

Report From Agency

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

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
: CR 14-010
DEPARTMENT OF SAFETY AND :
PROFESSIONAL SERVICES :**

I. THE PROPOSED RULE:

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

II. REFERENCE TO APPLICABLE FORMS:

None

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:

A recent audit revealed confusion among registered home inspectors in Wisconsin with regards to the continuing education requirements for registration renewal. This proposed rule change would provide clarity for registered home inspectors. The proposed rule change would also repeal rules that are no longer effective, consolidate the home inspector chapters into a single chapter, and incorporate rule changes to SPS 135 in light of changes to § 440.974 (2) under 2013 Senate Bill 345.

Chapter SPS 305 establishes licensing, certification, and registration requirements for a variety of building-related trades, both for individuals and businesses. Current rules require most renewal applicants to complete all continuing education requirements 3 months prior to the expiration of the license, certification or registration. The proposed rule change would align the renewal and continuing education cycle allowing applicants to complete continuing education requirements up to the expiration date of the credential.

Individuals seeking to renew a dwelling contractor qualifier certification must complete at least 12 hours of continuing education approved by the Department. However, Department standards for approval of continuing education courses are unclear often resulting in confusion and wasted resources for potential course providers. The proposed rule change would provide greater clarity with regards to Department standards for course approval facilitating a more transparent and consistent approval process.

The ASME QEI Accreditation Program accredits organizations that certify elevator inspectors in accordance with the ASME QEI-1 Standard. Department rule, SPS 305.64 (2) (b), currently requires applicants for an elevator inspector license to submit evidence of certification by an American Society of Mechanical Engineers (ASME) accredited organization as a qualified elevator inspector (QEI). ASME is discontinuing the QEI Accreditation Program. All accreditations will be withdrawn on January 1, 2014. The proposed rule change removes reference to ASME accreditation and requires applicants for an elevator inspector license to submit evidence of certification based on the QEI-1 standard from an independent organization acceptable to the Department.

Current Department administrative rules require applicants seeking to obtain a journeyman plumber-restricted appliance license to take and pass an examination administered by the Department. The proposed rule change would allow applicants the option of taking a Department approved examination administered by another entity. The plumbing activities performed by a licensed journeyman plumber-restricted appliance are limited to the installation and modification of water heaters, water softeners, water treatment devices, and other items in connection with an existing water supply system which do not required direct connection to the drain system. The proposed rule change would also repeal rules that are no longer effective and reorganize rules related to the two different restricted plumbing licenses for greater clarity including separating the rules for journeyman plumber-restricted appliance license holders into a separate rule section.

2013 Wisconsin Act 20 impacted several department rule chapters. As a result of the enactment of 2013 Wisconsin Act 20, the proposed rule change repeals all references to the building contractor registration in SPS 305 and 361, and repeals and amends sections that the Department no longer has authority to enforce relating to the storage, use, and handling of flammable or combustible liquids in SPS 323, 332, and 334.

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

The Department of Safety and Professional Services held a public hearing on March 3, 2014. The following people either testified at the hearing, or submitted written comments:

Jeff Beiriger, PCA of Southeast Wisconsin, PHCC of Wisconsin
Steve Breitlow, Plumbers Union Local 75
Scott Chiples
Rich Duerkop, Wisconsin Association of Home Inspectors
Dennis Franek
Ted Glover
Doug Hoerth
Samuel Karge, Water Quality Association of Wisconsin
Vincent Kent, Water Quality Association of Wisconsin
Kathi Kilgore, Wisconsin Association of Home Inspectors

Tom Kruse
Michelle Kussow, Water Quality Association of Wisconsin
Scott LeMarr, Southeast Wisconsin InterNACHI
Steven Lethlean
David Loveday, Water Quality Association
Jim Luedtke, Water Quality Association of Wisconsin
Donald Meredith, Water Quality Association of Wisconsin
Ron Miller
Ron Nohre, Wisconsin Association of Home Inspectors
Michael Paggi, Water Quality Association of Wisconsin
Tom Sachs
Tyler Sattler
Dan Schilling
David Strandberg, Wisconsin Association of Home Inspectors
Bret Tangle, Water Quality Association of Wisconsin
Mark Thomas, Wisconsin Association of Home Inspectors
Bob Turicik
Michael Von Gunten, Wisconsin Association of Home Inspectors
David Waraxa, Wisconsin Association of Home Inspectors
Ramie Zelenkova, Plumbers Union Local 75

