



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 12-030

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

2. Form, Style and Placement in Administrative Code

a. Under the heading “Analysis by the Department of Justice”, at the end of the first paragraph, the reference to DOJ proposing to repeal the existing emergency rules should be deleted. DOJ’s action in this rule-making order is to create proposed permanent rules, which does not require repealing the emergency rules that are in effect while the proposed permanent rules are being promulgated. Similarly, the paragraph labeled “Introductory Clause” should state that DOJ is proposing an order to create chs. Jus 17 and 18 (rather than to repeal and recreate the chapters).

b. Under the heading “Place where comments are to be submitted and deadline for submission”, the reference to a public hearing on “these emergency rules” should be deleted, as this rule-making order contains the department’s proposed permanent rules, not emergency rules.

c. As noted in comment a., the purpose of this rule-making order is to create two permanent rule chapters, not to repeal and recreate provisions contained in the emergency rules. Therefore, the order should contain a SECTION creating ch. Jus 17 and a SECTION creating ch. Jus 18. It should also include a SECTION setting forth the effective date of the rules and may include a separate SECTION containing an initial applicability provision, as discussed in comments d. and e., below. The rule-making order should be organized as follows:

(1) Chapter Jus 17 should be set forth in its entirety in SECTION 1, with the following treatment clause: “SECTION 1. Chapter Jus 17 is created to read:”. The chapter title should read as follows:

CHAPTER JUS 17

LICENSE TO CARRY A CONCEALED WEAPON

Following the chapter title, the text of the chapter should be set forth, beginning with Jus 17.01 Purpose.

(2) Chapter Jus 18 should be set forth in its entirety in SECTION 2, with the following treatment clause: “SECTION 2. Chapter Jus 18 is created to read:”. The chapter title should use the same format as the title to ch. Jus 17. Following the title, the text of the chapter should be set forth, beginning with Jus 18.01 Purpose.

d. SECTION 26, titled INITIAL APPLICABILITY, commingles an effective date provision (in the first sentence) and an initial applicability provision (in the second sentence). The effective date provision states that, except as otherwise provided, the rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register. The “except as otherwise provided” refers to the delayed applicability language in the second sentence. The effective date language is a required element of the rule and must be in a separate numbered rule SECTION. [s. 1.02 (4) (a) and (d), Manual.] If the initial applicability language is retained in some form, it should be placed in SECTION 3 and the effective date provision should be in SECTION 4. If the initial applicability language is not included, the effective date provision should be in SECTION 3. The proper wording of the effective date provision will depend on how the department addresses the questions raised in the following comment regarding the initial applicability language.

e. The initial applicability provision in SECTION 26 states that the standards set forth in ss. Jus 17.03 (7) and (8) and 17.05 (2) apply to all training completed on or after the first day of the first month following the effective date. Section Jus 17.03 (7) is the definition of “firearms safety or training course”. It differs from the corresponding definition in EmR 1206 (the emergency rule in effect as of the date of this report), by specifying several topics that the training, at a minimum, must include. Section Jus 17.03 (8) is the definition of “instructor-led”. It differs from the corresponding definition in EmR 1206, by specifying that the instructor-student ratio for group training may not exceed 50 students per instructor. Section Jus 17.05 (2) sets forth requirements for documenting proof of training. It differs from the corresponding provision of EmR 1206, by specifying that the certificate or affidavit of successful course completion is to be supplied by the course instructor or organization and requiring that the documentation of training submitted by an applicant include evidence that the training met the minimal instructional requirements specified in the definition of “firearms safety or training course”. The following comments are noted with respect to the initial applicability language:

(1) The reference to “standards” is vague and the above-cited provisions themselves do not refer to standards. The department should specify the particular requirements

that would not take effect on the general effective date of the rule. [For simplicity, these comments nonetheless refer to “standards”.]

(2) If the department delays the application of the new standards by a month, the department should consider, and the rule text should explicitly address, what standards will be in effect for the month in which the rule will have taken effect but the new standards are not yet being applied. If EmR 1206 has not expired by the time the permanent rule takes effect, does the department intend to apply the emergency rule provisions during that month? If so, the department should review its authority to apply provisions of the emergency rule for a period of time after the permanent rule takes effect, in light of SECTION 100 (1) of 2011 Wisconsin Act 35, which specifies that the department shall promulgate emergency rules “for the period before the effective date of the permanent rules.” This language reflects the longstanding view of the Rules Clearinghouse that a permanent rule replaces the related emergency rule upon promulgation.

(3) The department should also consider and address the effect on the training requirements if the emergency rule were to expire prior to the permanent rule taking effect. It is unclear what training and verification standards would apply in that situation.

(4) If the department’s purpose in delaying the applicability of the new standards is to clarify that persons who completed training prior to the permanent rule taking effect do not have to comply with the new standards, the rule could include an initial applicability provision stating that the new standards “first apply to a firearms safety or training course that commences on the effective date of the rule”. [In that case, the *effective date* provision would simply state that the rule takes effect on the first day of the month following publication.] If there is concern that persons may not be aware that the permanent rule contains new standards to which they may be subject, that information could be placed on the department’s website in advance of the rule taking effect. With regard to public notice, it should be noted that there are at least 45 days between an agency’s filing of a permanent rule with the Legislative Reference Bureau and actual publication of the rule. This may provide sufficient time for a public awareness campaign about the forthcoming requirements.

