

STATEMENT OF NEED AND REASONABLENESS  
REGARDING PROPOSED RULES GOVERNING THE POSSESSION  
OR OWNERSHIP OF MACHINE GUNS AND SHORT-BARRELLED SHOTGUNS

11 MCAR §1.3060 Statutory Authority

The statutory authority for promulgating these proposed rules is granted to the Superintendent of the Bureau of Criminal Apprehension by Minn. Stat. § 299C.03.

11 MCAR § 1.3061 Definitions

A. Applicability. It is necessary to show the limits of applicability of these rules.

B-G. Definitions. It is necessary to define certain terms and phrases used in these rules as these terms and phrases might otherwise be subject to various interpretations.

11 MCAR § 1.3062 Procedure For Approval Of Ownership Or Possession

This rule explains the procedures for obtaining approval of ownership or possession of a machine gun or short-barrelled shotgun. The procedures are as follows:

1. The applicant requests and receives an application form (a one page form in triplicate made of self-carboning paper) from the bureau;
2. The applicant completes the application form;
3. The applicant requests the sheriff or chief of police who has jurisdiction in the community in which the applicant resides to conduct an investigation of the applicant to determine whether or not the applicant is a person prohibited from receiving firearms (a fee of up to \$25.00 may be charged to the applicant by the investigating agency for each investigation);
4. If the applicant is not a person prohibited from receiving firearms, the chief of police or sheriff who conducted the investigation sends a written notice to the superintendent verifying this fact. If the applicant is a person prohibited from receiving firearms, no written notice is sent;
5. The applicant sends the completed application and a \$15.00 fee to the Superintendent at approximately the same time as the written notice is sent to the Superintendent by the chief of police or sheriff;
6. Once all material (application, fee, and written notice) are received by the Superintendent, a decision of approval or denial will be made by the Superintendent within 45 days (the decision is based on all materials being complete and truthful, and the firearm being an approved machine gun or short-barrelled shotgun);
7. If the applicant is approved, the Superintendent completes the appropriate sections of the application and sends two copies of the application to the applicant;
8. When the applicant receives the two copies of the application, he or she may then take ownership or possession of the firearm listed on the application;
9. When the applicant takes possession of the firearm, he or she has 48 hours in which to complete the transfer portion of the application copies and mail one copy to the Superintendent. One copy is retained by the applicant for their records.

A. Subd. A. explains that the procedures defined in 11 MCAR §1.3062 must be followed before a person may own or possess a machine gun or short-barrelled shotgun.

B. Subd. B. states that a completed application form must be sent to the Superintendent. Information required on the applications is required by Minn. Stat. §609.67 Subd. 4.

C. Subd. C. requires the \$15.00 fee paid to the bureau for each application submitted. The \$15.00 fee is necessary to cover the reasonable cost of form duplication, postage, and clerical tasks. The form will be in triplicate with two self-carboning pages.

D. Subd. D. states that the applicant requests from the sheriff or chief of police who has jurisdiction in the community where the applicant resides that an investigation be conducted to determine whether or not the applicant is a person prohibited from receiving firearms. Persons prohibited from receiving firearms are defined in 11 MCAR §1.3061, F. as "1. fugitives from justice (any crime); 2. persons under indictment for, or who have been convicted of, a crime punishable for a term exceeding one year; 3. narcotic addicts or unlawful drug users; 4. persons adjudicated mental defectives or mentally incompetent, or who have been committed to any mental institution; 5. veterans discharged under dishonorable conditions; 6. persons who have renounced their United States; and 8. where the transferor is a firearms licensee, persons under 21 years of age in the case of any firearm other than a shotgun or rifle, and persons under 18 years of age in the case of a shotgun or rifle". This definition is the same as the definition used by the Bureau of Alcohol, Tobacco, and Firearms in their application instructions for Firearms Transfer and Registration Forms, and is under 18 U.S.C. Chapter 44, and Title VII of Public Law 90-351, as amended (18 U.S.C., Appendix). By using this definition, the basis on which persons could or could not be approved to own or possess a machine gun or short-barrelled shotgun in the State of Minnesota would be no more and no less stringent than the basis used by the Federal government in determining who may or may not receive firearms.

Subd. D. states that the investigating agency may charge up to \$25.00 for each investigation. The fee of up to \$25.00 is a necessary and reasonable amount to reimburse the law enforcement agency for manpower, office supplies, travel, and telephone costs incurred during the background investigation.

Additionally, Subd. D. explains that the sheriff or chief of police who conducted the investigation sends a written notice to the Superintendent to verify that the person is not "a person prohibited from receiving firearms". The sheriff or chief of police sends the written notice upon completion of the investigation only if it has been determined that the applicant is not a "person prohibited from receiving firearms". It is necessary for the sheriff or chief of police to send the written notice to the superintendent in order to ensure its contents contain valid, verifiable, and reliable information.

E. Subd. E. explains that the Superintendent will approve an applicant for ownership or possession when the requirements of 11 MCAR §1.3062, B-D have been met, that the decision will be made within 45 days of receipt of all necessary items by the Superintendent, and that, upon approval, two approved copies of the application will be sent to the applicant.

