



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Co-Directors

Terry C. Anderson
Legislative Council Director

CLEARINGHOUSE RULE 15-010

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 December 2014.]

1. Statutory Authority

Section 440.08 (3) (b), Stats., authorizes examining boards to promulgate rules requiring a credential holder who fails to renew a credential within five years of the credential’s renewal date to satisfy requirements in addition to typical renewal requirements before the credential will be reinstated. That section does not expressly authorize a board to prohibit such a credential holder from applying for a new credential using the application process for an initial credential. Rather, the section specifies that additional requirements may not be more extensive than the requirements required to obtain an initial credential. If the agency acts under the authority in s. 440.08 (3) (b), Stats., the agency should ensure that s. REEB 12.04 (2m) is consistent with the statute.

2. Form, Style and Placement in Administrative Code

a. Throughout the proposed rule, the agency has repealed existing rule sections and then created new rule sections that contain much of the same substance as the repealed sections. Generally, when a proposed rule makes changes to an existing rule provision, it is appropriate to amend the existing provision. [s. 1.06, Manual.] If major changes are being made to an existing rule provision, the existing provision may be repealed and recreated rather than amended. [s. 1.065, Manual.]

b. Throughout the proposed rule, the agency should ensure that all new language added is underscored when a portion of an existing rule is amended. [s. 1.06 (1) (a), Manual.] For example, in SECTION 13, “and reinstatement” should be underscored. Likewise, in SECTION 14, “AFTER LICENSE EXPIRATION” should also be underscored.

c. In SECTION 1, s. REEB 12.01 (2) (a) and (b) are moved to s. REEB 12.01 (1). As a result, it appears that there is only one subsection in s. REEB 12.01. If so, the paragraphs in that section should be numbered as subsections. [s. 1.03 (1), Manual.]

d. In SECTION 3, if s. REEB 12.013 (3) is an exception to the requirements in s. REEB 12.013 (1) and (2), subs. (1) and (2) should state “except as provided in sub. (3)”. This comment also applies to the treatment of s. REEB 12.017 (4) in SECTION 5.

e. In SECTION 7, the treatment clause states that s. REEB 12.025 (title) is repealed and recreated. Because the proposed changes in this SECTION amend the title, the treatment clause should read: “REEB 12.025 (title) is amended to read:”. [s. 1.06, Manual.]

f. In SECTION 10, “, ~~for facilitating further study,~~” should be replaced with “, ~~for facilitating further study,~~” and placed after “shall receive” to reflect the text of the existing rule.

g. In SECTION 14, “~~and the applicant is not registered as an inactive licensee,~~” should be omitted because it is not included in the text of the existing rule.

h. In SECTION 14, the agency has consolidated part of s. REEB 12.04 (1) (a) with s. REEB 12.04 (1) (intro.) and placed all of this content within s. REEB 12.04 (1) (a). It is unclear why division to the paragraph level was retained here. It would appear that the substance of s. REEB 12.04 (1) (c) might also be included within the same subpart as the material in proposed s. REEB 12.04 (1) (a). If the agency retains the division of s. REEB 12.04 (1) into two paragraphs, the “(a)” inserted after the section title should be underscored.

i. In SECTION 20, in s. REEB 25.01 (6), the comma after “grade report” should not be underscored because it is not new material. [s. 1.06 (1), Manual.]

j. The existing rule provision that applies to educational requirements for nonresident broker’s license applicants incorporates the elements of the general salesperson’s educational course by reference to the rule section that contains those requirements. [See s. REEB 25.025 (1) (a).] SECTION 25 creates a new provision that pertains to the educational obligations of nonresident broker’s license applicants. Rather than incorporate the elements of the general salesperson’s educational course by reference to the rule section containing those requirements, though, the proposed rule lists them separately in s. REEB 25.028 (2). The agency might consider incorporating by reference the portions of the general salesperson’s education requirements it wishes to apply to nonresident applicants.

k. In SECTION 25, in s. REEB 25.028 (2) (d) 4. (intro.), “, including all of the following:” should be inserted at the end of the subdivision. This comment also applies to s. REEB 25.038 (4) (d) (intro.) in SECTION 29.

l. In SECTION 29, in s. REEB 25.038 (4) (c) and (d), the subparts should be numbered because they are subdivisions. [s. 1.03, Manual.] The agency should review the proposed rule for other similar errors.

m. In SECTION 33, the text of s. REEB 25.065 (1) (Note) and (2) should be reviewed because it does not accurately reflect the text of the existing rule.

n. In SECTION 35, the period at the end of s. REEB 25.065 (5) should not be underscored because it is not new material. [s. 1.06, Manual.]

o. In SECTION 44, does the initial applicability clause apply to all changes made by the proposed rule or to specific changes? If the clause applies to all changes, it should begin with “This rule first applies...”. If the clause applies to specific changes, it should cite the rule sections to which it applies. In addition, the clause should state to what action it first applies; for example, the clause could state that the rule first applies to “applications received on January 1, 2016”. [s. 1.02 (3m), Manual.]

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

a. In the “summary of factual data and analytical methodologies” section of the rule summary, the agency states that certain parts of this rule-making are “based on recent legislative changes”. The agency should explain the legislative changes to which the rule responds.

b. In SECTION 17, in s. REEB 12.04 (2m) (c) 2., “12.01 (2)” should be replaced with “12.017 (2)”. In addition, in s. REEB 12.04 (3) (a) 1., it appears that “(a) or (b)” should be replaced with “(b) or (c)”.

c. In SECTION 23, in s. REEB 25.023 (8) (a) 3., should “s. REEB 24.07 (2)” be replaced with “s. REEB 24.07 (5)”?

d. In SECTION 25, in s. REEB 25.028 (2) (i) 5., “and” should be inserted before “134.09” and “, Stats” should be omitted.

e. In SECTION 27, in s. REEB 25.033 (18) (k), a comma should be inserted after “ch. 709”. [s. 1.07, Manual.]

f. In SECTION 31, in s. REEB 25.055 (3), “par.” should be replaced with “sub.”. [s. 1.07, Manual.] This comment also applies to s. REEB 25.068 (3) in SECTION 41.