The Department of Safety and Professional Services summarizes the comments received either by hearing testimony or by written submission as follows:

The Department received several comments in opposition to s. SPS 131.41 (4) (d) which limits the number of hours per biennial registration period that a home inspector may count toward continuing education requirements from technical or professional society meetings. Rationale to support this comment included: (1) the Wisconsin Association of Home Inspectors (WAHI) and other professional associations effectively provide high quality education to home inspectors that is specific to local building standards/codes, and (2) a current lack of available continuing education opportunities outside of WAHI and other professional associations will result in increased compliance costs for home inspectors if s. SPS 131.41 (4) (d) is implemented. People who provided this comment included:

Mark Thomas
Dennis Franek
Ron Miller
Doug Hoerth
Ted Glover
Tom Sachs
Ron Nohre
Tom Kruse
Bob Turicik
Tyler Sattler
Rich Duerkop
David Waraxa

Michael Von Gunten (In support of CR14-010 if SPS 131.41 (4) (d) is removed)
Kathi Kilgore, WAHI (In support of CR14-010 if SPS 131.41 (4) (d) is removed)

Dan Schilling
Scott LeMarr

Steven Lethlean would like to see the 2 year statute of limitation for home inspector liability on property inspection changed to 1 year.

David Strandberg testified providing information to the Department; neither for nor against the rule.

The Department received several comments in support of s. SPS 305.945 which provides journeyman plumber-restricted appliance applicants with the option of taking an examination provided by an outside entity that is approved by the Department. Rationale to support this comment included: (1) industry-offered third party training and testing will produce better prepared, higher quality license holders, (2) few states require a license to perform the duties of the journeyman plumber-restricted appliance, and (3) the low pass rate will be addressed by allowing for additional testing and training options. People who provided this comment included:

Donald Meredith
Bret Tangley
Scott Chiples
Vincent Kent
David Loveday
Jim Luedtke
Michelle Kussow (WQA)
Michael Paggi

The Department received other comments in opposition to s. SPS 305.945 which provides journeyman plumber-restricted appliance applicants with the option of taking an examination provided by an outside entity that is approved by the Department. Rationale to support this comment included: (1) the journeyman plumber-restricted appliance license belongs to a family of plumbing licenses that protect a vital resource in Wisconsin, water, (2) Wisconsin administers all other plumbing examinations, and (3) it is premature and unwise to allow outside entities to provide the journeyman plumber-restricted appliance examination based on a request from a singular association. People who provided this comment included:

Jeff Beiriger
Ramie Zelenkova
Steve Breitlow

The Department received several comments in support of updates to journeyman plumber-restricted appliance rules that remove specified instruction time in each area of instruction (s. SPS 305.945 (2) (b)). Rationale provided for this comment included that greater flexibility produces better prepared licensees because it allows for changes to training components as needs and plumbing processes change. People who provided this comment included:

Donald Meredith
Bret Tangley
Scott Chiples

Michelle Kussow (WQA)
Michael Paggi

The Department received a comment from Vincent Kent in opposition to updates to journeyman plumber-restricted appliance rules that remove specified instruction time in each area of instruction (s. SPS 305.945 (2) (b)). Rationale provided for this comment included: (1) the water treatment industry is complex and vital, and (2) removing the hourly topic training requirements and the math requirement entirely reduces the rigor of journeyman plumber-restricted appliance training.

The Department received other comments requesting a rule change to SPS 384 that would ease the plumbing product approval process in Wisconsin. Rationale provided for this comment included that under current rule, many products that have received approval from a nationally accredited agency must be additionally approved by the state prior to their use in Wisconsin. This process is redundant, overly burdensome, and impedes business in Wisconsin. People who provided this comment included:

Donald Meredith
Water Quality Association
Samuel Karge
Bret Tangley
Scott Chiples
Vincent Kent
Michelle Kussow (WQA)

The Department of Safety and Professional Services explains modifications to its rule-making proposal prompted by public comments as follows:

