

STATE OF WISCONSIN
Department of Justice

**ORDER OF
THE WISCONSIN DEPARTMENT OF JUSTICE
TO ADOPT RULES**

The Wisconsin Department of Justice (“DOJ”) proposes an order to amend ch. Jus 10, relating to handgun transfers. The statement of scope for these rules, SS 096-23, was approved by the Governor on October 26, 2023, and published in the Administrative Register, No. 815A1, on November 6, 2023. Pursuant to s. 227.136(1), Stats., on November 15, 2023, the Joint Committee for the Review of Administrative Rules directed DOJ to hold a preliminary public hearing and comment period on scope statement SS 096-23.

On January 18, 2024, DOJ held a preliminary public hearing and comment period. Pursuant to s. 227.136(5), Stats., on January 23, 2024, notice was provided to Attorney General Joshua L. Kaul regarding public comments and feedback received during the hearing and comment period. Attorney General Kaul approved the scope statement on January 26, 2024. The Governor approved these rules on _____.

**ANALYSIS PREPARED BY THE
WISCONSIN DEPARTMENT OF JUSTICE**

Statutes interpreted: ss. 175.35(2) and 175.35(2g), Stats.

Statutory authority: ss. 227.11(2)(a) and 175.35(2g)(c), Stats.

Explanation of agency authority:

The proposed promulgation of these rules is supported by ss. 227.11(2)(a) and 175.35(2g)(c), Stats.

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

Section 175.35(2g)(c), Stats. provides:

(c) The department of justice shall promulgate rules for firearms restrictions record searches regarding transferees under sub. (2), including procedures for all of the following:

1. A firearms dealer to convey the information from a completed notification form to the department using either a toll-free telephone number provided by the department or an alternative means the department provides.

2. The department to provide the firearms dealer with a confirmation number confirming the receipt of the information under subd. 1.

3. The department to conduct the firearms restrictions record search regarding the transferee. The rules shall include, but not be limited to, a requirement that the department use the transaction information for management of enforcement system and the national crime information center system.

4. The department to notify the dealer as soon after receiving the information under subd. 1. as practicable, of the results of the firearms restrictions record search as follows:

a. If the search indicates that the transferee is prohibited from possessing a firearm under s. 941.29, the department shall provide the firearms dealer with a unique nonapproval number. The department may not disclose to the firearms dealer the reason the transferee is prohibited from possessing a firearm under s. 941.29.

b. If the search indicates that the transferee is not prohibited from possessing a firearm under s. 941.29, the department shall provide the firearms dealer with a unique approval number.

c. If the search indicates that it is unclear whether the person is prohibited under state or federal law from possessing a firearm and the department needs more time to make the determination, the department shall make every reasonable effort to determine whether the person is prohibited under state or federal law from possessing a firearm and notify the firearms dealer of the results as soon as practicable but no later than 5 working days after the search was requested.

These statutes confer on DOJ the power to promulgate rules interpreting provisions in s. 175.35(2), Stats. that are to be enforced or administered by DOJ to effectuate the purpose of those statutory provisions, as long as the rules do not exceed the bounds of correct interpretation of the governing statutes.

DOJ finds that the rules here proposed:

- do not exceed the bounds of correct interpretation of s. 175.35(2g)(c), Stats.;
- are authorized by ss. 227.11(2)(a) and 175.35(2g)(c), Stats. 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 s. 175.35(2g)(c), Stats. and 2015 Wis. Act 22 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 s. 175.35(2g)(c), Stats.

For these reasons, the proposed rules are authorized by ss. 227.11(2)(a) and 175.35(2g)(c), Stats.

Related statutes or rules: ss. 175.35(2) and (2g), Stats.; Wis. Admin. Code ch. Jus 10.

Plain-language analysis:

The objective of the proposed rules is to repeal Jus § 10.06(2)(d) and amend the language of Jus § 10.06(2)(c) to make Jus 10 consistent with s. 175.35(2g)(c)4.c., Stats., as amended by 2015 Wis. Act 22, § 4.