It is necessary to describe the requirements which must be met in order for the Superintendent to grant approval.

45 days is a reasonable amount of time to allow the Superintendent to make the decision of approval or denial. The information on the application must be verified, personal checks must be cleared, and the firearm listed on the application must be determined to be an "approved machine gun or short-barrelled shotgun". In 11 MCAR §1.3061, B. "approved machine gun or short-barrelled shotgun" is defined as "machine guns and short-barrelled shotguns which have been determined by the Superintendent to be collector's items, relics, museum pieces, or objects of curiosity, ornaments or keepsakes, and which are not likely to be used as weapons". Pursuant to Minn. Stat. §609.67, the Superintendent has defined "collector's items, relics, museum pieces, or objects of curiosity, ornaments or keepsakes, and approved machine guns and short-barrelled shotguns" as "firearms which appear on the '1981 Curios and Relics List', issued by the Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms (Washington D.C.: 1981) or the most current version of this list". The firearms appearing on the list have been determined by the Bureau of Alcohol, Tobacco, and Firearms (B.A.T.F.) to be curios or relics through a process at the federal level. For further information regarding the list, please see Attachment A. By using the list, the Superintendent shall have a current list of firearms designated as curios or relics, and be totally within federal guidelines, while being no more stringent than necessary.

F. Subd. F. states that after the applicant receives approval, ownership or possession of the approved machine gun or short-barrelled shotgun may take place. After ownership or possession takes place, the applicant has 48 hours to notify the Superintendent that the transfer has taken place. The notification is done by the applicant completing the appropriate portion of the application and sending one copy to the Superintendent. It is necessary to complete this process so the Superintendent may know not only who is approved to have ownership/possession of a machine gun or short-barrelled shotgun, but also who has actually taken possession or ownership of such a firearm. 48 hours is a reasonable time limit to place on this notification in order to keep the Superintendent aware of current locations of machine guns and short-barrelled shotguns, thereby promoting public safety.

#### 11 MCAR §1.3063 Denial Or Revocation Of Application Approval

This rule defines what conditions will result in denial or revocation of approval. The conditions are: 1. misrepresentation or falsification of information on the application; 2. the firearm listed on the application is not an approved machine gun or short-barrelled shotgun; 3. the applicant uses the approved machine gun or short-barrelled shotgun in the commission of a crime; 4. the applicant is or becomes a person prohibited from receiving firearms, or 5. the applicant fails to notify the bureau within 48 hours after becoming a person prohibited from receiving firearms.

It is necessary to define what conditions will constitute revocation or denial. All the conditions are necessary and reasonable in promoting public safety for citizens of Minnesota.

#### 11 MCAR §1.3064 Right To Contest Decision

This rule states that any applicant who wishes to contest the denial may do so by following procedures of the Administrative Procedure Act, Minn. Stat §15.0418 - 15.0426, and 9 MCAR §2.201 - 2.222 of the Office of Administrative Hearings. It is necessary and reasonable to explain the procedure for an applicant to follow to contest a decision of denial or revocation made by the Superintendent which the applicant feels is in error. 11 MCAR §1.3065 Data privacy.

This rule states that all materials collected by the bureau pursuant to 11 MCAR §1.3061 - 1.3067 will be kept at the bureau and be considered private data. The designation of private data is necessary to protect information on where approved machine guns and short-barrelled shotguns may be found, and by whom they are owned or possessed. This information should be protected to help prevent theft of these particularly dangerous firearms, thereby increasing public safety.

#### 11 MCAR §1.3066 Theft, Destruction, Transfer

This rule explains that in the event of theft, destruction, or transfer of any approved machine gun or short-barrelled shotgun, the bureau must be notified within 48 hours of the occurrence.

It is necessary for the bureau to be aware of any machine gun or short-barrelled shotgun changing owners, possessors, being stolen or destroyed, as a method of ensuring public safety. 48 hours is a reasonable time limit for notifying the bureau in order for the Superintendent to be aware of, and take measures against, any circumstances which could ultimately endanger the public.

#### 11 MCAR §1.3067 Limited Protection Of Application Information

This rule states that for the first 90 days after 11 MCAR §1.3061 - 1.3067 becomes effective, information on the application form cannot be used in a criminal proceeding against the applicant. There is currently suspicion that machine guns and short-barrelled shotguns may currently be owned or possessed by unknown persons in Minnesota who are not permitted to do so under the existing statutes. When these rules become effective it is desired that all persons owning/possessing any machine guns or short-barrelled shotguns apply for approval for such ownership/possession, including those who owned/possessed them prior to the effective date of these rules. 11 MCAR §1.3067 is necessary and reasonable in order to prompt all persons to apply. Without this rule, persons who owned/possessed a machine gun or short-barrelled shotgun prior to the effective date of these rules might not be willing to apply for approval for fear of prosecution upon their admission in the application, of illegally owning/possessing a machine gun or short-barrelled shotgun. This rule will simply prevent any criminal proceeding against the applicant based solely on information appearing on the application. If, however, there is an independent investigation involving the applicant, concerning his or her suspected illegal possession of these firearms, this rule will not end the criminal investigation or proceedings or provide immunity from prosecution with evidence gathered by the independent investigation.