



MEMORANDUM
OFFICE OF ATTORNEY GENERAL
BUREAU OF CRIMINAL INVESTIGATION

TO: Administrative Rules Committee

FROM: Phil Pfennig, Chief Agent, Bureau of Criminal Investigation

RE: Administrative Rules Committee Meeting, response to questions

DATE: December 12th, 2013

Representatives Chairman Bill Devlin, Randy Boehning, Joshua A. Boschee, Robert Frantsvog, Brenda Heller, Ben Koppelman, Kim Koppelman, Mark S. Owens, Mike Schatz, Peter F. Silbernagel, Blair Thoreson, Nathan Toman, Robin Weisz;

Senators John Andrist, Kelly M. Armstrong, Joan Heckaman, Jerry Klein, Connie Triplett

Mr. John Walstad, Legislative Council Code Revisor

Members of the Legislative Council Rules Committee, my name is Phil Pfennig, I am the Chief Agent at the North Dakota Bureau of Criminal Investigation. One of the groups that I supervise is the concealed weapons licensing unit. During the 63rd Legislative Session, there were seven bills dealing with firearms and/or concealed weapons that found their way through the legislative process. These bills resulted in several changes in statute which affected Administrative Code Article 10-12 Concealed Weapon Licensing.

I have included a copy of the rules as amended. Following, is the list of questions, responses and if necessary attached documentation that this committee asked to be answered.

1. Whether the rules submitted from 2013 statutory changes made by the Legislative Assembly.

Yes. There were seven firearms related bills that made it to the end of the legislative process (of House Bills 1224; 1241; 1260; 1283; 1327 and Senate Bills 2145; 2239).

The changes to the rules are regarding changes in NDCC. The primary change is due to the removal of the cost of a concealed weapon license from statute and in its place, created the statutory mandate that the fee would be mandated in administrative code. As the law took effect on August 1st, the administrative code 10-12 needed to be changed by emergency rule.

Other changes included removing local law enforcement from the application process and adding the requirement that the background check be done by fingerprint based criminal history record search.

2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.

The changes to the rules were not related to or mandated due to any federal statute or regulation.

3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.

On July 1st, a letter was sent to Governor Dalrymple requesting emergency approval of new rules. His letter approving emergency status was dated July 8th.

On August 15th, the full and abbreviated notice of intent to adopt, amend and repeal administrative rules relating to concealed firearms and dangerous weapons was posted in public and also on the Legislative Council website. The notice made known that the rules were approved through emergency rule. A copy of the abbreviated notice was sent to the North Dakota Newspaper Association to be published in all official newspapers in North Dakota.

On August 15th, a copy of the full notice was sent to all 38 representative and senator sponsors and supporters of firearms bills during the sixty-third legislative session as well as Mr. Walstad, code revisor of the legislative council. In those letters, it was noted that the rules were granted emergency status by Governor Dalrymple.

On July 19th, notice was given to all ND concealed weapon test administrators regarding the new rules. As new test administrators were added, they were also notified.

On September 24th, a public hearing was held at the Sakakawea room at the state capitol at 10:00 am, to allow the public to make any statements regarding the rules. No one came to the hearing.

On October 1st, the ND Newspaper Association swore by affidavit of publication, that they submitted the abbreviated notice of intent to adopt, amend and repeal administrative rules relating to concealed firearms and dangerous weapons in accordance with the law and rules. A bill in the amount of \$1,526.22 was incurred from this publication.

- 4. Whether any person has presented a written or oral concern, objection or complaint for agency consideration with regard to these rules. If so, describe the concern, objection or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.**

There were no written comments.

No one came to the public hearing and therefore, there were no comments at the public hearing.

There were several oral comments during the open comment period. All of the comments had to do with the new requirement of test administrators to give a 15 day notice to BCI for all concealed weapon testing (in the past, this was only required of class 1 testing). The comments expressed concern for requests for small classes from individuals who only had short time frames to work around.

After the comment period, the rules were changed to require a 15 day notice of classes with five (5) or more students. Four (4) students or less do not require prior notification.

- 5. The approximate cost of giving public notice and holding any hearing on the rules and approximate cost (not including staff time) of developing and adopting the rules.**

The cost (excluding staff time) was \$1,526.22 from the ND Newspaper Association for publishing the abbreviated notice.

