



P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1816
TDD: Contact Through Relay

Scott Walker, Governor
Dave Ross, Secretary

January 3, 2012

Robert Marchant
Senate Chief Clerk
B20 Southeast, State Capitol
P.O. Box 7882
Madison, Wisconsin 53707-7882

Patrick Fuller
Assembly Chief Clerk
Room 401
17 West Main Street
Madison, Wisconsin 53703

TRANSMITTAL IN FINAL DRAFT FORM OF ADMINISTRATIVE RULES AND REPORT

CLEARINGHOUSE RULE NO.: 11-047

RULE NO.: Chapters Comm 41 and 45 (Become Chapters SPS 341 and 345 on January 1, 2012)

RELATING TO: Boilers and Pressure Vessels

Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the chief clerk 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.

This rule is not subject to s. 227.185. The statement of scope for this rule, published in Register No. 664, on April 15, 2011, was sent to LRB prior to the effective date of 2011 Wis. Act 21.

File reference: Comm 41/LR Chief Clerks



P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1816
TDD: Contact Through Relay

Scott Walker, Governor
Dave Ross, Secretary

January 3, 2012

Bruce Hoesly, Code Editor
1 East Main Street, Suite 200
Madison, Wisconsin 53703

NOTIFICATION OF RULE REFERRAL

Pursuant to section 227.19, Stats., the Department of Safety and Professional Services has referred

CLEARINGHOUSE RULE NO.: 11-047

RULE NO.: Chapters Comm 41 and 45 (Become Chapters SPS 341 and 345 on January 1, 2012)

RELATING TO: Boilers and Pressure Vessels

to the chief clerks of the Senate and Assembly of the Legislature for referral to the appropriate standing committees for Legislative review.

This rule is not subject to s. 227.185. The statement of scope for this rule, published in Register No. 664, on April 15, 2011, was sent to LRB prior to the effective date of 2011 Wis. Act 21.

File reference: Comm 41/LR Notice to LRB

RULE REPORT

Department of Safety and Professional Services

Clearinghouse Rule No.: 11-047

Rule No.: Chapters Comm 41 and 45 (Become Chapters SPS 341 and 345 on January 1, 2012)

Relating to: Boilers and Pressure Vessels

Contact person for substantive questions:

Contact person for internal processing:

Name Joe Hertel

Name Sam Rockweiler

Title Program Manager

Title Code Consultant

Telephone Number 266-5649

Telephone Number 266-0797

1. Basis and purpose of the proposed rule.

The main purpose of the rule changes is to update chapter SPS 341 to have it include newer editions of several referenced nationwide model codes and standards from the American Society of Mechanical Engineers (ASME) and the National Board of Boiler and Pressure Vessel Inspectors – such as the ASME *Boiler and Pressure Vessel Code*. The changes would also repeal any text that is either no longer used, redundant or not substantive, and would discontinue applying ASME nuclear power plant requirements that differ from the requirements applied by the federal Nuclear Regulatory Commission. The changes would also clarify and refine some of the administrative elements of the chapter, such as how authorized agents and insurance companies can participate in enforcing the chapter.

2. How the proposed rule advances relevant statutory goals or purposes.

Under sections 101.02 (1) and (15) (h) to (j) of the Statutes, the Department is required to establish rules and prescribe safeguards for protecting the life, health, safety and welfare of employees and frequenters of public buildings and places of employment. Under section 101.17 of the Statutes, installation and use of machines, mechanical devices and steam boilers must comply with the rules of the Department. The rule changes are consistent with these directives.

3. Changes to the rule analysis or fiscal estimate that was prepared for public hearing.

No substantive changes were made to the rule analysis and the fiscal estimate that were prepared for the public Hearing.

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Safety and Professional Services

CLEARINGHOUSE RULE NO.: 11-047

RULE NO.: Chapters Comm 41 and 45 (Become Chapters SPS 341 and 345 on January 1, 2012)

RELATING TO: Boilers and Pressure Vessels

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

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.

Less stringent requirements are not proposed for small businesses because (1) the equipment manufacturers that the included nationwide construction standards are directed at are not small businesses, and (2) the included nationwide inspection standards would be more difficult to understand and comply with if they were modified and applied differently in Wisconsin for small businesses.
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.

No such issues were raised, and no such changes were made.
3. Nature and estimated cost of preparation of any reports by small businesses.

