

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

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| IN THE MATTER OF RULEMAKING | : | NOTICE OF TIME PERIOD |
| PROCEEDINGS BEFORE THE | : | FOR COMMENTS FOR THE |
| DEPARTMENT OF SAFETY AND | : | ECONOMIC IMPACT ANALYSIS |
| PROFESSIONAL SERVICES | : | |

NOTICE IS HEREBY GIVEN of the time period for public comment on the economic impact of this proposed rule of the Department of Safety and Professional Services relating to firearms and other dangerous weapons for private security personnel, private detectives, and private investigators or special investigators, including how this proposed rule may affect businesses, local government units and individuals. The comments will be considered when the Department of Safety and Professional Services prepares the Economic Impact Analysis pursuant to § 227.137. Written comments may be submitted to:

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Department of Safety and Professional Services
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The deadline for submitting economic impact comments is February 6, 2014.

PROPOSED ORDER

An order of the Department of Safety and Professional Services to repeal: SPS 34.01 (1) (f) and (fm), 34.02 (2) (Note); renumber SPS 34.01 (1) (g) to (i) as 34.01 (1) (f) to (h), 34.06 and 34.07 as 34.11 and 34.12; renumber and amend: SPS 34.015 (6) as 34.015 (5), 34.02 (2) , (2) (a) and (b) as 34.02 (2) (a) and (b) 1. and 2.; 34.05 as 34.10, 34.08 as 34.13; amend: SPS 34.01 (1) (intro.), 34.01 (1) (g), (2) and (3), 34.011 (intro.), 34.015 (title) and (1), 34.015 (2), 34.02 (1) (Note), 34.02 (3), 34.03 (title) and (1), 34.04 (2) (a) 2. and 3., 34.04 (4) to (6), (6) (Note) and (7); and create: SPS 34.002, 34.01 (5) to (9), 34.015 (1) (Note), 35.04 (1) (Note), 34.04 (7) (Note) and 34.10 (1) (Note) , relating to firearms and other dangerous weapons for private security personnel, private detectives, and private investigators or special investigators, and rule changes affected by 2011 Act 35.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 440.26 (3m), and 440.26 (5r), Stats.

Statutory authority: ss. 227.11 (2) (a), and 440.26 (3m), Stats.

Explanation of agency authority:

Section 227.11 (2) (a), Stats., confers to the agency the powers to promulgate rules for the guidance of the profession and to interpret the provisions of statutes it enforces.

Section 440.26 (3m), Stats., confers to the agency the powers to promulgate rules for the carrying of dangerous weapons, set minimum requirements for allowing and individuals licensed under s. 175.60, Stats., to carry a dangerous weapon, and defines those individuals allowed to carry, concealed or otherwise, under this chapter.

Section 440.26 (3m), Stats., reads: (3m) RULES CONCERNING DANGEROUS WEAPONS. 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:

Chs. SPS 30 to 35 and Jus 17 and 18, and s. 175.60, Stats.

Plain language analysis:

Within the 2011 Wisconsin Act 35 and the authority given to the Department of Safety and Professional Services, this legislation relates to owners or employees of private security agencies and the carrying of dangerous weapons about or near their person when holding a firearms permit granted by the department or a permit issued under s. 175.60, Stats.

The proposed rule exempts all of the requirements in ch. SPS 34 from applying to anyone who is licensed in Wisconsin to carry a concealed weapon in accordance with a permit issued under s. 175.60, Stats. In addition, the proposed rule provides for the recognition of permits to carry firearms, concealed or otherwise, issued by other states. These proposed rules are intended to respond to the legislative directives set forth in 2011 Act 35, Wisconsin's 'concealed carry law'.

Specific provisions contained in 2011 Act 35 allow a licensee under s. 175.60, Stats., to carry a weapon, concealed or otherwise, in the capacity of an owner or employee of a security agency under chs. SPS 30 to 35. In addition, these proposed provisions now recognize all the following: a licensee, as defined in s. 175.60 (1) (d), Stats., an out-of-state licensee, as defined in s. 175.60 (1) (g) , Stats., an individual employed in this state by a public agency as a law enforcement officer, to whom s. 941.23 (1) (g) 2. to 5. and (2) (b) 1. to 3. applies, a qualified out-of-state law enforcement officer, as defined in s. 941.23 (1) (g), Stats., or a former officer, as defined in s. 941.23 (1) (c), Stats.

