

Amended Notice of Hearing

The Department of Safety and Professional Services announces that it will hold a public hearing on the permanent rule for SPS 30 to 35, relating to electric weapons, at the time and place shown below.

Hearing Information

Date: July 31, 2020

Time: 11:00 AM

Location: Virtual Hearing—Connection information will be posted in advance of the hearing at the following webpage:
<https://dsps.wi.gov/Pages/RulesStatutes/PublicHearingComments.aspx>

Appearances at the Hearing and Submittal of Written Comments

Written comments may be submitted to Jon Derenne, Rule Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8935, Madison, WI 53705, or by email to DSPSAdminRules@wisconsin.gov. Comments shall be received on or before the time of the hearing scheduled for July 31, 2020 at 11:00 AM to be included in the record of rule-making proceedings.

The rule may be reviewed and comments made at:
<http://docs.legis.wisconsin.gov/code/chr/hearings>.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

Agency Small Business Regulatory Coordinator

Daniel Hereth, Daniel.Hereth@wisconsin.gov, (608) 267-2435

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 RULES
	:	(CLEARINGHOUSE RULE TBD)

PROPOSED ORDER

An order of the Department of Safety and Professional Services to amend SPS 33.025, 34.07, and 35.01 (4m); and to create SPS 30.02 (2m) and 34.065, relating to electric weapons.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 440.26 (3m), Stats.

Statutory authority: Sections 227.11 (2) (a) and 440.26 (1) (b) and (3m), Stats.

Explanation of agency authority:

Section 227.11 (2) (a), Stats., “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...”

Section 440.26 (1) (b), Stats., “The department may promulgate rules specifying activities in which a person may engage without obtaining a license or permit under this section.”

Section 440.26 (3m), Stats., “The department shall promulgate rules relating to the carrying of dangerous weapons by a person who holds a license or permit issued under this section or who is employed by a person licensed under this section. The rules shall meet the minimum requirements specified in 15 USC 5902 (b) and shall allow all of the following:

- (a) A person who is employed in this state by a public agency as a law enforcement officer to carry a concealed firearm if s. 941.23 (1) (g) 2. to 5. and (2) (b) 1. to 3. applies.
- (b) A qualified out-of-state law enforcement officer, as defined in s. 941.23 (1) (g), to carry a concealed firearm if s. 941.23 (2) (b) 1. to 3. applies.
- (c) A former officer, as defined in s. 941.23 (1) (c), to carry a concealed firearm if s. 941.23 (2) (c) 1. to 7. applies.
- (d) A licensee, as defined in s. 175.60 (1) (d), or an out-of-state licensee, as defined in s. 175.60 (1) (g), to carry a concealed weapon as permitted under s. 175.60.”

Related statute or rule: None.

Plain language analysis:

This rule project creates a definition for “electric weapon.” It also specifies that private security credential holders may go armed with an electric weapon if they are permitted to carry a firearm under SPS 34.015 (2) or are exempt from the permit requirement by statute. Further, the rule project clarifies that credential holders carrying an electric weapon under a firearm permit issued by the department, must have the permit on their person while on duty. Finally, several changes are made to bring the text into conformity with current drafting standards, including replacing references to “he or she.”

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

15 U.S.C. s. 5902 allows armored car crew members to carry a firearm in any state if they meet their state’s requirements to carry a firearm while on duty. Section 440.26 (3m), Stats., requires the department to promulgate rules relating to carrying dangerous weapons that, at a minimum, comply with the federal requirements in 15 U.S.C. s. 5902.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule: N/A.

Comparison with rules in adjacent states:

Illinois:

Private security and private detective credential holders are required to complete a firearm training course before performing job duties requiring the use, carrying, or possession of a firearm. A credential holder who has passed the required firearm training may be issued a firearm control card by the Department of Financial and Professional Regulation-Division of Professional Regulation. This card allows the credential holder to carry a firearm as well as stun, taser, or tear gas guns. (Ill. Admin. Code 1240.530)

Iowa:

Iowa law allows individuals whose employment reasonably justifies the need to go armed while on duty, including private security and private investigators, to apply for a professional carry permit. (IA § 724.6, Stats.) In order to receive a professional carry permit the individual must complete a firearms training course. (IA Admin Code 661-91.4(1)) Iowa law defines a dangerous weapon as including devices which emit electric current designed to immobilize a person. (IA § 702.7, Stats.)

Michigan:

Michigan law allows the possession and reasonable use of an electro-muscular disruption device by private security officers and private detectives in the course of their official duties so long as the individual has been trained in the use, effects, and risks of the device. (MI § 750.224 (a), Stats.)

