

Publication Date: October 25, 2011
Effective Date: November 1, 2011 through March 29, 2012

EmR1115

This emergency rule was approved by the governor on October 14, 2011.

The statement of scope for this rule, SS 009-11, was approved by the governor on August 4, 2011, published in Register No. 668, on August 31, 2011, and approved by Attorney General J.B. Van Hollen on September 12, 2011.

STATE OF WISCONSIN
Department of Justice

**ORDER ADOPTING EMERGENCY RULE
DOJ-2011-02**

INTRODUCTORY CLAUSE

The State of Wisconsin Department of Justice (“DOJ”) proposes an order to create section Jus 17.13 relating to the recognition by Wisconsin of concealed carry licenses issued by other states.

ANALYSIS BY THE DEPARTMENT OF JUSTICE

DOJ proposes to promulgate an emergency administrative rule relating to the recognition by Wisconsin of concealed carry licenses issued by other states. The proposed rule will be numbered section Jus 17.13 and will be located in the new chapter Jus 17 that is being simultaneously promulgated in a separate order.

Statutes interpreted: ss. 165.25(12) and 175.60(1)(f) and (g), Stats.

Statutory authority: s. 165.25(12), Stats.

Explanation of statutory authority:

Section 165.25(12), Stats., expressly authorizes and requires DOJ to promulgate the proposed rule:

Promulgate by rule a list of states that issue a permit, license, approval, or other authorization to carry a concealed weapon if the permit, license, approval, or other authorization requires, or designates that the holder chose to submit to, a background search that is comparable to a background check as defined in s. 175.60(1)(ac).

Related statutes or rules: Prior to the enactment of 2011 Wis. Act 35, Wisconsin statutes and administrative rules contained no provisions for the recognition of concealed carry licenses issued by other states. The rule proposed in the present Order is the first to address this subject and there are thus no other related statutes or rules at the present time.

Plain language analysis: In 2011 Wisconsin Act 35, the state of Wisconsin established a new system under which DOJ is required to issue licenses authorizing eligible Wisconsin residents to carry

concealed weapons in Wisconsin. As part of that licensing system, DOJ is required to conduct a background check of license applicants for the purpose of determining whether an applicant is prohibited from possessing a firearm under state or federal law. That background check is required to include a search in the national instant criminal background check system (“NICS”) operated by the Federal Bureau of Investigation.

Under s. 165.25(12), Stats., as created by s. 22 of 2011 Wis. Act 35, DOJ is required to promulgate by rule a list of states that issue a permit, license, approval, or other authorization to carry a concealed weapon if the permit, license, approval, or other authorization requires, or designates that the holder chose to submit to, a background search that is comparable to the type of background check that DOJ is required to conduct for Wisconsin concealed carry licensees.

DOJ has determined that a background search conducted by another state is comparable to a Wisconsin background check only if it includes a NICS search. This is because the NICS database includes some relevant data related to potential disqualifying conditions that is not included in other national background check databases or in background check databases operated by individual states. A background search that does not include NICS, therefore, might fail to find that an applicant has a disqualifying condition that would have been found by a NICS search. It follows that a background check conducted by another state is comparable to a Wisconsin background check only if it includes a check of the NICS database for conditions that would disqualify an applicant from possessing a firearm.

The proposed emergency rule provides a list of three categories of states that meet the requirements in s. 165.25(12), Stats.

The first category consists of each state that, by statute or administrative rule, expressly requires a background check that includes a NICS search as a prerequisite for obtaining a concealed carry license.

The second category consists of each state that, through the office of its attorney general or another appropriate state agency or official, has informed DOJ that the state, as a matter of policy, requires a background check that includes a NICS search as a prerequisite for obtaining a concealed carry license.

The third category consists of any state that does not fall into either of the first two categories, but that issues concealed carry licenses which designate if the license holder has voluntarily submitted to a background check, provided that the state, through the office of its attorney general or another appropriate state agency or official, has informed DOJ that the background check includes a NICS search.

The proposed rule further provides that a person is a valid out-of-state licensee as defined in s. 175.60(1)(f) and (g), Stats., if the person holds a valid concealed carry license from a state in either of the first two categories or if the person holds a valid concealed carry license from a state in the third category and the license indicates that the holder has chosen to submit to a background check.

In addition, the proposed rule requires DOJ to maintain a list of the names of the states in each of the three categories and to make that list available to the public on DOJ’s Internet site. If DOJ at any time identifies any inaccuracies in the list of state names, the rule requires that those inaccuracies be corrected. If any person possesses information indicating that the list of state names is inaccurate, the rule permits the person to submit that information to DOJ and requires DOJ to take reasonably necessary and appropriate steps to review the accuracy of the list and correct any inaccuracies.

