



STATE OF WISCONSIN  
Department of Justice

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**NOTICE OF RULEMAKING HEARINGS**

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NOTICE IS HEREBY GIVEN that pursuant to the authority granted under ss. 165.25(12m), 175.60(7), 175.60(14g), 175.60(15)(b), and 227.11(2)(a), Stats., the Department of Justice (DOJ) will hold a public hearing to consider the adoption of emergency and permanent rules creating chapters JUS 17 and JUS 18, Wis. Adm. Code, relating to licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; the recognition by Wisconsin of concealed carry licenses issued by other states; and the certification of firearms safety and training instructors.

**HEARING INFORMATION**

DOJ will hold public hearings at the times and places noted below.

Date: Monday, July 16, 2012  
Time: 10:00 a.m.  
Location: Superior Police Department  
1316 North Fourteenth Street  
Superior, WI 54880

Date: Tuesday, July 24, 2012  
Time: 11:00 a.m.  
Location: Green Bay Police Training Center  
307 South Adams Street  
Green Bay, WI 54301

Date: Wednesday, July 25, 2012  
Time: 10:00 a.m.  
Location: Waukesha County Technical College  
Business Building Room B130/B140  
800 Main Street  
Pewaukee, WI 53072

## **COPIES OF PROPOSED RULES, FISCAL ESTIMATE, AND ECONOMIC IMPACT ANALYSIS**

You may access a free copy of the emergency and permanent rules at <http://www.doj.state.wi.us/dles/cib/ConcealedCarry/ConcealedCarry.asp>. The emergency and permanent rules are also available online at <http://adminrules.wisconsin.gov>.

You may obtain a free copy of the emergency and permanent rules, the fiscal estimates, and the economic impact analyses by contacting the Wisconsin Department of Justice, Attn: David Zibolski, P.O. Box 7857, Madison, WI 53707-7857. You can also obtain a free copy by calling (608) 266-5710 or e-mailing [zibolskidb@doj.state.wi.us](mailto:zibolskidb@doj.state.wi.us).

## **PLACE WHERE COMMENTS ARE TO BE SUBMITTED AND DEADLINE FOR SUBMISSION**

Comments on the emergency and permanent rules should be submitted by no later than **4 p.m. on August 1, 2012**, and can be faxed to (608) 267-2223 to the attention of David Zibolski, emailed to [zibolskidb@doj.state.wi.us](mailto:zibolskidb@doj.state.wi.us), or mailed to the attention of David Zibolski at the Wisconsin Department of Justice, P.O. Box 7857, Madison, WI 53707-7857.

## **ANALYSIS PREPARED BY DEPARTMENT OF JUSTICE**

On October 25, 2011, DOJ adopted emergency rules relating to the implementation of DOJ's statutory responsibilities under 2011 Wis. Act 35 regarding licenses authorizing persons to carry concealed weapons, the certification of firearm safety and training instructors, the recognition by Wisconsin of concealed carry licenses issued by other states, and concealed carry certification cards for qualified former federal law enforcement officers. On March 15, 2012, DOJ repealed and re-created those emergency rules, with the exception of those portions of the emergency rules that had been suspended on November 7, 2011, by the Joint Committee for the Review of Administrative Rules ("JCRAR").

Like the emergency rules, the permanent rules proposed here will be located in two chapters. The first chapter is designated ch. Jus 17 and is titled "Licenses to Carry a Concealed Weapon." The second chapter is designated ch. Jus 18 and is titled "Certification of Former Federal Law Enforcement Officers."

The scope of these proposed permanent rules was described in a scope statement approved by the Governor on December 19, 2011.

**Statutes interpreted:** ss. 165.25(12m), 175.49(3)-(5m), and 175.60, Stats.

**Statutory authority:** ss. 165.25(12m), 175.60(7), 175.60(14g), 175.60(15)(b), and 227.11(2)(a), Stats.

**Explanation of statutory authority:**

A. Section 165.25(12m), Stats.

The portions of the proposed rules designating those states other than Wisconsin that conduct a background check for concealed carry licenses comparable to Wisconsin's background check is expressly authorized by s. 165.25(12m), Stats., which requires DOJ 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 a background check as defined in s. 175.60(1)(ac).

