined spaces [29 CFR 1910.146]. ~~These~~ This is a department ~~rules are rule~~ in addition to the requirements in 29 CFR 1910.146 ~~for permit-required confined spaces:~~ **TRAINING.** An employer shall provide approved training in basic first aid and adult cardiopulmonary resuscitation for all authorized entrants and attendants.

SECTION 34. SPS 332.28 (Note) is created to read:

SPS 332.28 Note: The department recognizes courses conducted through such organizations as the American Red Cross or the America Heart Association as acceptable training.

SECTION 35. SPS 332.28 (1) and (2) are repealed.

SECTION 36. SPS 332.29 (intro.), (1), and (2) are amended to read:

SPS 332.29 Confined spaces [29 CFR 1910.146]. These are department rules ~~for~~ in addition to the requirements in 29 CFR 1910.146, and apply to all confined spaces:

(1) **ENTRY PROHIBITED.** A confined space with an atmosphere ~~which~~ that has a combustible gas content of 10% or more of the lower explosive limit ~~shall~~ may not be entered even if a breathing apparatus or respirator is used.

(2) **SMOKING AND OPEN FLAMES.** Smoking and open flames ~~shall~~ may not be allowed within 10 feet of a confined space.

SECTION 37. SPS 332.30 (intro.) and (1) are renumbered SPS 332.30 and amended to read:

SPS 332.30 Medical services and first aid [29 CFR 1910.151]. Substitute the following wording for the requirements in 29 CFR 1910.151(c): Whenever the eyes or body of any person may be exposed to materials that are corrosive or can cause irreversible eye or bodily injury, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

Note: The department will accept facilities that comply with ANSI ANSI/ISEA standard Z358.1, Emergency Eyewash and Shower Equipment, or other equipment that provides similar protection.

SECTION 38. SPS 332.32 (intro.) and (1) are renumbered SPS 332.32 and amended, along with the title, to read:

SPS 332.32 (title) Handling ~~materials, general materials~~ – general [29 CFR 1910.176]. ~~These~~ This is a department ~~rules are rule~~ in addition to the requirements in 29 CFR 1910.176: Conveyor systems passing through more than one room, or from one working level to another,

shall be provided in each room, or working level, where exposed to contact, with means to disconnect the power.

SECTION 39. SPS 332.32 (1) (title) and (2) are repealed.

SECTION 40. SPS 332.32 (Note) is amended to read:

Note: ~~Guidance in the storage~~ Storage of incompatible materials ~~can be obtained in publications from the National Fire Protection Association, such as is regulated by NFPA 49 and 491M 1, as adopted in chapter SPS 314.~~

SECTION 41. SPS 332.33 (intro.) is amended to read:

SPS 332.33 General requirements for all machines [29 CFR 1910.212]. These are department rules ~~are~~ in addition to the requirements in 29 CFR 1910.212:

SECTION 42. SPS 332.34 (intro.) and (2) are amended to read:

SPS 332.34 Woodworking machinery requirements [29 CFR 1910.213]. These are department rules ~~are~~ in addition to the requirements in 29 CFR 1910.213(h):

(2) RETURN MEANS. Every radial arm saw shall be equipped with a means to return the saw automatically to the back of the table when released at any point of its travel; the means shall prevent the saw from rebounding and ~~shall~~ may not depend on fiber rope or cord for this function.

SECTION 43. SPS 332.35 and 332.36 are repealed.

SECTION 44. SPS 332.37 (intro.) and (1) are renumbered SPS 332.37 (2) and amended to read:

SPS 332.37 (2) Substitute the following wording for the requirements in 29 CFR 1926.601(b)(10): ~~Trucks with dump~~ Dump bodies of all vehicles shall be equipped with a positive means of support; that is permanently attached; and capable of being locked in position to prevent accidental lowering of the body while maintenance or inspection work is being done or ~~when~~ while the vehicle is left unattended.

SECTION 45. SPS 332.38 (intro.) and (3) are renumbered SPS 332.38 and amended to read:

SPS 332.38 Specific excavation requirements [29 CFR 1926.651]. These ~~This is a~~ department ~~rules are~~ rule in addition to the requirements in 29 CFR 1926.651: ~~SOLITARY~~

EMPLOYMENT. No person may work in a ~~trench, shaft, tunnel, caisson or appurtenance~~ an excavation over 4 feet in depth without another person being present at the surface.

SECTION 46. SPS 332.38 (1) and (2) are repealed.

SECTION 47. SPS 332.39 is repealed.

SECTION 48. SPS 332.40 (title) is repealed.

SECTION 49. SPS 332.40 is renumbered SPS 332.37 (1) and amended to read:

SPS 332.37 (1) This is a department exception to the requirements in 29 CFR 1926.601(b)(9): Employees may ride on motor vehicles in other than factory-installed passenger seats equipped with seatbelts only when the speed of the motor vehicle is less than 10 miles per hour.

SECTION 50. SPS 332.50 (1) and (2) (title) are repealed.

SECTION 51. SPS 332.50 (2) is renumbered SPS 332.50 and amended to read:

SPS 332.50 Incorporation of standards by reference. The standards listed in the following ~~tables~~ table are hereby incorporated by reference into this chapter under the authority provided in s. 101.055 (3) (a), Stats.

Note: Copies of the adopted standards are ~~on file in the offices of the department and the legislative reference bureau.~~ Copies also may be purchased available through the ~~organizations~~ sources listed in the table.

SECTION 52. SPS 332.50 Table 332.50-1 is renumbered SPS 332.50 Table 332.50 and amended to read:

Table 332.50

| OSHA | Occupational Safety and Health Administration (OSHA) U.S. Government Printing Office 732 N. Capitol Street, NW Washington, DC 20401 Telephone: 866/512-1800 Online Bookstore: http://bookstore.gpo.gov E-copies: http://www.gpo.gov/fdsys/search/submitcitation.action?publication=CFR |
|-------------|--|
| 1. | Recording and Reporting Occupational Injuries and Illnesses, Title 29 CFR Part 1904, July 1, 2003 <u>2010</u> . |
| 2. | Occupational Safety and Health Standards, Title 29 CFR Part 1910, July 1, 2003 <u>2010</u> . |
| 3. | Occupational Safety and Health Standards for Shipyard Employment, Title 29 CFR Part |

| | |
|----|--|
| | 1915, July 1, 2003 <u>2010</u> . |
| 4. | Occupational Safety and Health Standards for Marine Terminals, Title 29 CFR Part 1917, July 1, 2003 <u>2010</u> . |
| 5. | Occupational Safety and Health Regulations for Construction, Title 29 CFR Part 1926, July 1, 2003 <u>2010</u> . |
| 6. | Occupational Safety and Health Standards for Agriculture, Title 29 CFR Part 1928, July 1, 2003 <u>2010</u> . |

SECTION 53. SPS 332.50 Table 332.50-2 is repealed.

SECTION 54. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

 (END OF TEXT OF RULE)

Dated _____ Agency _____
 Dave Ross, Secretary of the
 Department of Safety and
 Professional Services

File reference: SPS 332/Hearing notice, order and rules