

CR 94-68

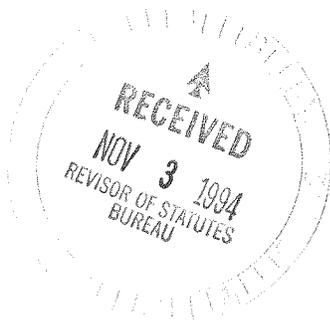
**CERTIFICATE**

**STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING**

**TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:**

*I, Marlene A. Cummings, Secretary of the Wisconsin Department of Regulation and Licensing and custodian of the official records of the Department of Regulation and Licensing, do hereby certify that the annexed rules were duly approved and adopted by the Department of Regulation and Licensing on the 1st day of November, 1994.*

*I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.*



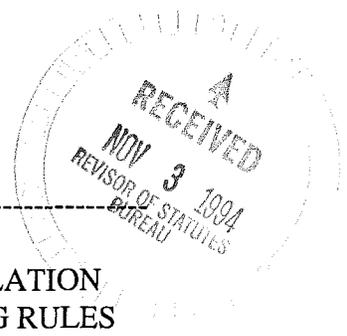
**IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1400 East Washington Avenue, Madison, Wisconsin this 1st day of November, 1994.**

*Marlene A. Cummings*

**Marlene A. Cummings, Secretary  
Department of Regulation and  
Licensing**

1-1-95

STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING



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IN THE MATTER OF RULE-MAKING : ORDER OF THE  
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION  
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES  
AND LICENSING : (CLEARINGHOUSE RULE 94-68)  
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ORDER

An order of the Department of Regulation and Licensing to repeal RL 32.02; to amend RL 34.04 (2); to amend RL 31.04 (5), 32.03 (title) and 32.03, 34.01 (1) (intro.), (1) (a), (b) and (c), 34.05 (1) and (2), 34.06, 34.07, 35.01 (2) and (12); to repeal and recreate RL 31.04 (3) (a) to (k), 34.01 (2) (intro.), (a), (b) and (c), 34.02, 34.03 and 34.04; and to create RL 30.02 (12) (b) 11, 34.01 (1) (am), (d), (e), (f), (g) and (3), 34.01 (4), 34.015, 34.08 and 35.01 (12m) relating to private detective definitions, examinations, license renewal and reporting requirements, firearms and other dangerous weapons, and unprofessional conduct.

Analysis prepared by the Department of Regulation and Licensing.

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ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2), 440.03 (1), 440.08 (3) and 440.26, Stats.

Statutes interpreted: ss. 440.08 (2) and (3) and 440.26, Stats.

SECTION 1 proposes clear conditions under which a person who is licensed in another licensing jurisdiction, but not in Wisconsin, may enter Wisconsin for the purpose of pursuing an investigation which had begun in the other licensing jurisdiction. The conditions include being accompanied by a Wisconsin-licensed private detective and being unarmed.

SECTION 2 amends the contents of the private detective licensing examination and provides more information about how the examination passing score is determined. The examination contents were determined after the department conducted a Task Analysis and performed other procedures which meet current standards for preparing a valid and reliable licensing examination.

SECTION 3 removes a specific examination passing score from the rules and replaces it with an explanation of how the passing score is determined. This procedure is comparable to the procedures used for other examinations administered by the department.

SECTIONS 4 and 5 make several technical changes, relating to renewal fees and requirements, to bring the rule into compliance with statutory changes in chapter 440, Stats.

SECTIONS 6, 7, 8, 9, 10 and 11 require owners or employes of a private detective agency who wish to carry a firearm while on duty as a private security person to obtain a permit from the department, rather than simply file a certification of proficiency with the department. These sections also enumerate the following new conditions for carrying a firearm: 1) the agency must require its employe to carry a firearm; 2) the person, subject to ss. 111.321, 111.322 and 111.335, Stats., has not been convicted of a felony; 3) the person is not prohibited from possessing a firearm under s. 941.29, Stats.; 4) the person has not been convicted of a misdemeanor; and 5) the person is in uniform, as that term is defined in s. RL 30.01 (14), and on duty as a private security person. No private detective or private security person may carry a concealed firearm while on duty unless the person is a peace officer.

SECTION 12 creates a new permit-granting process, including the conditions and requirements which must be satisfied; the right for the department to deny, suspend, limit or revoke a permit with the provision of due process under chapters RL 1 or 2, as applicable; the right for the department to obtain a criminal history record search from the Department of Justice and the Federal Bureau of Investigation for each person for whom an agency submits an application for permit. The department may also require the agency to pay the reasonable costs of such searches.