No new substantive reporting would be imposed on small businesses.
4. Nature and estimated cost of other measures and investments required of small businesses.

None of the proposed rule changes are expected to significantly increase the current cost of installing and operating boilers and pressure vessels because the primary effect of the changes is to make chapter SPS 341 consistent with current regional and national-level standards for boilers and pressure vessels, and with current industry and regulatory practices.
5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small businesses.

None of the methods listed in 1. for reducing small-business impacts are included in the proposed rules.
6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.

None of the methods listed in 1. for reducing small-business impacts are included in the proposed rules.

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

Original Updated Corrected

Administrative Rule Chapter, Title and Number

SPS 341, Boilers and Pressure Vessels; and SPS 345, Mechanical Refrigeration

Subject

Boilers and pressure vessels

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Chapter 20 , Stats. Appropriations Affected

None

Fiscal Effect of Implementing the Rule

No Fiscal Effect
 Indeterminate

Increase Existing Revenues
 Decrease Existing Revenues

Increase Costs
 Could Absorb Within Agency's Budget
 Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy
 Local Government Units

Specific Businesses/Sectors
 Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

Policy Problem Addressed by the Rule

The industry standards that are adopted by reference in chapter SPS 341 are out-of-date because the sponsoring organizations have replaced them with newer editions.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule revisions would not impose significant additional costs or other impacts on a substantial number of businesses.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Keeping Wisconsin's requirements consistent with current industry standards avoids having manufacturers, suppliers, inspectors and insurers of the regulated equipment face a regulatory environment here that differs from their practices elsewhere.

Long Range Implications of Implementing the Rule

No adverse impacts are expected, and any uncertainties that could otherwise result by being inconsistent with corresponding regional and national-level practices will be avoided.

Compare With Approaches Being Used by Federal Government

The proposed rules for nuclear power plants would achieve consistency with the requirements applied by the Nuclear Regulatory Commission.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Minnesota already applies the latest edition of the ASME *Boiler and Pressure Vessel Code*, and the other three neighboring states are expected to soon do so as well.

Name and Phone Number of Contact Person

Sam Rockweiler, 608.266.0797

FISCAL ESTIMATE WORKSHEET
 Detailed Estimate of Annual Fiscal Effect
 DOA-2047(R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.
 Chapters Comm 41 and 45

Subject

Boilers and Pressure Vessels

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
A. State Costs By Category		
State Operations - Salaries and Fringes	\$0	-\$0
(FTE Position Changes)	(0.00 FTE)	(- 0.00 FTE)
State Operations - Other Costs	\$0	-\$0
Local Assistance	\$0	-\$0
Aids to Individuals or Organizations	\$0	-\$0
TOTAL State Costs By Category	\$0	-\$0
B. State Costs By Source of Funds	Increased Costs	Decreased Costs
GPR	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$0	-\$0
GPR Earned	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
TOTAL State Revenues	\$0	-\$0

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)

Safety and Professional Services/Joe Hertel
 266-5649

Authorized Signature/Telephone No.

Date

**DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

(Note: After the public hearing, chapter Comm 41 was renumbered chapter SPS 341, effective January 1, 2012, under section 13.92 (4) (b) 1. of the Statutes.)

Clearinghouse Rule Number: 11-047		Hearing Location: Madison, Wisconsin	
Rule Number: Chapters SPS 341 and 345		Hearing Date: November 11, 2011	
Relating to: Boilers and Pressure Vessels			
Comments:			
Oral or Exhibit No.			
Presenter, Group Represented, City and State		Comments/Recommendations	
1	Kenneth A. Stoller American Insurance Association Washington, DC	<p>Objects to adopting ASME CSD-1 as an <i>inspection</i> standard. States CSD-1 is a new-construction and installation standard that is intended to be used by boiler manufacturers and installing contractors. It requires the manufacturer to furnish detailed instructions for cleaning, maintenance and testing of controls and safety devices, as well as testing the operation of control systems and safety devices before releasing the boiler to the owner/user; and it requires the installing contractor to verify the satisfactory completion of testing of the controls and safety devices. States CSD-1 does not require a field inspector (i.e., an insurance inspector) to inspect these systems.</p> <p>States AIA supports the concepts behind CSD-1, but believes proposed sections SPS 341.16 (1) (a) 2. and 341.17 (7) would undesirably require National Board-commissioned insurance inspectors to inspect equipment that is beyond the scope of the National Board Inspection Code and beyond the coverage of the boiler and machinery insurance policy issued by the insurer.</p> <p>Recommends not deleting the requirement in section SPS 341.08 that the owner is responsible for payment of fees to the Department. Believes retaining this requirement would avoid creating the impression that an insurer who performs an inspection would be expected to pay the fees instead of the owner.</p>	Agency Response
		<p>The proposed rules have been revised to clarify that both the installation inspection and the periodic inspections for equipment which is installed under ASME CSD-1 simply include verification of whether the <i>documents</i> required by CSD-1 are available. This revision has resolved the objection.</p>	<p>Deleting the reference to who pays a fee to the Department does not transfer the responsibility to the insurance company, but instead allows another party to perform this service on behalf of the owner – which is consistent with the fee submittal processes throughout the Department’s fee chapter, SPS 302. Mandating that the owner perform this activity instead is unnecessary and excessively regulatory.</p>

