



FOCUS - 1 of 1 DOCUMENT

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VOLUME 47, ISSUE 12

ISSUE DATE: JUNE 15, 2015

RULE PROPOSALS

**LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE**

47 N.J.R. 1291(a)

Proposed Changes: N.J.A.C. 13:54-1.2, 1.17, 3.2, and 3.16

[Click here to view Interested Persons Statement](#)

Firearms and Weapons

Notice of Proposed Substantial Change upon Adoption to Proposed Readoption with Amendments of N.J.A.C. 13:54 and Proposed New Rules N.J.A.C. 13:54-1.16, 1.17, and 3.21

Proposed: December 15, 2014, at 46 N.J.R. 2393(a).

Authorized By: Colonel Joseph R. Fuentes, Superintendent, Division of State Police.

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

Submit written comments by August 14, 2015, to:

Colonel Joseph R. Fuentes, Superintendent
Attn: Firearms Investigation Unit
New Jersey State Police
PO Box 7068
West Trenton, New Jersey 08638
or electronically to: LPPNJSPFIU@gw.njsp.org

Take notice that the Division of State Police is proposing substantial changes to the proposed amendments at N.J.A.C. 13:54-1.2, 3.2, and 3.16 and proposed new N.J.A.C. 13:54-1.17. The changes are based on the comments

submitted and summarized below.

Summary of Public Comments and Agency Responses:

In addition to publication of the proposed amendments and new rule in the New Jersey Register (see above), the Division of State Police (Division) notified the press through the State House Press Room, and posted a notice that the notice had been proposed on the Division's website. As a result, the Superintendent received written comments from the following individuals or representatives of organizations:

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N.J.A.C. 13:54-1.2 Definitions

COMMENT: Commenters object to the proposed amendments in this section of the chapter dealing with the definition of semi-automatic shotguns, which would be considered assault weapons. The commenters hold that currently, semi-auto shotguns that have one, and only one, of the listed features are legal in New Jersey. The proposed

amendment decreases the allowable features from "at least two" to "one or more." In addition, the proposed amendment will render shotguns illegal if they have the ability to accept a detachable magazine, with no number of rounds specified. Under existing N.J.S.A. 2C:39-1.w(3), a semi-automatic shotgun may possess a detachable magazine that does not hold more than six rounds. There are numerous shotguns that are legal under the existing definition that would become illegal with the adoption of the proposed changes. This would have the unintended consequence of creating felons out of people who were previously following the law.

RESPONSE: The agency is proposing a change to address the issue identified by the commenters. The definition of semi-automatic shotgun will remain unchanged from the existing rule, in the number of features permitted to one. The change on adoption will specify the number of rounds permitted to be no more than six in either a fixed or detachable magazine which will mirror N.J.S.A. 2C:39-1.w(3).

N.J.A.C. 13:54-1.17

COMMENT: This proposed new rule by the Superintendent is a blatant attempt to subvert the statutory law and the Courts, which have ruled contrary to the Superintendent's new rule to allow issuing agencies to create their own additional forms or request additional information. N.J.S.A. 2C:58-3.f says "There shall be no conditions or requirements added to the form or content of the application, required by the licensing authority for the issuance of a permit or identification card, other than those that are specifically set forth in this chapter." Thus, this new rule is not only unauthorized by statute, but it is directly prohibited by statute. It is therefore ultra vires and unlawful.

RESPONSE: The Division is not proposing in this new rule to allow new forms to be created or make additions to existing forms. The proposed new rule clearly states that all applications and/or forms "shall be promulgated by the Superintendent." The added language allowing the issuing agencies to request additional information was intended to allow for a thorough investigation to determine if the applicant is subjected to any disabilities established in N.J.S.A. 2C:58-3.c. The Division is [page=1299] proposing a substantive change to add language to the new rule to clarify that "additional information" is strictly limited to information contained on the forms and applications promulgated by the Superintendent, and the issuing agency may only ask follow-up questions to clarify and or verify information contained on the forms.

