

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY AND
DEPARTMENT OF SAFETY AND : PROFESSIONAL SERVICES
PROFESSIONAL SERVICES : ADOPTING RULES
: (CLEARINGHOUSE RULE 13-062)

ORDER

An order of the Department of Safety and Professional Services to amend SPS 381.01 (141), SPS 381.20 Table 381.20-11 (partial) line 6., SPS 384.20 (2) (b) (Note), SPS 384.30 (4) (intro.), and SPS 384.40 (8) (a) and (d); and create SPS 381.01 (141) (c) (Note), SPS 381.20 Table 381.20-11 (partial) line 7., relating to U.S. EPA lead reduction rule, Safe Drinking Water Act amendments of 2011.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 145.02 (2), Stats.

Statutory authority: ss. 145.13 and 227.11 (2), Stats.

Explanation of agency authority:

227.11 (2), Stats.: “Rule-making authority is expressly conferred as follows: (a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

145.02 (2), Stats.: “The department shall have general supervision of all such plumbing and shall after public hearing prescribe and publish and enforce reasonable standards therefore which shall be uniform and of statewide concern so far as practicable. ...”

145.13, Stats.: “Adoption of plumbing code. The state plumbing code and amendments to that code as adopted by the department have the effect of law in the form of standards statewide in application and shall apply to all types of buildings, private or public, rural or urban, including buildings owned by the state or any political subdivision thereof. The state plumbing code shall comply with ch. 160 (Wisc. Stats.). All plumbing installations shall so far as practicable be made to conform to such code.”

Related statute or rule: Chs. SPS 381 to 387 and SPS 391

Plain language analysis:

SECTION 1. This section mirrors the three specific definitions of lead-free in the amended Federal safe drinking water act (SWDA), specifically relating to solders and flux, fixtures and components, and calculation of weighted average.

SECTION 2. This section creates a Note, which provides additional resources for calculating weighted average.

SECTIONS 3., 4. and 5. These two sections are revisions to tables listing the adoption of NSF standards reflecting the SWDA provisions. The Note reflects the more recent NSF standard adopted.

SECTIONS 6. and 7. The text of these sections is amended to reflect the use of the updated standards.

As required by s. 227.21 (2) (a), on September 12, 2013, the agency received approval from the Office of the Attorney General to adopt the technical standards contained within this rule.

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

The U.S. Safe Drinking Water Act amendments of 2011 [SDWA, 42 USC 300g-6] becomes effective January 4, 2014 in which water service piping, piping materials and fixtures must be “lead-free”. This Act updates the definition for “lead-free” and adopts by reference two national standards, ANSI/NSF-61 and ANSI/NSF 372 reflecting the revisions to the SDWA. Most importantly, this Act provides a 3-year enactment period for manufacturers, suppliers and users to become educated and comply with the rule revisions and allow for the use of new materials meeting the standard to be ready for sale by the effective date.

Comparison with rules in adjacent states: An Internet-based search of the four adjoining states revealed the following:

Illinois: The Illinois public health code was searched for conformity to the SDWA revisions regarding EPA lead reduction rule; the definition of lead-free has not changed nor has the state adopted the most recent edition of the NSF 61 standard, drinking water system components. No pending legislation was found. [Title 77: public health code, chapter I, subchapter r, part 890 Illinois Plumbing Code]

Iowa: The Iowa state plumbing code has adopted the UPC- Uniform Plumbing Code, 2009 edition [Ch. 25, State Plumbing Code]. The Internet-based search did not find any changes or proposed changes, to date, reflecting the definition of lead-free, and the

calculation of lead-free in materials and fixtures, or the adoption of the most recent edition of the NSF 61 standard, drinking water system components.

Michigan: In the Michigan state plumbing code, 605.3 water service pipe, water service pipe must conform to NSF 61 standard, although to date such an edition does not reflect the EPA lead-free definition or the calculation of lead-free in piping materials and fixtures based in sec. 1417 of the SDWA. No pending legislation or proposed rule revisions were found on this issue. [Part 7. Plumbing code, r 408.30701 applicable code. Rule 701].

