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CLEARINGHOUSE RULE 95-206

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

The current statutory authorization for persons to use pepper spray in self-defense or the defense of another is an exception to the general prohibition against persons, other than law enforcement and military personnel, using “...any tear gas bomb, hand grenade, projectile or shell or any other container of any kind or character in which tear gas or any similar substance is used or placed for use to cause bodily discomfort, panic, or damage to property” [s. 941.26 (1) (b) and (3), Stats.]. Thus, unless staff of the Division of Probation and Parole and Division of Intensive Sanctions are considered “civil enforcement officer[s] of the state” [see s. 941.26 (3), Stats.], these persons may only use pepper spray. As noted under comment 5. b., the definition of the term “incapacitating agent” is vague and not clearly limited to pepper spray.

2. Form, Style and Placement in Administrative Code

a. When subsections of the same administrative rule are subject to the same treatment, that treatment may be addressed in one SECTION. Therefore, it is unnecessary, as Clearinghouse Rule 95-206 provides, to use separate SECTIONS to renumber various subsections of s. DOC 333.03. However, it would be much simpler to create the new definition as s. DOC 333.03 (5m), thus eliminating the need to renumber the other definitions. This latter comment also applies to s. DOC 328.18 (1) (e), which could be s. DOC 328.18 (1) (dm).

b. The terms “field staff,” “staff,” “agent” and “client” are defined in current s. DOC 328.03, which sets forth definitions applicable to ch. DOC 328. Section DOC 328.20 refers to

“staff member” and “offender.” It is recommended that the defined terms “staff,” “agent” and “client” be substituted for the undefined terms used in the rule. Similarly, s. DOC 333.16 should refer to “DIS staff” rather than “staff member” because “DIS” is a defined term in s. DOC 333.03 and the term “DIS staff” is used throughout ch. DOC 333.

c. There is a typographical error in SECTION 5. The reference should be to “DOC 333.03 (7).”

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

a. Section 941.26 (4) (c) 1. permits any member of the public to use oleoresin of capsicum in self-defense or defense of another, as allowed under s. 939.48, Stats. However, the rule allows the affected DOC employes to use oleoresin of capsicum in self-defense or defense of others only after they complete training. Is this intended? Will training be provided to all affected employes?

b. The definition of “incapacitating agent” in proposed ss. DOC 328.18 (1) (e) and 333.02 (6) is confusing and vague. If the use of the phrase “authorized by statute” is intended to limit the term incapacitating agent to that which is authorized under s. 941.26 (4) (a), Stats. (i.e., “oleoresin of capsicum” or pepper spray), then this phrase is placed incorrectly. As currently placed, the phrase modifies the terms “client” and “inmate.” If the intent of these definitions is merely to authorize the use of pepper spray, it should refer to “oleoresin of capsicum” and include a cross-reference to s. 941.26 (4) (a), Stats. If the definitions are intended to encompass tear gas and similar agents, this should be specified in the definition.

c. Current ss. DOC 328.20 (2) and 333.16 (2) prohibit affected DOC employes from carrying “firearms or other weapons” during their working hours. As repealed and recreated, these provisions only apply to firearms. Is it intended that the employes be allowed to carry other weapons (besides oleoresin of capsicum) during their working hours?