N.J.A.C. 13:54-3.2, 3.3(d), and 3.10(d)

COMMENT: The commenters oppose the proposed amendment to N.J.A.C. 13:54-3.2, which would prohibit employees of a retail dealer to have access or be permitted to have access to any firearms or records of the acquisition or disposition of firearms without first obtaining a "retail dealers license." The commenters object to this change because it will prevent employees from handling and selling firearms and from processing paperwork for firearms. Furthermore, the commenters point out the proposed amendment would place the burden on the retail dealer to either run their business alone or force each employee to possess a retail dealer license. The commenters also note N.J.A.C. 13:54-3.3(d) is in direct contradiction with the proposed amended rule. It states that employees cannot access or be allowed to access firearms or records unless such employee has been licensed "by the Superintendent." This rule is in direct contradiction with N.J.A.C. 13:54-3.2 based on the fact that retail dealer licenses are granted by the Superior Court Judge in the county in which the business is located and the employee licenses are issued by the Superintendent. Lastly, the proposed amendment to N.J.A.C. 13:54-3.10(d) also restricts employees from accessing firearms and records without an employee license, in further contradiction of N.J.A.C. 13:54-3.2.

RESPONSE: The Division's motive for the proposed amendments to N.J.A.C. 13:54-3.2, 3.3(d), and 3.10(d), was to augment the security and integrity of firearms transactions and acquisitions recordkeeping. However, the conflict created with the proposed amendment to N.J.A.C. 13:54-3.2, specifically, is noted. Therefore, the Division is proposing a substantive change to N.J.A.C. 13:54-3.2 to clarify the requirement for employees of retail firearms dealers to possess an employee license in order to access to firearms and records of the acquisition and disposition of firearms. The proposed amendments to N.J.A.C. 13:54-3.3(d) and 3.10(d) will remain unchanged.

N.J.A.C. 13:54-3.16

COMMENT: Commenters object to the inclusion of language requiring all firearms to be maintained at the licensed premises unless expressly permitted by statutory law or Administrative Code to be temporarily removed as proposed in new N.J.A.C. 13:54-3.16(b). Commenters feel there are too many circumstances not expressly covered by law or the Administrative Code where a licensed dealer may have to remove a firearm from the premises. Commenters hold that as long as the retail dealer remains within the bounds of his or her license, there should be no restrictions requiring "express" permission, which is narrow and inflexible.

RESPONSE: The Division agrees with the commenters and is proposing a substantive change to allow firearms to be temporarily removed from the licensed premises unless expressly **prohibited** (emphasis added) by any other statutory law or Administrative Code.

COMMENT: N.J.A.C. 13:54-3.16(c) mandates that State of New Jersey Certificate of Eligibility forms be "permanently retained" by former dealers who terminate their retail dealers license. Commenters argue this language is undefined and unreasonably over broad. In addition, commenters opposition is based on the fact that the State does not require registration of rifles and shotguns and there is no statutory requirement for record retention for rifles and shotguns. Lastly, the commenters argued this is an unfair mandate for a former business owner to retain records "forever."

RESPONSE: There is no statutory requirement for these records to be maintained after a retail business closes. A final inspection is completed by the New Jersey State Police Firearms Investigation Unit and the retail license is surrendered. The Division does not take possession of the Certificate of Eligibility forms and has no legal authority to maintain or house the information contained therein. However, the Division recognizes the absence of administrative direction in handling these documents. Therefore, the Division is proposing a substantive change to the proposed new rule to allow the option for destruction of all completed Certificate of Eligibility forms upon termination of a retail firearms dealer's license.

Effect of Proposed Changes on Impact Statements Included in the Original Proposal

The proposed changes will not affect the impact statements in the original notice of proposal. The proposed change to N.J.A.C. 13:54-3.16 reduces a compliance requirement on retail dealers, who may be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed substantive changes to the proposed amendments and new rules follows: (additions to the proposal indicated in italicized boldface *thus*; deletions from the proposal indicated in italicized brackets [*thus*]):

SUBCHAPTER 1. FIREARMS 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. (No change.)
2. Any firearm manufactured under any designation, which is substantially identical to any of the firearms listed in

paragraph 1 above. As used in this definition, the term "substantial" means pertaining to the substance, matter, material, or essence of a thing and the term "identical" means exactly the same. Hence, a firearm is substantially identical to another only if it is identical in all material, essential respects. A firearm is not substantially identical to a listed assault firearm unless it is identical except for differences that do not alter the essential nature of the firearm.

