



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Co-Directors

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 14-010

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 November 2011.]

1. Statutory Authority

a. In the statutory authority section, “and (1v)” should be inserted after “101.82 (1m)” because s. 101.82 (1v), Stats., is cited in the explanation of agency authority.

b. In the statutory authority and explanation of agency authority sections, the following comments apply:

- (1) 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.
- (2) Act 20 repealed s. 101.147, Stats. The department should delete its reference to s. 101.147, Stats., or explain why the repealed statute is cited.
- (3) 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.
- (4) The reference to s. 145.15 (2), Stats., should be replaced with s. 145.17 (2), Stats.
- (5) The text of s. 440.974 (2), Stats., should be modified to reflect the text of the existing statute, as amended by 2013 Wisconsin Act 124.

c. Section SPS 131.45 (1), on page 16, addresses the process for a renewal applicant to obtain a waiver from continuing education requirements and provides that decisions are made by

the “department or its designee”. Does “designee” refer to someone outside of the department? If so, what is the statutory authority that allows the department to delegate this decision-making authority to a designee?

2. Form, Style and Placement in Administrative Code

a. The department should review the introductory clause to ensure that it complies with s. 1.02 (1), Manual, and that the introductory clause is modified to reflect any changes made to the proposed rule as a result of the comments in this report.

b. The plain language analysis does not explain why changes are made to chs. SPS 323, 332, and 334. As such, it is unclear what the purpose is of SECTIONS 108 to 116 and whether the changes in those SECTIONS are necessary. In addition, the plain language analysis should explain the changes made as a result of 2013 Wisconsin Act 20.

c. 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.

d. Throughout the proposed rule, SECTIONS should be arranged according to the numerical order of the decimal-numbered rule provision being treated. [s. 1.04 (1), Manual.] For example, the creation of the titles of subchs. II, III, and IV of ch. SPS 131 should be listed in SECTIONS following SECTION 4.

e. Administrative rules should, in general, use the singular form of a word. [s. 1.01 (9) (e), Manual.] For example, in s. SPS 131.02 (4e), on page 11, the term “registered home inspectors” should be replaced with “a registered home inspector”. The department should replace plural words with the singular form throughout the rule.

f. In SECTION 1, “Chapter” should be inserted before “SPS 131” in the treatment clause.

g. SECTIONS 1 to 25 merge chs. SPS 131 to 134. However, the rule does not specify where the subchapters should be placed. When creating a subchapter title, the rule should clarify where it should be placed. For example, in SECTION 4, the treatment clause should read: “Subchapter I (title) of chapter SPS 131 [precedes s. SPS __] is created to read:”. The rule also does not place sections currently found in ch. SPS 131 (i.e., statutory authority and definitions) in a subchapter. These sections should be placed in a subchapter, with a title such as “GENERAL PROVISIONS” or “AUTHORITY AND DEFINITIONS”. Lastly, the rule should repeal the chapter titles in chs. SPS 132 to 134.

h. In s. SPS 131.11 (3), on page 12, “s.” should be inserted before “SPS” to reflect the text of the existing rule.

i. In SECTION 8, the treatment clause should read: “SPS 132.05 (title) and (1) are renumbered SPS 131.12 (title) and (intro.) and amended to read:”. [ss. 1.04 (2) (a) 2. and 1.067, Manual.]

j. In s. SPS 131.12 (intro.), on page 12, “on or before” should be replaced with “by on or before” and “every” should be replaced with “each” to reflect the text of the existing rule.

k. In s. SPS 131.12 (2), on page 12, “~~ch. SPS 135~~” should be replaced with “~~s. SPS 135.02~~” to reflect the text of the existing rule.

l. In SECTIONS 10 and 11, the treatment clauses should be merged together to read: “SPS 132.05 (2) is renumbered SPS 131.13 and SPS 131.13 (intro.) and (2), as renumbered, are amended to read:”. [s. 1.04 (2) (a) 2., Manual.]

m. In SECTION 12, the treatment clause should read: “SPS 132.05 (3) is renumbered SPS 131.14 and amended to read:”. [ss. 1.04 (2) (a) 2. and 1.067, Manual.]

n. In s. SPS 131.41, on page 14, sub. (2) is an exception to sub. (1). As such, the following text should be inserted at the beginning of s. SPS 131.41 (1): “Except as provided in sub. (2),”. In addition, the notes following subs. (1) and (2) are not necessary because the definitions referenced in the notes apply throughout ch. SPS 131.

o. In s. SPS 305.003 (15), on page 17, “those” should be replaced with “includes”. [s. 1.01 (7) (c), Manual.] In addition, does the department intend that the following devices listed as exclusions in s. SPS 318.1004 (6) be included in the definition of “conveyance” in the proposed rule: a platform lift, stairway chair lift, and any other similar device serving an individual dwelling unit; a personnel hoist; and a material hoist? If so, it would be clearer to list the devices in the proposed rule, rather than to reference ch. SPS 318.

