



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 14-014

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 the rule summary’s listing of the statutory authority, “ss.” should replace “s.”, and the phrase “and 440.26 (3m)” should be inserted after “227.11 (2) (a)”.

b. In the rule summary’s explanation of agency authority, the following phrase should be inserted after “enforces”: “; and s. 440.26 (3m), Stats., requires the agency to promulgate rules relating to the carrying of dangerous weapons by private detectives, investigators, and security personnel”.

2. Form, Style and Placement in Administrative Code

a. In the introductory clause for the proposed rule, the following revisions should be made:

- (1) Delete the phrase “as 34.01 (1) (f) to (h)”.
- (2) Delete the phrase “as 34.11 and 34.12”.
- (3) Delete the phrase “as 34.015 (5)”.
- (4) Insert “(intro.)” after “34.02 (2)”.
- (5) Delete the phrase “as 34.02 (2) (a) and (b) 1. and 2.”.
- (6) Delete the phrase “as 34.10”.
- (7) Delete the phrase “as 34.13”.

(8) Insert “34.03 (title) and (1) (intro.) and (b) (Note)” to replace “34.03 (title) and (1)”.

(9) Insert “34.04 (1) (Note)” to replace “35.04 (1) (Note)”.

b. SECTION 4 of the proposed rule should be deleted, as re-use of numbers is discouraged. [s. 1.03 (5) (a), Manual.] In SECTION 5, the reference to s. SPS 34.01 (1) (g) in the treatment clause should be replaced with s. SPS 34.01 (1) (h).

c. In s. SPS 34.01 (2), “owner or” should be inserted before “employee” to reflect the text of the existing subsection.

d. Section SPS 34.01 (5) should be deleted, as it duplicates sub. (9), and the later subsection is more precise. Subsections (6) to (9) should then be numbered subs. (5) to (8), and the references in ss. SPS 34.01 (2) and (3) and 34.011, to the exceptions in subs. “(4) to (9)” should then be revised to end with sub. “(8)”. The introductory clause for the proposed rule should likewise be modified to reflect this revision.

e. In SECTION 11 of the proposed rule, it is not necessary to renumber s. SPS 34.015 (6) to sub. (5). Although sub. (5) is unused in the existing rule, it appears that it may have been used in the past, and re-use of numbers is discouraged. [s. 1.03 (5) (a), Manual.] If, however, sub. (6) is renumbered, in the treatment clause the phrase “is renumbered SPS 34.015 (5) and amended to read” should replace “is renumbered and as renumbered SPS 34.015 (5) is amended to read”. [s. 1.067, Manual.]

f. In the treatment clause for SECTION 13, the word “(intro.)” should be inserted after “SPS 34.02 (2)”, the word “as” should be deleted after “are renumbered”, and the phrase “as renumbered” should be deleted. Also, in sub. (2) (a), the plus sign should be deleted.

g. In the treatment clause for SECTION 16, the phrase “34.03 (title) and (1) (intro.) and (b) (Note)” should replace “34.03 (title), (1) (intro.) and Note”.

h. In s. SPS 34.04 (5), it is not necessary to amend “2” to “two”. Numbers should generally be expressed using Arabic numerals. [s. 1.01 (5), Manual.]

i. In the treatment clause for SECTION 20, the word “Note” should be enclosed in parentheses. [s. 1.09 (2) (a), Manual.]

j. In SECTIONS 21, 23, and 24 of the proposed rule, it is not necessary to renumber the affected sections. Renumbering of provisions is discouraged, as it may cause confusion. [s. 1.03 (5) (a), Manual.] If more division is desired, separate subchapters could be created in ch. SPS 34 to further partition the existing section numbers. If renumbering is removed, then SECTION 10 of the proposed rule should be removed, as the cross-reference would not need to be amended.

k. If renumbering in SECTIONS 21 and 24 is maintained, the phrase “as renumbered” should be deleted from the treatment clauses for both SECTIONS. [s. 1.067, Manual.]

l. In the treatment clause for SECTION 22, the word “Note” should be enclosed in parentheses. [s. 1.09 (2) (a), Manual.]

m. In SECTION 25, “EFFECTIVE DATE.” should be inserted after “SECTION 25.”. [s. 1.02 (4), Manual.]