SECTIONS 13 and 14 increase the number of hours of training for persons who wish to obtain a certificate of proficiency to carry a firearm from 32 hours to 36 hours. The sections require that the training be based on the current firearms training guide approved by the Wisconsin Law Enforcement Standards Board, except that the rule proposes a one-year transition period when a new edition of the manual has been approved by that board and the rule provides for approval of equivalency training under certain circumstances. These sections also propose the following changes to requirements relating to certificates of proficiency: 1) training for each type of firearm which the person will carry, such as a revolver, semi-automatic weapon or a shotgun, rather than for each weapon with different barrel lengths; 2) completion of an 8-hour refresher course each year; and 3) completion of the complete 36-hour course by those who do not obtain a certificate of proficiency at any time during a 5-year period.

SECTIONS 15 strengthens the process by which firearms proficiency certifiers are approved by the department and it continues to require instructors to be approved by the Training and Standards Bureau in the Department of Justice or the National Rifle Association. The section no longer accepts certification of persons who have obtained other education or experience which the department deems to be sufficient. In addition, the section contains conditions relating to conviction of a felony or a misdemeanor.

SECTIONS 16 and 17 amend several words or phrases without proposing significant policy changes.

SECTION 18 is a new provision which prohibits an owner or employe of an agency from carrying a replica of a firearm while on duty.

SECTION 19 requires a licensee to inform the department of any conviction of a felony, misdemeanor or ordinance violation except minor traffic violations. The current exception pertains to motor vehicle offenses under chs. 341 to 349, Stats.

SECTION 20 amends s. RL 35.01 (12), to make the list of protected classes is consistent with the current s. 101.22, Stats.

SECTION 21 creates a new requirement that private detective agencies entering into written agreements with clients for whom they will provide services prepare a written agreement containing at least the 5 provisions specified in the rule.

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TEXT OF RULE

SECTION 1. RL 30.02 (12) (b) 11 is created to read:

RL 30.02 (12) (b) 11 A person who is not licensed as a private detective in Wisconsin, who commences an investigation in another jurisdiction and who physically enters into Wisconsin for the purpose of pursuing that investigation, provided that the person is accompanied by a licensed private detective while conducting the investigation and that the person is not armed with a firearm.

SECTION 2. RL 31.04 (3) (a) to (k) are repealed and recreated to read:

RL 31.04 (3) (a) Interviewing and screening.

(b) Investigation process.

(c) Collection of evidence.

(d) Communicating and networking.

(e) Analyzing and reporting.

(f) Law, Regulations and Administrative Procedures.

(g) Court related activities.

SECTION 3. RL 31.04 (5) is amended to read:

RL 31.04 (5) PASSING SCORE. The score required to pass the examination shall be based on the department's determination of the level of examination performance required for ~~minimal~~ minimum acceptable competence in the profession. ~~The passing score shall be established prior to the exam administration and shall be designated by a grade of 70~~ The department shall make the determination after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate

performance statistics, and shall set the passing score for the examination at that point which represents minimum acceptable competence in the profession.

SECTION 4. RL 32.02 is repealed.

SECTION 5. RL 32.03 (title) and 32.03 are amended to read:

RL 32.03 (title) RENEWAL OF LICENSE MORE THAN 5 YEARS AFTER RENEWAL DATE. ~~Private detective agencies and private detectives may renew their licenses outside of the renewal periods set forth in s. RL 32.03 by making application for renewal, paying the renewal fee specified in s. 440.05 (3), Stats., and the penalty for late renewal specified in s. 440.05 (4), Stats. This may not be construed to authorize practice contrary to the requirements of s. RL 32.01. A private detective who applies for renewal of a license more than 5 years after the renewal date, as defined in s. 440.01 (1) (dm), Stats., shall successfully pass the licensing examination pursuant to s. RL 31.04 and pay the fee specified in s. 440.05 (1), Stats.~~

SECTION 6. RL 34.01 (1) (intro.) and (1) (a) are amended to read:

RL 34.01 CONDITIONS RELATING TO CARRYING A FIREARM. (1) (intro.) No licensee, ~~private security person, principal~~ owner or employe of an agency may carry on, about or near their person any firearm while on duty, unless all of the following apply:

(a) The circumstances or conditions of the ~~licensee's, private security person's, principal's~~ owner's or employe's assignment as a private security person give rise to a substantial need for being armed; ~~and,~~

SECTION 7. RL 34.01 (1) (am) is created to read:

RL 34.01 (1) (am) The agency requires the owner or employe to carry a firearm when acting as a private security person.