B. Section 175.60(7), Stats.

Those portions of the proposed rules that establish the amount of the fee to be charged for a concealed carry license are expressly and specifically authorized and required by s. 175.60(7), Stats., which provides:

SUBMISSION OF APPLICATION. An individual may apply for a license under this section with the department by submitting, by mail or other means made available by the department, to the department all of the following:

...

(c) A license fee in an amount, as determined by the department by rule, that is equal to the cost of issuing the license but does not exceed \$37. The department shall determine the costs of issuing a license by using a 5-year planning period.

C. Section 175.60(14g), Stats.

Those portions of the proposed rules that establish procedures for the administrative review by DOJ of any denial, suspension, or revocation of a license are expressly and specifically authorized by s. 175.60(14g), Stats., which provides:

DEPARTMENTAL REVIEW. The department shall promulgate rules providing for the review of any action by the department denying an application for, or suspending or revoking, a license under this section.

D. Section 175.60(15)(b), Stats.

Those portions of the proposed rules that establish the amount of the fee to be charged for the renewal of a concealed carry license are expressly and specifically authorized by s. 175.60(15)(b), Stats., which provides:

The department shall renew the license if, no later than 90 days after the expiration date of the license, the licensee does all of the following:

...

4. Pays all of the following:

a. A renewal fee in an amount, as determined by the department by rule, that is equal to the cost of renewing the license but does not exceed \$12. The department shall determine the costs of renewing a license by using a 5-year planning period.

E. Section 227.11(2)(a), Stats.

Those portions of the proposed rules that are not specifically authorized by ss. 165.25(12m), 175.60(7), (14g), and (15)(b), Stats., as described above, are authorized by s. 227.11(2)(a), Stats., which provides:

(2) Rule-making authority is expressly conferred as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

This statute expressly confers on DOJ the general power to determine whether administrative rules interpreting those statutory provisions in 2011 Wis. Act 35 that are to be enforced or administered by DOJ are necessary to effectuate the purpose of those statutory provisions and, if such necessity is found, to promulgate such administrative rules, as long as those rules do not exceed the bounds of correct interpretation of the governing statutes.

DOJ finds that the rules here proposed are necessary to effectuate those portions of ss. 175.49 and 175.60 that require DOJ to establish and operate procedures governing:

- the issuance of concealed carry licenses to qualified applicants, including verification that each applicant has satisfied the applicable statutory training requirements, has

passed the mandatory background check, and has met all of the other statutory eligibility requirements for a license;

- the issuance of concealed carry certification cards to qualified former federal law enforcement officers residing in Wisconsin, including verification that each applicant has satisfied the applicable firearms certification requirements, has passed the mandatory background check, and has met all of the other statutory eligibility requirements for certification;
- the administration of concealed carry licenses and certifications that have been issued by DOJ, including the maintenance and treatment of records; the receipt and processing of information from courts about individuals subject to a court-imposed disqualification from possessing a dangerous weapon; the renewal of licenses and certifications and the replacement of those that are lost, stolen, or destroyed; the processing of address changes or name changes for licenses and certifications; procedures and standards for revoking or suspending a license or certification; procedures for the administrative review by DOJ of any denial, suspension, or revocation of a license or certification; and procedures governing DOJ's cooperation with courts and law enforcement agencies in relation to emergency licenses issued by a court;
- the recognition by Wisconsin of concealed carry licenses issued by other states; and
- the qualification and certification of firearms instructors by DOJ and the identification of those firearms instructors who are certified by a national or state organization.

DOJ further finds that the rules here proposed:

- do not exceed the bounds of correct interpretation of ss. 175.49 or 175.60;
- are authorized by the statutes described above and are not based on authority derived from any other statutory or nonstatutory statements or declarations of legislative intent, purpose, findings, or policy;
- are authorized as necessary interpretations of the specific requirements of ss. 175.49 and 175.60 and are not based on authority derived from any other general powers or duties of DOJ; and
- do not impose any standards or requirements that are more restrictive than the standards and requirements contained in ss. 175.49 and 175.60.

