Clearinghouse Rule 13-047

STATE OF WISCONSIN
Department of Safety and Professional Services

IN THE MATTER OF RULE-MAKING PROCEEDINGS BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES	: : : :	PROPOSED ORDER OF THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES, ADOPTING RULES

PROPOSED ORDER

An order of the Department of Safety and Professional Services to create section SPS 34.04 (2) (a) 4. relating to training of firearms instructors for private security personnel, private detectives, and private investigators or special investigators, and affecting small business.

ANALYSIS

Statutes interpreted:

Section 440.26 (2) (c).

Statutory authority:

Sections 227.11 (2) (a) and 440.26 (2) (c).

Explanation of agency authority:

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting any statute that is enforced or administered by the Department, if the rule is considered necessary to effectuate the purpose of the statute.

Section 440.26 (2) (c) obligates the Department to prescribe by rule such qualifications as it deems appropriate relating to the professional competence of private security personnel, private detectives, and private investigators or special investigators.

Related statute or rule:

Section 175.60 of the Statutes contains authorization and criteria relating to carrying concealed weapons, and chapters Jus 17 and 18 contain the requirements of the Department of Justice for implementing those criteria.

Plain language analysis:

The proposed rule revisions would add Wisconsin Technical College System schools and other U.S. Department of Education approved institutions to the list of those able to provide training to individuals seeking the Department's approval to be firearms-proficiency certifiers for

private security personnel, private detectives, and private investigators or special investigators. Currently, the only entities that are accepted for providing this training are the Wisconsin Law Enforcement Standards Board and the National Rifle Association, Inc. The rule revisions would also allow the Department to adopt or approve a curriculum for training firearms instructors that is separate and distinct from a curriculum established by the Wisconsin Law Enforcement Standards Board or by the National Rifle Association, Inc.

The proposed rule revisions do not modify the current requirement in section SPS 34.04 (2) (a) (intro.) that a firearms-proficiency certifier "shall have received training as a police or security firearms instructor." The proposed rule revisions also do not modify the current requirements in section SPS 34.04 for these proficiency certifiers to obtain and biennially renew a credential from the Department that authorizes them to certify the firearms proficiency.

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

The federal government does not regulate training or approval of firearms instructors in the states.

Comparison with rules in adjacent states:

An Internet-based search of Web sites from the four adjacent states and contact with corresponding staff there produced the following results relating to firearms instructors for private security personnel, private detectives, and private investigators or special investigators:

Illinois: Under section 1240.515 of Title 68 of the Illinois Administrative Code, the Illinois Department of Financial and Professional Regulation approves firearms instructors for private detectives, private security contractors, and proprietary security force employees. The Department's approval of an instructor is based upon receipt of any of the following: (1) a certificate from the NRA, for completing a law enforcement firearms instructor course that included security personnel within the course; (2) an approval from the Illinois Police Training Board as a range instructor; (3) proof of any other firearm-instructor education or experience that the Department considers to be substantially equivalent to the standards in (1) or (2), such as experience or education received in military service or federal law enforcement service; or (4) proof of being a faculty member who is employed by an institution under the jurisdiction of either the Illinois Board of Higher Education or the Illinois Community College Board to teach a firearms training course.

Iowa: Under sections 661–121.19 and 661–91.4 of the Iowa Administrative Code, the Iowa Department of Public Safety issues and annually renews professional permits to carry weapons, for private security personnel and private detectives whose employment reasonably justifies being armed. Initial issuance of the permit is based upon proof of (1) completing a qualified firearm-training program, or (2) an honorable discharge from active duty with the U.S. armed forces, or (3) completing basic training and small arms training for active duty personnel in the U.S. armed forces. A qualified firearm-training program consists of (1) any handgun safety training course available to the general public that utilizes instructors who are certified by either the NRA, the Iowa Law Enforcement Academy, or another state's department of public safety, state police department, or similar certifying body; or (2) any NRA handgun safety training course; or (3) any handgun safety training course approved by the Department that is offered to security guards, investigators, or any division of a security-enforcement agency; or (4) completion

of small arms training while serving with the U.S. armed forces. Courses approved by the Department must be substantially equivalent to the Iowa Law Enforcement Academy marksmanship qualification course.

Renewal of a professional permit to carry weapons is based upon documentation of qualifying on a firing range under the supervision of an instructor certified by either the NRA; the Iowa Law Enforcement Academy; or another state's department of public safety, state police department, or similar certifying body.

Michigan: No Michigan administrative rules were found relating to firearms instructors for private security personnel or private detectives. Under sections 338.839 and 338.1069 of the Michigan Statutes, private security personnel and private detectives are not authorized to carry a deadly weapon unless they are licensed to do so in accordance with the laws of Michigan. According to staff in the Michigan Department of Licensing and Regulatory Affairs, all firearms licensure is administered by the Michigan Department of State Police. According to staff in the Michigan Department of State Police, no licensing occurs for open carry of firearms by private security personnel or private detectives. However, under Public Act 381 of 2000, the Michigan Commission on Law Enforcement Standards (MCOLES) certifies firearms instructors for teaching an 8-hour pistol safety training course to individuals seeking licensure to carry a concealed pistol. This instructor certification is based upon (1) successfully completing a training program of at least 40 hours that is either registered with MCOLES or is nationally or state-recognized, and (2) complying with several related qualification requirements which are likewise prescribed by MCOLES rather than applied from the statutes or promulgated as rules. Under Act 381, these instructors can alternately become certified by a national organization.

Minnesota: Under subpart 4 of part 7506.2300 of the Minnesota Administrative Rules, a firearms instructor for private detectives and protective agents must be certified as a law enforcement or private-security firearms instructor by either a governmental agency, the NRA, or other nationally recognized certifying organization that is approved by the Minnesota Board of Private Detective and Protective Agent Services. No minimum training requirements were found for obtaining this certification.

Summary of factual data and analytical methodologies:

The methodology for developing these rule revisions consisted primarily of reviewing the portions of 2011 Wisconsin Act 35 and chapters Jus 17 and 18` that relate to training and certification or approval of firearms instructors.

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

The proposed rule revisions do not apply directly to small business. They apply instead to schools in the Wisconsin technical college system and to institutions approved by the U.S. Department of Education that choose to train and certify or approve firearms instructors.

Fiscal Estimate and Economic Impact Analysis:

The Department estimates that these rule revisions will have no fiscal impact.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in section 227.114 (1) of the Statutes. The Department's Regulatory Review Coordinator may be contacted by email at greg.gasper@wi.gov, or by calling (608) 266-8608.

Agency contact person:

Sam Rockweiler, Rules Coordinator, at the Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI, 53708-8935; or by telephone at (608) 266-0797; or by e-mail at sam.rockweiler@wi.gov, or by telecommunications relay services at 711.

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

Comments may be submitted to Sam Rockweiler, Rules Coordinator, at the Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI, 53708-8935; or by e-mail to sam.rockweiler@wi.gov. Comments must be received on or before August 6, 2013, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 34.04 (2) (a) 4. is created to read:

SPS 34.04 (2) (a) 4. Current certification or approval as a firearms instructor from one of the following:

a. A school in the Wisconsin technical college system, that certifies or approves firearms instructors in a manner which the department determines achieves equivalency to complying with the requirements in subds. 1. to 3.

b. An institution approved by the U.S. department of education, that certifies or approves firearms instructors in a manner which the department determines achieves equivalency to complying with the requirements in subds. 1. to 3.

SECTION 2. 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)

Dated: _____ Agency: _____

Dave Ross, Secretary of the Department of Safety and Professional Services

File reference: SPS 30.04/P order and rules