

these amendments under the authority of, or in order to implement, comply with or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards, or requirements as set forth at N.J.A.C. 1:30-5.1(c)4. Accordingly, no Federal standards analysis is required.

The SEH Board notes that compliance with the new mandates, and, thus, implementation of the proposed amendments can be achieved using current technology.

Jobs Impact

The SEH Board does not anticipate that any jobs will be generated or lost as a result of the proposed amendments. Commenters may submit data or studies on the potential jobs impact of the proposed amendments together with their comments on other aspects of the notice of proposal.

Agriculture Industry Impact

The SEH Board does not believe the proposed amendments will have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The SEH Board does not believe the proposed amendments apply to "small businesses," as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but acknowledges the possibility that one or more carriers might meet that definition. The proposed amendments do not establish new or additional reporting or recordkeeping requirements, but have the effect of establishing new compliance requirements, as described in the Summary above.

No differentiation in compliance requirements is provided based on business size. The requirements of and the goals to be achieved by the State laws in question do not vary based on business size of a carrier, and the SEH Board would not be at liberty to make such a distinction, even if the SEH Board were to consider such a distinction warranted. Accordingly, the proposed amendments provide no differentiation in compliance requirements based on business size. No additional professional services would have to be employed in order to comply with the proposed amendments.

Housing Affordability Impact Analysis

The SEH Board does not believe the proposed amendments will have an impact on housing affordability or evoke a change in the average costs of housing in this State in that the proposed amendments relate to the benefit levels and terms of standard health benefits plans offered in New Jersey for purchase by individuals.

Smart Growth Development Impact Analysis

The SEH Board does not believe the proposed amendments will have an impact on smart growth in the State, or that the proposed amendments will have an effect on smart growth development in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments relate to the benefit levels and terms of standard health benefits plans offered in New Jersey.

APPENDIX

OFFICE OF ADMINISTRATIVE LAW NOTE: The New Jersey Small Employer Health Benefits Program Board is proposing amendments to N.J.A.C. 11:21 Appendix Exhibits F, G, W, Y, HH, and II. Pursuant to N.J.S.A. 52:14B-7(c) and N.J.A.C. 1:30-5.2(a)2, the Exhibits as proposed are not published herein, but may be reviewed by contacting:

New Jersey Small Employer Health Benefits Program
20 West State Street, 11th Floor
PO Box 325
Trenton, NJ 08625-0325
or
New Jersey Office of Administrative Law
9 Quakerbridge Plaza
PO Box 049
Trenton, NJ 08625-0049

LAW AND PUBLIC SAFETY

(a)

DIVISION OF STATE POLICE

Firearms and Weapons

Definitions; State of New Jersey Firearms

Identification Card or Permit to Purchase a Handgun and Form of Register Required; Prohibition on Sale of Certain Weapons; Application for a Permit to Carry a Handgun

Proposed Amendments: N.J.A.C. 13:54-1.2, 1.3, and 2.4

Authorized By: Colonel Patrick Callahan, Office of the Superintendent, Division of State Police, with the approval of Gurbin S. Grewal, Attorney General.

Authority: N.J.S.A. 2C:39-1 et seq., and 2C:58-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2018-051.

Submit written comments by August 17, 2018, to:

Colonel Patrick Callahan, Office of the Superintendent
Attn: Firearms Investigation Unit
New Jersey State Police
PO Box 7068
West Trenton, New Jersey 08638
or electronically to: LPPNJSPFIU@gw.njsp.org.

The agency proposal follows:

Summary

The Division of State Police (Division) is proposing amendments to N.J.A.C. 13:54. This chapter became effective on October 5, 1986. It was last readopted on March 6, 2017, and amended certain rules within N.J.A.C. 13:54 to clarify the requirements of the written certification of justifiable need that an applicant for a permit to carry a handgun must submit in certain circumstances with his or her application form. The amendments to N.J.A.C. 13:54-2.4(d) added "serious threats" to the circumstances that could demonstrate a special danger to the applicant's life that a private citizen may specify in a written certification of justifiable need, and further provided that the special danger to be demonstrated cannot be avoided by reasonable means other than by issuance of a permit to carry a handgun (adding the qualifying term "reasonable"). The written certification would be submitted with an application for a permit to carry a handgun under N.J.S.A. 2C:58-4.