Minnesota:

Minnesota law requires private security and private detectives who carry weapons, or immobilizing or restraint techniques, to complete a certified training course. Weapons include electronic incapacitation devices. The training course must include training on the proper use of the weapon, including the risks and dangers of its use. The course must also include training in first aid, as well as the legal limitations on the use of the weapon and alternatives to the use of force. Finally, individuals going armed with a weapon must complete 6 hours of continuing education each year. (MN § 326.3361, Stats.)

Summary of factual data and analytical methodologies:

This rule is necessary to ensure the department rules relating to private security and private detectives reflect the current state of Wisconsin law, including recent changes enacted in 2019 Wisconsin Act 87. Failure to revise the rules could result in stakeholder confusion as to the legality of carrying an electric weapon while on duty as a private security person or private detective.

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

The rule was posted on the department’s website for 14 days to solicit economic impact comments from small businesses and local governments. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The fiscal estimate and economic impact analysis is attached.

Effect on small business:

No impact.

Agency contact person:

Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing scheduled for 11:00 AM on July 31, 2020 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 30.02 (2m) is created to read:

SPS 30.02 (2m) “Electric weapon” has the meaning given in s. 941.295 (1c) (a), Stats.

SECTION 2. SPS 33.025 is amended to read:

SPS 33.025 Private security persons to carry permits. A private security person shall have on ~~his or her~~their person while on duty as a private security person the private security permit issued ~~to him or her~~ by the department and, if carrying a firearm or electric weapon, the firearms permit issued ~~to him or her~~ by the department if a permit is required.

SECTION 3. SPS 34.065 is created to read:

SPS 34.065 Electric weapons. An owner or employee of an agency may only be armed with an electric weapon while on duty if the owner or employee of the agency has been issued a permit under s. SPS 34.015 (2) to carry a firearm, or is exempt from the permit requirement under s. SPS 34.015 (5) to (8).

SECTION 4. SPS 34.07 is amended to read:

SPS 34.07 Other dangerous weapons. An owner or employee of an agency may only be armed with a dangerous weapon other than a firearm or electric weapon, which ~~he or she~~, based on their training, ~~is~~they are proficient in handling. The person shall understand the legal limits of force with the weapon, the dangers ~~and of~~ misuse of the weapon and the safety rules 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 5. SPS 35.01 (4m) is amended to read:

SPS 35.01 (4m) Failing to ~~have on his or her person~~possess a private security permit while on duty as a private security person and, if carrying a firearm ~~on, about or near his or her person~~ or electric weapon while on duty, failing to ~~have on his or her person~~possess the firearms permit issued by the department if a permit is required.

SECTION 6. 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)

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date June 4, 2020
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) SPS 30-35	
4. Subject Electric Weapons	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected 20.165 (1)(g)
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule This rule is necessary to ensure the department rules relating to private security and private detectives reflect the current state of Wisconsin law, including recent changes enacted in 2019 Wisconsin Act 87. Failure to revise the rules could result in stakeholder confusion as to the legality of carrying an electric weapon while on duty as a private security person or private detective.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The rule draft was posted on the department's website for 14 days in order to solicit economic impact comments. No comments were received.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. The rule draft was posted on the department's website for 14 days in order to solicit economic impact comments. No comments were received.	
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) No impact.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit of implementing this rule is that the department rules relating to private security and private detectives carrying electric weapons will be clarified and in compliance with current state statutes. The alternative of revising the rule is to leave the rules inconsistent with state statute and cause stakeholder confusion.	
16. Long Range Implications of Implementing the Rule The benefit of implementing this rule is that the department rules relating to private security and private detectives carrying electric weapons will be clarified and in compliance with current state statutes.	
17. Compare With Approaches Being Used by Federal Government	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

15 U.S.C. s. 5902 allows armored car crew members to carry a firearm in any state if they meet their state's requirements to carry a firearm while on duty. Section 440.26 (3m), Stats., requires the department to promulgate rules relating to carrying dangerous weapons that, at a minimum, comply with the federal requirements in 15 U.S.C. s. 5902.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois:

Private security and private detective credential holders are required to complete a firearm training course before performing job duties requiring the use, carrying, or possession of a firearm. A credential holder who has passed the required firearm training may be issued a firearm control card by the Department of Financial and Professional Regulation-Division of Professional Regulation. This card allows the credential holder to carry a firearm as well as stun, taser, or tear gas guns. (Ill. Admin. Code 1240.530)

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19. Contact Name

Jon Derenne, Administrative Rules Coordinator

20. Contact Phone Number

(608) 266-0955

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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