

**STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
DEPARTMENT OF SAFETY AND : CLEARINGHOUSE RULE 18-076
PROFESSIONAL SERVICES :**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

These rule revisions would not require use of any new or revised forms.

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

This proposed rule is predicated upon 2017 WI Act 338 and updates the administrative code by adding the statutory citation for the meaning of the term home inspection “defect”. This rule also amends the home inspection report by using the defect term. The rule provides that a written home inspection report is not required to use the term defect, but if the term is used, the written report must conform to the exact definition provided in statutes.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD’S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Department held a public hearing on November 21, 2018. The following people either testified at the hearing, or submitted written comments:

Mr. Chuck Staab, a private, registered Wisconsin home inspector submitted email comments regarding EmR1822.

The Wisconsin Association of Home Inspectors, Inc., provided a letter supporting the rule.

The Board summarizes the comments received either by hearing testimony or by written submission as follows:

In part, the WAHI's letter states:

WAHI worked collectively with the Wisconsin Realtors Association (WRA) to determine the language that was included as part of 2017 Act 338... The Association has reviewed the proposed changes to SPS 131.02 and SPS 131.33 that are included in EmR1822 and CR 18-076. WAHI is in full support of the proposed changes as it reflects the intentions of 2017 Act 338.

In his email comments, Mr. Staab suggested the phrase, "materially adverse fact" under s. SPS 131.02 (17) may be similar to the term, defect. He suggested an insufficiently competent home inspector might still describe a defect as a material adverse fact under s. SPS 131.33 (1) (e).

Mr. Staab also questioned the interpretation of the wording of s. SPS 131.33 (1) (d) and believes the structure of this section to be too strict and does not allow room for inspector judgement.

Mr. Staab suggested that additional rules should be promulgated regarding carbon monoxide detectors.

Mr. Staab pointed out a transposed statutory citation.

The Board explains modifications to its rule-making proposal prompted by public comments as follows:

Written comments by the WAHI were supportive of the rule. The transposed statutory citation noted by Mr. Staab and the Clearinghouse was corrected. Other suggestions made by Mr. Staab were rejected from this draft so as not to offset the legislatively created balance of interests between home inspectors and realtors.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment: 1. The statutory citation of s. 440.974 (1), Stats. contained a transposed number.

Response: Corrected.

Comment: 2 a. The caption for the proposed rule, both title and language notifying the public about the submission of comments should be deleted.

Response: Deleted.

Comment: 2b. The introductory clause was missing an amended section citation.

Response: Citation added.

Comment: 5a. Suggestion to consider revising the rule summary discussion regarding related statutes or rules.

Response: Rejected. This was a stylistic suggestion with no material impact.

Comment: 5b. The rule summary's plain language analysis should specify that if the term "defect" is used, the actual use of that term in the written report must conform to the exact definition provided in the statutes.

Response: Rejected. The plain language analysis contains this exact language.

Comment: 5c. & 5d. Grammatical suggestions.

Response: Corrected.

Comment: 5e. Suggested the term, "defect" is a single concept and therefore suggested combining ss. SPS 131.33 (2m) and SPS 131.33 (3m) into one section.

Response: Rejected. The combining of these sections was considered during drafting and ultimately rejected. While the concepts are indeed similar, there is a separation of issues at stake. SPS 131.33 (2m) relates to written home inspection reports while SPS 131.33 (3m) relates to written home inspection reports *and* verbal reports.

There were no other recommendations in the Clearinghouse Report.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

This rule was not submitted to the Small Business Regulatory Review Board.

This rule does not have an economic impact on small businesses.

STATE OF WISCONSIN
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PROCEEDINGS BEFORE THE	:	DEPARTMENT OF SAFETY AND
DEPARTMENT OF SAFETY AND	:	PROFESSIONAL SERVICES
PROFESSIONAL SERVICES	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 18-076)

ORDER

An order of the Department of Safety and Professional Services to amend SPS 131.33 (1) (d); and to create SPS 131.02 (6m), 131.33 (2m), and 131.33 (3m), relating to the written reports of home inspectors.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Subchapter XI of ch. 440, Stats.

Statutory authority: Sections 227.11 (2) (a), and 440.974 (1), Stats.

Explanation of board authority:

Section 227.11 (2) (a), Wis. 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.

Section 440.974 (1) "The department shall promulgate rules necessary to administer this subchapter including rules to establish all of the following:

- (a) Standards for acceptable examination performance by an applicant for registration.
- (b) Subject to s. 440.975, standards for the practice of home inspection by home inspectors and standards for specifying the mechanical and structural components of improvements to residential real property that are included in a home inspection. The rules promulgated under this paragraph shall include standards for the inspection of carbon monoxide detectors. The rules promulgated under this paragraph may not require a home inspector to use a specified form for the report required under s. 440.975 (3).
- (c) Subject to s. 440.975, the information that a home inspector is required to provide to a client concerning the results of the home inspection conducted by the home inspector."