p. SECTION 36 creates an introduction in s. SPS 305.09. Introductory material must end in a colon and lead into the subunits. Each subunit following an introduction should form a complete sentence when read with the introduction. [s. 1.03 (3), Manual.] If the department intends to create an introduction, it should follow the requirements of s. 1.03 (3), Manual. If not, the department should number s. SPS 305.09 (intro.) as a subsection.

q. In SECTION 37, the treatment clause should read: “SPS 305.125 (3) (a) 1. and (Note) are repealed.”.

r. In SECTION 39, should the treatment clause read: “SPS 305.315 (3) (a) 1. and 2. and (b) 1. are renumbered SPS 305.315 (3) (intro.), (a), and (b) and SPS 305.315 (3) (b), as renumbered, is amended to read:”? [s. 1.04 (2) (a) 2., Manual.] If so, s. SPS 305.315 (3) (intro.) should be amended to comply with s. 1.03 (3), Manual.

s. In s. SPS 305.315 (4), on page 19, the title of the subsection should be written in solid capital letters. [s. 1.05 (2) (c), Manual.]

t. 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. [s. 1.09 (1), Manual.]

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.

u. SECTIONS 70 and 71 should be replaced with the SECTIONS below. Where similar rule changes are made throughout the proposed rule, the department should use treatment clauses similar to those below.

(1) SECTION 70. SPS 305.90 (4) (intro.) is amended to read:

SPS 305.90 (4) Pursuant to s. 145.09, Stats., a person may be accepted for examination for the appropriate classification of license upon submittal of ~~all~~ any of the following:

(2) SECTION 71. SPS 305.90 (4) (a) and (b) are consolidated, renumbered SPS 305.90 (4) (a), and amended to read:

SPS 305.90 (4) (a) An application in accordance with s. SPS 305.01 ~~—(b) An~~ together with the application fee and examination fee in accordance with s. SPS 305.02, Table 305.02.

v. In SECTION 90, the treatment clause should be split into the following SECTIONS:

(1) SECTION 90. SPS 305.94 (title) is amended to read:

SPS 305.94 Journeyman plumbers-restricted service.

(2) SECTION 90m. SPS 305.94 (1) (a) 1. is renumbered SPS 305.94 (1) (a).

w. In SECTION 97, the treatment clause should read: “SPS 305.94 (3) (a) 1. and 2. are renumbered SPS 305.94 (3) (a) and (b) and 305.94 (3) (a), as renumbered, is amended to read:”. [s. 1.04 (2) (a) 2., Manual.] With this treatment clause, only the text of par. (a), with its amendment, should be shown.

x. SECTION 102 should be revised to address the following comments:

(1) In s. SPS 305.945 (1), on page 29, the “(a)” should be removed. When a subsection is divided into paragraphs, at least two paragraphs must be created. [s. 1.03 (1), Manual.]

(2) In s. SPS 305.945 (2) (b) (intro.), on page 29, “any of” or “all of”, whichever is appropriate, should be inserted before “the following”. [s. 1.03 (3), Manual.]

(3) Section SPS 305.945 (3) (intro.), on page 29, should be numbered as a paragraph, not as an introduction. [s. 1.03 (3), Manual.] Also, a cross-reference to s. SPS 305.09 when referring to “an examination administered by the department” would help clarify what exams are referenced.

(4) In s. SPS 305.945 (3) (e) 2. c., on page 30, the slashed alternative “pass/fail” is used and should be avoided. [s. 1.01 (9), Manual.]

y. 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. [s. 1.09 (1), Manual.] The department should include substantive material in the text of the rule, rather than in a note.

z. In SECTION 112, “**SPS 326.16**” should be replaced with “**SPS 332.16**” in the rule text.

aa. The department should consider including an initial applicability provision, especially for changes made to continuing education requirements. [s. 1.02 (3m), Manual.]

bb. In SECTION 118, “EFFECTIVE DATE.” should be inserted after “SECTION 118.” [s. 1.02 (4), Manual.]

