

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY AND
DEPARTMENT OF SAFETY AND : PROFESSIONAL SERVICES
PROFESSIONAL SERVICES : (CLEARINGHOUSE RULE 22-004)
ADOPTING RULES

PROPOSED ORDER

An order of the Department of Safety and Professional Services to repeal SPS 131.33 (2m) and (3m), and 131.43 (2); to amend SPS 131.11 (title) and (intro.), 131.12 (intro.) and (2), 131 sub. V (title), and 131.41 (2); to repeal and recreate SPS 131.11 (1) (note), 131.11 (4), 131.21 (1) (note) and (2), 131.24 (note), 131.33 (1) (d); and to create SPS 131.11 (5), 131.113, 131.115, 131.33 (1) (bm) and (f), 131.40 and 131.405; relating to home inspections and home inspector education.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 440.03 (4m), 440.09, 440.974 and 440.975, stats.

Statutory authority: Sections 440.974 and 440.975, stats.

Explanation of agency authority:

Section 227.11 (2) (a), Stats.: “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, Stats. provides: “(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.

(ag) Standards for instruction for purposes of the requirement under s. 440.972 (1) (bg).

(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.

(2) The department shall promulgate rules establishing continuing education requirements for individuals registered under this subchapter. The rules promulgated under this subsection shall require the completion of at least 40 hours of continuing education every 2 years, except that the rules may not require continuing education for an applicant for renewal of a registration that expires on the 1st and 2nd renewal dates after the date on which the department initially granted the registration.”

Related statute or rule: None.

Plain language analysis:

This rule project implements 2021 Wisconsin Act 17, which required the department to create rules relating to the following matters pertinent to home inspection registration and practice:

- Require at least 40 hours of pre-registration education experience and provide standards for the department to approve applicant education. The rules require 40 hours of instruction, with at least 20 hours coming from hand-on instruction in the performance of home inspections and home inspection report writing.
- Provide a pathway for individuals credentialed as a home inspector in another state to apply for reciprocal registration as a home inspector in Wisconsin.
- Eliminate the requirement that registrants complete continuing education during their first two renewal periods as a registered home inspector.
- Revise the department’s rules regarding home inspection standards to reflect that home inspection reports must include a summary page with references to the full report, list any defects discovered by the home inspector, and disclosures to the client including a reminder that the summary page is not a substitute for reading the entire report, as well as a statement reminding the client that the home inspector may not provide an opinion on the marketability of the home nor provide an opinion as to whether or not the home should be purchased.

The rule project also brings the department’s rules into compliance with other recent legislative enactments, including the arrest record and conviction discrimination provisions in 2017 Act 278; the special pathway for service members, former service members, and their spouses to obtain reciprocity created under 2019 Act 143; and removed the continuing education audit provision as required by 2017 Act 59.

Finally, notes containing incorrect agency contact information have been revised.

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

None.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:

A preliminary hearing on statement of scope was held on June 18, 2021. The following people and entities commented on the proposed scope:

- Julie Arnstein with the Wisconsin Association of Home Inspectors (WAHI) expressed support for the requirement that home inspectors complete pre-registration education and stated that many already do so as part of the process of studying for and taking the required examination. She also expressed support for requiring that at least some of the pre-registration education include field training in the performance of home inspections. She expressed interest in working with the department on providing input in the drafting of the administrative rules.
- Scott Newcomer and Joel Kleefisch with the All American Association of Home Inspectors (AAAI) also expressed support for requiring field training as part of the pre-registration education requirement. Mr. Newcomer suggested that ½ of the required 40 hours involve field training. He also recommended that education providers be approved by the department in advance. Mr. Newcomer and Mr. Kleefisch expressed interest in working with the department on providing input in the drafting of the administrative rules.

The input received from the WAHI and AAAI was considered in drafting this rule. A requirement that at least 20 of the 40 hours of required education involve training in the performance of home inspections was incorporated into the rule based on this input.

Comparison with rules in adjacent states:

Illinois: Illinois requires 60 hours of pre-licensure education for home inspectors. Programs must be preapproved by the board. The program must include study of exteriors, interiors, roofing, plumbing, electrical, HVAC, structural components, miscellaneous appliances, laws and regulations, and standards of practice including report writing and required disclosures. The program must also include at least 5 field inspection events. (See 68 Ill. Admin. Code § 1410.520).

