



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 13-026

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 s. SPS 205.330 (3) (b), a manager applicant must complete a written examination. Section 454.24 (2), Stats., requires that an examination for a manager license include “written tests and practical demonstrations”. How does the requirement for a written examination in s. SPS 205.330 (3) (b) satisfy the requirement for “practical demonstrations” in s. 454.24 (2), Stats.?

b. In s. SPS 205.340 (2) (intro.), a licensee from another state may receive a license in Wisconsin without examination if the licensee satisfies the requirements in s. SPS 205.340 (2) (a) to (d) or (b) to (e). It appears that the requirement in par. (d) for a written examination is inconsistent with sub. (2) (intro.) and possibly with s. 454.27, Stats., which does not appear to require the passage of an examination.

c. Under s. SPS 205.402, a cosmetology licensee may convert to a barbering license until March 31, 2015. However, SEC. 102 (1) of 2011 Wisconsin Act 190 allows a licensee to notify the department of the conversion only until March 31, 2013. The agency should explain its authority for using the date of March 31, 2015.

d. In s. SPS 205.402, “, cosmetology manager,” should be inserted after “active cosmetologist”, pursuant to SEC. 102 (1) (d) of 2011 Wisconsin Act 190.

2. Form, Style and Placement in Administrative Code

a. In the enumeration of treated provisions in the introductory clause, the following revisions should be made:

- (1) Delete “62.10 (title) and” before “62.10”.
- (2) Delete “SPS” before the reference to “61.02”.
- (3) Replace “chapter” with “ch.” before “SPS 205”.
- (4) Replace the semi-colons with commas to separate the rule sections that are being amended.

b. In SECTION 3, “SPS 62.10 (title) and” should be deleted from the treatment clause, “is” should replace “are” in the treatment clause, and “(title)” should be deleted from the text of the amended rule.

c. In SECTION 4, each rule section that is amended should show the text of the rule with a strike-through for language to be removed and underscoring for language to be inserted. [s. 1.06 (1) (a), Manual.] Each affected rule section should also be treated in separate, single SECTIONS of the rule-making order. [s. 1.04 (2) (a) 3., Manual.]

d. In SECTION 6, the new material created in ch. SPS 205 could be located nearer to the existing material in chs. SPS 60 to 62 and 65, which govern the related subjects of barbering and cosmetology schools and instructors. For example, it would be appropriate to create the new material as ch. SPS 50 or 67 (unless those chapter numbers had previously existed and were repealed).

e. In s. SPS 205.110 (14), it appears that the examples of disinfectants listed in the Note are intended to be an enforceable requirement and should therefore be listed in the text of the rule. [s. 1.09 (1), Manual.] If the examples are not meant to be an exhaustive list, but only to enumerate examples of acceptable disinfectants, “, including:” should be inserted after “bacteria”, and then the examples of disinfectant solutions may be listed.

f. In s. SPS 205.110 (25), language relating to substantive requirements for courses of instruction should be removed from the definition. [s. 1.01 (7) (b), Manual.] This could be accomplished by deleting “are designed to”, deleting “by providing instruction on and increasing knowledge and awareness of”, inserting “with” before “the identification”, and deleting “courses dealing with”. In addition, in that subsection, “may” should replace “could”.

g. In s. SPS 205.230, sub. (1) should be an introduction, and subs. (2) to (5) should be numbered subs. (1) to (4). [s. 1.03 (3), Manual.]

h. In ss. SPS 205.270 (3) and 205.271 (4), the term “contact equipment” is used, but is not defined in s. SPS 205.110. A definition should be created to specify what the term includes. Then, if a definition for “contact equipment” is created, the list of instruments in s. SPS 205.271

(3) could be deleted in order to more simply specify that “Disinfection for contact equipment shall...”.

i. In s. SPS 205.271 (1), the Note should be deleted. Instead, a definition should be created in s. SPS 205.110 to specify that “Personal care instruments include...”. Then, the list of instruments in s. SPS 205.271 (2) could be deleted in order to more simply specify that “Disinfection for personal care instruments shall...”.

j. The contents of the Note to s. SPS 205.340 (3) should be included in the text of the proposed rule because the Note appears to be substantive. [s. 1.09 (1), Manual.]

k. In SECTION 7, the effective date should follow the format described in s. 1.02 (4), Manual, for permanent rules.