Minnesota: The Minnesota plumbing code, updated Oct. 31, 2012, adopts NSF 61 standard, but an edition prior to the lead-free definition and calculation of lead reduction in the recent revisions to sec. 1417 of the SDWA. No pending legislation or proposed rule revisions were found on this issue. [Chapters 4715 and 4716].

Summary of factual data and analytical methodologies:

No factual data or analytical methods were used. The proposed revisions reflect only U.S. EPA 2011 amendments to the SDWA, which is expected to be enforced at the Federal level.

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

This rule-making project will not impose any additional impact on small business above or beyond what is required by the federal government.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Jean MacCubbin, Program Manager, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-266-0955; telecommunications contact at 711; email at Jean.MacCubbin@wisconsin.gov.

Rule text begins on the next page.

TEXT OF RULE

SECTION 1. SPS 381.01 (141) is amended to read:

SPS 381.01 (141) ~~“Lead-free” mean a chemical composition equal to or less than 0.2% of lead.~~ means:

(a) When used with respect to solders and flux, containing not more than 0.2 percent lead.

(b) When used with respect to pipe and pipe fittings and fixtures, containing not more than 8.0 percent lead.

(c) When used with respect the wetted surface material of to pipe and pipe fittings and fixtures, containing a weighted average of not more than 0.25 percent lead.

SECTION 2. SPS 381.01 (141) (c) (Note) is created to read:

SPS 381.01 (141) (c) Note: Calculation procedures for determining the weighted average lead concentration in a product that consists of several components are listed in NSF/ANSI Standard 61, annex G, including how to comply with amended sec. 1417(d)(2) of the Federal safe drinking water act (SDWA) of 2011.

SECTION 3. SPS 381.20 Table 381.20-11 (partial) line 6. is amended to read:

**Table 381.20-11
(partial)**

NSF	<i>NSF International</i> 789 Dixboro Road P.O. Box 130140 Ann Arbor, Michigan 48113-0140 Phone: (800) 673-6275 Web page: www.nsf.org
Standard Reference Number	Title
6. Standard 61-2007-2012	Drinking Water System Components - Health Effects

SECTION 4. SPS 381.20 Table 381.20-11 (partial) line 7. is created to read:

**Table 381.20–11
(partial)**

NSF	NSF <i>International</i> 789 Dixboro Road P.O. Box 130140 Ann Arbor, Michigan 48113–0140 Phone: (800) 673–6275 Web page: www.nsf.org	
Standard Reference Number	Title	
7. Standard 372-2011	Drinking Water System Components - Lead Content	

SECTION 5. SPS 384.20 (2) (b) (Note) is amended to read:

SPS 384.20 (2) (b) Note: The scope of NSF 61, ~~section 9 annex G,~~ defines which devices are intended for use for human ingestion in response to ~~the Federal clean drinking water act amended.~~ Section 1417 of the Federal safe drinking water act, as amended.

SECTION 6. SPS 384.30 (4) (intro.) is amended to read:

SPS 384.30 (4) WATER SUPPLY SYSTEMS. Water supply systems shall be of such material and workmanship as set forth in this subsection. All materials in contact with water, in a water supply system, shall be suitable for use with the water within the system. All pipes and pipe fittings for water supply systems shall be made of a material that contains ~~not more than 8% lead~~ a weighted average of not more than 0.25 percent in the wetted surface material.

SECTION 7. SPS 384.40 (8) (a) and (d) are amended to read:

SPS 384.40 (8) (a) *Brazed joints.* All joint surfaces to be brazed shall be cleaned bright by other than chemical means. Brazing filler metal conforming to AWS A5.8, NSF/ANSI 61, annex G, or other approved material shall be used. The joining of water supply piping shall be made with lead–free materials.

(d) *Soldered joints.* All joint surfaces to be soldered shall be made in accordance with ASTM B828. Flux approved by NSF for use in potable water systems shall be applied to all joint surfaces. Solder conforming to ASTM B32, NSF/ANSI 61, annex G, or other approved material shall be used. The joining of water supply piping shall be made with lead–free materials.

SECTION 8. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

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

Dated _____

Agency _____

Dave Ross, Secretary
Department of Safety and
Professional Services