File reference: Comm 41/Hearing summary



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Pam Shannon
Clearinghouse Director

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Assistant Directors

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 11-047

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 September 2008.]

2. Form, Style and Placement in Administrative Code

a. In the relating clause to the rule, the final phrase should read: “and affecting small business” (rather than “businesses”).

b. The rule includes the repeal and recreation of the Appendix to ch. Comm 41, which is 121 pages in single-spaced, two-column format. The analysis makes no mention of the Appendix, much less of what changes are made to it. The first page of the Appendix, though, explains that the Appendix is simply a reproduction of selected portions of the standards incorporated by reference in the rule, provided for the convenience of the reader. This explanation should be added to the analysis, as well.

c. The rule repeals a number of provisions. A brief explanation of what is repealed should be included in the analysis.

d. The rule makes a number of typographic changes to ch. Comm 41 by specifying, for example, that all occurrences of certain spellings or punctuations be replaced by another, such as in SECTION 22. It is suggested that all such provisions be collected together in a single SECTION at the end of the rule, rather than spread throughout the rule (presumably at the location of the first occurrence of each change to be made). Also, the analysis should make brief mention of the inclusion in the rule of these typographic changes.

e. The rule makes numerous changes to ch. Comm 41 that are rather complicated and, in a number of cases, drafted incorrectly. A common error in the rule is the combination of disparate treatments in a single rule SECTION. Usually this occurs in a SECTION that amends one rule unit but also either creates or repeals an entire subunit. [See SECTIONS 10 and 32 for examples.] These actions should be separated into individual SECTIONS for each type of treatment and where, for example, an amendment is followed by a creation which is followed by another amendment, they should be further separated into enough SECTIONS to keep all the types of treatment separate and all the rule parts in sequential order. Some individual errors are pointed out as examples, with detailed instructions on how to correct them. The entire rule should be reviewed carefully to find and correct all such errors. SECTIONS 100 and 101 are a good example of correct drafting format. [See s. 1.04, Manual for guidance on the correct arrangement of material in SECTIONS.]

f. The order of s. Comm 41.03 (1) (a) and (b) should be reversed, placing the more general statement of applicability first.

g. In s. Comm 41.03 (2) (a), the two occurrences of "department-written rule in this chapter" should be replaced with "provision of this chapter."

h. With regard to s. Comm 41.03 (2) (b) and (c), the correct manner to address the kinds of conflicts described here is to use "notwithstanding" and "except as provided" clauses in the specific provisions. The rule should not leave it to the reader to figure out which provision applies in a given instance.

i. Similarly, s. Comm 41.03 (3) uses an inappropriate drafting device. Section Comm 41.10 speaks for itself and there is no need for a statement in the section dealing with applicability [s. Comm 41.03 (3)] to say that it means what it says. If there are apparent conflicts, they should be addressed through the use of "notwithstanding" and "except as provided" clauses in the specific provisions.

j. Section Comm 41.04 (1) should be treated in one of the following ways: (1) repeal and recreate the subsection in a single SECTION and show the text of pars. (a) and (b) without strike-throughs or underscoring; or (2) treat the subsection in two SECTIONS, the first of which renumbers and amends Comm 41.04 (1) as Comm 41.04 (1) (a) and the second of which creates Comm 41.04 (1) (b) and (Note). The latter approach would show the reader how sub. (1) (a) is being modified. Also, the comma following "Alteration" should be outside the end quotation mark, as it is not part of the defined word.