(5) Whichever course of action the department takes, the rule language should be very clear as to which standards apply at any given time. Also, the rule analysis should provide an explanation of any provision that delays the applicability of any rule requirements.

f. Many provisions of this rule cite the statutory provisions that set forth requirements relating to obtaining a concealed carry license or certification card, rather than actually describing the requirements in the rule text itself. For example, s. Jus 17.04 (1) provides that: “An application is complete when the department has received all of the items, including fees, listed in s. 175.60 (7) (a) to (e), Stats.” The rule text does not set forth the required application

items or the required fees, thereby requiring the reader to refer back to the statutes for that information. [Note that, in contrast, s. Jus 18.04 (1) (a) lists the items that make up a complete application, referencing other rule provisions as needed.]

This problem occurs throughout the rule, both in definitions and in substantive provisions. It would be helpful if the rule language provided sufficient detail to enable the reader to understand applicable requirements without having to refer to the statutes. Wherever possible, it is suggested that the rule minimize references to statutory provisions and instead, state the applicable requirements and restrictions.

g. For lengthy rule sections such as ss. Jus 17.04 and 17.05, it would be helpful if the subsections (and perhaps smaller subunits as well) were given titles, as is done for the subsections in s. Jus 17.08. [See s. 1.05, Manual, regarding use and proper format of titles.]

h. Chapter Jus 17 should address renewal of a license and should set forth the fee for license renewal, as required by s. 175.60 (15) (b) 4. a., Stats. Chapter Jus 18 should address renewal of a certification card.

i. Wherever the rule refers to a department form that must be submitted, a note should be inserted to indicate where the form may be obtained. Also, wherever the rule requires that an item be mailed to the department, a note should be inserted to provide the mailing address.

j. The term “background check” is defined in s. Jus 17.03 (3), using somewhat different wording than is used in the statutory definition of that term in s. 175.60 (1) (ac), Stats. The statutory definition clearly states that the purpose of the background check is to determine a person’s eligibility for a license to carry a concealed weapon. The wording of the rule definition is less clear. To avoid confusion from having two different definitions, it is suggested that the rule definition be redrafted to refer to the statutory definition, by providing that “background check” has the meaning given in s. 175.60 (1) (ac), Stats.

k. In s. Jus 17.03 (7) and (8), the definitions of “firearms safety training course” and “instructor-led” contain substantive information that should be in the text of the rule rather than in the definition. [s. 1.01 (7) (b), Manual.] Note that cross-references to those provisions should be changed accordingly.

l. It appears that the definition of “record” in s. Jus 17.03 (15) should either be eliminated or revised, because certain usages of “record” in the rule text differ from the meaning given in the definition. “Record” is defined as “the records associated with a licensee or applicant that are available for the department to search when conducting a background check...including court records, state criminal history records, and national criminal history records maintained by the FBI, including...NICS records.” However, in s. Jus 17.11 (1), “record” refers, among other things, to the application materials submitted to the department by applicants for concealed carry licenses. All references to “record” and “records” in the rule should be reviewed for consistent usage. This comment also applies to ss. Jus 18.03 (9) and 18.09 (1). Note that s. 175.60 (12), Stats., also pertains to records.

m. The definition of “search” in s. Jus 17.03 (16) seems unnecessary and could be deleted. The same comment applies to s. Jus 18.03 (10).

n. In s. Jus 17.05 (b) and (c), and throughout the rule, “must” should be changed to “shall”, to denote a mandatory action. [s. 1.01 (2), Manual.]

o. Section Jus 17.10 (1) properly requires the department to provide information to a court upon request, but should not govern what the court may request.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In the rule analysis, under the headings “Statutes interpreted” and “Statutory authority”, “ss.” should be replaced with “Sections”. Also, under “Statutes interpreted”, the hyphen between statutory paragraphs should be replaced with “to”. Under “Statutory authority” the citations to provisions of s. 175.60 should be combined to read: “175.60 (7), (14g) and (15) (b)”.

b. In the rule analysis, under the heading “Plain Language Analysis” in the first paragraph of item (3), “s. 175.60 (1) (f), (1) (g), and (2g)” should be replaced with “s. 175.60 (1) (f) and (g) and (2g)”.

c. In s. Jus 17.03 (9), the citation to s. 165.83 (1) should be to s. 165.83 (1) (b), Stats.

d. In s. Jus 17.03 (14), “(3)” should be inserted after the second occurrence of “175.60”.

e. In s. Jus 17.04 (1) (a), the hyphen in the citation should be replaced with “to”.

f. In s. Jus 17.06 (3) (b), in the last sentence, the hyphen in the citation should be replaced with “to”.