3. Conflict With or Duplication of Existing Rules

In the existing rules, s. SPS 34.01 (4) should be repealed, as it conflicts with s. SPS 34.01 (6) of the proposed rules, which follows the directive given in s. 440.26 (3m) (a), Stats., for carrying a concealed firearm by a law enforcement officer. After the repeal of sub. (4), the references in ss. SPS 34.01 (2) and (3) and 34.011, to the exceptions in subs. “(4) to (9)” should then be revised to begin with sub. “(5)”.

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

a. In the rule summary’s plain language analysis of SECTION 1 of the proposed rule, a reference to “s. SPS 30.02” should replace “ch. SPS 30”.

b. In the rule summary’s plain language analysis of SECTION 3 of the proposed rule, the phrase “in 2011 Act 35” should be deleted, as that Act does not appear to address those requirements.

c. In the rule summary’s plain language analysis of SECTIONS 5 and 6 of the proposed rule, a reference to “, Stats.” should be inserted before “applies”.

d. In the rule summary’s plain language analysis, a description of SECTION 11 of the proposed rule should be inserted.

e. In the rule summary’s comparison with federal regulation, the word “Rules” should replace the phrase “This specific federal rule is cited in 2011 Act 35 whereby rules”, as 2011 Wisconsin Act 35 does not create that citation.

f. In the rule summary’s comparison with rules in adjacent states, the description of Illinois law should be reviewed and corrected as needed. The cited law was repealed in 2003. [P.A. 93-438.] Current Illinois law allows the standards for registration, licensure, and professional conduct of private detectives and private security personnel to be regulated by rule. [225 ILCS 447/50-20.] Additionally, contrary to the statement in the description, current Illinois law allows the issuance of a license to carry a concealed firearm, which was approved in July 2013. [430 ILCS 66/10; P.A. 98-63.]

g. In the rule summary’s comparison with rules in Iowa, a reference to “s. 661-91.4” should replace “661 chapter 4”, and the phrase “Iowa Code ch.” should be inserted before “80A”. Also, the phrase “for a concealed carry permit to be issued, and Iowa Code s. 724.11A provides” should be inserted after “Iowa Code s. 724.7(1) provides”. The last sentence should either be deleted (“Iowa code s. 724.11-A; therefore, Iowa too recognizes reciprocity.”), or in that sentence the citation and the word “too” should be deleted.

h. In the rule summary’s comparison with rules in adjacent states, the description of Michigan law should be reviewed and corrected as needed. The reference to “chapter 338” should be revised to “ss. 338.821 to 338.851”, for the Michigan Professional Investigator Licensure Act, as “ch. 338” includes all occupational licenses. Also, the Michigan Private Security Business and Security Alarm Act should be reviewed and described as appropriate. [Mich. Comp. Laws ss. 338.1051 to 338.1092.]

i. In the rule summary's comparison with rules in adjacent states, the description of Minnesota law should be reviewed and corrected as needed. The reference to "ch. 3326" should be revised to "ss. 326.32 to 326.339", for licensure of private detectives and protective agents, as "ch. 3326" does not exist, and ch. 326 includes other occupational licenses.

j. In the rule summary's description of the factual data and analytical methodologies, the following revisions should be made:

(1) A reference to "Jus 17 and 18" should replace "Jus 16 and 17".

(2) The period before "all" should be deleted.

(3) A reference to ", Stats." should be inserted before "applies".

k. In s. SPS 34.002 (2) (Note), the reference to "(4)" between "s. 941.295" and "(1c (a))" should be deleted.

l. In s. SPS 34.002 (3) (Note), a reference to "175.60" should replace "175.060".

m. In s. SPS 34.01 (8), the reference to "s. 941.23, Stats.," should be revised to "s. 941.23 (2) (c), Stats.,".

n. In s. SPS 34.011 (intro.), "s." should replace "ss.".

o. In s. SPS 34.015 (1), the intent of the reference to "As provided in ch. SPS 31" is unclear, as that chapter does not provide an application procedure for a firearms permit. Is it intended that, "An agency who applies for a license or permit under ch. SPS 31 shall apply..."? Or that, "With an application under ch. SPS 31 an agency may apply...?"

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

a. In the rule summary's plain language analysis, in the first paragraph, the phrase "proposed rule" should replace "legislation", and before "issued under" the word "license" should replace "permit". Likewise, in the second paragraph, "license" should replace "permit", and "licenses" should replace "permits". Wisconsin law requires a person to have a license, rather than a permit, to carry a concealed weapon. [s. 175.60 (2) (a), Stats.]

b. In the rule summary's plain language analysis, in the third paragraph, the following revisions should be made:

(1) Delete the word "would" before "allow".