Each biennium home inspectors are required to complete at least 12 hours of continuing education, unless it has been less than one year since initial licensure, in which case no continuing education is required. If more than one year has passed since initial licensure, at least 6 continuing education hours are required. (See 68 Ill. Admin. Code § 1410.160).

Illinois requires the home inspector to provide the client with a written report that includes the home inspector's name, address and license number, components that will be inspected, and report on any significant deficiencies, why there is a deficiency, and whether the deficiency needs to be corrected. A summary document is not required. (See 68 Ill. Admin. Code § 1410.200).

Iowa: Iowa does not credential home inspectors.

Michigan: Michigan does not credential home inspectors.

Minnesota: Minnesota does not credential home inspectors.

Summary of factual data and analytical methodologies:

The department reviewed the provisions of 2021 Wisconsin Act 17 and revised its administrative rules in ch. SPS 131 to bring them into conformity with Act 17 and other state statutes. The department received and considered input from several organizations, including the Wisconsin Association of Home Inspectors (WAHI) and the All American Association of Home Inspectors (AAAI) in drafting these rules, particularly as it relates to the required pre-registration education requirement.

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

The rule was posted on the department's website for 14 days to solicit economic impact comments from small businesses. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis are attached.

Effect on small business:

These proposed rules are not anticipated to 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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Jon Derenne, Attorney, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, 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:

A public hearing was held on February 4, 2022 at 11:00 AM.

TEXT OF RULE

SECTION 1. SPS 131.11 (title) and (intro.) are amended to read:

SPS 131.11 Application for home inspector registration ~~on or after January 1, 2001.~~

An applicant for registration as a home inspector ~~who applies for registration on or after January 1, 2001,~~ shall submit all of the following:

SECTION 2. SPS 131.11 (1) (note) and (4) are repealed and recreated to read:

Note: Application forms are available on the department's website at <https://dsps.wi.gov/pages/Home.aspx>, or by request from the Department of Safety and Professional Services, P.O. Box 8935, Madison, WI 53708, or call (608) 266-2112.

(4) Subject to ss. 111.321, 111.322, and 111.335, Stats., evidence necessary for the department to determine that the applicant is not the subject of a pending criminal charge, nor has been convicted of an offense, the circumstances of which substantially relate to the practice of home inspection.

SECTION 3. SPS 131.11 (5) is created to read:

SPS 131.11 (5) Evidence satisfactory to the department that the applicant has completed at least 40 hours of pre-registration instruction approved by the department under s. 440.974 (1) (ag), Stats.

SECTION 4. SPS 131.113 is created to read:

SPS 131.113 Reciprocity, generally.

(1) An applicant registered or licensed in good standing in another state may apply for home inspector registration by submitting the following materials:

- (a) A completed application form.
- (b) The fee specified in s. 440.05 (2), Stats.
- (c) Evidence of successful passage of the examination specified in s. SPS 131.21 (2).
- (d) Evidence that the individual is registered or licensed in good standing as a home inspector in another state.
- (e) Subject to ss. 111.321, 111.322, and 111.335, Stats., documentation necessary for the department to determine that the applicant is not the subject of a pending criminal charge, nor has been convicted of an offense, the circumstances of which substantially relate to the practice of home inspection.

(2) The department shall issue a reciprocal home inspector registration if both of the following are true:

- (a) The department determines that the applicant satisfies the requirements in sub. (1).
- (b) The department determines that the requirements for registration or licensure in the state where the applicant is currently registered or licensed meet or exceed the requirements in sub. (1).

Note: Application forms are available on the department's website at <https://dsps.wi.gov/pages/Home.aspx>, or by request from the Department of Safety and Professional Services, P.O. Box 8935, Madison, WI 53708, or call (608) 266-2112.

SECTION 5. SPS 131.115 is created to read:

SPS 131.115 Reciprocity for service members, former service members, and their spouses.

(1) As used in this section:

- (a) “Former service member” has the meaning provided in s. 440.09 (1) (a), Stats.
- (b) “Service member” has the meaning provided in s. 440.09 (1) (b), Stats.
- (c) “Spouse” has the meaning provided in s. 440.09 (1) (c), Stats.

(2) The department shall register as a home inspector a service member, former service member, or spouse of a service member or former service member, who the board determines meets all of the requirements under s. 440.09 (2), Stats.

(3) Subject to s. 440.09 (2m), Stats., the board may request verification necessary to make a determination under this section.