The New Jersey Legislature found that the revised rule governing the Application for a Permit to Carry a Handgun, N.J.A.C.13:54-2.4, was not consistent with the intent of the Legislature because "[c]urrent law and judicial interpretations of the justifiable need standard clearly require demonstration of an urgent necessity for protection from a specific threat to one's life rather than from a mere generalized fear or concern[.]" and that adding "serious threats" to the rule "could potentially authorize taxi drivers, bus drivers, pizza delivery drivers, United Postal Service drivers, and anyone working or living in a high-crime neighborhood to qualify to carry a firearm[.]" This amendment is currently the subject of litigation pending before the New Jersey Superior Court, Appellate Division, in a matter captioned "In the Matter of the Application for a Permit to Carry a Handgun Rule Amendment N.J.A.C. 13:54-2.4," Docket No. A-3150-16. That litigation is currently stayed by mutual consent of the parties. In light of the expressed concern, the Division has taken the opportunity to review the rule and its underpinnings.

The Court first interpreted the applicable standard to obtain a permit to carry a handgun in *Siccardi v. State*, 59 N.J. 545. Revisiting the issue in *In re Preis*, 118 N.J. 564, the Supreme Court of New Jersey cited the *Siccardi* case for setting forth "the most relevant definition of 'justifiable need'" while characterizing the requirement to be "of specific threats or previous attacks demonstrating a special danger to the applicant's life

that cannot be avoided by other means.” *Id.* at 571. Both the *Siccardi* and *Preis* opinions make clear that mere generalized fears or concerns do not provide sufficient justification for issuance of a carry permit.

The rule requires applicants to “specify in detail the urgent necessity for self-protection,” and further indicates that this showing is to be “evidenced by serious threats, specific threats, or previous attacks which demonstrate a special danger to the applicant’s life that cannot be avoided by reasonable means other than by issuance of a permit to carry a handgun.” After a review of the applicable rule and relevant precedent in *Siccardi* and *In re Preis*, it has been determined that inclusion of “serious threats” is not necessary to convey the concept intended by the Legislature and the Supreme Court of New Jersey, that is, that an applicant must provide evidence of something more than a generalized threat or concern for a court to conclude that the applicant has made the requisite showing of justifiable need in order to issue a permit to carry a handgun. That is, the inclusion of both “serious threats” and “specific threats” in this formulation adds nothing, as a judge considering a carry permit application would continue to apply the “justifiable need” standard set forth in the statute as interpreted in *Siccardi* and *Preis*, without reference to N.J.A.C. 13:54-2.4. Nonetheless, the use of that term in the rule has the potential to cause undue confusion among applicants and chief police officers (who, under N.J.S.A. 2C:58-4, review and approve carry permit applications in the first instance), with the potential, however small, to result in unwarranted approvals of carry permit applications at the initial stage of review (which still would be reviewed by a Superior Court judge for issuance). Therefore, this rulemaking would restore the prior language characterizing the evidence that a private citizen may specify in a written certification of need seeking to demonstrate a special danger to the applicant’s life, which specific details would be submitted with an application for a permit to carry a handgun under N.J.S.A. 2C:58-4, by removing the reference to “serious threats” from the provision (as well as the “reasonable” qualifier, which does not appear to be necessary).

The Division also proposes to amend N.J.A.C. 13:54-1.3(c)4, concerning New Jersey law enforcement agencies’ ability to purchase firearms, to conform the language to the current statute addressing this issue. Specifically, N.J.A.C. 13:54-1.3(c)4 prohibits New Jersey law enforcement agencies from purchasing firearms through any entity other than a retail dealer licensed in New Jersey, which means that law enforcement agencies in New Jersey are prevented from purchasing firearms in another state, whether through a retail firearms dealer licensed in the other state, through a wholesaler, or directly from a manufacturer. This provision is inconsistent with a recently enacted law, P.L. 2013, c. 114, which amended N.J.S.A. 2C:58-3, to provide that the firearms purchaser identification card and handgun purchase permit requirements of that law do not apply to the purchase of firearms by a law enforcement agency for use by law enforcement officers in the actual performance of the officers’ official duties, further specifying that such purchases may be made directly from a manufacturer or from a licensed dealer located in this State or any other state. The current regulation, N.J.A.C. 13:54-1.3(c)1, requires the Superintendent to be notified in writing within five days of any firearm purchased or otherwise acquired by a New Jersey law enforcement agency for departmental use, so the rules will continue to provide a mechanism to ensure the propriety of firearms acquisitions by New Jersey law enforcement agencies. Thus, the proposed amendment modifies the restrictive language from N.J.A.C. 13:54-1.3(c)4, providing that “New Jersey law enforcement agencies can only purchase firearms through licensed retail firearms dealers in New Jersey” to incorporate the statutory authorization for law enforcement agencies to purchase firearms for use by law enforcement officers in the actual performance of the officers’ official duties directly from a manufacturer or from a licensed dealer located in this State or any other state.

