

[(b)](a) The following concern the calibration check[infrared analysis and electrochemical analysis] of approved instruments:

1. All approved instruments [which] that employ the infrared analysis and electrochemical analysis approved method of chemical breath testing, as set forth in N.J.A.C. 13:51-3.5(a)1 or 2, when used in this State in connection with taking of breath samples under the provisions of N.J.S.A. 39:4-50.2(b), 39:3-[10.24b]10.24.b or 12:7-[55b]55.b, or in connection with the prosecution of a person pursuant to the provisions of N.J.S.A. 39:4-50 et seq., 39:3-10.13, 39:3-10.20, 39:3-10.24, 12:7-46, 12:7-55, or 2A:4A-23 shall be subject to a calibration check.

2. (No change.)

3. A calibration check shall be performed when an approved instrument:

i. ii. (No change.)

iii. Within 182 days after a calibration check conducted pursuant to [(b)3i] (a)3i or ii above; and

iv. Thereafter, within 182 days after any calibration check conducted pursuant to [(b)3i] (a)3i, ii, or iii above or after a discretionary calibration check conducted pursuant to [(b)4] (a)4 below.

4. (No change.)

5. The results of each calibration check shall be recorded on forms and in the manner specified by the Superintendent of the Division of State Police.

i. (No change.)

ii. An original, duplicate original, photocopy, or electronic copy of each calibration check, performed under this subsection, of an approved instrument under the custody and control of an organized police department, other than approved instruments under the custody and control of the Division of State Police, shall be maintained by the organized police department having custody and control of the approved instrument.

(a)

DIVISION OF STATE POLICE

Firearms and Weapons

Restrictions for Sale and Possession of Stun Guns

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

Proposed New Rule: N.J.A.C. 13:54-5.8

Authorized By: Colonel Joseph Fuentes, Superintendent, Division of State Police, with the approval of Christopher S. Porrino, Attorney General.

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

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

Proposal Number: PRN 2017-198.

Submit comments by October 20, 2017, 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.

The agency proposal follows:

Summary

The Division of State Police is proposing to amend and supplement N.J.A.C. 13:54 to address regulatory issues related to the sale and possession of stun guns. In *Caetano v. Massachusetts*, 136 S. Ct. 1027 (2016), the United States Supreme Court struck down a Massachusetts state law prohibiting possession of a stun gun, finding that the absolute ban on possession of a stun gun violated the Second Amendment’s protection of an individual right to keep and bear arms for self-protection. Since 1985, New Jersey law, N.J.S.A. 2C:39-3.h, similarly has established a strict prohibition on possession of a stun gun, regardless of the circumstances or location of the possession. In a

Consent Order entered in *New Jersey Second Amendment Society v. Porrino*, No. 16-4906 (USDC) (April 25, 2017), the United States District Court declared that “N.J. Stat. Ann. § 2C:39-3(h), to the extent this statute outright prohibits, under criminal penalty, individuals from possessing electronic arms, is declared unconstitutional in that it violates the Second Amendment to the United States Constitution and shall not be enforced.” The Consent Order further provided that N.J.S.A. 2C:39-9.d “shall not be enforced to the extent this statute prohibits, under criminal penalty, the sale or shipment of Tasers® or other electronic arms.” The Consent Order stayed proceedings to allow the implementation of any necessary revisions to controlling legal authorities and to establish limitations consistent with the public safety and the Second Amendment.

Accordingly, this notice of proposal is intended to address issues raised by the court invalidating the blanket prohibition on possession and sale of stun guns in New Jersey by maintaining the prohibition on sale and possession of stun guns to minors. Nothing in this rulemaking is intended to supplant or affect any time, place, and manner limitations on the possession, use, and ownership of stun guns established by New Jersey law, other than those set forth in N.J.S.A. 2C:39-3.h and 2C:39-9.d.

Recognizing that the outright statutory prohibition on sale and possession of stun guns has been declared unconstitutional and can no longer be enforced, the proposed amendments would in operative effect permit the sale to and possession of stun guns by persons age 18 and over, codifying in rule the continuing prohibition on the sale to and possession of stun guns by persons under the age of 18. The proposed amendments and new rule would also authorize law enforcement officers to confiscate from minors unlawfully possessed stun guns.

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 and new rule will provide guidance to law enforcement, weapons dealers, and members of the public in understanding the lawful acquisition and possession and remaining restriction on the sale and possession of stun guns by minors in New Jersey, establishing limitations consistent with public safety and the Second Amendment.

Economic Impact

The proposed amendments and new rule will likely have a positive economic impact by authorizing the sale of stun guns to adults in New Jersey.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments and new rule 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 and new rule are not expected to result in the generation or loss of jobs in New Jersey, although allowing the sale or transfer of stun guns to adults in New Jersey could have a positive impact on the job market.

Agriculture Industry Impact

The proposed amendments and new rule 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 and new rule 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.

Housing Affordability Impact Analysis

The proposed amendments and new rule will not have any impact on the affordability of housing in New Jersey and there is an extreme

unlikely that the proposed amendments or new rule would evoke a change in the average costs associated with housing because the proposed amendments and new rule concern the regulation of weapons.