A number of Notes are being updated to reflect the most current information; several formatting and typographical corrections are also being made.

SECTION 1. Definitions not included in ch. SPS 30 are created in s. SPS 34.002 adding three terms defined in state statutes specific to carrying firearms: carry, dangerous weapon and weapon.

SECTIONS 2, 4, 8, 9, 12, 13 to 22 and 24. These treatment sections are rewritten for clarification purposes or adding current information in Notes, adding Notes either where needed, correcting typographical errors, or repealing Notes no longer pertinent.

SECTION 3. Two items from a listing specifying the carrying of a weapon when licensed are repealed in 2011 Act 35—the requirement to be in uniform or on duty.

SECTIONS 5 and 6. A typographical error is corrected in addition to expanding the exceptions for carrying a concealed weapon, thus reflecting provisions in 2011 Act 35. Specifically recognizing the following: a licensee, as defined in s. 175.60 (1) (d), Stats., an out-of-state licensee, as defined in s. 175.60 (1) (g) , Stats., an individual employed in this state by a public agency as a law enforcement officer, to whom s. 941.23 (1) (g) 2. to 5. and (2) (b) 1. to 3. applies. , a qualified out-of-state law enforcement officer, as defined in s. 941.23 (1) (g), Stats., or a former officer, as defined in s. 941.23 (1) (c), Stats. In addition, a new section is created in SPS 34.01 to recognize the individuals allowed to carry a concealed weapon as in the listing above.

SECTION 7. This section recognizes the individuals listed above and the provisions regarding a firearm being transported in a vehicle, concealed or “within plain view”.

SECTION 23. Various sections are renumbered to reflect that the provisions do not relate to obtaining or the granting of a permit under this chapter.

SECTION 25. This treatment section is the effective date of the rule once adopted.

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

The minimum requirements for carrying a weapon as stated in s. 440.26 (3m), Stats., references U.S. Code [15 USC 5902](#) (b) [Title 15-Commerce and Trade Chapter 85-Armored Car Industry Reciprocity]. This federal rule relates to state reciprocity of weapons licenses issued to armored car company crew members. This specific federal rule is cited in 2011 Act 35 whereby rules of the department concerning the carrying of dangerous weapons shall meet the minimum requirements specified in this U.S. Code. When comparing ch. SPS 34, this rule at least meets the minimum standards of the cited U.S. Code.

No other federal rule or code was found specific to Wisconsin law.

Comparison with rules in adjacent states: An Internet-based search was conducted of the rules and laws of the four adjacent states relating to provisions contained in 2011 Act 35.

Illinois: In Illinois, the Division of Professional Regulation administers the licensing program for private security and investigators, structured under a sole proprietorship, partnership, or corporation. The license is for two-years and for applicants seeking renewal they must pass a re-qualifying test, which the passing grade is good for six years. In addition to various application, examination and training fees, fingerprints and background checks are required. When licensed, one may carry a firearm after 20 hours of basic training and 40 hours of field training. [Illinois Code: 225 ILCS 446/]. The State Police administer the Firearms Owner's Identification Card system under 430 ILCS 65/8. The provisions of the Firearms Concealed Carry Act of 2013 are under the Concealed Carry Licensing Review Board. This Act, P.A. 76-1939, requires a license for a period of 5 years for the carrying of one loaded and one unloaded concealed firearm once licensed.

Iowa: In Iowa, a non-professional license to carry weapons is required for Private Investigators, Security Agents, and the sheriff of the county where the applicant resides issues such permit. The license is good for two years; there is no examination at application although continuing education is required. The license is attached to the private security agency; when working for more than one agency, a separate card is required. To carry a weapon while working, one must meet the requirements in Iowa administrative code 661 chapter 4 and 80A: submitting an affidavit of completion of course training, passing a course meeting statutory requirements and completing a firearms shooting competition. Iowa Code s. 724.7(1) provides that a concealed carry permit or license issued by another state to a nonresident of Iowa shall be considered a valid permit or license to carry weapons under Iowa law, [Iowa Code s. 724.11-A], thus recognizing reciprocity.

