

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY

In the Matter of the Proposed Adoption
of Rules of the State Department of
Public Safety Governing The
Possession or Ownership of Machine
Guns and Short-Barrelled Shotguns.

STATEMENT OF NEED AND REASONABLENESS

The above captioned rules are not amendments to existing rules of the State Department of Public Safety.

The need to adopt these rules arises because of the requirements of Minn. Stat. 609.67, which prohibits ownership, possession or operation of machine guns or short-barrelled shotguns with certain exceptions. That statute defines who may own or possess such guns. It requires the superintendent of the Bureau of Criminal Apprehension to define certain guns as collectors items, relics and objects of curiosity and to provide for a reporting procedure. The need for and reasonableness of the substantive portions of the above captioned rules are outlined below:

11 MCAR 1.3060 gives the statutory authority for promulgating the proposed rules in order to clarify the parameters of the rules.

11 MCAR 1.3061 defines certain terms and phrases used in the rules so that these terms and phrases are not otherwise interpreted.

11 MCAR 1.3062 explains the procedures for reporting the ownership or possession of a machine gun or short-barrelled shotgun. The step by step procedures are as follows:

1. The applicant requests and receives a reporting form (a one-page form in duplicate made of self-carboning paper) from the Bureau of Criminal Apprehension.
2. The applicant completes the report form and submits the report form to the Superintendent of the Bureau of Criminal Apprehension within ten days after taking possession or ownership of the approved machine gun or short-barrelled shotgun.
3. The reporting individual returns the completed form with a \$15 non-refundable fee which is used to defray administrative costs of handling the report.
4. The Superintendent then files the form. One copy is retained by the reporting individual.

Subd. A. explains that the procedures defined in 11 MCAR 1.3062 must be followed to report the possession or ownership of a machine gun or short-barrelled shotgun. Subd. B. states that a completed report form must be sent to the Superintendent within ten days after taking possession or ownership of the machine gun or shotgun. Subd. C. requires the \$15.00 fee paid to the Bureau for each report submitted. The \$15.00 fee is necessary to cover the reasonable cost of form duplication, postage, and clerical tasks. The form will be in duplicate with self-carboning pages. Subd. D. states that the reporting person shall, within ten days of obtaining ownership or possession of an approved firearm, submit to the Superintendent one fully executed report form indicating the date the firearm was transferred and shall certify the firearm is now owned or possessed by the reporting person. This rule is necessary and reasonable in order to have a simple, uniform method of reporting and should not place any undue hardship on the applicant.

11 MCAR 1.3063 defines the conditions that would cause the Superintendent to return the form. They are:

1. The reporting person misrepresents, falsifies, or fails to complete any information on the form.
2. The Superintendent determines that the firearm is not an approved firearm.

It is necessary to define conditions which constitute non-acceptance of the form, because non-acceptance means that the applicant does not meet one of the exceptions under Minn. Stat. Section 609.67 and therefore is in violation of the statute. It is reasonable that the Superintendent of the Bureau of Criminal Apprehension specify the grounds in which the form is to be returned, since noncompliance is a felony.

11 MCAR 1.3064 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 states that all materials collected by the Bureau pursuant to 11 MCAR 1.3061 - 1.3066 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. The classification "private" is reasonable because it provides for this protection without jeopardizing the applicant's right and ability to know what is in his or her record.

11 MCAR 1.3066 states that for the first 90 days after 11 MCAR 1.3061 - 1.3066 becomes effective, information on the application form cannot be used in a criminal proceeding against the applicant. There is some concern 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 1.3066 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.