



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Co-Directors

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 14-060

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

2. Form, Style and Placement in Administrative Code

a. The introductory clause should be updated to reflect any revisions made in accordance with these comments and should be carefully reviewed to ensure that it accurately reflects the sections affected by the proposed rule.

b. In s. SPS 332.002, the subsections should be labeled as “(1)” and “(2)”, not “1.” and “2.”. [s. 1.03, Manual.]

c. SECTIONS 5 and 6 of the proposed rule should be combined, as they give the same treatment to subsections within one rule section, without any affected intervening subunits. [s. 1.04 (2) (a) 4., Manual.]

d. In the renumbering of s. SPS 332.01 (8), the following revisions should be made:

- (1) In the treatment clause, the phrases “(intro.) to (e) are” and “(intro.) to (5)” should be deleted, as the renumbering affects sub. (8) and s. SPS 332.17 in their entirety. Then, the word “is” should be inserted after “SPS 332.01 (8)”.
- (2) In the text of the rule, the title that is created in SECTION 18 of the proposed rule could instead be included among amendments to the introduction.
- (3) In the text of the rule, the word “secretary” should appear with a strike-through, and should be replaced with the same word placed in quotation marks and underscored.

e. In s. SPS 332.01 (9), the exclusion in the Note should appear in the text of the proposed rule itself, rather than in the Note, as the exclusion is a substantive element of the given definition. [s. 1.09 (1), Manual.]

f. In the treatment clause for SECTION 10, the word “is” should replace the phrase “to (4) are”. Then, a new SECTION should be inserted for the repeal of s. SPS 332.05 (3) and (4), as those subsections are repealed only, without being recreated. When subsections are affected by different treatments, they are treated separately, in separate SECTIONS of the proposed rule. [s. 1.04 (2) (b), Manual.]

g. In s. SPS 332.205 (2), “and” should replace “and”.

h. In SECTION 16, “and (4)” in the treatment clause should be omitted. Section SPS 332.16 (4) does not exist.

i. In s. SPS 332.205 (3), “3” should replace “three”. [s. 1.01 (5), Manual.]

j. In the Note to s. SPS 332.21 (1), the name given in the acronym should be written out, or should be defined with its acronym in s. SPS 332.01. [s. 1.01 (8), Manual.] Also, it appears that the word “newly” should be deleted.

k. A new SECTION should be inserted to repeal the titles for s. SPS 332.22 (1) and (2).

l. The renumbering of s. SPS 332.22 (2) (intro.) in SECTION 23 of the proposed rule should be moved to appear after the treatment of s. SPS 332.22 (1) (b) and (2) (a) and (Note) in SECTION 25 of the proposed rule. [s. 1.04 (1), Manual.]

m. In SECTION 28, the treated provisions should be consolidated, renumbered, and amended. The following SECTIONS should also contain a similar treatment: SECTIONS 30, 33, 37, 38, 44, and 45. In SECTION 28, the treatment clause should read: “SPS 332.23 (intro.) and (1) are consolidated, renumbered SPS 332.23, and amended to read:”. The text of the SECTION should 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):
~~(4)~~ 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.

n. In s. SPS 332.24 (intro.), no underscoring should appear because the section is repealed and recreated. [s. 1.065, Manual.]

o. Consider combining ss. SPS 332.28 and 332.29, as both sections provide additional requirements to 29 CFR 1910.146. If not combined, the distinction between which types of confined spaces the separate sections apply to should be specified. For example, if s. SPS 332.28 is intended to apply only to permit-required confined spaces, the strike-through of that phrase in SECTION 33 of the proposed rule could be removed.

p. In s. SPS 332.29 (title), “[29 CFR 1910.146]” should be underscored because it is new material. [s. 1.06 (1), Manual.]

q. In s. SPS 332.32 (title), “materials – general” should be underscored because it is new material. [s. 1.06 (1), Manual.]

r. In the Note to s. SPS 332.32, the name given in the acronym should be written out. [s. 1.01 (8), Manual.]

s. In s. SPS 332.38, “~~any trench~~” should replace “~~a trench~~” to accurately reflect the current text of the rule.

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

a. In the rule summary’s listing of statutes interpreted, the reference to sub. “(3)” should be removed, as the proposed rule interprets s. 101.055, Stats., as a whole.

b. In the rule summary’s comparison with rules in adjacent states, citations should be given to each state’s statutes or rules, or a link should be provided to the administering agency’s website for public employee safety and health standards.

c. In s. SPS 332.002 (Note), “ch.” should replace “chapter”. Similarly, in s. SPS 332.003 (2) (Note), “chs.” should replace “chapters” and “ch.” should replace “chapter”. [s. 1.07 (2), Manual.]

d. In s. SPS 332.05 (2), in the citations to s. 101.055, Stats., in par. (a), sub. “(5)” should be inserted with the citation, and in par. (b), sub. “(6) (a)” should be inserted with the citation.

e. In s. SPS 332.32 (Note), “ch.” should replace “chapter”. [s. 1.07 (2), Manual.]

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

a. In the rule summary’s explanation of agency authority, it would be more precise to add the following phrase at the end of the first paragraph: “, except definitions for toxic substances cannot be based solely on the federal registry of toxic effects of chemical substances”.

b. In the rule summary’s comparison with rules in adjacent states, the phrase “for private sector employees” should be inserted at the end of the final sentence about Wisconsin.

c. In the definitions under s. SPS 332.01, the phrase “given in” should replace each instance of “specified under”. [s. 1.01 (7) (d), Manual.]

d. In s. SPS 332.05 (2) (b), the phrase “resulting from an inspection” should be inserted after “orders”.

e. In the Note to s. SPS 332.205 (3), the following revisions should be made:

(1) The word “department’s” should be inserted before “Division of Industry Services”.

(2) It appears that the word “division” should replace “department”.

(3) The extent of the allowance to contact the other named agency should be specified. For example, if a follow-up after making a report during nonbusiness hours is not required, the final sentence could be rephrased to state: “During nonbusiness

hours, report fatalities and hospitalizations to Wisconsin Emergency Management, which can be contacted at 800/943-0003.”.

f. In s. SPS 332.21 (1), it appears that the phrase “high visibility of the employee” should replace “visible protection”.

g. In s. SPS 332.21 (2), consider revising the subsection to be in an active voice, and consider revising the phrase “to warn traffic and protect employees” to more closely mirror s. 349.065, Stats. For example, the subsection could state: “An employer shall provide traffic control devices for the work under sub. (1), and the devices shall be used to regulate, warn, guide, or inform traffic of the work and of the presence of employees.”.

h. In s. SPS 332.24 (2) (intro.), the word “if” should replace “provided”.