(2) Insert "and a peace officer under s. 941.23 (2) (a) to (c), Stats.," before "to carry a weapon".

(3) Delete the phrase "would now" before "recognize".

(4) Insert ", Stats." before "applies".

c. In the rule summary's plain language analysis of SECTIONS 5 and 6 of the proposed rule, the period after "applies" should be deleted. Also, the last sentence should be deleted, as it is repetitive of the description given in the paragraph.

d. In the rule summary's plain language analysis of SECTION 23 of the proposed rule, in order to specify the type of permit, it appears that the word "firearms" should be inserted before "permit".

e. In the rule summary's introduction to the comparison of rules in adjacent states, the word "conducted" should replace "conduced".

f. In the rule summary's comparison of Minnesota's licensing requirements, it would be helpful to give the term of the license, as is stated for the other adjacent states.

g. In s. SPS 34.002 (intro.), the phrase "In addition to definitions under SPS 30.02," could be deleted, as s. SPS 30.02 already specifies that its definitions apply in ch. SPS 34.

h. In s. SPS 34.002 (2), the word "in" should replace "under".

i. In s. SPS 34.01 (1) (intro.), the phrase "on, about or near their person" after "carry" should be deleted by strike-through, as it is redundant to the meaning of the word "carry", as defined in s. SPS 34.002 (1) of the proposed rule. To "carry" by going armed with a firearm means that a firearm is on an individual's person or is within the individual's reach, and the individual is aware of the presence of the firearm. [*State v. Walls*, 190 Wis. 2d 65, 69 (Ct. App. 1994).]

j. In s. SPS 34.01 (2), the phrase "on, about or near the person" after "carry" should be deleted by strike-through.

k. In s. SPS 34.01 (3), the phrase "on, about or near his or her person" after "carry" should be deleted by strike-through.

l. In s. SPS 34.01 (6), the phrase "on, about or near his or her person" after "carry" should be deleted. Also, the phrase "to carry a concealed firearm" should be deleted, as it is redundant to "may carry..., concealed or otherwise".

m. In s. SPS 34.01 (7), the phrase "on, about or near his or her person" after "carry" should be deleted. Also, the word "Stats.," should be inserted before "to carry".

n. In s. SPS 34.01 (8), the phrase "on, about or near his or her person" after "carry" should be deleted.

o. In s. SPS 34.01 (9), the following revisions should be made:

(1) The phrase "on, about or near his or her person" after "carry" should be deleted.

(2) The word "weapon" should replace "firearm", in order to be consistent with the language under s. 440.26 (3m) (d), Stats., and with the terminology for the licensee status under s. 175.60 (1) (d), Stats.

(3) Additionally, it would be helpful to insert a statement to explicitly alert readers that the exception to requiring a firearms permit is limited because the definition for a "weapon" includes only one type of firearm, and does not include other types of firearms that may otherwise be carried with a firearms permit. The statement could be along the following lines: "A licensee or out-of-state licensee may carry a firearm that is not a weapon, as defined in s. SPS 34.002 (3), when

acting as a private detective or private security person, if the person obtains a firearms permit from the department.”.

p. In s. SPS 34.011 (intro.), the phrase “for a person” should be deleted.

q. In s. SPS 34.015 (5), the phrase “with a license or permit application” should be inserted after “submitted”, and the acronym “NICS” should be written out. Also, should the word “shall” replace “may”? [s. 1.01 (2) and (8), Manual.]

r. In s. SPS 34.02 (1) (Note), “~~may be obtained~~ contact” should replace “may be obtained”, the phrase “accessible for” should be deleted, and the phrase “the form” should be inserted after “download”. Also, the full address for the Firearms Permits Forms page should be given, as it is in the Note to s. SPS 34.015 (1).

s. In s. SPS 34.02 (3), “a” should replace “their”.

t. In s. SPS 34.04 (1) (Note), the phrase “accessible for” should be deleted, and the word “downloaded” should replace “download”.

u. In s. SPS 34.04 (6) (Note), the phrase “accessible for” should be deleted, and the word “downloaded” should replace “download”.

v. In s. SPS 34.04 (7) (Note), the phrase “accessible for” should be deleted, and the word “downloaded” should replace “download”. Also, the full address for the Firearms Permits Forms page should be given, as it is in the Note to s. SPS 34.015 (1).

w. In s. SPS 34.10 (1) (Note), the phrase “Mail copies of an agency’s firearms policy” could be revised to “For filing an agency’s firearms policy, mail the policy”.