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

North Dakota Administrative Code Article 10-12 has to do with concealed weapons. The changes to the rules had to do with changes in NDCC from the legislative assembly removing the fee from statute for obtaining a concealed weapon license to requiring the fee be placed in administrative code. Additionally, the legislative assembly added the requirement that federal fingerprint-based criminal history record check be done for positive identification of the applicant. This increased the \$45 fee to \$60. The legislative assembly also required BCI to send out reminder notices and gave BCI a 60 day time period to respond to completed applications. Additional changes were also made to move toward a more automated and electronic system (quality of photographs, documentation from test administrators, the ability to accept electronic payment, removal of local law enforcement from the application process, no requirement to state why the applicant wants a CWL, updated application, etc).

7. Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.

A regulatory analysis was completed and is attached.

8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.

A small entity regulatory analysis and small entity economic impact was completed and is attached.

9. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide copies of a fiscal note.

A fiscal note was completed and is attached.

10. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.

A constitutional takings assessment was prepared and is attached (as part of a letter to Wayne Stenehjem).

- 11. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules. If these rules were adopted as emergency (interim final) rules, what steps were taken to make the rules known to persons who can reasonably be expected to have a substantial interest in the rules?**

28-32-03. Emergency rules.

1. If the agency, with the approval of the governor, finds that emergency rulemaking is necessary, the agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by section 28-32-10.
2. A proposed rule may be given effect on an emergency basis under this section if any of the following grounds exists regarding that rule:
 - b. A delay in the effective date of the rule is likely to cause a loss of funds appropriated to support a duty imposed by law upon the agency.

The legislature removed the fee from statute for a ND Concealed Weapon License and required the fee be placed in administrative code. As the laws removing the fee to obtain a concealed weapon license and the law requiring us to put the fee in administrative code were to take effect on August 1st, the rules were changed through emergency because we would have been unable to charge a fee from August 1st until the rules were approved through normal process in October at the earliest. This would have left us with at least two months of not having a way of collecting fees.

The emergency rules were sent to all concealed weapon test administrators. The emergency rules were published on the legislative council website as well as the attorney general website. Public notice was also given through the North Dakota News Paper Association.



MEMORANDUM
OFFICE OF ATTORNEY GENERAL
BUREAU OF CRIMINAL INVESTIGATION

TO: Edward E. Erickson, Assistant Attorney General

FROM: Phil Pfennig, Chief Agent, Bureau of Criminal Investigation

RE: Regulatory Analysis of Proposed North Dakota Administrative Code
ch. 10-12-01

DATE: October 30, 2013

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08. This analysis pertains to proposed amendments to North Dakota Administrative Code Ch. 10-12-01. These amendments are not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

Purpose

The purpose of N.D.A.C. Ch. 10-12-01 is to provide direction regarding the qualification, application and testing for a North Dakota concealed weapons license. The proposed amendments are needed to incorporate state law changes and to provide updates and clarification to the rules since the last update of December 2011.

Classes of Persons Who Will be Affected

The classes of person who will most likely be affected by these rules are:

1. Citizens who wish to obtain a concealed weapons license, and
2. Concealed weapons license test administrators.

Probable Impact

Providing updates and clarification will positively impact citizens and concealed weapons license test administrators by providing detailed information and guidelines for application, testing and qualifications for a concealed weapons license.

Probable Cost of Implementation

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There are no additional expected costs to citizens or concealed weapons test administrators other than a nominal increase in the cost of the license. The projected costs associated with the proposed amendments for the Bureau of Criminal Investigations (BCI) would be newspaper advertisements (\$1526.22) to inform the community of the Administrative Code Ch. 10-12-01 amendment process.

Consideration of Alternative Methods

BCI could not consider doing no amendments to the rules because the laws regarding concealed weapons licenses at N.D.C.C. § 62.1-04-03 were changed thus requiring changes to the administrative rules.



MEMORANDUM
OFFICE OF ATTORNEY GENERAL
BUREAU OF CRIMINAL INVESTIGATION

TO: Edward E. Erickson, Assistant Attorney General

FROM: Phil Pfennig, Chief Agent, Bureau of Criminal Investigation

RE: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D.A.C. Ch. 10-12-01

DATE: October 30, 2013

The purpose of this small entity economic impact statement is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This impact statement pertains to proposed amendments to N.D.A.C. Ch. 10-12-01. The proposed rules should not have an adverse economic impact on small entities.