For these reasons, those portions of the proposed rules that are not specifically authorized by ss. 165.25(12m), 175.60(7), (14g), and (15)(b), Stats., are authorized by s. 227.11(2)(a), Stats.

**Related statutes or rules:** Prior to the enactment of 2011 Wis. Act 35, Wisconsin statutes and administrative rules contained no provisions for licenses authorizing members of the

general public to carry concealed weapons, no provisions for state certification of instructors to teach firearms safety and training to the general public, and no provisions for state issuance of firearm certification cards for qualified former federal law enforcement officers. There are thus no other related statutes or rules other than the emergency rules that DOJ proposes to repeal and re-create.

**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 and to certify firearms safety and training instructors. The legislation also provides for the recognition by Wisconsin of concealed carry licenses issued by other states, if those states meet specified conditions. In addition, the legislation authorizes DOJ to issue concealed carry certification cards to qualified former federal law enforcement officers who reside in Wisconsin.

The proposed rules carry into effect the legislative directives set forth in Act 35. In a few areas, the proposed rules give substance to undefined statutory terms and supply standards needed to ensure that licenses and certification cards are issued only to eligible individuals and that all applicants and licensees are properly identified at all times. Such rules are specifically intended to carry out the legislative intent of Act 35.

The proposed permanent rules cover six subject areas:

(1) Issuance of concealed carry licenses

First, the proposed rules govern the issuance of concealed carry licenses to qualified applicants by DOJ pursuant to s. 175.60, Stats. These rules govern all aspects of the licensing process and describe the procedures and standards under which DOJ processes applications, collects fees, and verifies that each license applicant meets all of the license eligibility requirements under s. 175.60(3), Stats., including procedures and standards for certifying that an applicant has satisfied the applicable statutory training requirements and procedures for conducting the statutorily required background check of each applicant to determine whether the applicant is prohibited from possessing a firearm under state or federal law.

(2) Administration of concealed carry licenses

Second, the proposed rules govern the administration of concealed carry licenses that have been issued by DOJ. These rules cover: the maintenance and treatment of licensing records by DOJ; the receipt and processing by DOJ of information from courts regarding individuals subject to a court-imposed disqualification from possessing a dangerous weapon; procedures for renewing a license and replacing a license that is lost, stolen, or destroyed; procedures for processing address changes and for issuing a new concealed carry license or certification card to an individual who changes his or her name; procedures and standards for revoking or suspending a license; procedures for the administrative review by DOJ of any denial, suspension, or revocation of a license; and procedures governing DOJ's cooperation with courts and law enforcement agencies in relation to emergency concealed carry licenses issued by a court pursuant to s. 175.60(9r). The rules for administrative review of a denial, suspension, or revocation of a license include procedures for conducting fingerprint checks to verify the identity of any applicant who has been found to be ineligible based on a background check.

(3) Recognition by Wisconsin of concealed carry permits issued by other states

Third, pursuant to s. 165.25(12m), Stats., the proposed rules designate those states other than Wisconsin that issue a concealed carry permit or other authorization that is entitled to recognition in Wisconsin because the permit or authorization issued by the other state 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. Under s. 175.60 (1)(f), (1)(g), and (2g), Stats., a concealed carry permit or other authorization issued by another state is entitled to recognition in Wisconsin if the state is included in that list of states promulgated by DOJ.

The background check that DOJ must conduct on each applicant for a Wisconsin concealed carry license is required to include a search in the national instant criminal background check system ("NICS") operated by the Federal Bureau of Investigation. DOJ has determined that a background search conducted by another state is comparable to a Wisconsin background check only if it similarly includes a NICS search. Accordingly, the rules proposed here designate three categories of states that meet this requirement:

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 permit.

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 permit.

The third category consists of any state that does not fall into either of the first two categories, but that issues concealed carry permits which designate if the permit 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 rules further require 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 rules require that those inaccuracies be corrected. If any person possesses information indicating that the list of state names is inaccurate, the rules permit the person to submit that information to DOJ and require DOJ to take reasonably necessary and appropriate steps to review the accuracy of the list and correct any inaccuracies.