k. Rather than renumbering numerous provisions within s. Comm 41.04, it would be preferable to use the decimal system described in s. 1.03 (2) (g), Manual, to insert new rule provisions in their proper numerical or alphabetical order. Renumbering impairs the ability to trace a provision's history and may result in ambiguity or error. It is best to avoid renumbering any unit to eliminate a gap in numbering, as is done in SECTIONS 15 and 16 and elsewhere, or to otherwise reuse a previously existing number that is eliminated by repeal.

l. The treatment clause to SECTION 25 should read: "Comm 41.04 (30) and (Note) are repealed."

m. The treatment of s. Comm 41.08 should be done in three rule SECTIONS: the first should renumber Comm 41.08 (1) as Comm 41.08 and amend the renumbered provision; the second should repeal s. Comm 41.08 (2); and the third should create Comm 41.08 (Note).

n. Section Comm 41.09 (3) relates to inspections, not enforcement, and so would be more appropriately placed in subch. II, perhaps numbered as s. Comm 41.15 (4).

o. Together, SECTIONS 35 and 36 of the rule make a number of changes to current s. Comm 41.10, Adoption of Standards by Reference. The treatment clauses to the two SECTIONS are drafted incorrectly and, among other things, there are errors in the renumbering of provisions and the treatment of notes. To avoid confusion and improve readability, it is suggested that s. Comm 41.10 be repealed and recreated. That would be done in SECTION 35, with the following treatment clause: "SECTION 35. Comm 41.10 is repealed and recreated to read:". The rule text would be drafted as the department wishes it to read once the rule is promulgated, without any strike-throughs or underscores. Notes no longer needed would simply be deleted and newly created notes would be inserted as needed. Current notes the department wishes to amend should be drafted as they will appear in the rule as promulgated, again without strike-throughs or underscores.

Where some material leads into other material, for example, in s. Comm 41.10 (2) (intro.), which leads into pars. (a) and (b), draft the (intro.) with language that ends grammatically in a colon and leads logically to the language in pars. (a) and (b). For example, sub. (2) (intro.) could say: "The following standards of the American Society of Mechanical Engineers (ASME):". Then, all provisions relating to ASME could be listed in paragraphs under the (intro.). This would appear to include the language in proposed sub. (2) (a) to (e), some of which is in current SECTION 36. Place any notes immediately after the provision or provisions to which they apply.

p. The rule should include a note to the LRB indicating in which subchapter, subch. I or subch. II, the new s. Comm 41.11 is to be placed. If it pertains to inspections, it should be in subch. II.

q. Section Comm 41.15 (4) (a) should be rewritten in the active voice to clearly indicate who must provide the inspection reports. Is it the inspector? The department? There are numerous other examples in the rule of duties such as these that should be stated in the active voice. [See s. 1.01 (1), Manual.]

r. SECTION 46 of the rule combines a variety of treatments, including renumbering, amending, and creating. SECTIONS 47 and 48 provide separate treatments, repealing and creating, respectively, but not in the sequence of the provisions as they appear in the code. These various treatments should be separated into a number of SECTIONS, each providing a separate treatment of the rule provisions, in sequence.

s. In the treatment of s. Comm 41.33 and numerous other provisions, hyphens are inserted in an incorrect manner. In the example of inserting a hyphen between "pressure" and "reducing," the correct format is as follows: ~~pressure reducing~~ pressure-reducing.

t. It is unclear why the rule changes s. Comm 41.33 (intro.) into a subsection, as it does appear to introduce the material in the following subsections. The final sentence is substantive, though, and could be moved to one of the existing subsections or made a subsection of its own.

u. Section Comm 41.33 (1) (title) should be created in a separate SECTION, following SECTION 69 of the rule. See SECTIONS 93 and 94 of the rule for an example of correct format for this type of treatment.

v. The treatment of s. Comm 41.36 should be accomplished in two SECTIONS, the first of which repeals Comm 41.36 (2) (title) and the second of which rennumbers Comm 41.36 (2) as Comm 41.36.

w. In references to sections of the statutes or administrative rules, the word "section" is spelled out only if it is the first word in a sentence; otherwise, it is abbreviated "s." (for singular) or "ss." (for plural). SECTIONS 71 and 74 change correct formats to incorrect formats.

x. The treatment of s. Comm 41.38 (1) is complicated. The correct sequence of actions is the following:

