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RULE PROPOSALS

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

48 N.J.R. 377(a)

Proposed Amendment: N.J.A.C. 13:54-2.4

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

Firearms and Weapons

Application for a Permit to Carry a Handgun

Authorized By: Colonel Joseph Fuentes, Superintendent, Division of State Police, with the approval of John J. Hoffman, Acting 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 2016-037.

Submit comments by May 6, 2016, 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 (Division) is proposing an amendment to N.J.A.C. 13:54. This chapter became effective on October 5, 1986. It was last readopted with amendments on February 16, 2016. The Superintendent of the Division proposes to amend certain rules within N.J.A.C. 13:54 to align with existing Supreme Court precedent the requirements of the written certification of justifiable need that an applicant for a permit to carry a handgun must submit with his or her application form.

The proposed amendment to N.J.A.C. 13:54-2.4(d) adds "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, which would be submitted with an application for a permit to carry a handgun under N.J.S.A. 2C:58-4. The proposed amendment also clarifies that the issuance of a permit to carry a handgun can be based on a special danger to the applicant's life that cannot be avoided by other "reasonable" (as opposed to unreasonable or conceivable) means.

The proposed amendment to N.J.A.C. 13:54-2.4 harmonizes the regulatory definition of "justifiable need" with the Supreme Court of New Jersey's construction of that standard. The Court first defined the concept in *Siccardi v. State*, 59 N.J. 545 (1971). In *Siccardi*, the Court observed that "carry permits may be issued under this standard to those who can establish an urgent necessity for self-protection ... [o]ne whose life is in real danger, as evidenced by serious threats or earlier attacks[.]" *Id.* at 557. The Court also recognized, in determining whether an applicant for a permit to carry a handgun satisfied the legislative standard of demonstrating "need," that "need is a flexible term which must be read and applied in light of the particular circumstances and the times." *Id.* at 555.

Revisiting the issue in *In re Preis*, 118 N.J. 564 (1990), 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. The proposed amendment incorporates both the *Siccardi* and *Preis* standards by specifying that an applicant may demonstrate an urgent necessity for self-protection by evidence of serious threats, specific threats, or previous attacks that demonstrate a special danger to the applicant's life. Thus, the amendment more closely and fully aligns the regulatory definition to the Supreme Court's construction of the "justifiable need" standard.

In practical application, this change will allow the chief of police or the Superintendent, as the case may be, to consider evidence of serious threats that are not directed specifically at an individual and that establish more than mere generalized fears or concerns. That is, there may be circumstances that pose a sufficiently concrete threat to warrant the issuance of a permit (establishing the requisite urgent necessity for self-protection) but that do not yet involve a specific threat directed at a particular individual. For example, one such situation could be a taxi driver who works nights in a particular precinct where armed assailants recently and on multiple occasions had flagged down cabs at night and robbed and shot the drivers. Another example of a serious but not specific threat may be where the applicant is an eyewitness to a murder committed by the member of a street gang that has engaged in systematic and dangerous witness intimidation and retaliation.

The proposed amendment to N.J.A.C. 13:54-2.4(d) also makes explicit that the permit application shall demonstrate that the special danger to a carry permit applicant's life cannot be avoided by "reasonable" means other than issuance of a permit to carry a handgun. This change clarifies that, in considering whether an applicant has met the justifiable need showing required for approval of a handgun carry permit application, the issuing authority should consider whether there are any reasonable means, other than a issuance of a carry permit, by which the applicant could avoid the special danger to his or her life, rather than whether there are any conceivable or unreasonable means to do so (such as moving out of the State or never leaving one's residence). This change will provide greater objectivity, consistency, and clarity in the application of this standard.

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.

[page=378] **Social Impact**

The proposed amendments will align with existing Supreme Court precedent the requirements for the written certification of justifiable need that an applicant for a permit to carry a handgun. The public at large will benefit from the adoption of amendments to this chapter through the continued regulation by the Superintendent of those persons seeking to carry firearms.

Economic Impact

The proposed amendments will not have an economic impact on the general public. Applicants must still pay all current fees.

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 incorporate or refer 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.

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.

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**):

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.)