



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 20-086

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 2020.]

1. Statutory Authority

The department should consider whether s. SPS 85.230 (2m) (e) is consistent with the statutory authority cited for this proposed rule.

Section 440.09 (2), Stats., states that the department “shall” grant a reciprocal license to an individual satisfying five requirements. The fifth requirement is that the individual be in “good standing with the government authorities” in any other jurisdiction that granted the credential to the individual. [s. 440.09 (2) (f), Stats.] Although the statute does not define what is meant by “good standing with the government authorities”, it may be notable that 2019 Wisconsin Act 143 amended s. 440.09 (2), Stats., to repeal a provision requiring that an applicant meet “any other requirements established by the department or credentialing board by rule”. [See s. 440.09 (2) (e), 2017-18 Stats.]

The proposed rule, in s. SPS 85.230 (2m) (e), mirrors four of the five statutory requirements for a reciprocal license. For the fifth requirement, however, the proposed rule specifies that an individual would not be in “good standing with the government authorities” in two circumstances. The first circumstance arises if the individual has had an appraiser credential limited, suspended, revoked, or surrendered for cause within five years of applying for reciprocity. [s. SPS 85.230 (2m) (e) 1.] The second circumstance arises if the individual has been convicted of certain felonies within five years of applying for reciprocity. [s. SPS 85.230 (2m) (e) 2.]

It is not clear whether either of those circumstances in the proposed rule bears on whether an individual is, at the time of application for reciprocity, in “good standing with the government

authorities” as contemplated by the statute. For example, suppose another jurisdiction revoked an individual’s credential but then subsequently reinstated it without limitation, in each case within five years of the individual applying for reciprocity in Wisconsin. Under the statute, it is plausible that the individual would be in “good standing” with the other jurisdiction’s credentialing authority and thus would qualify for reciprocity. Under the proposed rule, however, that individual would not be in “good standing” with the other jurisdiction’s credentialing authority and thus would not qualify for reciprocity.

An agency may not implement or enforce any standard, requirement, or threshold, including as a condition of a license issued by the agency, unless it is explicitly required or explicitly permitted by statute or by rule. [s. 227.10 (2m), Stats; and s. 1.01 (2) (c) 3., Manual.] However, an agency may promulgate rules interpreting the provisions of a statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute. [s. 227.11 (2) (a), Stats; and s. 1.01 (2) (c) 2., Manual.] The department should evaluate and explain whether adding requirements for obtaining a reciprocal credential beyond those listed in s. 440.09 (2), Stats., is necessary to effectuate the purpose of the statute.

3. Conflict With or Duplication of Existing Rules

The department should consider clarifying how the reciprocity process established in the proposed rule will relate to the reciprocity processes in the current administrative code, particularly in ss. SPS 85.230 (1) and 85.240 (1).

- First, the department should consider adding a phrase like “Except as provided in sub. (2m),” to the beginning of s. SPS 85.230 (1) of the current administrative code to clarify that the reciprocity process created in s. SPS 85.230 (2m) is separate from the process existing in s. SPS 85.230 (1).

For instance, s. SPS 85.230 (1) (c) 2. of the current administrative code requires an applicant for a reciprocal appraiser credential to submit evidence that the applicant has successfully completed the examination under s. SPS 85.600 on statutes and rules of this state governing appraisers. Under the proposed rule, an applicant for a reciprocal appraiser credential under s. 85.230 (2m) would not have to submit such evidence. Adding a cross-reference within s. 85.230 (1) would eliminate this potential conflict.

- Second, the department should examine whether the general restrictions on the issuance of an appraiser credential in s. SPS 85.240 (1) of the current administrative code should be rendered inapplicable to the issuance of a reciprocal credential under the proposed rule.

For instance, s. SPS 85.240 (1) prevents the department from issuing an appraiser credential if, among other factors, the applicant fails to meet a character and fitness requirement. As discussed under comment 1., above, it is not clear that current law authorizes the department to enforce requirements beyond the five requirements found in s. 440.09 (2), Stats. Specifying in the proposed rule that s. SPS 85.240 (1) does not apply to an applicant for reciprocity under s. SPS 85.230 (2m) would eliminate this conflict.

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

Section SPS 85.230 (2m) (a) requires the use of a form. The department should include a reference to the form in a note. [s. 1.12 (3), Manual.]

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

a. The caption for the proposed rule contains the typographical error “to to”, after the phrase “An order of the department”. The second “to” should be removed, and the name of the department should be inserted.

b. In the rule analysis, the plain language analysis states that s. 440.09, Stats., was created by 2019 Wisconsin Act 143. It should state that s. 440.09, Stats., was amended by that act.

c. In the rule analysis, the summary of factual data and analytical methodologies appears to be missing a word or words following the phrase “The proposed rules were developed by”.