

Secretary of State
Certificate and Order for Filing

TEMPORARY ADMINISTRATIVE RULES

A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on [May 28, 2010] by the

Oregon Department of State Police
Agency and Division

Date prior to or same as filing date
OA R 257 Division 010
Administrative Rules Chapter Number

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Rules Coordinator Address Telephone

to become effective [May 28, 2010] through [November 23, 2010].
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

Revises the authority of law enforcement to access Firearm Instant Check System information for criminal investigations.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

ADOPT:

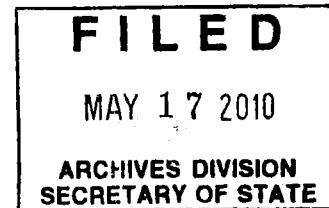
AMEND: 257-010-0055

SUSPEND:

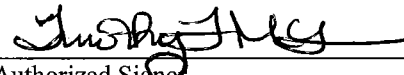
Stat. Auth.: ORS 166.412

Other Auth.:

Stats. Implemented: ORS 166.412

**RULE SUMMARY**

This temporary rule amends Oregon Administrative Rule (OAR) 257-010-0055 by deleting that portion of subsection (2) that authorizes law enforcement agencies to access the Department's Firearm Instant Background Check System (FICS) when they are conducting general criminal investigations. ORS 166.412(8) provides that "[a] law enforcement agency may inspect the records of a gun dealer relating to transfers of handguns with the consent of a gun dealer in the course of a reasonable inquiry during a criminal investigation or under the authority of a properly authorized subpoena or search warrant." Effective December 7, 2000, the provisions of ORS 166.412 apply to the transfer of firearms other than handguns to the same extent that they apply to the transfer of handguns. See ORS 166.434(1). The Department has recently revised its policy to discontinue the practice of law enforcement accessing FICS for criminal investigatory purposes and this temporary rule amendment implements that policy.


Authorized Signer

Timothy McLain
Printed name

5/17/10
Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.
ARC 940-2005

OSP 1-2010 (T)

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Oregon Department of State Police
Agency and Division

OAR 257 Division 010
Administrative Rules Chapter Number

In the Matter of: The amendment of OAR 257-010-0055

Rule Caption: Revises the authority of law enforcement to access Firearm Instant Check System information for criminal investigations.

Statutory Authority: ORS 166.412

Other Authority:

Stats. Implemented: ORS 166.412

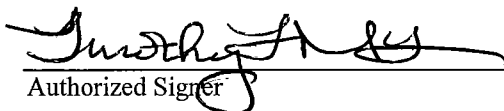
Need for the Temporary Rule(s):

ORS 166.412(8) provides that "[a] law enforcement agency may inspect the records of a gun dealer relating to transfers of handguns with the consent of a gun dealer in the course of a reasonable inquiry during a criminal investigation or under the authority of a properly authorized subpoena or search warrant." Effective December 7, 2000, the provisions of ORS 166.412 apply to the transfer of firearms other than handguns to the same extent that they apply to the transfer of handguns. ORS 166.434(1). Notwithstanding ORS 166.412(8) and 166.434(1), Oregon Administrative Rule (OAR) 257-010-0055(2), in part, authorizes law enforcement agencies access to the Department's Firearm Instant Check System (FICS) when they are conducting criminal investigations. The Department has recently revised its policy to discontinue that practice and consistent with that policy revision, the temporary rule amends that portion of OAR 257-010-0055(2) to discontinue law enforcement access to FICS information.

Documents Relied Upon, and where they are available: N/A

Justification of Temporary Rule(s):

The Department finds that failure to act promptly will result in serious prejudice to the public interest and law enforcement. OAR 257-010-0055(2), in part, allows law enforcement access to the Department's FICS information for criminal investigatory purposes notwithstanding ORS 166.412(8) and 166.434(1). The Department has revised its internal policy to end the practice embodied in OAR 257-010-0055(2), and has implemented that policy revision effective immediately. Failure to immediately suspend the rule would result in a business practice that is contradictory to the Department's policy revision. Moreover, it would be unjust and inconsistent with the Department's policy revision to continue the rule in effect during the period of time necessary for amendment of OAR 257-010-0055(2) to delete the contrary practice during permanent rulemaking. Finally, continued application of the administrative rule would result in confusion by the public, law enforcement, and Department staff. Therefore, in order for staff and law enforcement to correctly implement the Department's revised policy and protect the privacy of firearm purchasers, it is necessary for the Department to immediately amend OAR 257-010-0055.


Authorized Signer

Timothy McLean
Printed name

5/17/10
Date

257-010-0055

Firearm Instant Check System

(1) The Oregon Firearm Instant Check System is a computerization of firearm and firearm purchaser information, and is maintained by the OSP under provisions of Oregon Law. The purpose of the Firearm Instant Check System is to receive information from Oregon Gun Dealers and private citizens at gun shows or voluntarily from the public and determine if the person purchasing the firearm is disqualified under Oregon (ORS 166.470) and Federal Law from completing the purchase of a firearm and if the firearm being transferred is stolen.

(2) The OSP may retain a record of the information obtained during a request for a criminal records check for no more than five years.

(3) The record of the information obtained by the OSP during a request for a criminal records check by a gun dealer is exempt from disclosure under public records law.

(4) Identification required of the purchaser shall include one piece of current identification bearing a photograph and date of birth of the purchaser that is issued under the authority of the United States government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental organization or an international quasi-governmental organization; and is intended to be used for identification of an individual or is commonly accepted for the purpose of identification of an individual.

(5) If the identification presented by the purchaser under (4) of this rule does not include the current address of the purchaser, the purchaser shall present a second piece of current identification that contains the current address of the purchaser and corroborates the name on the first piece of identification. Examples of a second piece of identification that will be accepted are: current vehicle registration, current rent receipt and current utility bill.

(6) The OSP may require that the gun dealer verify the identification of the purchaser if that identity is in question by sending the thumbprints of the purchaser to the OSP, Identification Services Section. The OSP shall publish the firearms transaction thumbprint form and shall furnish the form to gun dealers on application at cost.

(7) The OSP may adopt a fee schedule for criminal history record checks and collect a fee for each criminal history record check requested. The fee schedule shall be calculated to recover the cost of performing criminal history record checks, but may not exceed \$10 per record check.

(8) The OSP may respond to a telephone request from any person requesting that the OSP determine if the firearm is stolen.

(9) The Department of State Police shall develop a state form to be completed by a person seeking to obtain a firearm at a gun show from a transferor other than a gun

dealer. The department shall consider including in the form all of the requirements for disclosure of information that are required by federal law for over-the-counter firearms transactions.

(10) The department shall make the form available to the public at no cost.