Note: Application forms are available on the department’s website at <https://dsps.wi.gov/pages/Home.aspx>, or by request from the Department of Safety and Professional Services, P.O. Box 8935, Madison, WI 53708, or call (608) 266–2112.

SECTION 6. SPS 131.12 (intro.) and (2) are amended to read:

SPS 131.12 To renew a home inspector registration, a registrant shall, ~~on or before December 15 of each even-numbered year following initial registration,~~ file with the department all of the following

(2) Evidence that the registrant has, during the biennial period immediately preceding application, complied with the continuing education requirements in subch. V. This subsection does not apply to first and second renewal dates after the date on which the registrant was initially registered by the department.

SECTION 7. SPS 131.21 (1) (note) and (2) are repealed and recreated to read:

SPS 131.21 (2) The examination consists of two parts. Part I shall consist of an examination relating to the Wisconsin statutes and administrative rules that relate to the practice of home inspection. Part II shall consist of an examination relating to the principles and procedures that relate to the practice of home inspection.

Note: Application forms are available on the department’s website at <https://dsps.wi.gov/pages/Home.aspx>, or by request from the Department of Safety and Professional Services, P.O. Box 8935, Madison, WI 53708, or call (608) 266–2112. An otherwise qualified applicant with a disability shall be provided with reasonable accommodations.

SECTION 8. SPS 131.24 (note) is repealed and recreated to read:

Note: Application forms are available on the department's website at <https://dsps.wi.gov/pages/Home.aspx>, or by request from the Department of Safety and Professional Services, P.O. Box 8935, Madison, WI 53708, or call (608) 266-2112.

SECTION 9. SPS 131.33 (1) (bm) is created to read:

SPS 131.33 (1) (bm) States the property address, the name of the home inspector who conducted the home inspection, the date of the home inspection, the names of the individuals who prepared the report, the date the report was prepared, and, if applicable, the date the report was revised.

SECTION 10. SPS 131.33 (1) (d) is repealed and recreated to read:

SPS 131.33 (1) (d) Describes any defect that is detected by the home inspector during his or her home inspection. A home inspector shall use the term "defect" in describing a condition in the written report required under this subsection if the home inspector believes the condition satisfies the definition of "defect" under s. 440.97 (2m), Stats.

SECTION 11. SPS 131.33 (1) (f) is created to read:

SPS 131.33 (1) (f) A summary page that includes at least all of the following:

1. A list of conditions, labeled as defects, that are observed under par. (d) of this section to be defects.
2. Other than items labeled as defects, a listing of components needing repairs, components needing further evaluation, items to monitor, and maintenance items.
3. References to the page, heading, or item number in the full written report for further information.
4. The disclosures required under s. 440.975 (3) (cr) 3., Stats.

SECTION 12. SPS 131.33 (2m) and (3m) are repealed.

SECTION 13. SPS 131 sub. V (title) is amended to read:

Subchapter V — ~~Continuing~~ Education Requirements

SECTION 14. SPS 131.40 is created to read:

SPS 131.40 Education requirement for initial registration. An applicant for registration as a home inspector must have completed at least 40 hours of pre-registration instruction approved by the department under s. SPS 131.405.

SECTION 15. SPS 131.405 is created to read:

SPS 131.405 Standards for approval of pre-registration education. An acceptable pre-registration instruction program shall meet all of the following criteria:

- (1) Include instruction in an organized method of learning contributing directly to the professional competency of the registrant and pertaining to subject matters that significantly relate to the practice of home inspection.
- (2) Include at least 20 hours of hands-on training in the performance of home inspections and drafting of home inspection reports.
- (3) Be conducted by individuals or entities which have specialized education, training, or experience in the subject matter of home inspections.
- (4) Provide a record evidencing completion of the training program that shall include all of the following:
 - (a) The name of the course.
 - (b) The provider's name.
 - (c) The registrant's name.
 - (d) The date of completion.
 - (e) The location of the course.
 - (f) The number of hours.
 - (g) A signature from the instructor or provider.

SECTION 16. SPS 131.41 (2) is amended to read:

SPS 131.41 (2) A registrant is not required to complete continuing education credit hours between initial registration and the ~~first~~ conclusion of the second registration renewal period.

SECTION 17. SPS 131.43 (2) is repealed.

SECTION 18. 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 _____

 Secretary