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

a. The “plain language analysis” section of the rule summary does not provide any context for the rule-making or provide an understandable and objective description of the effect of the rule. If the rule-making is responsive to particular legislation--for example, 2013 Wisconsin Act 133--the plain language analysis should explain that. The plain language analysis should also contain sufficient detail to enable the reader to understand the content of the rule and the changes made in existing rules. [s. 1.02 (2) (b), Manual.]

b. Various SECTIONS of the proposed rule outline educational programs that must consist of a specified number of hours. Is it the agency’s intention that these are hours of classroom instruction? If so, the rule should state that.

c. In various SECTIONS of the proposed rule, the rule states that an applicant shall “read and write” an examination. It would be more direct to state that the applicant must “pass” an examination.

d. The agency should ensure that requirements are generally stated using the singular form of a word. [s. 1.01 (9) (e), Manual.] See SECTIONS 3 and 5 of the proposed rule, for example: “An applicant who is” should replace “Applicants who are”.

e. Throughout, the proposed rule would benefit from editing to state requirements more clearly and directly. For example, in SECTION 29, “An applicant who has held an active real estate salesperson’s license in another licensing jurisdiction within the 2 year period prior to filing an application for a real estate salesperson’s license in this state” could be more directly written as follows: “A person applying for a real estate salesperson’s license who was licensed, in good standing, in another jurisdiction within the 2 years immediately preceding the date of his or her application...”. Note also that it is unclear what the agency means by the phrase “within the 2 year period”. The word “within” in this phrase suggests the person need only have been licensed at some point during that time period. If the agency instead means that the person must be licensed for the two years immediately preceding the date of his or her application, it should state that directly.

f. In SECTION 3, the comma after “state” in s. REEB 12.013 (3) should be omitted. This comment also applies to s. REEB 12.017 (4) in SECTION 5.

g. In SECTION 5, a comma should be inserted after “Stats.” in s. REEB 12.017 (3) (c) (intro).

h. In SECTION 5, s. REEB 12.017 (1) (a) (intro.) requires each applicant for a real estate broker’s license to submit evidence of “[c]ompletion, within 4 years of broker’s licensure, of a real estate broker’s education program in business management under s. REEB 25.023”. Did the agency intend instead to require completion of an education program within the four years preceding *the date of application*? A similar comment also applies to SECTIONS 3 and 17.

i. In SECTION 5, in s. REEB 12.017 (3) (intro.), the phrase “except as provided in pars. (b) to (d)” should begin the sentence in which it is included.

j. In SECTION 9, s. REEB 12.025 (1m) is wordy and vague. It appears the intent of this provision of the rule is to provide that the board, after consulting with subject matter experts, shall determine what constitutes a passing score. If that is the case, the rule should state that directly. It would appear to be unnecessary to also provide that a passing score must be set at the point that represents minimum acceptable competence in the profession.

k. In SECTION 10, it appears that “of the applicant’s examination” should be inserted after “results” to be consistent with s. 452.09 (3) (a), Stats.

l. In SECTIONS 14 and 15, why has the agency changed all of the references to “applicant” in proposed s. REEB 12.04 (1) to “licensee”? This rule provision applies to license renewals occurring after the license renewal date. “Renewal date” is defined, in s. 440.01 (1) (dm), Stats., as “the date on which a credential expires and before which it must be renewed for the holder to maintain without interruption the rights, privileges and authority conferred by the credential”. Referring to a person who, because he or she has not timely renewed his or her license, may not enjoy the rights, privileges, and authority of the license as a “licensee” would seem to be contrary to this definition. “Applicant” appears to be the more accurate word in this context. This comment also applies to the use of “licensee” in SECTION 17.

m. In SECTION 17, s. REEB 12.04 (2m) (a) provides that “[a] licensee who has failed to renew a license within 5 years of the renewal date holds an expired license [and] may not reapply for the license using the initial application process”. This provision creates a confusing conflict

with the ordinary meaning of the word “expired”. As discussed in the previous comment, “expired”--within the context of licensure--means that the period for which the license was valid has come to an end. Here, however, the agency uses the word “expired” to mean “expired for five years or more”.

n. In SECTION 17, in s. REEB 12.04 (2m) (b) 2., “Passing” should be replaced with “Passage of”.

o. In SECTIONS 25 and 29, ss. REEB 25.028 and 25.038 state that a person “is deemed to have met the equivalency to the [salesperson or broker program education] based upon his or her education required to obtain a license in the other licensing jurisdiction”, but then continues to outline Wisconsin-specific education that a person who has been licensed in another jurisdiction must complete to satisfy Wisconsin’s education requirement. Does the agency intend that the education requirements for nonresident applicants consist of two parts – the education in the licensing jurisdiction and the Wisconsin-specific education? If so, the text of the proposed rule should state that more clearly.

p. In SECTION 29, in s. REEB 25.038 (intro.), “their” should be replaced with “his or her”.

q. In SECTION 41, in s. REEB 25.068 (1) (c), “their” should be replaced with “its”.

r. In SECTION 43, under what circumstances may the board deny or withdraw approval of a program or course? The agency should explain such circumstances in the text of the proposed rule.