Section 175.35, Stats. governs the purchase of handguns and requires DOJ to promulgate rules to interpret the statutes. Section 175.35(2), Stats. provides that “[w]hen a firearms dealer sells a handgun, he or she may not transfer possession of that handgun to any other person until all of the following have occurred.” The following must have occurred: “(a) The transferee has provided identification as required by rule under sub. (2g)(a)”; “(b) The transferee has completed the notification form described in sub. (2g)(b)”; “(c) The firearms dealer has conveyed the information from the completed notification form to the department of justice as required by rule under sub. (2g)(b) and requested a firearms restrictions record search”; and “(d) The firearms dealer has received an approval number regarding the firearms restrictions record search under sub. (2g)(c) from the department of justice.” Section 175.35(2)(a)–(d), Stats.

Section 175.35(2g)(c), Stats. requires DOJ to “promulgate rules for firearms restrictions record searches regarding transferees under sub. (2), including procedures for all of the following.” Subsection (2g)(c) then lists the following procedures for which DOJ must promulgate rules:

1. A firearms dealer to convey the information from a completed notification form to the department using either a toll-free telephone number provided by the department or an alternative means the department provides.
2. The department to provide the firearms dealer with a confirmation number confirming the receipt of the information under subd. 1.

3. The department to conduct the firearms restrictions record search regarding the transferee. The rules shall include, but not be limited to, a requirement that the department use the transaction information for management of enforcement system and the national crime information center system.

4. The department to notify the dealer as soon after receiving the information under subd. 1. as practicable, of the results of the firearms restrictions record search as follows:

a. If the search indicates that the transferee is prohibited from possessing a firearm under s. 941.29, the department shall provide the firearms dealer with a unique nonapproval number. The department may not disclose to the firearms dealer the reason the transferee is prohibited from possessing a firearm under s. 941.29.

b. If the search indicates that the transferee is not prohibited from possessing a firearm under s. 941.29, the department shall provide the firearms dealer with a unique approval number.

c. If the search indicates that it is unclear whether the person is prohibited under state or federal law from possessing a firearm and the department needs more time to make the determination, the department shall make every reasonable effort to determine whether the person is prohibited under state or federal law from possessing a firearm and notify the firearms dealer of the results as soon as practicable but no later than 5 working days after the search was requested.

Section 175.35(2g)(c), Stats. DOJ previously promulgated the required rules, in Jus 10.

Because of a subsequent amendment to s. 175.35(2g)(c)4.c., Stats., however, DOJ seeks to amend Jus 10 so that it is consistent with the statutory amendment. Specifically, the statute was amended by 2015 Wis. Act 22, § 4 to state that DOJ must “make every reasonable effort to determine whether the person is prohibited under state or federal law from possessing a firearm and notify the firearms dealer of the results *as soon as practicable but no later than 5 working days after the search was requested.*” Section 175.35(2g)(c)4.c., Stats. (emphasis added). DOJ seeks to amend Jus § 10.06(2)(c) and (d) to be consistent with this amended language.

The proposed rule is divided into three substantive sections, which are described below.

Section 1 of the proposed rule amends the text of Jus § 10.06(2)(c) to make it consistent with the current language of s. 175.35(2g)(c)4.c., Stats. Specifically, the rule is being amended to make it clear that DOJ must make every reasonable effort to determine whether a handgun transferee is prohibited by law from possessing a firearm and notify a firearms dealer of the results of a firearms restrictions record search as soon as practical but no later than five working days after the search was requested.

Section 2 of the proposed rule repeals Jus § 10.06(2)(d). This rule language is no longer necessary because of the change that 2015 Wis. Act. 22, § 4 made to s. 175.35(2g)(c)4.c., Stats. regarding the time DOJ has to complete a firearms restrictions record search. DOJ is not allowed an extension

of time to complete a search, as Jus § 10.06(2)(d) currently provides. DOJ's time to complete the search will now be stated in Jus § 10.06(2)(c), as amended, so Jus § 10.06(2)(d) may be eliminated.

Section 3 of the proposed rule establishes the effective date of the rule.