SECTION X. Comm 41.38 (1) (intro.), (a), and (b) are consolidated, renumbered Comm 41.38 (1) (a), and amended to read:

Comm 41.38 (1) ACCIDENTS. (a) ~~Whenever~~ If a component of a boiler, or pressure vessel, or power piping fails and causes an injury to any person that needs more than first aid treatment, the owner or user shall ~~do all of the following:~~ report the facts involved to the department on form SBD-10787-E during normal business hours or notify the state division of emergency management during non-business hours within 24 hours of the accident. (b) ~~Shall~~ The owner or user may not remove or disturb the boiler, or pressure vessel, or power piping or any of...etc.

SECTION Y. Comm 41.38 (1) (a) (Note) and (b) are created to read: [Note that the underscoring should be removed from both of these provisions, as they contain newly created language. [See s. 1.06 (1), Manual.]

...

SECTION Z. Comm 41.38 (1) (b) (Notes) and (4) (Note) are amended to read:

...

y. Also, with regard to the note following s. Comm 41.38 (1) (a), the third note following sub. (1) (b), and the note following sub. (4):

(1) Is *www.commerce.wi.gov* (emphasis added) still the correct website address, in light of the dissolution of the Department of Commerce?

(2) The three notes contain identical language. It appears that one note should suffice if it is drafted to make clear that it applies to the entire section.

z. In s. Comm 41.41 (1) (a), the amendment of the form number should be written as follows: ~~SBD-6314~~ SBD-6314-E. Similarly, in s. Comm 41.41 (4) (b), the insertion of the hyphen should be written as follows: ~~solid-fuel-fired~~ solid-fuel-fired. In a number of locations in the rule, the revision of the reference to ANSI/ASME standards should be written as follows: ~~ANSI/ASME~~ ASME. The rule should be reviewed for other errors of this nature.

aa. The note following s. Comm 41.41 (2) (c) appears to contain substantive material relating to a provision [s. 41.16 (2) (c)] that appears much earlier in the chapter. The substantive language should be in rule text, not in a note, and its current placement should be reviewed.

bb. It is appropriate to number the notes following s. Comm 41.42 (1), but the rule does not entirely accomplish this. Two steps are required. The first step is to give numbers to the existing notes; the second step is to create and number the two new notes. Note that SECTION 79 of the rule states that it creates Note [3], but the “[3]” designation is missing from the text. Also, in Note [3], should “with” be inserted before “Canadian”?

cc. The department may wish to number multiple notes occurring in other provisions of ch. Comm 41, using the technique described in the previous comment.

dd. SECTION 80 should be separated into three SECTIONS: the first would amend Comm 41.42 (2) (a); the second would renumber Comm 41.42 (3) as Comm 41.42 (3) (a) and amend it; and the third would create Comm 41.42 (3) (b).

ee. Section Comm 41.62 (2) (a) 2. b. should be numbered s. Comm 41.62 (2) (a) 3.

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

In the note following s. Comm 41.03 (1) (c), the correct reference is “chs. Comm 61 to 66”, without reference to the Wisconsin Commercial Building Code. [See s. 1.07, Manual, with particular attention to the format of internal references. Note that, since the Building Code is part of the Wisconsin Administrative Code, as is ch. Comm 41, this is actually an internal reference.]

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

a. In s. 41.04 (4), the definition of “authorized agent” is confusing. Paragraph (a) says that it is “[a] certified inspector who is addressed in a written contract with the department as enforcing this chapter.” What does it mean to be “addressed” in a written contract? Between whom is the contract? This definition appears to assume that the reader already knows a great deal that is not specified in the definition. Paragraph (b) states that the City of Milwaukee is an authorized agent. Is that literally what is intended? Since s. Comm 41.04 (4) (intro.) states that

an "authorized agent" is either (a) or (b) *or their authorized representatives*, does par. (b) mean that anyone authorized by the City of Milwaukee is an authorized agent?

b. The word choices in s. Comm 41.03 (1) (a) and (c), "that are existing" and "that exist," are unclear. What is meant by "does not apply retroactively to boilers...that are existing prior to the effective date"? Does "existing" mean "installed"? Or does it refer to any of the described equipment regardless of whether it is already installed or being installed in a public building or in a one- or two-family residence? A more precise and descriptive term would help clarify the intent.

c. Perhaps even more confusing is s. Comm 41.27. Since it refers to boilers "existing or installed," existing and installed must have different meanings (or else two separate words would not be needed). What that difference is, though, is unclear. That provision specifies that certain rules apply to boilers and pressure vessels existing or installed on or after the effective date of the rule. If "existing" refers to equipment that was previously installed, then "existing or installed on or after" would appear to include *all* boilers and pressure vessels, since "existing on" would be equivalent to "installed before." See also s. Comm 41.53 (1).

d. In the definition of "relief valve" in s. Comm 41.04 (29), no comma should be inserted. ("Which" is preceded by a comma; "that" is not.)