(4) Issuance of concealed carry certification cards to former federal law enforcement officers

Fourth, the rules govern the procedures and standards under which DOJ issues concealed carry certification cards to qualified former federal law enforcement officers pursuant to s. 175.49(3), Stats. These rules govern all aspects of the certification process for former federal officers who reside in Wisconsin and describe the procedures and standards under which DOJ processes applications, collects fees, and verifies that each applicant meets all of the certification eligibility requirements under s. 175.49(3)(b), Stats., including procedures and standards for certifying that an applicant has satisfied the firearm qualification requirement under s. 175.49(3)(b)5., Stats., and procedures for conducting the statutorily required background check of each applicant to determine whether the applicant is prohibited from possessing a firearm under federal law.

(5) Administration of concealed carry certification cards held by former federal law enforcement officers

Fifth, the rules also cover the administration of concealed carry certification cards issued to former federal law enforcement officers by DOJ, including: the maintenance and treatment of certification records by DOJ; procedures for renewing a certification card and replacing a card that is lost, stolen, or destroyed; procedures for processing address changes or name changes by a certified former federal officer; procedures and standards for revoking or suspending a certification; and procedures for the administrative review by DOJ of any denial, suspension, or revocation of a certification. The administrative review procedure includes procedures for checking fingerprints to verify the identity of any certification applicant who has been found to be ineligible based on a background check.

(6) Certification of firearms instructors

Sixth, the proposed rules govern the procedures and standards for the qualification and certification of firearms instructors by DOJ under s. 175.60(4)(b), Stats., and provide a definition identifying those firearms instructors who are certified by a national or state organization, as provided in s. 175.60(4)(a), Stats.

**Summary of, and comparison with, existing or proposed federal regulation:** For persons other than current and former law enforcement officers, the regulation of the carrying of concealed weapons 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 the licensing of concealed carry by such persons, nor are there federal regulations governing the certification of firearms instructors for concealed carry purposes.

For qualified current and former law enforcement officers, state and local laws restricting the carrying of concealed firearms are federally preempted by 18 U.S.C. §§ 926B-926C (commonly referred to as “H.R. 218”). The provisions in 2011 Wis. Act 35 related to qualified current and former law enforcement officers are state-law codifications of the corresponding provisions in H.R. 218. Similarly, the rules proposed here governing procedures and standards for the issuance and administration of concealed carry certification cards for qualified former federal law enforcement officers also codify corresponding provisions in the federal law.

### **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). 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.

Iowa statutes specify a variety of methods by which a license applicant may demonstrate the requisite knowledge of firearms safety. Iowa Code § 724.9(1). Satisfaction of any of these methods may be documented by submitting: (1) a copy of a certificate of completion or similar document for a course or class that meets the statutory requirements; (2) an affidavit from the instructor or organization conducting such a course or class that attests that the applicant has completed the course or class; or (3) a copy of any document indicating participation in a firearms shooting competition. Iowa’s administrative rules give these requirements additional substantive content through definitions of “firearm training and documentation” and “firearm training program.” Iowa Admin. Code § 661.91.1(724).

The information to be included on the application form is prescribed by statute. Iowa Code § 724.10(1). Upon receipt of a completed application, the commissioner of public safety is required to conduct a criminal background check to determine whether the applicant is statutorily eligible for a permit. Iowa Code § 724.10(2); Iowa Admin. Code § 661-91.5(724)(1). The commissioner must approve or deny a permit application within 30 days. Iowa Admin. Code § 661-91.5(724)(2). Denial decisions must be issued in writing, with reasons. Iowa Admin. Code § 661-91.5(724)(4). If a permit holder is arrested for a disqualifying offense, the commissioner may immediately suspend the permit and immediately notify the holder in writing.

Iowa Admin. Code § 661-91.6(724)(1). If the arrest results in a disqualifying conviction, the permit is revoked. Iowa Adm. Code § 661-91.6(724)(4). If there is no conviction, the permit is reinstated. Iowa Adm. Code § 661-91.6(724)(3). Iowa's administrative rules provide an administrative hearing procedure for appealing the denial, suspension, or revocation of a *professional* weapons permit, but do not expressly provide an appeal procedure for a non-professional permit.

