



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 15-028

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

- a. The rule summary’s listing of statutes interpreted should include s. 440.60, Stats.
- b. The rule summary’s listings for both statutes interpreted and statutory authority should identify the specific statutory authority for repealing the fee schedule in s. SPS 61.02. The repeal is outside the scope of the statutes cited. In this case, it appears that the specific citation is s. 440.03 (9) (a), Stats. [s. 1.02 (2m) (a), Manual.]
- c. In s. SPS 50.300 (1), the proposed rule lists accrediting agencies that are approved by the department to provide accreditation to barbering schools that operate in Wisconsin. However, 2013 Wisconsin Act 356 did not create an additional requirement for schools operated in the state under s. 440.62 (1) (a), Stats., to be accredited. Instead, under the structure of s. 454.23 (2) (d) and (3) (b), Stats., the clause recognizing accredited schools allows someone who has been educated at an out-of-state barbering school to have that education recognized for the person’s Wisconsin licensure, provided that the school was accredited by an agency approved by the department. Accordingly, the statutory language allows three types of schools to be recognized from which an applicant may receive instruction: (1) a school of barbering that is licensed to operate in Wisconsin; (2) a school that is exempt from needing licensure because it is regulated or approved by the technical college system board or is operated by the Department of Health Services or the Department of Corrections; **or** (3) a school that is not operating in Wisconsin but has been accredited by an accrediting agency that has been approved by the department, by rule. The proposed rule should be revised to reflect this distinction.

2. Form, Style and Placement in Administrative Code

a. The rule summary's plain language analysis does not describe the repeal of the fee structure in s. SPS 61.02. While the plain language section is not intended to be an exhaustive discussion of the rule, it should contain sufficient detail to enable to reader to understand the content of the rule, and the changes made to existing rules. [s. 1.02 (2) (b), Manual.] The department should consider revising the plain language analysis to include a description of the changes made to the fee schedule.

b. The rule summary's listing of the place to submit comments should provide the specific date by which comments should be submitted, and the strike-through of that provision should be removed.

c. In SECTION 2 of the proposed rule, the following revisions should be made:

(1) The treatment of the two affected rule provisions should be divided into two separate SECTIONS of the proposed rule. The affected provisions are subsections of different rule sections, and the rule sections are not affected in their entirety. [s. 1.04 (2) (a) 1. and 4., Manual.]

(2) In the treatment clause for s. SPS 50.300, a reference to sub. "(1)" should be inserted in the citation to that rule section.

d. In s. SPS 50.300 (1), consider making the following changes:

(1) Revising the list of approved accrediting agencies to be in the format of a series of subunits after an introductory phrase that applies to "any of the following". Such a revision would make the list more readable, and would avoid the redundancy of the phrases "any of the following" and "including". [s. 1.03 (3), Manual.]

(2) Inserting the word "barbering" before the word "manager's", in order to use the defined phrase.

e. In s. SPS 60.02 (1), the closing quotation marks for the word "apprentice" and for the phrase "barber and cosmetologist" should be shown with a strike-through. Also, the underscored period after the phrase "barbering manager" should be revised to a comma.

f. In s. SPS 61.01, the period without any treatment at the end of the stricken phrase "for a one year period" should be removed. Also, the underscoring for the period after the underscored phrase "odd-numbered year" should be removed, so that the period is shown without any treatment. Periods are usually preserved in material being amended, and periods are not stricken or underscored unless a new sentence is created. [s. 1.06 (4), Manual.]

g. In the treatment clause for SECTION 8 of the proposed rule, a reference to "(2) (Figure 61.06) (title)" should replace the reference to "Figure 61.06". Also, the table itself could be removed from the text of the rule, as it is not affected by the treatment of the section. [s. 1.04 (1) (b) 2., Manual.]

h. In SECTION 9 of the proposed rule, the treatment of the two affected rule provisions should be divided into two separate SECTIONS of the proposed rule. The affected provisions are

subsections of different rule sections, and the rule sections are not affected in their entirety. [s. 1.04 (2) (a) 1. and 4., Manual.]

i. In the treatment clause for SECTION 11 of the proposed rule, a reference to “(3) (Figure 65.03) (title)” should replace the reference to “Figure 65.03”. Also, the table itself could be removed from the text of the rule, as it is not affected by the treatment of the section. [s. 1.04 (1) (b) 2., Manual.]

j. The introductory clause that enumerates the rule provisions treated by the proposed rule should be updated to reflect any revisions made in accordance with these comments.

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

a. In ss. SPS 61.04 (2) and 61.07, it is unclear how the cited “required fee” can be ascertained. Does the department intend to recreate a fee schedule, or provide a schedule on its website? The department should cite the source where an applicable fee can be found. Compare, for example, s. SPS 65.02 (2) (Note). Also, submission of a school’s licensing fee is included in the renewal requirements under s. SPS 61.04 (2) (intro.), but is not listed among the initial application requirements under s. SPS 61.03, of the current rule. The department should consider amending the initial application requirements to include a reference to the required fee, with a citation to where the applicable fee can be found.

b. Section SPS 61.05 (intro.) of the current rule should be amended to remove the cross-reference to s. SPS 61.02, as that section is repealed in the proposed rule. The department should review the current rules to delete any other cross-references to this repealed section.