Summary of, and comparison with, existing or proposed federal regulation: The regulation of the carrying of concealed weapons, including the recognition by one state of a concealed carry license

issued by a different state, is primarily governed at the state level. Numerous federal statutes and regulations restrict the possession of weapons that have been shipped in interstate commerce, but there are no federal regulations that relate to reciprocal recognition of concealed carry licenses between states.

Comparison with rules in adjacent states:

A. Iowa

Iowa provides by statute that any person who meets specified eligibility and training requirements and who files a proper application shall be issued a nonprofessional permit to carry weapons. Iowa Code § 724.7(1). A criminal background check is required to determine whether an Iowa resident is statutorily eligible for such a permit. Iowa Code § 724.10(2); Iowa Admin. Code § 661-91.5(724)(1). Iowa further provides by statute that a concealed carry permit or license issued by another state to a nonresident of Iowa shall be considered a valid permit or license to carry weapons under Iowa law. Iowa Code § 724.11A. Iowa's statutory recognition of permits issued by other states is not tied to the nature of any background checks performed by those other states.

B. Minnesota

Minnesota provides by statute that any person who meets specified eligibility and training requirements and who files a proper application shall be issued a permit to carry a pistol. Minn. Stat. § 624.714(2). A criminal background check is required to determine whether a Minnesota resident is statutorily eligible for such a permit. Minn. Stat. § 624.714(4). Minnesota further requires the state commissioner of public safety to annually establish and publish a list of states whose concealed carry laws are not substantially similar to Minnesota's concealed carry laws. Minn. Stat. § 624.714(16)(a). A nonresident of Minnesota holding a carry permit from a state not on the list may use that permit in Minnesota, subject to the requirements of Minnesota law. Minn. Stat. § 624.714(16)(a). Minnesota's statutory recognition of a permit issued by another state is not directly tied to the nature of any background checks performed by the other state, but is tied to a general determination that the other state's concealed carry laws are substantially similar to Minnesota's.

C. Michigan

Michigan provides by statute that any person who meets specified eligibility and training requirements and who files a proper application shall be issued a license to carry a concealed pistol. Mich. Comp. Laws § 28.425b(7). License applicants are required to submit a fingerprint card, which is checked against state and FBI records. Mich. Comp. Laws § 28.425b(9)-(10). Michigan affords statutory recognition to non-residents who are licensed by another state to carry a concealed pistol. Mich. Comp. Laws § 28.432a(1)(h). That recognition is not tied to the nature of any background checks performed by the other state.

D. Illinois

Illinois does not issue or recognize licenses for the carrying of concealed weapons.

Summary of factual data and analytical methodologies: The proposed rule is predicated primarily on legal analysis by DOJ staff of the language and requirements of Act 35. DOJ staff also considered factual information about NICS and other state and federal background check systems obtained through DOJ's experience in conducting background checks for law enforcement and handgun

hotline purposes. In addition, DOJ staff have informally contacted appropriate officials in all other states and have requested information about a variety of their requirements and practices related to concealed carry. Finally, DOJ has sent formal written inquiries to the attorneys general of all other states, requesting relevant information about the requirements and practices of those states regarding background checks for concealed carry purposes. To date, DOJ has received and processed responses to those inquiries from 33 states.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: The proposed rule does not impose any financial or compliance burdens that will have a significant effect on small businesses or a significant economic impact. Accordingly, DOJ has determined that the gathering and analysis of additional data regarding any such effects or impact is unnecessary.

Effect on small business: The proposed rule does not have a significant effect on small business.

Agency contact person: Assistant Attorney General Clayton P. Kawski, Wisconsin Department of Justice, 17 West Main Street, P.O. Box 7857, Madison, Wisconsin 53707-7857; phone: (608) 266-7477; email: kawskcp@doj.state.wi.us.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to the contact person shown above no later than one week after the public hearing on this emergency rule is conducted. Information as to the date, location, and time of the public hearing will be published in the Wisconsin Administrative Register.

FINDING OF EMERGENCY

Section 100(1) of 2011 Wis. Act 35 expressly authorizes and requires DOJ to use the emergency rulemaking procedures of s. 227.24, Stats., to promulgate the emergency rule required under s. 165.25(12), Stats., and further provides that DOJ is not required to provide evidence that promulgating this rule as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare.

TEXT OF THE PROPOSED RULE

SECTION 1. Jus 17.13 is created to read:

Jus 17.13 Recognition of out-of-state licenses

(1) DEFINITIONS. In this section:

(a) “Concealed carry license” means a permit, license, approval, or other authorization to carry a concealed weapon that is issued by a state other than Wisconsin.