1. Small Entities Subject to the Proposed Rules

The small entities that are subject to the amended rules are:

Concealed Weapons License Test Administrators

2. Costs For Compliance

The administrative and other costs required for compliance with the proposed rules are expected to be the minimal cost of mailing the roster/course schedules to BCI. This cost can be eliminated by scanning and emailing the forms to the BCI.

3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rule: Nominal costs for instructors to submit forms as indicated above. Nominal increase in license fees for private citizens.

The probable benefit to private persons and consumers who are affected by the proposed rule: *A benefit is the amendments help provide a clear expectation to*

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instructors and private citizens as to the requirements/qualifications needed for obtaining a concealed weapons license.

4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be: None, there will be no impact on state revenues. Costs for processing the applications and federal background checks are covered by the increased application fees.

5. Alternative Methods

BCI considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. Those alternatives included:

N/A. Changes to state law required changes to the administrative code.



MEMORANDUM
OFFICE OF ATTORNEY GENERAL
BUREAU OF CRIMINAL INVESTIGATION

TO: Edward E. Erickson, Assistant Attorney General

FROM: Phil Pfennig, Chief Agent, Bureau of Criminal Investigation

RE: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D.A.C. Ch. 10-12-01

DATE: October 30, 2013

The purpose of this small entity regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This regulatory analysis pertains to proposed amendments to N.D.A.C. Ch. 10-12-01.

Consistent with public health, safety, and welfare, the Bureau of Criminal Investigation uses regulatory methods that will accomplish the objectives of the applicable concealed weapons statutes while minimizing the adverse impact on small entities. For this analysis, BCI has considered the following methods for reducing the rules' impact on small entities:

1. Establishment of Less Stringent Compliance or Reporting Requirements

The small entities involved are the concealed weapons license test administrators. The only required reporting for these test administrators is the submission of a roster of class schedules and attendees to BCI.

No less restrictive requirements could be implemented.

2. Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Entities

The requirements are minimal and mandated by state law.

3. Consolidation or Simplification of Compliance or Reporting Requirements for Small Entities

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N/A

4. Establishment of Performance Standards for Small Entities to Replace Design or Operational Standards Required in the Proposed Rules

N/A

5. Exemption of Small Entities From All or Any Part of the Requirements Contained in the Proposed Rules

All concealed weapons license test administrators are required to submit their class schedules and rosters. This can be done by U.S. mail or by scanning and emailing the forms to the BCI.



MEMORANDUM
OFFICE OF ATTORNEY GENERAL
BUREAU OF CRIMINAL INVESTIGATION

TO: Edward E. Erickson, Assistant Attorney General

FROM: Phil Pfennig, Chief Agent, Bureau of Criminal Investigation

RE: Fiscal Note of Proposed North Dakota Administrative Code ch. 10-12-01

DATE: October 30, 2013

The purpose of this fiscal note is to determine what the changed rules have on state revenues and state expenditures.

Fees for a North Dakota Concealed Weapon License (CWL) were removed from NDCC 62.1 and responsibility to assess a fee was placed in NDAC 10-12. This fee will essentially be unchanged (\$45). Additionally, fingerprint-based Criminal History Record (CHR) checks as required by NDCC 12-60-24 conducted through the FBI will create an increase of \$15.00 that will be passed through BCI from the applicant to the FBI. This will ultimately not have an impact on state revenues or expenditures. Total CWL fee will be \$60 for a 5-year license.



MEMORANDUM
OFFICE OF ATTORNEY GENERAL
BUREAU OF CRIMINAL INVESTIGATION

TO: The Honorable Wayne Stenehjem, Attorney General of the State of North Dakota

FROM: Phil Pfennig, Chief Agent, Bureau of Criminal Investigation

RE: Takings Assessment of Proposed North Dakota Administrative Code ch. 10-12-01

DATE: October 15, 2013

Dear Mr. Stenehjem:

Enclosed please find the amendments approved by the Honorable Governor Jack Dalrymple through emergency rule to N.D. Administrative Code Article 10-12 Concealed Firearms and Dangerous Weapons by the Office of Attorney General. The proposed rules have been approved by the Office of Attorney General. In accordance with N.D.C.C. section 28-32-14, the Office of Attorney General requests your examination of these rules as to their legality so they may be considered for formal adoption and publication in the North Dakota Administrative Code. The rules opinion must be submitted to Legislative Council prior to November 1st, 2013.