In sum, the proposed rule will make Jus 10 consistent with s. 175.35(2g)(c)4.c., Stats. by repealing Jus § 10.06(2)(d) and amending Jus § 10.06(2)(c).

Summary of, and comparison with, existing or proposed federal regulations:

Federal firearm transfers are governed by the Gun Control Act of 1968, Title 18, United States Code, chapter 44. In 1993, the Gun Control Act of 1968 was amended by the enactment of the Brady Handgun Violence Prevention Act, which required the United States Attorney General to establish the National Instant Criminal Background Check System (NICS). NICS must be contacted by any licensed importer, licensed manufacturer, or licensed dealer of firearms to conduct a firearms restrictions record search to determine whether the transfer of a firearm to any person is permitted under federal and state firearms eligibility laws.

Even before the Brady Handgun Violence Prevention Act, the State of Wisconsin required licensed firearms dealers to contact DOJ to conduct a firearms restrictions record search on any person prior to the sale of a handgun to that person. While the passage of the Brady Handgun Violence Prevention Act requires licensed firearms dealers to contact NICS for all firearm transfers, whether involving a handgun or otherwise, licensed firearms dealers in Wisconsin still continue to contact DOJ for the sale of a handgun.

28 C.F.R. § 25.6(c)(1)(iv)(B) governs when a licensed firearms dealer may transfer a firearm to a transferee after submitting a firearms restrictions record search to the NICS. Under 28 C.F.R. § 25.6(c)(1)(iv)(B), a "Delayed" response indicates that the firearm transfer should not proceed pending receipt of a follow-up "Proceed" response from the NICS or the expiration of three business days, whichever occurs first. The proposed amendment to Jus 10 will bring the rule in line with s. 175.35(2g)(c)4.c., Stats., which requires that DOJ must notify a firearms dealer of the results of a firearms restrictions record search "as soon as practicable but no later than 5 working days after the search was requested."

Comparison with rules in adjacent states:

Illinois: Illinois handgun transfers are governed by the Firearm Owners Identification Card (FOID) Act, 430 Ill. Comp. Stat. 65. The FOID Act provides for the Firearm Transfer Inquiry Program, which requires the Illinois Department of State Police to conduct background checks on potential transferees to identify anything that would disqualify them from acquiring or possessing a firearm. The Illinois Department of State Police "shall provide, during the initial dealer inquiry, an approval, denial, or conditional denial of the transfer." 20 Ill. Admin. Code § 1235.90. The time period for the Illinois Department of State Police "to respond shall begin at the time the inquiry is received." *Id.* When the Illinois Department of State Police "provides a

conditional denial, the dealer shall not transfer the firearm until an approval is provided by the [Illinois Department of State Police] or the length of time prescribed in Section 24-3 of the Criminal Code of 1961 [720 Ill. Comp. Stat. 5/24-3] has been exceeded.” *Id.* The time provided in 720 Ill. Comp. Stat. 5/24-3 is 72 hours.

Iowa: As of July 1, 2021, a person in Iowa attempting to purchase a handgun through a federal firearms licensee without presenting a permit to acquire or a permit to carry is required to undergo a check through NICS. Iowa Code § 724.15 governs the acquisition of pistols or revolvers, and it provides that “to acquire a pistol or revolver from a federally licensed firearms dealer, an unlicensed person is required to”: (1) “have a valid permit to acquire,” (2) have “a valid permit to carry weapons,” or (3) “the person must complete a satisfactory national instant criminal background check pursuant to 18 U.S.C. § 922(t).” Iowa Code § 724.15.1. To receive a permit to carry or a permit to acquire, an individual may apply to the sheriff in his or her county of residence. Iowa Code §§ 724.10.1, 724.11.1, 724.17.1. Permits to carry shall be approved or denied within 30 days of receipt of an application. Iowa Code § 724.11.4. Permits to acquire will be issued immediately, unless the applicant is disqualified, and will be valid three days after the date of the application and invalid five years after the date of issuance. Iowa Code §§ 724.19, 724.20.