SECTION 8. RL 34.01 (1) (b) and (c) are amended to read:

RL 34.01 (1) (b) ~~The client for whom an employe is assigned of the agency~~ requests in writing that the agency assign armed security personnel to it and the agency retains these requests and makes copies of them available to the department upon request by the department; ~~and,~~

(c) ~~The licensee, private security person, principal or employe carrying the firearm is currently certified under s. RL 34.03 as being proficient in the care, handling and use of the type of firearm being carried on, about, or near the person.~~ agency has received a permit from the department pursuant to s. RL 34.015.

SECTION 9. RL 34.01 (1) (d), (e), (f), (g) and (3) are created to read:

RL 34.01 (1) (d) The owner or employe is not prohibited from possessing a firearm under s. 941.29, Stats.

(e) Subject to ss. 111.321, 111.322 and 111.335, Stats., the owner or employe has not been convicted of a misdemeanor.

(f) The owner or employe is in uniform.

(g) The owner or employe complies with all federal or state laws or local ordinances when carrying a firearm.

(3) Except as provided in sub. (4), a private detective, while in uniform and on duty as a private security person, may only carry on, about or near his or her person a firearm when all the conditions in sub. (1) are satisfied. This subsection does not prohibit a private detective from having on, about or near his or her person a firearm which the private detective obtained and is holding as evidence in an investigation.

SECTION 10. RL 34.01 (2) (intro.), (a), (b) and (c) are repealed and recreated to read:

RL 34.01 (2) Except as provided in sub. (4), an owner or employe of any agency may not carry on, about or near the person any concealed firearm at a time when he or she is on duty.

SECTION 11. RL 34.01 (4) is created to read:

RL 34.01 (4) A person who is a peace officer, as defined in s. 939.22 (22), Stats., may carry on, about or near his or her person a firearm, concealed or otherwise, when acting as a private detective or private security person.

SECTION 12. RL 34.015 is created to read:

RL 34.015 PERMIT GRANTED BY THE DEPARTMENT. (1) An agency shall apply to the department for a permit to authorize any of its owners or employes to carry a firearm when assigned to do so by the agency.

(2) The department may grant a permit to an agency pursuant to sub. (1) if the department has determined that all of the conditions and requirements in ss. RL 34.01, 34.02, 34.03 and 34.05 have been satisfied by the agency and the owner or employe who will be assigned by the agency to carry a firearm while on duty.

(3) A permit shall only be valid while the owner or employe performs private security services for the agency to which the permit was granted. When an owner or employe transfers employment to another agency, the other agency shall obtain a new permit before requiring or permitting the owner or employe to carry a firearm.

(4) The department may deny an application submitted to it pursuant to sub. (1) or may suspend, limit or revoke a permit which it has granted, if the department determines that the conditions and requirements described in sub. (2) have not been satisfied or do not continue to be satisfied. The department shall grant a hearing pursuant to ch. RL 1 or 2.

(5) An agency shall submit to the department 2 complete and satisfactory sets of fingerprints, as provided in s. RL 31.03 (1) (b), of each owner or employe who will be assigned to carry a firearm and the department may obtain a criminal history record search from the Wisconsin department of justice and the federal bureau of investigation relating to each owner or employe before initially granting a permit for that individual and every 2 years thereafter.

(6) The agency shall pay the reasonable costs incurred by the department in obtaining information relating to the eligibility and qualifications of each owner or employe to whom the permit applies, including the reasonable costs of criminal history record searches.

SECTION 13. RL 34.02 is repealed and recreated to read:

RL 34.03 TRAINING REQUIREMENTS FOR CARRYING A FIREARM.

(1) GENERAL REQUIREMENT. Except as provided in sub. (2), completion of a training program of not less than 36 hours consisting of the following is required as a prerequisite for obtaining an initial certificate of proficiency to carry a firearm under s. RL 34.02. The training program shall consist of:

(a) Instruction in the dangers relating to the use of the firearm, safety rules, care and cleaning of the firearm.

(b) Training in the care, handling and use of the firearm, provided in accordance with the current firearms training guide which the Wisconsin law enforcement standards board has approved for training Wisconsin law enforcement officers. When the Wisconsin law enforcement standards board has approved a new edition of the training guide to replace an older edition, training which is received after the date on which a new edition is approved may be based on the older edition for a period not to exceed 12 months after approval of the new edition by the board.

Note: A copy of the firearms training guide entitled "Demonstrate Care and Use of Firearms" as approved by the Wisconsin Law Enforcement Standards Board is available for inspection at the Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, Room 281, Madison, WI.

(c) Instruction in the legal use of firearms under the provisions of the Wisconsin criminal code and relevant court decisions.