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

a. In s. SPS 131.01, on page 11, “ch. 131” should be replaced with “this chapter”. [s. 1.07 (2), Manual.]

b. In s. SPS 131.02 (4s), on page 11, “s.” should be inserted before “SPS 131.42”. [s. 1.07 (2), Manual.]

c. In s. SPS 131.31 (1), on page 13, “131.32” should be replaced with “132.32”.

d. In s. SPS 131.41 (4) (d), on page 15, “subs.” should be replaced with “s.”. [s. 1.07 (2), Manual.]

e. In s. SPS 131.43 (1) and (2), on page 16, “chapter” should be replaced with “subchapter”.

f. In s. SPS 131.45 (3), on page 16, “provision” should be replaced with “section”. [s. 1.07 (2), Manual.]

g. In s. SPS 305.945 (1) (a), on page 29, the reference should be replaced with “s. SPS 305.90 (1) (b) 3.”.

h. In ss. SPS 323.16 (2) (b) (Note), 332.16 (20) (Note), 334.36 (Note), and 334.45 (4) (b) (Note), on pages 32 to 33, “chapter” should be replaced with “ch.”. In addition, in s. SPS 332.16 (20) (Note), “section” should be replaced with “s.”. [s. 1.07 (2), Manual.] [See also comment 2. z.]

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

a. In s. SPS 131.02 (4e) and (4s), on page 11, the terms “continuing education” and “continuing education training program” are defined. However, the term “continuing education courses” is used in s. SPS 131.02 (4m). Should that reference be changed to “continuing education training program”?

b. In s. SPS 131.02 (25m), on page 11, the department should specify what type of registration is meant by “registration”.

c. SECTION 25 should be revised to address the following comments:

- (1) In s. SPS 131.41 (3) (a) and (b), on page 14, it is unclear what the term “continuing education requirements” means. It appears that the requirements are found in s. SPS 131.41 (1). The department should reference s. SPS 131.41 (1) when referring to “continuing education requirements”.
- (2) In s. SPS 131.41 (4) (a), on page 14, it is unclear whether only conferences must meet the requirements of s. SPS 131.42, or whether seminars, corporate in-house course, etc., must also meet these requirements. The department should review the intent and rewrite the first sentence. Also, it is unclear who is considered a “qualified provider”. The department should explain who is considered a “qualified provider”.
- (3) In s. SPS 131.41 (4) (b), on page 15, the term “continuing education program” should be replaced with the defined term “continuing education training program”. Because the definition of “continuing education training program” includes the phrase similar to “that meets the requirements of s. SPS 131.42”, this phrase should be deleted in par. (b).
- (4) In s. SPS 131.41 (4) (c), on page 15, it is unclear what the term “distance education” means. The department should define this term.
- (5) In s. SPS 131.41 (4) (d), on page 15, it is unclear to what a “maximum of 20 hours” is referring. Is this referring to technical or professional society meetings? The department should rewrite par. (d) to clarify what is limited to a maximum of 20 hours.
- (6) In s. SPS 131.42 (title) and (intro.), on page 15, the department should use the term “continuing education training program” that is defined earlier in the chapter. Also, the (intro.) is grammatically incorrect because it does not form a complete sentence with the subsections. For example, the phrase “meet all of the following” could be replaced with “shall meet all of the following criteria”.
- (7) 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 (e.g., s. SPS 131.44). Either “completion certificate” or “certification 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.
- (8) In s. SPS 131.42 (2), on page 15, the phrase “qualified in the subject matter of the program” is used. However, it is unclear how an individual or entity may be considered “qualified” to conduct a continuing education training program. Who makes this determination? What does a person have to do to be considered “qualified”? This comment also applies to s. SPS 305.315 (4) (b), on page 19.

d. 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.

e. In s. SPS 305.08 (1) (e) 1., on page 17, it is unclear what it means for the department to “limit credit”. Does it mean that the department may limit the number of credit hours that licensees, certificate holders, or registrants may count towards their continuing education requirements?

f. In s. SPS 305.64 (2) (b) and (Note), on page 24, it is unclear who determines what an acceptable independent organization is and what the standards are for the Qualification of Elevator Inspector (QEI-1).

g. SECTION 102 should be revised to address the following comments:

- (1) In s. SPS 305.945 (2) (a), on page 29, the phrase “plumbing related” should include a hyphen and read “plumbing-related”.
- (2) In s. SPS 305.945 (3) (a) (intro.), on page 29, it is unclear where the examination providers seeking departmental approval must submit the various items. Should “to the department” be inserted after “submit”?
- (3) In s. SPS 305.945 (3) (a) 1., on page 29, it is unclear what an “exam item bank” means. For example, does the department need to have access to an exam bank or just the exams included in the bank? Does the access need to be on-going? The department should clarify this.
- (4) Section SPS 305.945 (3) (b), on page 30, requires a journeyman plumber-restricted appliance license examination that is approved by the department to be consistent with and substantially equivalent to the examination content of the exams administered by the department. What does it mean to be “consistent with and substantially equivalent” to the content of the department’s exams? Who makes this determination? Also, to which department exams is this paragraph referring? Is it referring to an examination administered by the department under s. SPS 305.09?
- (5) In s. SPS 305.945 (3) (f), on page 30, a provider of an approved journeyman plumber restricted-appliance license examination must notify the department of “substantial changes” to the examination. What constitutes a “substantial change”?