Attached for purposes of review is a copy of the full and abbreviated Notices of Intent to amend Administrative Rules; and Affidavit of Publication from the Newspaper Association certifying the notice was published in each official paper of record for each county in North Dakota; a copy of one of the actual notices as published; a copy of the letter to each legislator who sponsored, co-sponsored or supported legislation during the most recent legislative session which is being implemented by the proposed rule; a copy of the letter filing the Notice and Administrative Rules with the Legislative Council; a copy of all written comments; a copy of the written summary of each oral comment; and the Office of Attorney Generals written record of consideration of all public comments received. A fiscal note, regulatory analysis, small entity economic impact statement and small entity regulatory analysis was completed and is attached. Additionally, an e-mail was sent to Representative Bill Devlin, Chairman of the Administrative Rules Committee, explaining the emergency rule status for the administrative rules change.

These rules implement legislation from the 63rd legislative session and the sponsors – Representatives Keith Kempenich, Mike Brandenburg, David Drovda, Jim Kasper, Dan Ruby, Roscoe Streyle, Blair Thoreson, Robin Weisz, Ben Koppelman, Mark Dosch, Brenda Heller, Karen Karls, Kim Koppelman, Alex Looyesen, David Rust, Ron Guggisberg, Andres Maragos, Randy Boehning, Joe Heilman, Diane Larson, Todd Porter, Scott Louser, Mark Owens, Wayne Trottier, Roger Brabandt, and William Kretschmar as well as Senators Stan Lyson, Kelly Armstrong, Ron Carlisle, Robert Erbele, David O'Connell, Donald Schaible, Ronald Sorvaag, Jessica Unruh, Larry Luick, Joe Miller, and Margaret Sitte – were each provided a copy of the

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full notice of intent as well as a copy of the emergency rules. The letter sent to them also identified the house and senate bills that were part of the rules change.

Through emergency rules, the Honorable Governor Jack Dalrymple has granted approval of rule changes to NDAC 10-12. In order to finalize the rules an analysis of the approved emergency rules has been completed.

Takings Assessment

concerning proposed amendment to ND Administrative Code chapter 10-12.

This document constitutes the written assessment of the constitutional takings implications of this proposed rulemaking as required by N.D.C.C. 28-32-09.

1. Upon analysis, the proposed rule changes do not appear to cause the taking or regulatory taking or use of any private real property by government which would require compensation to the owner of that property by the Fifth or Fourteenth Amendment to the Constitution of the United States or the North Dakota Constitution article I subsection 16. This proposed rulemaking does not appear to reduce the value of any real property by more than fifty percent and is thus not a "regulatory taking" as that term is used in N.D.C.C. 28-32-09. The likelihood that the proposed rules may result in a taking or regulatory taking is nil.
2. The purpose of this proposed rule is clearly and specifically identified in the public notice of proposed rule change which is by reference incorporated in this assessment.
3. The reasons this proposed rule is necessary to substantially advance that purpose are described in the regulatory analysis which is by reference incorporated in this assessment.
4. The potential cost to the government if a court determines that this proposed rule change constitutes a taking or regulatory taking cannot be reliably estimated to be greater than \$0. The agency is unable to identify any application of the proposed rule change that could conceivably constitute a taking or a regulatory taking. Until an adversely impacted landowner identifies the land allegedly impacted, no basis exists for an estimate of potential compensation costs greater than \$0.
5. There is no fund identified in the agency's current appropriation as a source of payment for any compensation that may be ordered.
6. I certify that the benefits of the proposed rule change exceed the estimated compensation costs.



State of
North Dakota
Office of the Governor

Jack Dalrymple
Governor

July 8, 2013

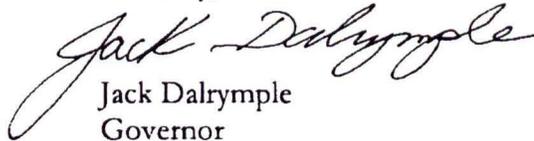
Director Dallas Carlson
Bureau of Criminal Investigation
600 East Boulevard Avenue
Bismarck, ND 58505-0200

Dear Mr. Carlson,

I received your request for approval of emergency rulemaking to amend North Dakota Administrative Code Article 10-12.

I have reviewed the request pursuant to N.D.C.C. § 28-32-03 and I find that an emergency rulemaking is reasonably necessary due to the removal of license fees from statute and their placement into the administrative code. I therefore approve adoption of your proposed rules as interim final rules.

Sincerely,


Jack Dalrymple
Governor

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