The following are examples of manufacturer changes that do not alter the essential nature of the firearm: the name or designation of the firearm; the color of the firearm; the material used to make the barrel or stock of the firearm; the material used to make a pistol grip; and a modification of a pistol grip. This is not an exclusive list. A semi-automatic firearm should be considered to be "substantially identical," that is, identical in all material respects, to a named assault weapon if it meets the below listed criteria:

i.-ii. (No change.)

iii. A semi-automatic shotgun that has [at least two] **one or more** of the following:

(1) (No change.)

(2) A pistol grip that protrudes conspicuously beneath the action of the weapon; *and/or*

(3) A *[fixed]* magazine capacity in excess of six rounds; *[and/or]*

[(4) An ability to accept a detachable magazine;]

[3. A semi-automatic shotgun with either a magazine capacity exceeding six rounds, a folding stock or a pistol grip;]

Recodify existing 4. and 5. as **3. and 4.** (No change in text.)

The following are not considered assault firearms within the meaning of this definition:

1.-2. (No change.)

...

"Full-time police department" means a police department having at least one department member employed full-time (minimum 40 hours per week) and the department is responsible for providing police services in that jurisdiction 24 hours a day, seven days a weeks, 365 days a year.

If another jurisdiction's law enforcement agency regularly and consistently (for example, on a daily basis), assumes responsibility for a recurring, regular interval of time for the safety of the residents of the subject jurisdiction by providing police services or law enforcement response, then said police department does not meet this definition of a full-time police department and is, therefore, a "part-time police department."

...

[page=1300] **"Part-time police department" means a police department having no full-time police officer (40 hours per week) and/or said police department is not committed or able to provide police services in that jurisdiction 24 hours a day, seven days a week, 365 days a year.**

...

"Weapon" means anything readily capable of lethal use or of inflicting serious bodily injury. The term includes, but is not limited to, all:

1.-3. (No change.)

4. Stun guns, **tasers**; and

5. (No change.)

...

13:54-1.17 Applications and forms

All applications and/or forms regarding the application of any firearm permit or license shall be promulgated by the Superintendent. If, during the course of the issuing [agencies] agency's investigation, it becomes necessary to acquire additional information on the applicant, the issuing agency may request the additional information necessary to facilitate a complete and thorough investigation to determine if the applicant is subjected to any disabilities established in N.J.S.A. 2C:58-3.c and this subchapter. This information is strictly limited to follow-up questions to clarify and or verify information contained on the forms and/or applications.

SUBCHAPTER 3. RETAIL DEALERS

13:54-3.2 Retail license required

No retail dealer of firearms nor any employee of a retail dealer shall sell or expose for sale or possess with intent to sell, any firearm, parts of firearms, **or** ammunition, or engage in gunsmithing, **nor have access or be permitted to have access to any firearms or records of the acquisition or disposition of firearms**, unless such person has first obtained a retail dealers license *or employee license* issued pursuant to this chapter.

13:54-3.16 Records **and firearms** available to Division of State Police

(a) Records are to be retained by the dealer and shall, for administrative and law enforcement purposes, be made available for inspection during reasonable hours to any member of the Division of State Police.

(b) **All firearms acquired by the licensee shall at all times be maintained at the licensee's licensed premises or temporarily removed for a lawful permitted purpose unless expressly [permitted] prohibited by any other New Jersey statutory law or Administrative Code regulation [allowing the firearms to be temporarily removed for a lawful permitted purpose] .**

(c) **[All completed] Completed State of New Jersey Certificate of Eligibility forms, S.P. 634, [shall] may be permanently retained by the former dealer upon any termination of a retail firearms dealer's license. If the dealer chooses not to retain forms, such forms must be destroyed in such a manner to render them unreadable.**