

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY AND
DEPARTMENT OF SAFETY AND : PROFESSIONAL SERVICES
PROFESSIONAL SERVICES : ADOPTING
: CLEARINGHOUSE RULE 15-028

PROPOSED ORDER

An order of the Department of Safety and Professional Services to repeal SPS 61.02; to amend SPS 50.110 (3) (Note), 50.300 (1), 50.310 (3) (b), 60.02 (1), 61.01, 61.03 (1) (intro.), 61.04 (1) and (2), 61.05 (intro.), 61.06 (2) and (2) (Figure 61.06) (title), 61.06 (4), 61.07, 65.02 (1) (Note), and 65.03 (1) and (3) (Figure 65.03) (title); to repeal and recreate SPS 50.310 Table, and to create SPS 50.110 (1m), 50.300 (intro.), 61.03 (intro.) (Note), 61.04 (2) (Note), 61.05 (intro.) (Note), 61.07 (Note), and 65.02 (2) (Note) relating to barbering and schools of barbering, cosmetology, aesthetics, electrology, and manicuring.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 440.03 (9) (a), 440.08 (2) (a) 19., 440.08 (2) (a) 24k., 440.60, and 454.26 (2), Stats.

Statutory authority:

Sections 227.11 (2) (a), 440.03 (9) (a), 440.62 (3) (ag), 454.245, Stats.

Explanation of agency authority:

The Department of Safety and Professional Services (Department) is authorized by the legislature, pursuant to s. 227.11 (2) (a), Stats., to promulgate rules interpreting the provisions of any statute it enforces or administers. Section 440.62. (3) (ag), Stats., sets forth the requirements the Department must adhere to when issuing licenses to schools of barbering. Section 454.245, Stats., requires the Department to identify, by rule, the accrediting agencies it approves to accredit schools.

Related statute or rule:

Wisconsin Administrative Code Chapters Cos 1 to 11

Plain language analysis:

The proposed rule addresses changes prompted by the passage of recent legislation. 2011 Wisconsin Act 190 severed the Barbering and Cosmetology Examining Board and transferred the regulation of the practice of barbering to the Department of Safety and Professional Services. Act 190 added several new definitions to s. 440.60, Stats., which required updating s. SPS 60.02. 2013 Wisconsin Act 205 reduced the number of hours of practical training that an apprentice in barbering must acquire from 3,712 hours to 1,712 hours. This change required amending the syllabus for apprentice training experience set forth in s. 50.310 table. Lastly, 2013 Wisconsin Act 356 created a provision requiring the Department to identify, by rule, the accrediting agencies it approves to accredit barbering schools. The proposed rule also updates the renewal date for barbering and cosmetology schools. The proposed rule additionally repeals s. SPS 61.02 as these provisions no longer accurately reflect the fees for licenses issued to schools and specialty schools. Section 440.62 (2), Stats., allows the Department to determine the licensure fees in accordance with s. 440.03 (9) (a), Stats., which establishes a biennial recalculation of credential fees.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Comparison with rules in adjacent states:

Illinois: Licenses for barbers, barber teachers, and barber schools expire July 31st of each odd numbered year. Ill. Admin. Code tit. 68 § 1175.225. No apprenticeship requirements or accreditation standards were found.

Iowa: Licensed barbering schools in Iowa must renew on an annual basis. Iowa Code § 158.7 Iowa accepts Barbering schools required course of study consists of 2,100 hours of instruction. Iowa Code § 158.8. Apprenticeship hours earned in other states may be applied towards the required 2,100 hours course of study. 645 Iowa Admin. Code r. 23.15.

Michigan: Licenses for barbers, barber instructors, barbershops, and barber colleges are renewed on a 2-year cycle expiring on September 30th. A barber college's license is automatically revoked if there is a transfer of ownership or change of location. Mich. Comp. Laws § 339.1110. No apprenticeship requirements or accreditation standards were found.

Minnesota: Barbers, barber shops, barber instructors, and barber schools are registered in Minnesota. Minn. Stats. 154.01. Barber schools must renew their registration on an annual basis. Minn. R. 2100.5600. Minnesota registers apprentices; however the statutes and rules were silent as to apprentice training experience requirements.

Summary of factual data and analytical methodologies:

The methodology used for developing the proposed rule includes reviewing recent legislation 2011 Wisconsin Act 190, 2013 Wisconsin Act 205, and 2013 Wisconsin Act 356 and obtaining feedback from the Department's barbering advisory committee.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The rule was posted for a period of 14 days for public comment on the economic impact of the proposed rule, including how this proposed rule may affect businesses, local government units, and individuals and no comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis are attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Eric.Esser@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Katie Paff, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4472; email at Kathleen.Paff@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Katie Paff, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8935, or by email to Kathleen.Paff@wisconsin.gov. Comments must be received on or before the public hearing to be held on April 20, 2015 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 50.110 (1m) is created to read:

SPS 50.110 (1m) "Apprentice" means a person who is learning the practice of barbering under s. 454.26, Stats.