g. In s. Jus 17.07 (1), the citation to s. 175.60 (11) (a) should be to s. 175.60 (11) (a) 2., Stats.

h. In s. Jus 17.09 (1) (b) 5., “s.” should be included at the beginning of the list of citations and the remaining occurrences should be deleted. Also, is there a reason for not listing the statutory provisions in ascending numerical order?

i. In s. Jus 18.07 (3) (a) and (b), more specific citations to the subsections of s. Jus 18.10 containing the applicable fees should be provided.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. Jus 17.02 (2) (c), would it be more precise to refer to law enforcement officers “acting in their official capacity”? Some active duty law enforcement officers are not permitted to carry a concealed weapon when they are off duty and, therefore, may choose to apply for a concealed carry license. This comment also applies to s. Jus 18.02 (2) (c).

b. In s. Jus 17.03 (1), “to whom no license has yet been issued” may not be accurate in every instance, as there likely will be licensees who allow their license to expire and then apply

for a new license. Perhaps, “who does not currently hold a license” would be more precise. This comment also applies to s. Jus 18.03 (1).

c. In ss. Jus 17.03 (7) and 17.05 (1) (c), and elsewhere in the rule, the phrase “satisfying the content requirements of...” is used. A less awkward phrase would be: “that includes the items specified in...”.

d. In s. Jus 17.03 (8), “and/or” should be replaced with “and”. [s. 1.01 (9) (a), Manual.]

e. In s. Jus 17.03 (15), “but not limited to” should be deleted. [s. 1.01 (7) (c), Manual.]

f. In s. Jus 17.04 (title), “license” should be singular. In sub. (1) (a) (intro.), “concealed weapons” should be changed to “a concealed weapon”. [s. 1.01 (9) (e), Manual.] Also, “all of” should be inserted after “shall do”.

g. In s. Jus 17.05 (1) (i), the military discharge form typically is referred to as the “DD-214 form”.

h. With respect to the requirements in s. Jus 17.05 (2) (a) (intro.), if there exceptions to those requirements in sub. (1), as the phrase “Except as otherwise provided in sub. (1)” seems to indicate, it would be helpful to cite the specific provisions within sub. (1) that contain those exceptions.

i. In s. Jus 17.06 (3) (b), the last sentence is unnecessary and could be deleted.

j. In s. Jus 17.11 (1) (f), the comma between “license” and “number” should be deleted.

k. In s. Jus 17.13 (1) (a), it would be clearer to define the phrase “out-of-state license” and use it throughout the section. The definition could refer to the statutory definition of the term in s. 175.60 (1) (f), Stats. Note that because sub. (1) has a title, all remaining subsections of s. Jus 17.13 should also have titles. [s. 1.05 (1), Manual.]

l. The language in s. Jus 17.13 (2) (intro.) is awkward and would be clearer if rewritten as: “An out-of-state license shall be recognized in this state if issued by any of the following”. Paragraphs (a) and (b) should begin with “A state that...”.

m. The wording in s. Jus 17.13 (3) would be clearer if rewritten as follows:

If a state is not covered by sub. (2) but issues a concealed carry license that designates that the holder chose to voluntarily submit to a background check, the voluntary background check shall be recognized as comparable to a background check under s. 175.60 (1) (ac), Stats., if that state, through the office of its attorney general or another appropriate state agency or official, has informed the department that the background check includes a NICS search.

This provision should also be explained more clearly in the rule analysis, at the bottom of page 6.

n. In s. Jus 17.13 (5), the phrase “to which sub. (2) (a) or (b) applies or to which sub. (3) applies” could be shortened to: “to which sub. (2) (a) or (b) or (3) applies”.

o. In s. Jus 17.13 (6) (c), “will” should be replaced with “shall”.

p. In s. Jus 18.04 (1) (a) (intro.), “all of” should be inserted before “the following:”. In sub. (1) (a) 1. a., “fully completed” should precede “signed”.

q. In s. Jus 18.05 (3), “that he or she has found the applicant to meet” would be clearer as “that the applicant meets”. Also, it would be clearer if “established” was inserted before “by an identified law enforcement agency”.

r. In s. Jus 18.06 (2) (b), should the statement be dated, as well as signed?

s. In s. Jus 18.06 (4), the first “must” in the last sentence should be replaced with “shall” and the second “must” may be deleted.

t. In s. Jus 18.08 (1) (a), the last sentence should be rewritten to read: “The petition shall be received by the department within 30 days after the date on which the written notice of denial or revocation was mailed to the individual”.

u. In s. Jus 18.08 (1) (b) 1., “properly authenticated copies of all supporting documentation” should be rewritten as “a properly authenticated copy of each supporting document”.

v. In s. Jus 18.08 (1) (b) 2., does the statement that “satisfactory proof of identity *shall include* a set of rolled-ink fingerprints” (emphasis added) mean that the petitioner is *required* to provide that type of fingerprints, or, merely that that type of fingerprints is one satisfactory method of proof of identity?

w. In s. Jus 18.08 (1) (c), the colon on line 4 should be deleted.