

**Report From Agency**

**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.