SECTION 2. SPS 50.110 (3) (Note) is amended to read:

SPS 50.110 (3) Note: Section 454.20 (2) of the Statutes reads as follows: "'Barbering' means, for compensation, arranging, styling, dressing, shampooing, cleansing, curling, dyeing, tinting, coloring, bleaching, waxing, waving, straightening, cutting, shaving, trimming, relaxing, singeing, or performing similar work upon the hair of the head, neck, or face of any person by any means. 'Barbering' does not include the removal of a person's hair at the root or the application of temporary or permanent eyelash extensions to the eyelashes of a person." The definition of barbering specifically allows barbers to perform waxing but prohibits barbers from performing all other forms of hair removal at the root.

SECTION 3. SPS 50.300 (intro.) is created to read:

SPS 50.300 Licensure through school. An applicant for licensure as a barber or a barbering manager may receive instruction in a school licensed under s. 440.62 (3) (ar), Stats., exempted under s. 440.61, Stats., or accredited by any of the following:

- (1) National Accrediting Commission of Career Arts & Sciences (NACCAS)
- (2) Accrediting Commission of Career Schools and Colleges (ACCSC)
- (3) Council on Occupational Education (COE)
- (4) National Interstate Council of State Boards of Cosmetology (NIC)
- (5) Any other accrediting agency relating to cosmetology that is recognized by the U.S. Department of Education

SECTION 4. SPS 50.300 (1) is amended to read:

SPS 50.300 (1) GENERAL. Schools that provide instruction to students for a barber's or barbering manager's license shall develop curricula for instruction which are based on the applicable syllabus approved by the department. A school may not deviate from the hours listed for subjects in the appropriate syllabus included in this section.

SECTION 5. SPS 50.310 (3) (b) is amended to read:

SPS 50.310 (3) (b) Each apprentice shall receive at least ~~3,712~~ 1,712 hours of training and experience in the practical services of barbering to qualify for the examination as a barber. Training and experience shall include the subjects and practical hours of training shown in Table 50.310.

SECTION 6. SPS 50.310 Table is repealed and recreated to read:

Table 50.310
Apprentice Training Experience

	SUBJECTS	PRACTICAL HOURS
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I.	Bacteriology, sterilization, and sanitation in the establishment.	70
II.	Haircutting, hair tapering (clipper cuts), razor cutting, hair styling, curling, thermal waving, finger-waving, roller setting, pin curl placement, blow-drying, shampoos, scalp and hair treatment, conditioning, reconditioning, hair analysis, and care of hairpieces, wigs, and wefts.	800
III.	Hair straightening, hair relaxing, thermal hair straightening, blowouts, permanents, hair coloring, tinting, bleaching (lightening), and chemistry.	250
IV.	Shaving, beard and mustache shaping, trimming, superfluous hair removal, waxing, men's facial, and facial massages.	300
V.	General patron service and individual apprentice needs.	292
	TOTAL PRACTICE HOURS	1,712

SECTION 7. SPS 60.02 (1) is amended to read:

SPS 60.02 (1) "Aesthetician," "aesthetics," ~~"apprentice," "barbering and cosmetology," "barber and cosmetologist," "barber," "barbering," "barbering manager," "cosmetologist," "cosmetology," "cosmetology manager,"~~ "electrologist," "electrology," "establishment," ~~"examining board," "manager,"~~ "manicuring," "manicurist," "practical instruction," "school," "specialty school," "student," "theoretical instruction," and "training hour" have the meanings given under s. 440.60, Stats.

SECTION 8. SPS 61.01 is amended to read:

SPS 61.01 License period. All licenses issued under ~~subch. V~~ subch. VI of ch. 440, Stats., shall ~~expire on July 1 unless renewed. Licenses issued under subch. V of ch. 440, Stats., may be renewed for a one year period~~ be renewed on or before April 1 of each odd-numbered year.

SECTION 9. SPS 61.02 is repealed.

SECTION 10. SPS 61.03 (1) (intro.) is amended to read:

SPS 61.03 (1) An application for initial licensure as a school, or for an additional location of a school, shall be made by the owner of the school on the form provided by the department, and shall be submitted with the fee required by s. 440.62 (2) (a), Stats. The department shall grant or deny the license application within 45 business days following receipt of the application. A separate application shall be made for each location and contain all of the following information:

SECTION 11. SPS 61.03 (1) (intro.) (Note) is created to read:

SPS 61.03 (1) Note: Fees established by the department pursuant to s. 440.03 (9), Stats., are posted on the department's website, at www.dsp.wisconsin.gov. The renewal fees for all other credentials are noted in the related statutes or rules.