(d) A presentation stressing the ethical and moral considerations which should be taken into account by any person who uses a firearm.

(e) A review of the law regarding lawful detentions.

(f) A review of the law on criminal and civil liability for intentional and negligent acts.

(2) EQUIVALENT TRAINING. A person who had received at least 30 hours of training, as described in sub. (1), except that the training did not include the provisions of Wisconsin law, as in sub. (1) (b) and (c), shall complete the 6-hour refresher course under s. RL 34.02 (3) to satisfy sub. (1), provided the person was authorized by another licensing jurisdiction or governmental agency to carry a firearm while on duty as a peace officer, a person who stands watch for security purposes or as a private detective at any time during the 5 years preceding application for a permit under s. RL 34.015.

SECTION 14. RL 34.03 is repealed and recreated to read:

RL 34.02 CERTIFICATES OF PROFICIENCY TO CARRY A FIREARM. (1) Before an agency may receive a permit from the department pursuant to s. RL 34.015, the owner or employe who will be assigned to carry a firearm while on duty shall obtain a certificate of proficiency in the care, handling and use of that specific type of firearm. For the purpose of this subsection the owner or employe shall obtain a separate certification of proficiency for each type of firearm which the owner or employe will carry on duty, such as a revolver, semi-automatic weapon or a shotgun.

Note: A copy of Form #467, Firearms Certification of Proficiency, may be obtained from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, Room 281, P.O. Box 8935, Madison, Wisconsin 53708.

(2) Certification shall be received from a person who is approved as a firearms proficiency certifier by the department under s. RL 34.04. The certificate shall be notarized and shall include at least:

(a) A full and complete description of each type of firearm, the care, handling and use of which the owner or employe is proficient.

(b) Statements to the effect that the owner or employe has successfully completed the training required in s. RL 34.03. These statements shall include the date, time of day, the number of hours and the location where the owner or employe completed the training.

Note: A copy of the firearms training guide entitled "Demonstrate Care and Use of Firearms" as approved by the Wisconsin Law Enforcement Standards Board is available for inspection at the Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, Room 281, Madison, WI.

(3) A certificate of proficiency shall be valid for one year. An owner or employe shall obtain a new certificate of proficiency by satisfying the requirements in subs. (1) and (2), except that the training course shall consist of a 6-hour refresher course which more briefly covers the required course contents described in s. RL 34.03.

(4) An owner or employe who has not obtained a certificate of proficiency under this section at any time during the 5 years preceding the issuance of a permit by the department pursuant to s. RL 34.015 shall obtain a new certificate by successfully completing the full 36-hour course, as required in s. RL 34.03.

SECTION 15. RL 34.04 is repealed and recreated to read:

RL 34.04 APPROVAL AS A FIREARMS PROFICIENCY CERTIFIER. (1) Before certifying the proficiency of an owner or employe to carry a firearm pursuant to s. RL 34.02, an individual shall obtain the approval of the department by submitting an application to the department on a form prepared by the department.

(2) An applicant for approval as an approved firearms certifier shall at the time of application and at all times thereafter meet all of the following qualifications:

(a) The individual shall be currently approved as a firearms instructor by the training and standards bureau in the Wisconsin department of justice or certified as a firearm instructor by the national rifle association.

(b) Notwithstanding ss. 111.321, 111.322 and 111.335, Stats., the individual shall not have been convicted of a felony and is not prohibited from possessing a firearm under s. 941.29, Stats.

(c) The individual has, subject to ss. 111.321, 111.322 and 111.335, Stats., not been charged with a crime or convicted of a misdemeanor.

(3) An individual whom the department had determined to be qualified as a firearms proficiency certifier under s. RL 34.04 (3) and who was so qualified on the effective date of this subsection shall be granted an additional 6 months from this date to satisfy sub. (2) (a) and the individual shall satisfy sub. (2) (a) by the end of the 6 month period or the individual shall at the end of the 6 months no longer be qualified to be a firearms proficiency certifier.

Note: The Application For Approval of Firearms Proficiency Certifier, Form # 1912, may be obtained from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, Room 281, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 16. RL 34.05 (1) and (2) are amended to read:

RL 34.05 AGENCY FIREARMS POLICY AND LAWS. (1) Each agency shall file with the department a copy of its firearms policy upon initial licensure before any of its owners or employees may receive a permit from the department pursuant to s. RL 34.015 and thereafter within 30 days after any substantial changes to it.

(2) Each agency shall maintain a current copy of ~~the statutes and rules ss. 939.48 and 939.49, Stats.,~~ relating to the use of firearms force, and shall make these accessible to its owners and employees.