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). 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.

Applications are made to the sheriff of the county in which the applicant resides. Minn. Stat. § 624.714(2). The information to be included on the application form is prescribed by statute. Minn. Stat. § 624.714(3). A permit applicant must have received training in the safe use of a pistol within one year prior to the application. Minn. Stat. § 624.714(2a)(a). To establish such training, an applicant must submit a copy of a certificate signed by the training instructor and attesting that the applicant attended and completed the training. Minn. Stat. § 624.714(3)(c)(2).

Upon receiving a permit application, the sheriff is required to conduct a criminal background check to determine whether the applicant is statutorily eligible for a permit. Minn. Stat. § 624.714(4). The sheriff must approve or deny a permit application within 30 days. Minn. Stat. § 624.714(6). A denied applicant is given the right to submit additional information and the sheriff then has 15 days to reconsider the denial. Minn. Stat. § 624.714(6)(b). All denial decisions must be issued in writing, with reasons, including the factual basis for the denial. Minn. Stat. § 624.714(6)(b). A permit is void any time the holder becomes legally prohibited from possessing a firearm. Minn. Stat. § 624.714(8)(a). If the sheriff has knowledge that a permit is void, the sheriff must give written notice to the holder, who must return the permit. Minn. Stat. § 624.714(8)(a). If a permit holder is convicted of a disqualifying offense, the convicting court must take possession of the permit and send it to the issuing sheriff. Minn. Stat. § 624.714(8)(b). A decision denying or revoking a permit may be appealed to the district court of the jurisdiction in which the permit application was submitted. The appeal is heard by the court de novo without a jury. Minn. Stat. § 624.714(12).

### 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). Applications are made to the concealed weapon licensing board of the county in which the applicant resides. Mich. Comp. Laws § 28.425b(1). The information to be included on the application form is prescribed by statute. Mich. Comp. Laws § 28.425b(1). 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.

A license applicant must demonstrate knowledge and training in the safe use and handling of a pistol by successfully completing a pistol safety training program that meets statutorily prescribed requirements. Mich. Comp. Laws § 28.425b(7)(c). The training program must consist of at least eight hours of instruction, must cover specified subject areas, must include at least three hours on a firing range, must require firing at least 30 rounds of ammunition, and must be taught by an instructor certified by the state or by a national organization. Mich. Comp. Laws § 28.425j(1). The training program must provide an instructor-signed certificate indicating that the program meets the statutory requirements and was successfully completed by the license applicant and the applicant must include a copy of that certificate with the license application. Mich. Comp. Laws §§ 28.425b(1)(j) and 28.425j(1)(c).

After submitting an application, an applicant is statutorily required to submit a fingerprint card to the state police. Mich. Comp. Laws § 28.425b(9)-(10). The fingerprints are sent to the FBI and checked against state police records. Mich. Comp. Laws § 28.425b(10). Within 10 days after receiving fingerprint comparison results from the FBI, the state police must provide a fingerprint report to the appropriate county concealed weapon licensing board. Mich. Comp. Laws § 28.425b(10). The licensing board must grant or deny a license within 45 days after receiving the fingerprint report, except that if the state police do not send a fingerprint report to the licensing board within 60 days after results are received from the FBI, then the licensing board shall issue the applicant a temporary license which is valid for 180 days. Mich. Comp. Laws § 28.425b(13)-(14).

License denial decisions must be issued in writing with reasons and supporting facts. Mich. Comp. Laws § 28.425b(13). Denial decisions may be appealed to the circuit court of the jurisdiction in which the applicant resides. Mich. Comp. Laws § 28.425d(1). Court review is based on the written record of the application proceeding, except in cases in which a determination has been made that the applicant is a safety risk, in which case there is a hearing de novo before the court. Mich. Comp. Laws § 28.425d(1).