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Safety and Professional Services

CLEARINGHOUSE RULE NO.: 11-047

RULE NO.: Chapters Comm 41 and 45 (Become Chapters SPS 341 and 345 on January 1, 2012)

RELATING TO: Boilers and Pressure Vessels

Agency contact person for substantive questions.

Name: Joe Hertel

Title: Program Manager

Telephone No. 266-5649

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

(Continued on next page)

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

RESPONSE COMMENTS TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

(Note: After issuance of the Clearinghouse report, chapter Comm 41 was renumbered chapter SPS 341 under s. 13.92 (4) (b) 1., Stats., and most of the Department's other Comm chapters were likewise changed to instead have an SPS prefix and to include 300 added to numbering.)

Clearinghouse comment 2. g. In s. SPS 341.03 (2) (a), the Department prefers to not replace “department-written rule in this chapter” with “provision of this chapter” because (1) “provision of this chapter” includes not only the Department-written rules in the chapter but also the national standards that are incorporated by reference into the chapter, and (2) the purpose of this section is to make the Department-written rules supersede any differing provisions in the incorporated standards.

Clearinghouse comment 2. h. The Department has diligently sought throughout the chapter to provide clear and ample direction in how to apply the included national standards in conjunction with the included department-written rules, so as to not leave the reader to figure out which provision applies in any given instance. The purpose of s. SPS 341.03 (2) (b) and (c), as proposed, is to provide a framework for resolving any uncertainty that might arise from any provisions that are subsequently found to differ. This resolution could include the Department oversight referenced in s. SPS 341.03 (4), if needed.

Clearinghouse comment 2. j. The Department prefers to include commas inside closing quotation marks in order to follow the preferred American style, as conveyed in rule number 247 in the 11th edition of *The Gregg Reference Manual*.

Clearinghouse comment 2. k. The Department prefers to not renumber all of the definitions in s. SPS 341.04 so that each of them are in separate, decimal-numbered sections, because the Department's numerous other codes typically likewise place each definition in separate subsections within a single section. The clarity that is obtained in the proposed rules by having un-gapped, numeric-only numbering of these definitions outweighs any value of having an unimpaired history for them, especially because they cannot contain substantive provisions.

Clearinghouse comment 2. q. The Department has rewritten s. SPS 341.15 (5) (a) as recommended, but prefers to retain all of the chapter's other uses of the passive voice. Although a facility's owner typically is ultimately responsible for having any prescribed action occur, mandating who they have perform it, such as in submitting a fee to the Department under ch. SPS 302, usually is unnecessary and excessively regulatory.

Clearinghouse comment 2. w. The Department prefers to not abbreviate “section” in the note under s. SPS 341.37 (3) because the purpose of notes is to be explanatory, and abbreviations may be less than fully explanatory to some readers of this chapter. In s. SPS 341.40, “ss.” is change to “Sections” because the deletions that precede it cause it to now begin the sentence.

Clearinghouse comment 2. bb. Because the Legislative Reference Bureau no longer sequentially numbers multiple notes in an individual section when publishing an Administrative Code chapter, any bracketed number following use of “Note” in the proposed rules instead serves either to inform the reader of the order in which the Department proposes to add one or more new notes to one or more existing notes, or to otherwise specifically address one or more but not all of a set of notes in a section.

Clearinghouse comment 4. Because the purpose of notes is to be explanatory, the Department prefers to include the title of chapters SPS 361 to 366 in the note following s. SPS 341.03 (1) (c) in order to convey to the reader the general content of those chapters.

Clearinghouse comment 5. a. Under s. SPS 341.04 (4), the City of Milwaukee is intended to be an authorized agent, and any party designated by the City to be their authorized representative would likewise be an authorized agent.

File reference: Comm 41/Legislative Review Clghse