



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 14-016

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.]

NOTE: Except as otherwise noted, all citations in this report to provisions of chs. SPS 85 to 87 are as renumbered by this proposed rule.

2. Form, Style and Placement in Administrative Code

a. The introductory clause contains several errors. For example, in the proposed rule, parts of s. SPS 81.04 are renumbered and parts of s. SPS 81.04 are renumbered and amended, but s. SPS 81.04 does not appear in the introductory clause. The agency should review the introductory clause for accuracy and ensure that it complies with s. 1.02 (1), Manual. In addition, the introductory clause should be modified to reflect any changes made in the proposed rule as a result of the comments in this report.

b. This rule executes a very extensive and complex renumbering of the provisions of current chs. SPS 80 to 87. 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 agency 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. If the agency decides to renumber, there are several errors in the proposed rule as a result of the renumbering. The agency should carefully review the renumbering done by the proposed rule. The following are examples of some errors resulting from the renumbering:

- (1) Current s. SPS 80.03 includes 27 definitions. The rule repeals three of these and renumbers the rest s. SPS 85.120 (1) to (23). However, with only three of 27 being repealed, the new numbering should be s. SPS 85.120 (1) to (24). In addition, in SECTION 4, s. SPS 85.120 (15) should be the subsection that is amended, not s. SPS 85.120 (14).
- (2) The rule creates s. SPS 85.910 (2) (n) to (p). However, there is no s. SPS 85.910 in current law to which these paragraphs can be added, and the rule does not renumber any units of existing rules as such. A similar comment applies to s. SPS 85.910 (7).

c. In light of this extensive renumbering, the agency may want to add a table showing the old and new numbering of each provision affected by the rule. This would serve as both an aid to readers and a tool for the agency to ensure that there are no errors in the renumbering.

d. In the treatment clause of SECTION 2, the words “as renumbered, are” should be omitted since all of the material that is renumbered is also amended. (See, for comparison, SECTION 3.) Also, when used, the phrase “as renumbered” should be both preceded and followed by commas. [ss. 1.04 (2) and 1.067, Manual.]

e. Treatment of rule sections must be done in order, as numbered in current law. For example, SECTIONS 4 and 5 should be replaced with seven SECTIONS, which would, in this order: renumber SPS 80.03 (1); repeal SPS 80.03 (2); renumber SPS 80.03 (3) to (8); repeal SPS 80.03 (8a); renumber SPS 80.03 (8ag) to (8c); repeal SPS 80.03 (8d); and renumber SPS 80.03 (9) to (18) and amend the renumbered SPS 85.120 (15). [See comment 2. b.] [s. 1.04, Manual.]

f. Throughout the rule, when material is deleted and other material is inserted in the same location, the new underscored material should follow the stricken material. [s. 1.06 (1), Manual.] For example, in s. SPS 85.700 (3m), “required” should appear after “~~under sub. (1), (1a) or (2),~~” and “must be acquired” should appear after “~~hours acquired~~”.

g. The treatment clause of SECTION 8 should read: “SPS 81.02 (intro.) and (1) to (7) are renumbered SPS 85.210 (intro.) and (1) to (7) and SPS 85.210 (3), (5), and (7), as renumbered, are amended to read:”.

h. In s. SPS 85.210 (5), “s.” should be inserted before “SPS” to reflect the text of the existing rule.

i. In ss. SPS 85.210 (7) (Note), 85.220 (2) (b) (Note), and 85.700 (4) (Note), the word “Credentialing” should be underscored. [s. 1.06 (1), Manual.]

j. SECTION 13 purports to amend s. SPS 85.230 (1) (c) 2. and 3., but makes no change to subd. 3. The text of subd. 3., and the reference to it in the treatment clause, should be omitted. If the intent is to create subd. 3., that should be done in a separate SECTION. [ss. 1.04 and 1.055, Manual.]

k. In s. SPS 85.700 (3), a subsection title should only be created if all subsections in the same section have titles. If the subsection title is created, it should be written in solid capital letters. [s. 1.05 (1) and (2) (c), Manual.]

l. It would appear that the language added at the end of s. SPS 85.700 (4) (intro.) should read: “that includes experience appraising all of the following:”.

m. The treatment clause of SECTION 35 should read: “SPS 83.02 (title), (intro.), and (1) to (6) are renumbered SPS 85.710 (title), (intro.), and (1) to (6) and SPS 85.710 (4), as renumbered, is amended to read:”.

n. SECTIONS 39 and 40 should be made into three SECTIONS: the first would renumber SPS 84.01 (1) and (3); the second would repeal SPS 84.01 (4); and the third would renumber SPS 84.01 (6) to (14) and amend SPS 85.810 (7) (e), as renumbered. [s. 1.04, Manual.]

o. In s. SPS 85.420 (1) (b), “~~subjects~~” should be replaced with “~~subject matter courses~~” to reflect the existing text of the rule.

p. The treatment clause of SECTION 46 should read: “SPS 84.04 (title) and (1) (intro.) and (a) are renumbered SPS 85.320 (title) and (1) (intro.) and (a).”.

q. Current s. SPS 84.03 (1) (b) (intro.) has a comma after “An associate degree” which is not shown in the amended rule. It must be included, with or without striking. In contrast, SECTION 47 shows an existing comma with underscoring. [s. 1.06 (1), Manual.]

r. SECTION 45 leaves s. SPS 84.03 (2) (intro.) unchanged, with the current numbering. Presumably, the intent is to renumber s. SPS 84.03 (2) as s. SPS 85.420 (2).