Michigan: As of February 13, 2024, Michigan law requires anyone who purchases a pistol or firearm to first obtain a license. Mich. Comp. Laws § 28.422(1)(a), (b). Authorities who issue licenses include “[t]he commissioner or chief of police of a city, township, or village police department.” Mich. Comp. Laws § 28.422(3). Issuing authorities must “with due speed and diligence issue licenses to purchase . . . unless the individual has probable cause to believe that the applicant would be a threat to the applicant or other individuals, or would commit an offense with the firearm that would violate a law of [Michigan] or another state or the United States.” *Id.* If issued, a license must be used within 30 days or it becomes void. Mich. Comp. Laws § 28.422(4).

Minnesota: In Minnesota, “every person who agrees to transfer a pistol or semiautomatic military-style assault weapon” must report certain personal information about the transferee “in writing to the chief of police of the organized full-time police department of the municipality where the proposed transferee resides” or “to the appropriate county sheriff if there is no such local chief of police.” Minn. Stat. § 624.7132, subd. 1. “If the proposed transferee presents a valid transferee permit” or “a valid permit to carry,” the transferor need not file a transfer report. Minn. Stat. § 624.7132, subd. 8.

After receiving this report, the chief of police or sheriff will run necessary background checks and notify the transferor and proposed transferee in writing as soon as possible if it is determined that the transferee is disqualified. Minn. Stat. § 624.7132, subds. 2.–3. This notification shall specify the grounds for disqualification and set forth a transferee’s appeal rights. Minn. Stat. § 624.7132, subd. 3. No person may deliver a pistol or semiautomatic military-style assault weapon to a proposed transferee until 30 days after the date the agreement to transfer is delivered to a chief of police or sheriff. Minn. Stat. § 624.7132, subd. 4. However, a chief of police or sheriff may waive the waiting period if he or she: (1) “determines the proposed transferee is not disqualified prior to the waiting period concluding,” or (2) “finds that the transferee requires

access to a pistol or semiautomatic military-style assault weapon because of a threat to the life of the transferee or of any member of the household of the transferee.” *Id.* If a waiver is to be made under option (2), the chief of police or sheriff must first determine that the transferee is not prohibited from possessing a firearm under state or federal law. *Id.*

Summary of factual data and analytical methodologies: The rules are predicated on legal analysis by DOJ attorneys and staff of the language and requirements of ss. 175.35(2) and (2g), Stats., and the requirements in ch. Jus 10. The purpose of the rule is to amend ch. Jus 10 to be consistent with existing statutory law, specifically, s. 175.35(2g)(c)4.c., Stats.

Fiscal estimate: DOJ has prepared a fiscal estimate that is being filed herewith.

Effect on small business: The rules will have no effect on small businesses.

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Place where comments are to be submitted and deadline for submission: Comments may be submitted to the contact person shown above as stated in the public hearing notice for these rules. Information as to the date, location, and time of the public hearing will be published in the Wisconsin Administrative Register, along with information about how to submit written public comments.

TEXT OF THE RULE

SECTION 1. s. Jus 10.06(2)(c) is hereby amended to read:

(c) *Notify dealer of search results.* If infeasible during the initial communication required under sub. (1)(d), then, as soon practicable, but no later than 5 working days after the search was

requested, the department shall notify the dealer by telephone of the results of its record search performed under par. (b). In notifying the dealer, the department shall proceed as follows:

1. If the search shows that transferring a handgun to the transferee is allowed under s. 941.29, Stats., the department shall approve the transfer and provide the dealer an approval number;

2. If the search shows that transferring a handgun to the transferee is prohibited by s. 941.29, Stats., the department shall not approve the transfer and shall provide the dealer a nonapproval number; or

3. If the search indicates that it is unclear whether the person is prohibited under state or federal law from possessing a firearm and the department needs more time to make the determination, the department shall make every reasonable effort to determine whether the person is prohibited under state or federal law from possessing a firearm and notify the firearms dealer of the results as soon as practicable but no later than 5 working days after the search was requested.

SECTION 2. s. Jus 10.06(2)(d) is hereby repealed.

SECTION 3. EFFECTIVE DATE. These rules take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2) (intro.), Stats.

(END OF TEXT OF THE RULE)