Michigan: in Michigan, the Michigan Professional Investigator Licensure Act, chapter 338, regulates licenses. These requirements are: minimum of 25 years old, education (at least a GED or equivalent), a clear criminal record, demonstration of knowledge and 8 hours of training on safe use of the weapon, 3 hours at a firing range, and successful completion of safety training program. Instructors are certified by the state or a national organization. There are no exams or continuing education required. The license is valid for three years and cards/certificates are given to individuals and the sole proprietor, partners or corporate members. Photos and criminal history are required, but not fingerprints. Michigan provides by statute that any person who meets specified eligibility and training requirements and who files a proper application shall be issued a license to carry a concealed pistol. [Mich. Comp. Laws s. 28.425b(7)] No information was found regarding reciprocity.

Minnesota: In Minnesota, the private detective board oversees the requirements for private detectives and protective agents. An applicant must be at least 18 years old and free of felony convictions in addition to being employed in a protective/security capacity. Under Minnesota statutes ch. 3326, one must be trained in the proper use of the weapon, including 12 hours of on-the-job training and 6 hours of continuing education. Minnesota Administrative Rules 7506.0100 – 7506.2900 contain licensing and continuing education qualifications as well as minimum standards of training instructors. Minnesota statutes s. 624.714 provides for requirements to issue a permit to carry a concealed pistol; a certificate attesting to the completion of training on the safe use of a pistol within the past year and a clear background check are required. Minnesota also recognizes reciprocity via Minn. Stat. s. 624.714 (16)(a).

Summary of factual data and analytical methodologies:

The methodology used in creating these rules was to bring the department's rule, ch. SPS 34, into compliance with the Wisconsin concealed carry law.

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

Pursuant to s. 227.137, Stats., the department will notice for a 14-day period the proposed rule to gather input on the effect on small business.

Fiscal Estimate and Economic Impact Analysis:

The department is currently soliciting information and advice from businesses, local government units and individuals in order to prepare the Economic Impact Analysis.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Jean MacCubbin, Administrative rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-266-0955 or 711 telecommunications relay; email at jean.maccubbin@wisconsin.gov.

TEXT OF RULE

SECTION 1. SPS 34.002 is created to read:

SPS 34.002 Definitions. In addition to definitions under SPS 30.02, in this chapter:

(1) “Carry” has the meaning given in s. 175.60 (1) (ag), Stats.

Note: Section 175.60 (1) (ag), Stats., reads: ““Carry” means to go armed with.’

(2) “Dangerous weapon” has the meaning given under s. 939.22 (10), Stats.

Note: Section 939.22 (10), Stats., reads: ““Dangerous weapon” means any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any ligature or other instrumentality used on the throat, neck, nose, or mouth of another person to impede, partially or completely, breathing or circulation of blood; any electric weapon, as defined in s. 941.295 (4) (1c) (a); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.’

(3) “Weapon” has the meaning given in s. 175.60 (1) (j), Stats.

Note: Section 175.60 (1) (j), Stats., reads: ““Weapon” means a handgun, an electric weapon, as defined in s. 941.295 (1c) (a), a knife other than a switchblade knife under s. 941.24, or a billy club.’

SECTION 2. SPS 34.01 (1) (intro.) is amended to read:

SPS 34.01 General conditions relating to carrying a firearm. (1) No owner or employee of an agency may carry on, about or near their person any firearm unless all of the following apply conditions are met:

SECTION 3. SPS 34.01 (1) (f) and (fm) are repealed.

SECTION 4. SPS 34.01 (1) (g) to (i) are renumbered as SPS 34.01 (1) (f) to (h).

SECTION 5. SPS 34.01 (1) (g), (2) and (3) are amended to read:

SPS 34.01 (1) (g) The owner or employee does not hold a ~~temporarily~~ temporary private security permit issued under s. 440.26 (5r), Stats.

(2) Except as provided in ~~sub. (4)~~ subs. (4) to (9), an employee 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.