If a license holder is charged with a disqualifying criminal offense, the prosecuting attorney must promptly notify the county licensing board. Mich. Comp. Laws § 28.425m. The prosecutor must also notify the board of the subsequent disposition of the charge. Mich. Comp. Laws § 28.425m. Upon receiving notice that a licensee has been charged with a disqualifying offense, a licensing board must immediately suspend the person's license until there is a final disposition of the charge. Mich. Comp. Laws § 28.428(3). The licensee must be given written

notice of the suspension and may request a prompt administrative hearing on the suspension. Mich. Comp. Laws § 28.428(3). If the licensing board determines that a licensee is no longer eligible for a license, the license shall be revoked. Mich. Comp. Laws § 28.428(4).

D. Illinois

Illinois does not issue 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 informally contacted appropriate officials in all other states and requested information about a variety of their requirements and practices related to concealed carry. Finally, DOJ 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. Based upon its legal analysis and the factual information obtained from other states, DOJ has determined that the proposed rules are necessary for DOJ to carry out its responsibilities under Act 35.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:** From April 20 through May 4, 2012, pursuant to s. 227.137, Stats., DOJ solicited comments on the economic impact of the proposed rules. Public notification of the comment period was posted on DOJ's public website, the Wisconsin administrative rules website, and the Wisconsin Law Enforcement Network (WILENET). Notification was also sent to the Governor's Office of Regulatory Compliance and to: all DOJ firearms instructors, interested concealed carry training organizations, firearms dealers, district attorneys' offices, technical colleges, and law enforcement agencies.

A total of 14 sets of comments were received and reviewed by DOJ and follow-up conversations with commenters were conducted. Based on the results of that comment and review process, DOJ has concluded that the proposed permanent rules will not have any adverse material effect on the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state and that the proposed rules do not impose any financial or compliance burdens that will have a significant effect on small businesses or a significant economic impact. The content of the comment and review process is described in greater detail in the economic impact report that is being simultaneously submitted by DOJ, pursuant to s. 227.137, Stats.

**Effect on small business:** Based on the comment and review process described above, DOJ has concluded that the proposed permanent rules will not have a significant effect on small business.

## **FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS**

Fiscal and economic costs associated with implementing the program are not driven by the proposed rules. Rather, administrative costs are driven by the statutory requirements established in Act 35. DOJ does not believe the rules impose additional costs beyond those necessary to fulfill the requirements of Act 35.

Prior to the enactment of 2011 Wis. Act 35, Wisconsin statutes and administrative rules contained no provisions for issuance of licenses/ certification cards to carry concealed weapons to qualified applicants. The proposed rules are the first to address these subjects.

Act 35 requires DOJ to issue licenses authorizing eligible Wisconsin residents to carry concealed weapons in Wisconsin and to certify firearms safety and training instructors. Wisconsin has not issued licenses/certification cards previously, so there is the potential for wide variability in the number of licenses/certification cards issued. Based on other States' experience and additional factors including the percentage of Wisconsin's population with hunting licenses and current handgun sales, the Department estimates, at a minimum, that 150,000 licenses/certification cards will be issued over a two year period. The Department's best estimate is that it will issue at least 100,000 permits in the first year, approximately 50,000 in the second year, and may issue more than 200,000 over the 5 year period. While these figures represent the Department's best estimate, each states experience with citizen participation in concealed carry is unique and the actual number of licenses issues cannot be stated with certainty without the supporting data that will be developed in the first two years. Revenues will be directly correlated with the number of completed applications submitted and approved.

The rules establish a statutorily allowed license fee of \$37, as determined by the department, to cover the cost of issuing the license on a five year renewal cycle and a \$12 renewal fee for the subsequent five years. Act 35 mandates a \$13 fee for the required background check. The annual fee for a certification card for former federal law enforcement officers is \$12 for the license and \$13 for the background check. The revenue generated by this rule will be dependent on the number of licenses/ certification cards issued. It is estimated that these emergency rules will generate approximately \$5,000,000 in revenue in FY2012 and \$2,500,000 in FY2013.

The rules will not have an economic effect on public utilities or their taxpayers. For additional information, please see the fiscal estimates and economic impact analyses relating to the emergency and permanent rules.

## **AGENCY CONTACT PERSON**

The agency contact person is David Zibolski, [zibolskidb@doj.state.wi.us](mailto:zibolskidb@doj.state.wi.us), (608) 266-5710.