



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 24-041

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

a. Under s. 175.35 (2) (d), Stats., as affected by 2015 Wisconsin Act 22, a firearms dealer may not transfer possession of a handgun without receiving an approval number from the Department of Justice. However, s. Jus 10.05 (2) currently contemplates situations in which a dealer is authorized to transfer a handgun without receiving an approval number. Consistent with the stated goal of aligning the rules with statutory changes made by 2015 Wisconsin Act 22, the department should also include treatment of s. Jus 10.05 in the proposed rule to conform with the governing statute.

b. Related to comment 2. f., below, are additional treatments of s. Jus 10.06 (2) necessary in order to more accurately align the rule text with s. 175.35 (2g), Stats.? For example, s. Jus 10.06 (2) (a) (title) and 2. b. specify only the issuance of a *confirmation* number “...if the initial search shows that transferring a handgun to the transferee is prohibited by s. 941.29, Stats...”. Relative to s. 175.35 (2g) (c) 4. a., Stats., should a unique *nonapproval* number also be provided immediately under this circumstance?

2. Form, Style and Placement in Administrative Code

a. The caption for the proposed rule should be corrected to specifically list each provision treated in the rule. [s. 1.01 (1) (a), Manual.]

b. According to the rule summary, the department held a preliminary hearing and comment period on the scope statement for the proposed rule pursuant to s. 227.136, Stats. Therefore, a heading and entry should be inserted to provide a summary of the public comments received and a description of how the feedback was considered in drafting the proposed rule. [s. 227.14 (2) (a) 3m., Stats.]

c. In the rule summary’s section on existing federal regulations, the department could clarify that Wisconsin is among several states that serve as the point of contact for record searches,

as contemplated by federal law. As written, the last sentence in the second paragraph of that section suggests that Wisconsin is not in compliance with the Brady Handgun Violence Prevention Act.

d. While the treatment clause for SECTION 1 indicates it is amending s. Jus 10.06 (2) (c), the rule text does not identify removed or inserted language using strike-through or underscoring formatting. As written, the rule text resembles the treatment of being repealed and recreated, though such treatment should only be used when intending to repeal an existing provision and create all new language in its place. Thus, it appears that amendment of the existing text is the appropriate treatment; as such, the department should insert strike-through and underscoring formatting and remove any unaffected subunits. [ss. 1.03 (2) (a) 2. and 1.04 (4) (a) 1. and (5), Manual.]

e. Remove the term “hereby” from the treatment clauses. [See s. 1.03 (2), Manual.]

f. Section 175.35 (2g) (c) 4., Stats., requires the department to promulgate rules for record searches regarding handgun transferees, including procedures for the department to notify a dealer of the search results as soon as practicable after receiving a notification form, as follows: (1) if the search indicates the transferee is prohibited from possessing a firearm, then the department must issue a unique nonapproval number; (2) if the search indicates that the transferee is not prohibited from possessing a firearm, then the department must issue an approval number; and (3) if the search is unclear as to whether the person is prohibited from possessing a firearm and the department needs more time to make that determination, then the department must notify the dealer of the results as soon as practicable but no later than five working days after the search was requested.

The proposed rule inserts language mirroring those statutory provisions into s. Jus 10.06 (2) (c), which, under the framework of the current rule, appears to govern only those situations in which an “initial” search was “infeasible”, as current s. Jus 10.06 (2) (a) and (b) are retained under the proposed rule. While the statute does not address the concept of a search being “not possible” or “infeasible”, it seems such situations are rooted in the concept of what is “practicable” under s. 175.35 (2g) (c) 4. (intro.), Stats. Broadly, it may be useful for the department to describe its desired policy using terms of art consistent with the statute (e.g., “as soon as practicable” and “unclear”) rather than introducing similar terms in the rule text (e.g., “initial search”, “not possible”, “inconclusive”, and “infeasible”) or to define newly introduced terms in s. Jus 10.03.

For example, should the rule define “infeasible” and provide separate procedures for situations in which the initial search is “infeasible” (which requires a subsequent search, undertaken as soon as practicable, to determine whether the results prompt approval or denial) versus when a search is “unclear” (which statutorily affords the department a maximum period of five days under s. 175.35 (2g) (c) 4. c., Stats.)? To that end, the department could consider amending, rather than repealing, s. Jus 10.06 (2) (d) to govern “unclear” searches.

Also, when addressing when a search is unclear, consider premising introductory text on situations in which “the search indicates that it is unclear” and then specifying the alternative options to either approve or deny after making reasonable efforts to determine whether the department must either deny or approve the transfer. In other words, it seems clearer to list approval or denial as the two *outcomes* of efforts undertaken when a search is unclear, rather than as two *alternatives* to when a search is unclear as provided in the proposed rule, particularly when other portions of s. Jus 10.06 (2) contain similar text. To that end, and related to comment 1.b., above, did the department unintentionally omit additional revisions to s. Jus 10.06 (2) (a) and (b)?

g. While it seems the department has already implemented the proposed rule's changes in practice to comply with 2015 Wisconsin Act 22, it may consider adding an initial applicability clause to identify at what point the revised rule applies to transfers in the process. For example, the clause could state: "This rule first applies to a dealer's request for a record search received by the department on the effective date of this rule." [s. 1.03 (3), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In SECTION 1, the word "as" should be inserted after "soon".

b. In SECTION 1, each subunit should be revised to end in a period rather than a semicolon. Also, the introductory material for the series of subunits should contain a phrase such as "under one of the following" in order to specify the applicability and relationship of the provisions, versus the current use of "or" at the end of the second subunit. [s. 1.11 (2) and (3), Manual.]