(3) Except as provided in ~~sub. (4)~~ subs. (4) to (9), 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 6. SPS 34.01 (5) to (9) are created to read:

SPS 34.01 (5) A person who holds a permit issued under s.175.60, 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, without first obtaining a firearms permit granted by the department.

(6) A person who is employed in this state by a public agency as a law enforcement officer to carry a concealed firearm and if s. 941.23 (1) (g) 2. to 5. and (2) (b) 1. to 3., Stats., applies, 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, without first obtaining a firearms permit granted by the department.

(7) A person who is a qualified out-of-state law enforcement officer, as defined in s. 941.23 (1) (g), to carry a concealed firearm and if s. 941.23 (2) (b) 1. to 3., Stats., applies, 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, without first obtaining a firearms permit granted by the department.

(8) A person who is a former officer, as defined in s. 941.23 (1) (c), Stats., to carry a concealed firearm and if s. 941.23, Stats., applies, 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, without first obtaining a firearms permit granted by the department.

(9) A person who is a licensee, as defined in s. 175.60 (1) (d), Stats., or an out-of-state licensee, as defined in s. 175.60 (1) (g) , Stats., to carry a concealed weapon as permitted under s. 175.60, 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, without first obtaining a firearms permit granted by the department.

SECTION 7. SPS 34.011 (intro.) is amended to read:

SPS 34.011 Conditions relating to transporting a loaded firearm in a vehicle. ~~No~~ Except for a person as provided in ss. SPS 34.01 (4) to (9), no owner or employee of an agency may transport a loaded firearm in a vehicle, unless all of the following ~~apply~~ conditions are met:

SECTION 8. SPS 34.015 (title) and (1) are amended to read:

SPS 34.015 ~~Permit granted by the department~~ Application for a permit to carry a firearm. (1) ~~An~~ As provided in ch. SPS 31, an agency shall apply to the department for a permit to authorize any of its owners or employees to carry a firearm when assigned to do so by the agency.

SECTION 9. SPS 34.015 (1) (Note) is created to read:

SPS 34.015 (1) Note: For a copy of Form# 2156, Procedures For Certification Of Proficiency To Carry A Firearm, contact the department at phone: (608) 266-1212 or download the form from the department's webpage at <http://dsps.wi.gov/Licenses-Permits/FirearmsPermit/FIREPforms>.

SECTION 10. SPS 34.015 (2) is amended to read:

SPS 34.015 (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. SPS 34.01, 34.02, 34.03 and ~~34.05~~ 34.10 have been satisfied by the agency and the owner or employee who will be assigned by the agency to carry a firearm while on duty.

SECTION 11. SPS 34.015 (6) is renumbered and as renumbered SPS 34.015 (5) is amended to read:

SPS 34.015 (5) The agency shall pay the reasonable costs incurred by the department in obtaining information relating to the eligibility and qualifications of each owner or employee to whom the permit applies, including the reasonable costs of

criminal history record searches and if submitted under ch. SPS 31, may include costs of finger printing and a NICS search.

SECTION 12. SPS 34.02 (1) (Note) is amended to read:

SPS 34.02 (1) Note: ~~A~~ For a copy of Form #467, Firearms Certification of Proficiency-Initial Certification, may be obtained from the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935 or accessible for download from the department's webpage: <http://dsps.wi.gov>.

SECTION 13. SPS 34.02 (2), (2) (a) and (b) are renumbered as SPS 34.02 (2) (a) and (b) 1. and 2. and as renumbered are amended to read:

SPS 34.02 (2) (a) Certification shall be received from a person who is approved as a firearms proficiency certifier by the department under s. SPS 34.04. +

(b) The certificate shall be notarized and shall include at least:

~~(a)~~ 1. A full and complete description of each type of firearm, the care, handling and use of which the owner or employee is proficient with.

~~(b)~~ 2. Statements to the effect that the owner or employee has successfully completed the training required in s. SPS 34.03. These statements shall include the date, time of day, the number of hours and the location where the owner or employee completed the training.

SECTION 14. SPS 34.02 (2) Note is repealed.