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

a. Throughout the rule-making order, “Cos” should replace “BC” in all references to the Cosmetology Examining Board’s administrative rules.

b. In the “statutory authority” section of the analysis, “454.23 (6) (d)” should replace “454.23 (6) (b)”, and the reference to sub. “(1)” after “454.265” should be deleted.

c. In the “explanation of agency authority” section of the analysis, “454.23 (6) (d)” should replace “454.23 (6) (b)”, and the reference to sub. “(1)” after “454.265” should be deleted.

d. In the Notes throughout the rule-making order, references in the form of “s. XXX.XX, Stats.” should replace “section XXX.XX of the Statutes”; “ch.” should replace “chapter”; and “chs.” should replace “chapters”. [s. 1.07 (2), Manual.] See, for example, the Notes to ss. SPS 205.100 and 205.310 (1) (d).

e. In s. SPS 205.110 (10), “subsection” should replace “definition”. [s. 1.07 (2), Manual.]

f. In the Note to s. SPS 205.110 (21), “s. SPS 205.340 (1) (b)” should replace “section SPS 205.340 (1) (b)”. In the Note to s. SPS 205.230 (3), “s. SPS 205.310” should replace “section SPS 205.310”. [s. 1.07 (2), Manual.]

g. In the Note to s. SPS 205.210 (6), “, Stats.,” should be inserted after “111.32 (13)”. [s. 1.07 (2), Manual.]

h. In ss. SPS 205.230 (1), 205.231 (1), 205.232 (intro.), 205.241 (1) (intro.) and (2) (b), 205.250 (1), and 205.310 (1) (d), “subch. II of” should be inserted before each instance of “ch. 454”.

i. In ss. SPS 205.230 (4) and 205.231 (3), “s. 440.63 (3) (a) 2. or 454.23 (2) or (3), Stats.” should replace “s. 440.63 (3) (a) 2., 454.23 (2) or 454.23 (3), Stats.”. [s. 1.07 (2), Manual.]

- j. In s. SPS 205.250 (1), “205.290” should replace “205.320”.
- k. In s. SPS 205.280 (1), “(2) or (4)” should be inserted after “205.290”.
- l. In the Note to s. SPS 205.310 (1) (d), “and 296” should be inserted after “DWD 295”.
- m. In s. SPS 205.310 (1) (e), “sub. (3)” should replace “s. SPS 205.310 (3)”. [s. 1.07 (2), Manual.]
- n. In s. SPS 205.340 (2) (intro.), “pars.” should be inserted before “(a) to (d)”. [s. 1.07 (2), Manual.]
- o. In ss. SPS 205.500 to 205.520, “subchapter” should replace “section”. [s. 1.07 (2), Manual.]
- p. In s. SPS 205.500 (1), a reference to sub. “(3)” should be inserted after “454.29”.

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

- a. In s. SPS 205.110 (6), (7), and (25), it appears that the exact phrases defined in those subsections (“chemical relaxing”, “chemical waving”, and “safety, sanitation, and infection control”) may not be used in the proposed rule. If a phrase is not used in the proposed rule, it should not be defined.
- b. In s. SPS 205.210 (6), a comma should replace the semi-colon.
- c. In s. SPS 205.231 (3), “, except as provided in s. SPS 205.230 (4)” should be deleted, as the referenced section states that it only applies in the absence of a manager.
- d. In s. SPS 205.310 (3) (a) 2., “their” should be deleted. Similarly, in s. SPS 205.320 (3), “of their” should be deleted.
- e. In s. SPS 205.420 (2) (b), what is meant by “including combinations thereof”? The agency should clarify the use of this language.
- f. In s. SPS 205.421 (1) (intro.), “meet” should replace “include, consist of or accomplish”, and “requirements” should be inserted after “all of the following”.
- g. In s. SPS 205.422 (1), “the license fully complies” should replace “they fully comply”.