Smart Growth Development Impact Analysis

The proposed amendments and new rule will have an insignificant impact upon smart growth and there is an extreme unlikely that the proposed amendments or new rule 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 proposed amendments and new rule concern the regulation of weapons.

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:

... **“Stun gun” means any weapon or other device that emits an electrical charge or current intended to temporarily or permanently disable a person.** ...

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

(a) No person, other than a licensed or registered retail or wholesale dealer, shall receive, purchase, or otherwise acquire a rifle, shotgun, or antique cannon, other than an antique rifle or shotgun, unless that person possesses and exhibits a valid firearms purchaser identification card. No person shall sell, give, transfer, assign, or otherwise dispose of a rifle, shotgun, or antique cannon, other than an antique rifle or shotgun, to a person other than a licensed or registered retail or wholesale dealer, unless the buyer or receiver possesses and exhibits a valid firearms purchaser identification card. No person shall sell, acquire, or possess a sawed-off shotgun. **No person shall sell, give, transfer, assign, or otherwise dispose of a stun gun to a person under 18 years of age, and no person under 18 years of age shall receive, purchase, or otherwise acquire a stun gun.**

(b)-(d) (No change.)

SUBCHAPTER 5. MACHINE GUNS, ASSAULT FIREARMS, [AND] LARGE CAPACITY AMMUNITION MAGAZINES, AND STUN GUNS

13:54-5.8 Possession of a stun gun by a minor

No person under 18 years of age shall possess a stun gun. Any stun gun possessed by a person under the age of 18 shall be subject to confiscation by law enforcement.

(a)

DIVISION OF STATE POLICE

Motor Carrier Safety Regulations

Proposed Amendments: N.J.A.C. 13:60-1.2 and 2.1

Proposed Repeal: N.J.A.C. 13:60 Appendix

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

Authority: N.J.S.A. 39:5B-32.

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

Proposal Number: PRN 2017-188.

Submit comments in writing to:

Colonel Joseph R. Fuentes, Superintendent
Division of State Police
Attn: Transportation Safety Bureau
3925 U.S. Route 1
Princeton, N.J. 08540
or electronically at: NJADOPTION@gw.njsp.org.

The agency proposal follows:

Summary

The Superintendent of the Division of State Police (Superintendent), under the authority of N.J.S.A. 39:5B-32, is proposing amendments to N.J.A.C. 13:60. At the direction of the Superintendent, the rules at N.J.A.C. 13:60 were reviewed and were found to be in need of minor amendments to ensure compliance with the Federal Motor Carrier Safety Regulations. In accordance with N.J.S.A. 39:5B-32, appropriate representatives of the Motor Vehicle Commission and Department of Transportation have been consulted on the proposed amendments.

N.J.A.C. 13:60 incorporates by reference Federal regulations adopted pursuant to the Surface Transportation Assistance Act of 1982 (49 U.S.C. §§ 31101, 31102, 31103, and 31104), as amended and supplemented. The Federal rules are collectively known as the Federal Motor Carrier Safety Regulations. The rules in the chapter apply to all motor carrier operators and vehicles engaged in interstate and intrastate commerce or used or operated wholly within a municipality. N.J.A.C. 13:60-1.2 explains the application of the chapter in further detail. The Superintendent proposes to amend N.J.A.C. 13:60-1.2 to update citations to applicable Federal regulations.

N.J.A.C. 13:60-2.1 incorporates by reference the Federal Motor Carrier Safety Regulations. The Superintendent proposes to amend this section by adding a new subsection (d) to incorporate parts of the Federal regulations, including 49 CFR Part 390 (Federal Motor Carrier Safety Regulations: General) to conform with State intrastate commerce rules. Accordingly, the Superintendent proposes to repeal the Appendix to the Regulations Regarding Motor Carrier Safety Regulations and all references to this appendix in Chapter 60. The State of New Jersey enforces Federal regulations governing both motor carrier safety and the transportation of hazardous materials. The proposed amendments will permit New Jersey to continue these public safety programs, whose continuation has been directed by the Legislature pursuant to N.J.S.A. 39:5B-26 and 39:5B-32.

Because a 60-day comment period has been provided on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments and repeal impact motor carriers, motor carrier operators, and persons operating commercial motor vehicles in intrastate commerce, in that they will be required to comply with, and be knowledgeable of, current Federal Motor Carrier Safety Regulations as found at 49 CFR 350.341(e) and the Appendices to those Federal regulations as found in the Code of Federal Regulations (currently revised as of February 1, 2017). Adoption of these Federal regulations does not impose any new burden on those operating in intrastate commerce since they are required to comply with most Federal Motor Carrier Regulations.

Economic Impact

It is anticipated that the proposed amendments and repeal will have no additional economic impact on motor carriers, motor carrier operators, or persons operating commercial motor vehicles in intrastate commerce. Pursuant to P.L. 1991, c. 491, section 1 (amending N.J.S.A. 39:5B-32) this group of commercial motor carrier operators was required to comply substantially with the Federal Motor Carrier Safety Regulations. Although Federal law does not mandate that this group comply absolutely with the Federal Motor Carrier Safety Regulations, it does condition New Jersey’s participation in the Federal safety enforcement programs and receipt of Federal aid upon the State requiring substantial compliance.