The Division also proposes to amend and add certain definitions in N.J.A.C. 13:54-1.2 to reflect statutory changes concerning bump stocks and trigger cranks effectuated by a recently enacted law, P.L. 2017, c. 323. Among other things, that law made it a crime of the third degree to manufacture, cause to be manufactured, transport, ship, sell, dispose, or possess bump stocks and trigger cranks in New Jersey, and amended the definitions applicable to the Chapter of Title 2C applicable to “Firearms,

Dangerous Weapons and Instruments of Crime” to incorporate new definitions relevant to these express prohibitions. N.J.S.A. 2C:39-1.ee defines “bump stocks” as “any device or instrument for a firearm that increases the rate of fire achievable with the firearm by using energy from the recoil of the firearm to generate a reciprocating action that facilitates repeated activation of the trigger,” and subsection ff defines “trigger cranks” as “any device or instrument to be attached to a firearm that repeatedly activates the trigger of the firearm through the use of a lever or other part that is turned in a circular motion; provided, however, the term shall not include any weapon initially designed and manufactured to fire through the use of a crank or lever.” The statutory law was also amended to specify that the definition of “assault firearm” in N.J.S.A. 2C:39-1.w(6) also includes a firearm with a bump stock attached and that the definition of “machine gun” in N.J.S.A. 2C:39-1.i also includes any firearm with a trigger crank attached. These statutory changes are reflected in the definitions section of the chapter.

This notice of proposal is excepted from the rulemaking calendar requirement because the Division is providing a 60-day comment period, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments to N.J.A.C. 13:54-2.4 will eliminate potentially confusing language and provide greater clarity as to the demonstrations that applicants must make for a sufficient showing of justifiable need to warrant the approval of a permit to carry a handgun under law and regulation. The public at large will benefit from the adoption of amendments to this chapter through the continued regulation by the Division of those persons seeking to purchase and/or carry firearms. The proposed amendments will also avoid confusion by conforming certain rules to applicable statutory authority.

Economic Impact

The proposed amendments will not have an economic impact on the general public. Applicants must still pay all current fees for carry permits. The changes to the definitions and the provision authorizing New Jersey law enforcement agencies to purchase firearms from sources other than New Jersey licensed firearms dealers will not have an economic impact, as both sections are being amended to conform to controlling statutory law.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments do not exceed Federal standards, and are not proposed under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under State statutes that incorporates or refers to Federal law, Federal standards, or Federal requirements.

Jobs Impact

The proposed amendments will not result in the generation or loss of jobs in New Jersey. Any jobs impact from authorizing New Jersey law enforcement agencies to purchase firearms from sources other than New Jersey licensed firearms dealers or expressly prohibiting the manufacture and sale of bump stocks and trigger cranks is as a result of the prior statutory change rather than the proposed amendments.

Agriculture Industry Impact

The proposed amendments will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose any reporting, recordkeeping, or other compliance requirements on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because the rules pertain to applications to purchase and carry a firearm by individuals, statutory prohibitions against manufacture, sale, and possession of certain firearm components, and the authority of New Jersey law enforcement agencies to purchase firearms from additional sources.

Housing Affordability Impact Analysis

The proposed amendments will not have any impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed amendments would evoke a change in the average costs associated with housing because the rules concern the regulation of firearms.

Smart Growth Development Impact Analysis

The proposed amendments will have an insignificant impact upon smart growth and there is an extreme unlikelihood that the proposed amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules concern the regulation of firearms.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. FIREARMS PURCHASER IDENTIFICATION CARD AND PERMIT TO PURCHASE A HANDGUN

13:54-1.2 Definitions

The words and terms used in this chapter shall have the following meanings:

...