(b) “State” has the meaning given in s. 990.01(40), Stats.

(2) The following states issue a concealed carry license that requires a background search that is comparable to a background check as defined in s. 175.60(1)(ac), Stats.:

(a) Each state that by statute or administrative rule expressly requires a background check that includes a NICS search as a prerequisite for obtaining a concealed carry license.

(b) Each state that, through the office of its attorney general or another appropriate state agency or official, has informed the department that the state, as a matter of policy, requires a background check that includes a NICS search as a prerequisite for obtaining a concealed carry license.

(3) If a state is not covered by sub. (2), but issues concealed carry licenses which designate if the holder chose to voluntarily submit to a background check, that voluntary background check is

comparable to a background check as defined in 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.

(4)(a) A concealed carry license issued by any of the states to which sub. (2)(a) or (b) applies is an out-of-state license as defined in s. 175.60(1)(f), Stats. A person who has been issued such an out-of-state license, who is 21 years of age or over, and who is not a Wisconsin resident is an out-of-state licensee as defined in s. 175.60(1)(g), Stats.

(b) A concealed carry license issued by any of the states to which sub. (3) applies is an out-of-state license as defined in s. 175.60(1)(f), Stats., if the license indicates that the holder of that license has chosen to submit to a background check. A person who has been issued such an out-of-state license, who is 21 years of age or over, and who is not a Wisconsin resident is an out-of-state licensee as defined in s. 175.60(1)(g), Stats.

(5) The department shall create and maintain a list of the names of all the states to which sub. (2)(a) or (b) applies or to which sub. (3) applies and shall make the list available to the public on the department's Internet site.

(6)(a) If the department determines that a state whose name is not included in the list created under sub. (5) is a state to which sub. (2)(a) or (b) or sub. (3) applies, the department shall add that state to the list.

(b) If the department determines that a state whose name is included in the list created under sub. (5) is a state to which sub. (2)(a) or (b) or sub. (3) does not apply, the department shall remove that state from the list.

(c) Any person possessing information indicating that the list created under sub. (5) is not accurate may submit that information to the department. Upon receiving such information, the department will take reasonably necessary and appropriate steps to review the accuracy of the list and correct any inaccuracies.

SECTION 2. EFFECTIVE DATE. This rule shall take effect on November 1, 2011.

Dated this 19th day of October, 2011.

WISCONSIN DEPARTMENT OF JUSTICE

By: _____
J.B. Van Hollen, Attorney General

This emergency rule was approved in writing by the governor on October 14, 2011, pursuant to Wis. Stat. § 227.24(1)(e)1g.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)	ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS
Type of Estimate and Analysis	

<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Wis. Admin. Code § JUS 17.13		
Subject		
Rule relating to the recognition by Wisconsin of concealed carry licenses issued by other states.		
Fund Sources Affected	Chapter 20, Stats. Appropriations Affected	
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG SEG-S	20.455 (2) (gs) and 20.455 (2) (gu)	
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State's Economy <input type="checkbox"/> Local Government Units	<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
Under 2011 Wis. Act 35, DOJ is required to promulgate by rule a list of states that issue a permit, license, approval, or other authorization to carry a concealed weapon if the permit, license, approval, or other authorization requires, or designates that the holder chose to submit to, a background search that is comparable to the type of background check that DOJ is required to conduct for Wisconsin concealed carry licensees.		
Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)		
The proposed rule does not impose any financial or compliance burdens that will have an effect on small businesses or a significant economic impact. Accordingly, DOJ has determined that the gathering and analysis of additional data regarding any such effects or impact is unnecessary.		
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule		
The proposed rules are predicated on legal analysis by DOJ staff of the language and requirements of Act 35. Based on that analysis, DOJ has determined that the proposed rules are necessary for DOJ to carry out its responsibilities and the legislative directives set forth in Act 35.		
Long Range Implications of Implementing the Rule		
There are no long range implications associated with the proposed rules.		

Compare With Approaches Being Used by Federal Government

The regulation of the carrying of concealed weapons, including the recognition by one state of a concealed carry license issued by a different state, is primarily governed at the state level. Numerous federal statutes and regulations restrict the possession of weapons that have been shipped in interstate commerce, but there are no federal regulations that relate to reciprocal recognition of concealed carry licenses between states.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

See “Analysis by the Department of Justice” in the Department’s order adopting the emergency rule, DOJ-2011-02.

Name and Phone Number of Contact Person

Brian O’Keefe (608) 266-7052