s. In the treatment clause of SECTION 51, “of subchapter IX of chapter SPS 85” should be omitted.

t. The treatment clause of SECTION 52 should read: “SPS 85.120 (3m) and (25) are created to read:”. [See comment 2. b.]

u. In the first sentence of s. SPS 85.240 (intro.), “must” should be replaced with “shall”. The second sentence should be written in the active voice: “The board may not issue...”. [s. 1.01 (2), Manual.]

v. Section SPS 85.240 (4) does not follow from the introductory language. To remedy this, s. SPS 85.240 (intro.), (1), (2), and (3) should be numbered s. SPS 85.240 (1) (intro.), (a), (b), and (c), and s. SPS 85.240 (4) should be numbered s. SPS 85.240 (2).

w. With regard to ss. SPS 85.330, 85.430, and 85.530, note the following:

(1) In each of these sections, the first sentence is insufficient; it needs to state for what the examination must be completed. Note that titles are not part of the rule, so reliance on the title to supply this information is inadequate.

(2) With regard to s. SPS 85.330, the second sentence is superfluous and should be omitted; it merely reiterates what the first sentence says. With regard to ss. SPS 85.430 and 85.530, the first and second sentences should be restructured to list the alternative prerequisites, such as: “An applicant for _____ shall have completed one of the following:”.

x. In ss. SPS 85.330 (1) and (3), 85.430 (1) and (3), and 85.530 (1) and (3), numbers at the beginning of a sentence should be spelled out. [s. 1.01 (5), Manual.]

y. The 30-hour requirement referenced in s. SPS 85.520 (9) should be identified by cross-reference; presumably, it is the requirement under sub. (8).

z. The subsections of s. SPS 85.820 must follow both grammatically and conceptually from the introductory language, in the active voice. Subsection (1) is drafted correctly. Subsection (2) should be broken into a list, similar to sub. (3), and sub. (2) (intro.) should read: “One of the following approves the course content:”. Subsection (3) (intro.) should read: “One of the following approves the course delivery:”. Subsection (4) should be drafted like sub. (1), beginning as follows: “The course includes a written...”. Also, the last sentence of sub. (4) is superfluous and should be omitted; it merely reiterates the earlier statement that the exam must be written.

aa. In s. SPS 85.840 (1), “Real Estate” should not be capitalized. [s. 1.01 (4), Manual.]

bb. In s. SPS 85.910 (2) (p), “energy” should be capitalized.

cc. In SECTION 74, it appears that the amendments to s. SPS 87.02 (3) should be omitted because sub. (3) does not exist in the current rule.

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

a. In s. SPS 85.210 (3), “chs.” should be replaced with “ss.”. [s. 1.07 (2), Manual.]

b. In s. SPS 85.700 (3m), “subch.” should be replaced with “ss.”. [s. 1.07 (2), Manual.]

c. In s. SPS 85.240 (intro.), “, Stats” should be inserted after “s. 440.03 (13) (c)”. [s. 1.07 (2), Manual.]

d. In s. SPS 85.330 (1), “s.” should be inserted before “SPS 85.320 (1) (a)”. [s. 1.07 (2), Manual.]

e. In s. SPS 85.430 (1), “SPS 85.410 (1) (a)” should be replaced with “s. SPS 85.420 (1) (a)”. [s. 1.07 (2), Manual.]

f. In s. SPS 85.530 (1) and (2), “s.” should be inserted before “SPS 85.520”. [s. 1.07 (2), Manual.]

g. In s. SPS 85.840 (2), “s.” should be inserted before “SPS 85.700 (3) (f)”. [s. 1.07 (2), Manual.]

h. In s. SPS 86.01 (9), “s.” should be inserted before “SPS 85.600”. [s. 1.07 (2), Manual.]

i. In s. SPS 86.01 (11), “SPS 85.120 (9)” should be replaced with “SPS 85.120 (10)”. [See comment 2. b.]

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

a. In current chs. SPS 80 to 87, it is not immediately apparent that the subject is real estate appraisers. This comprehensive revision of the rules of the Real Estate Appraisers Board presents an opportunity to correct this. At a minimum, the term “real estate appraisers” should be added to each chapter title (though not necessarily to subchapter titles).

b. This rule replaces a very clear provision, s. SPS 81.01, which clearly states what requirements are intended, with a less clear provision, which refers only to the “required education and experience hours”. The current structure, with cross-references to the specific requirements, should be retained. Similarly, s. SPS 85.210 (7) should be amended as follows: “A The roster of appraisal experience ~~as required in SPS 83.01 (4) (b)~~ under s. SPS 85.700 (4).”.

c. The definition of AQB, in SECTION 52, is insufficient. It should make clear that it is the Appraiser Qualifications Board of the Appraisal Foundation, and should be followed by a note such as that following current s. SPS 84.01 (6).

d. In s. SPS 85.240 (2), the comma following “guilty” should be deleted.

e. Section SPS 85.600 (7) is confusing. First, what approval does it refer to? This should be identified by cross-reference. Perhaps more importantly, what is the meaning of the second sentence? Does a credential holder have to retake the exam every 24 months? Or does this mean that completion of the exam up to 24 months prior to approval satisfies the requirement of this subsection? Also, what are the consequences of failing to meet this requirement – is the applicant’s approval revoked?

f. Section SPS 85.840 needs greater clarity. What degrees may substitute for what class hour requirements? Can it be specified in the rule, or is it based on prior approval of the board, on a case-by-case basis?

g. In s. SPS 86.01 (9), the period after “~~ch. SPS 82~~” should be omitted.