In response to public comments, the Department will remove s. SPS 131.41 (4) (d) from the proposed rule section that creates SPS 131 subchapter V (formerly subchapter IV prior to changes resulting from the Clearinghouse Report). As a result of this change, attendance at technical and professional society meetings will count towards continuing education credit hours under s. SPS 131.41 (4) (a) of the proposed rule and will not be limited to 20 hours per biennial registration period. Providers of the continuing education hours will be required to comply with all other continuing education requirements and standards in the subchapter. As required by s. SPS 131.42 (3) of the proposed rule, WAHI and other professional associations will need to provide a certificate of completion to each participant seeking continuing education credit hours.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

1. Statutory Authority

Comment: 2013 Wisconsin Act 20 renumbered s. 101.09 (3) (c), Stats., as s. 168.23 (3), Stats. The department should replace s. 101.09 (3) (c), Stats., with s. 168.23 (3), Stats.
Response: Wisconsin Statutes 168.23 (3) falls under the authority of DATCP. Rather than replacing s.101.09 (3) (c), Stats., with 168.23 (3), Stats., the authority has been removed entirely.

Comment: The department should review its reliance on s. 101.82 (1m), Stats., because that statute will be amended if 2013 Assembly Bill 683, which has passed the Assembly and Senate, is enacted

Response: 2013 Assembly Bill 683, if enacted, will not impact the department's authority as it relates to the proposed rule changes.

2. Form, Style, and Placement in Administrative Code

Comment: The proposed rule contains extensive renumbering to reorganize existing material. It is generally best to avoid renumbering, especially when inserting new rule sections or subunits, eliminating a gap in numbering, or reusing a previously existing number that is eliminated by repeal. Renumbering impairs the ability to trace a provision's history and may result in ambiguity or error. The department should review its use of renumbering to ensure that such renumbering is necessary and consistent with ss. 1.03 (5) (a) and (c) and 1.067, Manual.

Response: The department reviewed all renumbering and determined that the proposed changes were necessary and consistent with ss. 1.03 (5) (a) and (c) and 1.067, Manual.

Comment: In SECTIONS 61 and 62, substantive provisions are removed from the text of the rule and instead placed in a note. Notes may not include substantive material. The department should include substantive material in the text of the rule, rather than in a note. This comment also applies to s. SPS 305.315 (3) (c) 4. (Note), on page 18.

Response: The note following SPS 305.64 (2) (b) clarifies which organizations the department has currently deemed as acceptable as a courtesy to the public. Absent the information in the note, the public would have to contact our department to determine the acceptable organizations.

Comment: In SECTIONS 108 to 116, substantive provisions are removed from the text of the rule and instead placed in a note. Notes may not include substantive material. The department should include substantive material in the text of the rule, rather than in a note.

Response: These sections remove from rule the sections that are no longer enforceable by the department as a result of 2013 Wisconsin Act 20. As a courtesy to the public, notes are utilized for easy referencing of the new code sections in DATCP code.

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

Comment: In s. SPS 131.31 (1), on page 13, "131.32" should be replaced with "132.32".

Response: The preliminary rule draft incorrectly renumbered SPS 134.03 to SPS 132.32 instead of SPS 131.32. Therefore, the department decided to correctly renumber SPS 134.03 as SPS 131.32. Also "131.32" will be kept in SPS 131.31 and will replace "132.32" in SPS 131.33.

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

Comment: In s. SPS 131.42, on page 15, the term “amplification” in sub. (1) and the term “completion certificates” in sub (3) should be defined. In other parts of the rule, the term “certificate of completion” is used. Either “completion certificate or “certificate of completion” should be used consistently throughout the rule. Also, the phrase “as defined in SPS 131.02 (12)” in sub. (1) is unnecessary and should be deleted.

Response:“Amplification” is used throughout department code without definition (e.g. ch. SPS 50) and later in this rule project s. SPS 305.325 (4). Amplification will remain in SPS 131.42 without definition for consistency across rule chapters. The intended purpose of continuing education is to expand upon or “amplify” credential holders’ knowledge relating to their profession. The department decided to use “certificate of completion” throughout the rule, and the contents of a certificate of completion are specified in SPS 131.42 (3).

Comment: In s. SPS 305.07 (2) (b) 1. b., on page 17, it is unclear what “one-term” means in the amended version of that subdivision paragraph. The department should clarify what “one-term” means.

Response: The amended version states “as specified in Table 305.06”. Table 305.06 clearly indicates the length of a term and the expiration date for each credential.

All of the remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

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

The rule will not have an effect on small business and as such was not submitted to the SBRRB as part of the rule promulgation process.