

👉 **09hr_JCR-AR_CRule_09-033_pt01**



(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

**STATE OF WISCONSIN
EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS**

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : EXAMINING BOARD OF ARCHITECTS,
EXAMINING BOARD OF ARCHITECTS, : LANDSCAPE ARCHITECTS,
LANDSCAPE ARCHITECTS, : PROFESSIONAL ENGINEERS,
PROFESSIONAL ENGINEERS, : DESIGNERS AND LAND SURVEYORS
DESIGNERS AND LAND SURVEYORS : ADOPTING RULES
: (CLEARINGHOUSE RULE 09-033)**

TO: Senator Jim Holperin, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 409 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS is submitting in final draft form rules relating to the definitions of supervision, direct supervision, responsible charge, and direction and control.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

Thank you.

**STATE OF WISCONSIN
EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS**

**IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
EXAMINING BOARD OF ARCHITECTS, : ON CLEARINGHOUSE RULE 09-033
LANDSCAPE ARCHITECTS, : (s. 227.19 (3), Stats.)
PROFESSIONAL ENGINEERS, :
DESIGNERS AND LAND SURVEYORS :**

I. THE PROPOSED RULE:

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

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

The department estimates that the proposed rule will have no significant fiscal impact. The department finds that this rule has no significant fiscal effect on the private sector.

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

The intent of the proposed rule is to provide clearer direction to registrants in the act of signing, sealing or stamping plans, drawings, documents, specification or reports for architectural, landscape architectural, professional engineering, design practice or land surveying practice. The importance of clarifying the definitions is due to various changes in the practice of the registrants. Foremost is the change resulting from advances in electronic communication and technology which allows professional services to be performed almost anywhere in the world. The globalization of practice can result in a registrant being deemed to be in responsible charge of a project and the persons who perform services under the registrants' direction and control, while neither are present in the same location or even in the same time zone.

In addition, the clarification of the meaning of the terms is increasingly important as a result of changes in the profession where contractual responsibilities may change over the course of a project and different registrants are involved in the preparation or direction and control of plans and documents during different phases or percentage of completion of the project.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on May 27, 2009. The following individuals appeared at the public hearing and spoke in support of the proposed rules:

Francis Thousand, Land Surveyor, Madison, WI, Wisconsin Society of Land Surveyors
Charles Kopplin, Professional Engineer, Greenfield, WI.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

All of the recommendations suggested in the Clearinghouse Report were accepted in whole.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats.

A-E 8.03 (5) CR09-033 (Definition) Report to Leg 6-24-09

STATE OF WISCONSIN
EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : EXAMINING BOARD OF
EXAMINING BOARD OF ARCHITECTS, : ARCHITECTS, LANDSCAPE
LANDSCAPE ARCHITECTS, : ARCHITECTS, PROFESSIONAL
PROFESSIONAL ENGINEERS, : ENGINEERS, DESIGNERS AND LAND
DESIGNERS AND LAND SURVEYORS : SURVEYORS ADOPTING RULES
: (CLEARINGHOUSE RULE 09-033)

PROPOSED ORDER

An order of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors to repeal and recreate A-E 8.03 (5), relating to the definitions of supervision, direct supervision, responsible charge, and direction and control.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Sections 443.11 to 443.13, Stats.

Statutory authority:

Sections 15.08 (5) (b) and 227.11 (2), Stats.

Explanation of agency authority:

The Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, or the applicable section of the board, under the authority of ss. 15.08 (5) (b), and 443.06 to 443.13, Stats., may establish the registration and practice requirements for architects, landscape architects, professional engineers, designers and land surveyors and impose discipline against a registrant for violating the rules of professional conduct set forth in ch. A-E 8.

Related statute or rule:

Sections A-E 2.02 (4), (5), (6) and (8), A-E 4.05 (2) (a), A-E 6.03 (1), and ch. A-E 8.

Plain language analysis:

This proposed rule-making order clarifies the meaning of the terms “supervision,” “direct supervision,” “responsible charge,” and “direction and control” as related to the practice of architecture, landscape architecture, professional engineering, designing and land surveying. The terms are listed and defined in the rules of professional conduct, s. A-E 8.03 (5), which applies to all the professions. The terms are contained in, and apply to, several specific A-E chapters, such as s. A-E 4.05 (2) (a), the requirements for registration of professional engineers, and s. A-E 6.03, registration of land surveyors. The terms also appear in the statutory provisions for registration of professional engineers and land surveyors in ss. 443.04 (1) (a) and 443.06 (1) (b) and (2) (a), (b) and (c), Stats.

The current definition of the terms in the rules of professional conduct define the meaning of the terms in the negative sense, specifying what duties are not included in the definition. The proposed amendments define the terms in the positive sense, specifying what duties constitute “supervision,” “direct supervision,” “responsible charge,” and “direction and control” by a registrant.

The intent of the proposed rule is to provide clearer direction to registrants in the act of signing, sealing or stamping plans, drawings, documents, specification or reports for architectural, landscape architectural, professional engineering, design practice or land surveying practice. The importance of clarifying the definitions is due to various changes in the practice of the registrants. Foremost is the change resulting from advances in electronic communication and technology which allows professional services to be performed almost anywhere in the world. The globalization of practice can result in a registrant being deemed to be in responsible charge of a project and the persons who perform services under the registrants’ direction and control, while neither are present in the same location or even in the same time zone.

In addition, the clarification of the meaning of the terms is increasingly important as a result of changes in the practice where contractual responsibilities may change over the course of a project and different registrants are involved in the preparation or direction and control of plans and documents during different phases or percentage of completion of the project.