SECTION 15. SPS 34.02 (3) is amended to read:

SPS 34.02 (3) A certificate of proficiency shall be valid for one year. An owner or employee shall ~~obtain a new~~ renew their 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. SPS 34.03 (1). A person approved as a firearms proficiency certifier under s. SPS 34.04 may satisfy the 6-hour training requirement by conducting the 6-hour refresher course or the 36-hour course under s. SPS 34.03 (1).

SECTION 16. SPS 34.03 (title), (1) (intro.) and Note are amended to read:

SPS 34.03 Training-Initial 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. SPS 34.02. The training program shall ~~consist of~~ include all of the following:

Note: ~~A copy of the~~ 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 Division of Professional Credential Processing, 1400 East Washington Avenue, Madison, WI or accessible for download from the department of justice webpage: <http://doj.wi.gov/>.

SECTION 17. SPS 34.04 (1) (Note) is created to read:

SPS 34.04 (1) Note: Form #1912, Application For Approval of Firearms Proficiency Certifier, may be obtained from the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935 or accessible for download from the department's webpage: <http://dsps.wi.gov/Licenses-Permits/FirearmsCertifier/FIRECforms>.

SECTION 18. SPS 34.04 (2) (a) 2. and 3. are amended to read:

SPS 34.04 (2) (a) 2. Current certification as a law enforcement firearms instructor by the national rifle association of america, inc.

3. At any time on or after January 1, 1995, was approved as a firearms instructor ~~by the training and standards board in the Wisconsin law enforcement standards board,~~ or certified as a law enforcement firearms instructor, or a substantially equivalent designation, by the national rifle association of america, inc. and has completed a 6-hour firearms instructor refresher course within 12 months before application for approval by the department. The refresher course shall be presented by a regional training school approved by the Wisconsin law enforcement standards board or by a staff instructor in the law enforcement activities division of the national rifle association.

SECTION 19. SPS 34.04 (4) to (6), (6) (Note), and (7) are amended to read:

SPS 34.04 (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~~ an approval granted under this section, 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. SPS 1 or 2.

(5) Except as provided in sub. (1m), an applicant shall submit to the department ~~2~~ two complete and satisfactory sets of fingerprints as specified under s. SPS 31.03 (1) (b), in order 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 the applicant before initially granting a permit for that individual.

(6) The applicant shall pay the reasonable costs incurred by the department in obtaining information relating to the eligibility and qualifications of the ~~application~~ applicant, including the reasonable costs of criminal history record searches.

Note: ~~The Form #1912, Application For Approval of Firearms Proficiency Certifier, Form #1912,~~ may be obtained from the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935 or accessible for download from the department's webpage: <http://dsps.wi.gov/Licenses-Permits/FirearmsCertifier/FIRECforms>.

(7) The approval of a firearms proficiency certifier shall expire on December 31 of each even-numbered year, unless the firearms proficiency certifier submits to the department an application for renewal on a form prescribed by the department and is reapproved by the department.

SECTION 20. SPS 34.04 (7) Note: is created to read:

SPS 34.04 (7) Note: Form #2117, Firearms Certification of Proficiency-Renewal Certification, may be obtained from the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935 or accessible for download from the department's webpage: <http://dsps.wi.gov>.

SECTION 21. SPS 34.05 is renumbered SPS 34.10 and as renumbered is amended to read:

SPS 34.10 Agency firearms policy and laws. (1) Each agency shall file with the department a copy of its firearms policy before any of its owners or employees may receive a permit ~~from~~ granted by the department pursuant to s. SPS 34.015 and thereafter within 30 days after any substantial changes to ~~it~~ its firearms policy.

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

SECTION 22. SPS 34.10 (1) Note is created to read:

SPS 34.10 (1) Note: Mail copies of an agency's firearms policy to the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935.

SECTION 23. SPS 34.06 and 34.07 are renumbered SPS 34.11 and 34.12.

SECTION 24. SPS 34.08 is renumbered SPS 34.13 as renumbered is amended to read:

SPS 34.13 Replica or facsimile of a firearm. No owner or employee of an agency may, at any time while he or she is on duty, carry on, about or near the person, concealed or otherwise, an object which looks like a firearm, but is not.

SECTION 25. 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
Department of Safety and Professional Services