SECTION 12. SPS 61.04 (1) and (2) are amended to read:

SPS 61.04 (1) Application for the renewal of a license for a school or specialty school shall be filed on or before ~~May 31~~ April 1 of each odd-numbered year. The department shall grant or deny the application for license renewal within 45 business days following receipt of the application.

(2) A renewal application shall be filed together with the fee required by ~~s. SPS 61.02 (2)~~ s. 440.62 (2) (a), Stats., and shall contain the following information:

SECTION 13. SPS 61.04 (2) (Note) is created to read:

SPS 61.04 (2) Note: Renewal fees established by the department pursuant to s. 440.03 (9), Stats., are posted on the department's website, at www.dsps.wisconsin.gov. The renewal fees for all other credentials are noted in the related statutes or rules.

SECTION 14. SPS 61.05 (intro.) is amended to read:

SPS 61.05 To apply for reinstatement of a license expired for one year or longer, the owner of a school or specialty school shall file an application for an initial license. To apply for reinstatement of a license expired for less than one year, the owner of a school or specialty school shall file an application for renewal, as required by s. SPS 61.04, together with the application fee and late fee required by s. ~~SPS 61.02 (2) and (4)~~ 440.62 (2) (a), Stats.. The department shall grant or deny the application for reinstatement within 45 business days of receiving the application. The application shall include the following additional material:

SECTION 15. SPS 61.05 (intro.) (Note) is created to read:

SPS 61.05 Note: Fees established by the department pursuant to s. 440.03 (9), Stats., are posted on the department's website, at www.dsps.wisconsin.gov. The renewal fees for all other credentials are noted in the related statutes or rules.

SECTION 16. SPS 61.06 (2) and (2) (Figure 61.06) (title) are amended to read:

SPS 61.06 (2) AMOUNT OF BONDS. The amount of the bond required shall not be less than reflected in ~~figure~~ table 61.06, and may be increased if the department determines that a larger bond is required to protect students of the school or specialty school, and their parents, guardians, and sponsors from risk of economic loss. A school which exceeds the enrollment upon which its bonding amount is based shall increase the amount of its bond accordingly. The increased bond shall be filed with the department within 30 days of the day the school first exceeds the enrollment on which its bonding amount is based.

FIGURE TABLE 61.06

SECTION 17. SPS 61.06 (4) is amended to read:

SPS 61.06 (4) CANCELLATION OF SURETY BOND. A surety on a bond may be released from the bond on 90 days written notice to the secretary of the department. The secretary shall forthwith notify the school or specialty school named as principal on that bond that the school's or specialty school's license shall be suspended if satisfactory evidence of a replacement bond has not been presented within 15 business days of the date of the secretary's notice to the school or specialty school. A school or specialty school which has its license suspended under this subsection shall provide written notice of the suspension and the reason therefor together with the identifying information of the bond from which the surety has sought release to its students and enrollees within 5 days of the suspension, and shall thereupon cease all operations as a school or specialty school under ~~subch. V~~ subch. VI of ch. 440, Stats.

SECTION 18. SPS 61.07 is amended to read:

SPS 61.07 Change of ownership. Any change of ownership of a school or specialty school shall be reported to the department within 5 calendar days of the change of ownership, on the form provided by the department, and shall be accompanied by the fee ~~specified in s. SPS 61.02 (3)~~ equivalent to the fee for initial licensure and the surety bond required by s. 440.62 (2) (a), Stats. The bond accompanying the change of ownership report shall be in the same form as, and in an amount at least equal to, the bond filed by the previous owners of the school or specialty school. The department shall immediately suspend the license of any school or specialty school for which a change of ownership is reported unless it is accompanied by a surety bond in the specified form and amount, naming the new owners as principals.

SECTION 19. SPS 61.07 (Note) is created to read:

SPS 61.03 (1) Note: Fees established by the department pursuant to s. 440.03 (9), Stats., are posted on the department's website, at www.dsp.wisconsin.gov. The renewal fees for all other credentials are noted in the related statutes or rules.

SECTION 20. SPS 65.02 (1) (Note) is amended to read:

SPS 65.02 (1) Note: Certificates expire on ~~July 1~~ April 1 of odd-numbered years.

SECTION 21. SPS 65.03 (1) and (3) (Figure 65.03) (title) are amended to read:

SPS 65.03 (1) The instructor training required by ss. 440.63 (3) (a) 3., 440.63 (3) (b) 2., 440.63 (3) (c) 2., and 440.63 (3) (d) 2., Stats., is satisfied by successful completion of a course approved by the department in accordance with the syllabus set forth in ~~Figure~~ Table 65.03. A person shall complete the 150 hours of training within 2 years of commencing the training.

**~~FIGURE~~TABLE 65.03
INSTRUCTOR TRAINING COURSE SYLLABUS**

SECTION 22. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

This Proposed Order of the Department of Safety and Professional Services is approved for submission to the Governor and Legislature.

Dated _____

Agency _____

Secretary
Department of Safety and
Professional Services