SECTION 17. RL 34.06 and 34.07 are amended to read:

RL 34.06 REPORTING THE DISCHARGE OF A FIREARM. If any ~~principal~~ owner or employe of an agency is responsible for the accidental or intentional discharge of any firearm other than in target practice, competition, or licensed hunting, or the accidental or intentional use of deadly force by any means, the ~~principal~~ owner or employe shall ~~within 24 hours~~ immediately after the incident notify the local law enforcement agency where the incident took place and inform his or her supervisor of the incident. The supervisor or another person assigned by the agency shall investigate the incident as soon as possible, and shall make a signed, written report of the incident, identifying all persons involved in the incident, the investigator, and the agency, and fully describing the circumstances of the incident. As soon as possible after the investigation is completed, a copy of the report shall be filed with the department and with the local law enforcement agency.

RL 34.07 OTHER DANGEROUS WEAPONS. ~~A licensee, private security person,~~ ~~principal~~ An owner or employe of an agency ~~who is~~ may only be armed with ~~any other a~~ dangerous weapon ~~may use only a weapon for which the person~~ other than a firearm, which he or she, based on training, is proficient in handling ~~based on training and experience, and for which the.~~ The person understands shall understand the legal limits of force ~~and~~ with the weapon, the dangers and misuse of the weapon and the safety rules of relating to the weapon. The agency shall, upon request of the department, provide documentation of the training or experience which prepared the person to be proficient in the use of the weapon.

SECTION 18. RL 34.08 is created to read:

RL 34.08 REPLICA OF A FIREARM. No owner or employe of an agency may, at any time while he or she is on duty, carry on, about or near the person an object which looks like a firearm.

SECTION 19. RL 35.01 (2) is amended to read:

RL 35.01 (2) Violating, or aiding and abetting the violation of, any law the circumstances of which substantially relate to the practice of a private detective or private security person. A licensee who has been convicted of a felony, misdemeanor or ordinance violation, including

driving while intoxicated under s. 346.63, Stats., but excluding other except motor vehicle offenses under chs. 341 to 349, Stats., shall send to the department within 30 days after the judgment of conviction a copy of the complaint or other information which describes the nature of the crime and the judgment of conviction in order that the department may determine whether the circumstances of the crime of which the licensee was convicted are substantially related to the practice of a private detective or private security person, pursuant to s. 111.335 (1) (c), Stats.

SECTION 20. RL 35.01 (12) is amended to read:

RL 35.01 (12) Neglecting, failing or refusing to render professional services to any person solely because of that person's age, race, color, handicap disability, sex, sexual orientation, religion, creed, national origin, marital status, lawful source of income, or ancestry.

SECTION 21. RL 35.01 (12m) is created to read:

RL 35.01 (12m) Before providing services to clients, failing to enter into a written agreement with at least the following provisions:

- (a) The date of the agreement.
- (b) The parties to the agreement.
- (c) A description of the services to be provided by the agency.
- (d) A description of the fees required by the agency for the services to be provided.
- (e) A description of how or when the agreement will terminate or may be terminated by one or both parties.

Note: In this section, "client" means a person for whom a private detective agency agrees to provide detective services described in s. RL 30.02 (12) (a) or to supply private security personnel.

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(END OF TEXT OF RULE)  
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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.

Dated 11/2/94

Agency Marlene A. Cummings

Marlene A. Cummings, Secretary  
Department of Regulation  
and Licensing

RECEIVED  
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REVISOR OF STATUTES  
BUREAU

**CORRESPONDENCE/MEMORANDUM**

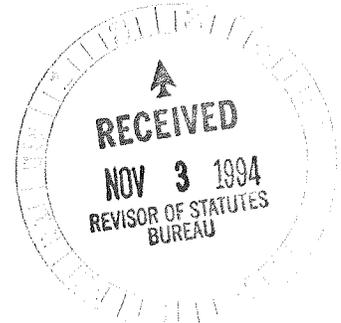
**STATE OF WISCONSIN**

**DATE:** November 3, 1994

**TO:** Gary Poulson  
Assistant Revisor of Statutes

**FROM:** Pamela A. Haack, Administrative Assistant  
Department of Regulation and Licensing  
Office of Administrative Rules

**SUBJECT:** Final Rule-Making Order



**Agency: DEPARTMENT OF REGULATION AND LICENSING**

**Clearinghouse Rule: 94-68**

Attached is a copy and a certified copy of a final order adopting rules. Would you please publish these rules in the code.

Please stamp or sign a copy of this letter to acknowledge receipt.

Thank you.