Related statute or rule:

Wisconsin home inspector requirements are found in chs. 15 and 440, Stats., the administrative code in ch. SPS 131, and DSPS administrative code chs. SPS 1 to 9, which outlines the administrative procedures for issuing licenses.

Plain language analysis:

This proposed rule updates the administrative code by adding the statutory citation for the meaning of the term home inspection “defect” and amends the home inspection report by using the defect term. This rule also provides that a written home inspection report is not required to use the term defect, but if the term is used, the written report must conform to the exact definition provided in the statutes.

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

Federal regulations do not govern home inspectors.

Comparison with rules in adjacent states:

Illinois: The state of Illinois uses the term, “significantly deficient” which means unsafe or not functioning. Illinois also uses the term “unsafe,” which they define as a condition in a system or component that poses a significant risk of personal injury or property damage during normal, day-to-day use. The risk, they include, may be due to damage, deterioration, improper installation or a change in accepted residential construction standards.

Iowa: The state of Iowa does not have licensing requirements for home inspectors. Generally, real estate agents are trained and certified in home inspection and are required to disclose material adverse facts.

Michigan: The state of Michigan does not have licensing requirements for home inspectors. Generally, real estate agents are trained and certified in home inspection and are required to disclose material adverse facts.

Minnesota: The state of Minnesota does not have licensing requirements for home inspectors. Generally, real estate agents are trained and certified in home inspection and are required to disclose material adverse facts.

Summary of factual data and analytical methodologies:

The basis for this rule is 2017 Wisconsin Act 338. The Wisconsin Association of Home Inspectors was contacted for additional background information.

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

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. While one person did comment on the rule via email, those comments were technical in nature and did not describe any fiscal impact.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document 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 Kirsten.Reader@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Greg DiMiceli, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Greg DiMiceli, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708, or by email to DSPSAdminRules@wisconsin.gov. Comments must be submitted by the date and time at which the public hearing on these rules is conducted. Information as to the place, date, and time of the public hearing will be published on the Department of Safety and Professional Services' website and in the Wisconsin Administrative Register.

TEXT OF RULE

Section 1. SPS 131.02 (6m) is created to read:

SPS 131.02 (6m) "Defect" has the meaning given in s. 440.97 (2m), Stats.

Section 2. SPS 131.33 (1) (d) is amended to read:

SPS 131.33 (1) (d) Describes ~~the condition of~~ any defect that is detected by the home inspector item identified in s. SPS 131.32 that, if not repaired, will have significant adverse effect on the life expectancy of the identified item.

Section 3. SPS 131.33 (2m) is created to read:

SPS 131.33 (2m) A home inspector is not required to use the term “defect” in describing a defect in the written home inspection report described in this section.

Section 4. SPS 131.33 (3m) is created to read:

SPS 131.33 (3m) A home inspector may not use the term “defect” in the written home inspection report described in this section unless that use is consistent with s. SPS 131.02 (6m).

Section 5. 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 12-5-18

Agency Laura E. Gutiérrez
Secretary
Department of Safety and Professional Services

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		2. Date 09/12/2018
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) SPS 131		
4. Subject Written reports of home inspectors		
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected	
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget		
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)		
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0		
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
11. Policy Problem Addressed by the Rule This rule updates the administrative code by adding the statutory citation for the meaning of the term home inspection "defect".		
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. Home Inspectors/Realators		
13. Identify the Local Governmental Units that Participated in the Development of this EIA. N/A		
14. 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) None		
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule This rule will clarify what the meaning of defect is when evaluating real estate property.		
16. Long Range Implications of Implementing the Rule This rule will establish a base line for the meaning of the term, defect.		
17. Compare With Approaches Being Used by Federal Government Federal regulations do not govern home inspectors.		
18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota) Illinois: The state of Illinois uses the term, "significantly deficient" which means unsafe or not functioning. Illinois also uses the term, "unsafe" which they define as a condition in a system or component that poses a significant risk of personal injury or property damage during normal, day-to-day use. The risk, they include, may be due to damage, deterioration, improper installation or a change in accepted residential construction standards.		

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

Iowa: The state of Iowa does not have licensing requirements for home inspectors. Generally, real estate agents are trained and certified in home inspection and are required to disclose material adverse facts.

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19. Contact Name

Greg DiMiceli

20. Contact Phone Number

266-0955

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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