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

There is no existing or proposed federal regulation defining the terms.

Comparison with rules in adjacent states:**Illinois:**

“Direct supervision or responsible charge” means work prepared under the control of a licensed professional engineer or that work as to which that professional engineer has detailed professional knowledge. 225 ILCS 325

Iowa:

The term “in responsible charge” as used in this chapter means direct control of and personal supervision over any land surveying work or work involving the practice of engineering. A licensee shall not place the licensee’s signature or seal on any engineering document or land surveying document unless the licensee was in responsible charge of the work, except that the licensee may do so if the licensee contributed to the work and the licensee in responsible charge has signed and certified the work. Iowa § 542B.2(4)

Michigan:

The term “responsible charge” is defined as the person who determines technical questions of design and policy; advises the client; supervises and is in responsible charge of the work of subordinates; is the person whose professional skill and judgment are embodied in the plans, designs, plats, surveys, and advice involved in the services; and who supervises the review of material and completed phases of construction, but is referenced in the requirements for sealing documents for projects involving overlapping architecture and engineering professions; a licensee shall not seal a plan, drawing, map, plat, report, specification, or other document not prepared by the licensee as the person in responsible charge. § 339.2001 (d), Michigan Admin. Code.

Minnesota:

A person in responsible charge of architectural, engineering, land surveying, or landscape architectural work means the person who determines design policy, including technical questions, advises with the client, superintends subordinates during the course of the work and, in general, the person whose professional skill and judgment are embodied in the plans, designs, and advice involved in the work. A person in direct supervision of work means that person who is the employer, an employee of the same firm, or who is under contract to or from another firm and who is in responsible charge of technical, architectural, engineering, land surveying, or landscape architectural work in progress, whose professional skill and judgment are embodied in the plans, specifications, reports, plats, or other documents required to be certified pursuant to that subdivision. MN Rule § 1805.1600

Summary of factual data and analytical methodologies:

There have been changes in the profession that require updating of this rule. This rule change will provide additional clarification of “responsible charge” and similar terms used in s. A-E 8.03 (5) as it relates to the practice of architecture, landscape architecture, professional engineering, designing or land surveying.

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

This rule change will not affect or impact adversely small businesses or the private sector. No written analysis or formal research was involved in reaching this conclusion.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

Anticipated costs incurred by the private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:

The department estimates that the proposed rule will have no significant fiscal impact.

Effect on small business:

These proposed rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at hector.colon@wisconsin.gov, or by calling 608-266-8608.

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-266-0495; email at pamela.haack@wisconsin.gov.

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

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to pamela.haack@wisconsin.gov. Comments must be received on or before June 5, 2009, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. A-E 8.03 (5) is repealed and recreated to read:

A-E 8.03 (5) (a) "Supervision," "direct supervision," "responsible charge," and "direction and control," mean direct, personal, active supervision and control of the preparation of plans, drawings, documents, specifications, reports, maps, plats and charts.

(b) The terms in par. (a) include the following:

1. Selection or development of standards, methods and materials to be used.
2. Selection of alternatives to be investigated and the comparison of alternatives for the professional work.
3. Testing to evaluate materials or completed works, either in new or existing projects.
4. Knowledge of applicable codes and professional standards.
5. Knowledge of the technical capabilities of the personnel they rely upon to perform the professional work.

(c) The terms in par. (a) do not include the following:

1. Indirect or casual supervision.
2. Delegation of any decision requiring professional judgment.
3. Casual review or inspection of prepared plans, drawings, specifications, maps, plats, charts, reports or other documents.
4. Mere assumption by an architect, landscape architect, professional engineer, designer or land surveyor of responsibility for work without having control of the work.
5. Assuming charge, control or direct supervision of work in which the architect, landscape architect, professional engineer, designer or land surveyor does not have technical proficiency.

(END OF TEXT OF RULE)

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.

Dated _____ Agency _____
Chairperson
Examining Board of Architects, Landscape
Architects, Professional Engineers,
Designers and Land Surveyors

A-E 8.03(5) CR09-033 (Definition) Draft to Leg 6-24-09



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 09-033

AN ORDER to repeal A-E 8.03 (5) (a) to (e); to renumber and amend A-E 8.03 (5) (intro.); and to create A-E 8.03 (5) (a) and (b), relating to the definitions of supervision, direct supervision, responsible charge, and direction and control.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

04-17-2009 RECEIVED BY LEGISLATIVE COUNCIL.

05-11-2009 REPORT SENT TO AGENCY.

RS:DD

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 09-033

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. The department’s analysis may give the impression that the application of the defined terms treated by the rule is confined to ch. A-E 8, Professional Conduct. See, for example, the citations to “Statutes Interpreted” in the analysis and the statement in the “Plain Language Analysis”: “The current rules of professional conduct define the terms in the negative, specifying what duties are not included in the definition.” However, the defined terms treated by the rule are contained in, and apply to, several A-E chapters. The department may wish to provide a more comprehensive discussion of where the defined terms are used and what “changes in the profession” (see “Summary of Factual Data and Analytical Methodologies”) have prompted the proposed rule change. Providing that information will convey a better sense of what the proposed changes are intended to accomplish and who may be affected by the changes.

b. It is suggested that consideration be given to simply repealing and recreating s. A-E 8.03 (5). Further, it is unnecessary to include “but are not limited to” in s. A-E 8.03 (5) (a) (intro.). See s. 1.01 (7) (c), Manual. Finally, if three subunits are created in s. A-E 8.03 (5), they should be numbered as pars. (a) to (c). The internal cross-reference would be to “par. (a).”