“Assault firearms” means:

1.-3. (No change.)

4. A semi-automatic rifle with a fixed magazine capacity exceeding 15 rounds; [or]

5. A part or combination of parts designed or intended to convert a firearm into an assault firearm[,] or any combination of parts from which an assault firearm may be readily assembled if those parts are in the possession or under the control of the same person[.]; or

6. A firearm with a bump stock attached.

...

“Bump stock” means any device or instrument for a firearm that increases the rate of fire achievable with the firearm by using energy from the recoil of the firearm to generate a reciprocating action that facilitates repeated activation of the trigger.

...

“Machine gun” means any firearm, mechanism, or instrument not requiring that the trigger be pressed for each shot and having a reservoir, belt, or other means of storing and carrying ammunition [which] that can be loaded into the firearm, mechanism, or instrument and fired therefrom. **A machine gun shall also include, without limitation, any firearm with a trigger crank attached.**

...

“Trigger crank” means any device or instrument to be attached to a firearm that repeatedly activates the trigger of the firearm through the use of a lever or other part that is turned in a circular motion; provided, however, the term shall not include any weapon initially designed and manufactured to fire through the use of a crank or lever.

...

13:54-1.3 State of New Jersey firearms identification card or permit to purchase a handgun and form of register required; prohibition on sale of certain weapons

(a)-(b) (No change.)

(c) The provisions of (a) and (b) above shall not apply to the Armed Forces of the United States, the National Guard, or to a law enforcement agency; provided that such transactions are authorized in writing by the appropriate governmental entity as provided by this chapter.

1.-3. (No change.)

4. If an agency wishes to utilize firearms that are considered abandoned property, all procedures pursuant to the Abandoned Property Act, N.J.S.A. 40A:14-157, must be followed in addition to ensuring that proper notifications are made to the prosecutor’s office, Attorney General’s Office, and the Superintendent, as set forth above. New Jersey law enforcement agencies [can only] **may** purchase firearms **for use by** law enforcement officers in the actual performance of the officers’

official duties, which purchase may be made directly from a manufacturer or through a licensed retail firearms dealer[s] located in New Jersey or any other state. Individuals donating firearms to New Jersey law enforcement agencies must ensure that all such transfers are conducted through licensed dealers pursuant to all regulatory provisions, State statutes, and all necessary local ordinances.

(d) (No change.)

SUBCHAPTER 2. HANDGUNS

13:54-2.4 Application for a permit to carry a handgun

(a)-(c) (No change.)

(d) Each application form shall also be accompanied by a written certification of justifiable need to carry a handgun, which shall be under oath and which:

1. In the case of a private citizen, shall specify in detail the urgent necessity for self-protection, as evidenced by [serious threats,] specific threats[,] or previous attacks, which demonstrate a special danger to the applicant’s life that cannot be avoided by [reasonable] means other than by issuance of a permit to carry a handgun. Where possible, the applicant shall corroborate the existence of any specific threats or previous attacks by reference to reports of such incidents to the appropriate law enforcement agencies; or

2. (No change.)

(e)-(f) (No change.)

TREASURY—TAXATION

(a)

DIVISION OF TAXATION

Luxury Tax

Proposed Readoption with Amendments: N.J.A.C. 18:25

Proposed Repeal: N.J.A.C. 18:25-1.3

Authorized By: John Ficara, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:32B-24 and 54:32B-24.1.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2018-055.

Submit comments by August 17, 2018, to:

Elizabeth J. Lipari
Administrative Practice Officer
Division of Taxation
50 Barrack Street
PO Box 269
Trenton, NJ 08695-0269
E-mail: Tax.RuleMakingComments@treas.nj.gov.

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, N.J.A.C. 18:25 was scheduled to expire on May 13, 2018. As the Division of Taxation (Division) filed this notice of proposal with the Office of Administrative Law prior to that date, the expiration date of the chapter is extended 180 days to November 9, 2018, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Division has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purposes for which they were originally promulgated. The Division proposes to readopt these rules with necessary amendments to take into account recent statutory decreases in the sales and use tax rate.

Since 1947, cities of the fourth class have been authorized to enact ordinances to increase their revenue by levying and collecting taxes on certain retail sales pursuant to N.J.S.A. 40:48-8.15 et seq. To date, Atlantic City is the only fourth class city to enact an ordinance imposing such “luxury tax.”