DEPARTMENT OF CORRECTIONS

Policy Number	**103.130**
Title:	**Firearms and Chemical Irritants Eligibility**
Effective Date:	**5/7/19**

PURPOSE: To ensure department firearms and chemical irritants are only issued to and used by employees who are eligible to have a firearm or chemical irritant under federal and state law.

APPLICABILITY: Employees issued chemical irritants and employees in classifications that may require the use of firearms working at facilities or locations with firearms.

DEFINITIONS: None

PROCEDURES:

A. Notification and Ineligibility

Under Policy 103.0141, "Employees who are the Subject of Criminal Investigation(s), Arrest(s), and/or Conviction(s)," Policy 103.220, "Personal Code of Conduct of Employees," and this policy, all department employees must notify the appointing authority if the employee is the subject of a criminal investigation, order for protection, or any incident that may impact an employee's eligibility to carry a firearm or chemical irritant.

B. Appointing Authority Response

1. The appointing authority or designee initiates an investigation and completes the Firearms and Chemical Irritant Eligibility form (attached).

2. Office of special investigations (OSI) staff gather information and documentation about the criminal investigation, arrest, and/or conviction and provide it to the appointing authority based on Policy 107.007, "Criminal Investigations."

3. The Firearms and Chemical Irritant Eligibility form is a part of the investigative package retained by human resources (HR).

4. The appointing authority reviews the information and determines whether to request a review by central office OSI.

C. Employees with Firearms – Eligibility/Ineligibility

1. If needed, the appointing authority/designee sends the Firearms and Chemical Irritant Eligibility form and associated information to central office OSI for evaluation based upon federal and state law.

2. The OSI director/designee determines whether the employee is disqualified from using or possessing a firearm based on state and federal law.

3. The OSI director/designee:
   a) Provides the verification and determination to the appointing authority, policy and legal services unit, and regional human resources director (RHRD)/designee; and
   b) Makes a recommendation on the best course of action.

4. The work incident review committee (WIRC) reviews the information and determines a course of action.

5. The appointing authority/designee must notify the employee, supervisor, HR, and scheduler (if appropriate) of the decision.

6. If the employee is no longer legally, or by DOC policy, eligible to use firearms, the employee is placed on the "no firearms" list at the employee's work location. The employee remains on this list until the employee informs the appointing authority/designee the employee is legally eligible to possess firearms.

7. An employee on the "no firearms" list retains the employee's bid position, except for posts where employees routinely carry or handle firearms (such as perimeter, tower, etc.).
   a) The employee is not eligible to bid to a position that requires possession of a firearm and must not be assigned to such a position.
   b) If the watch commander or higher authority must authorize issuance of firearms, the employee is prohibited from being issued a firearm.
   c) Employee development excludes the employee from weapons certification training including Policy 301.105, "Facility Firearms Qualification."
   d) The employee is not eligible to be a member of the emergency response team (ERT) or special operations response team (SORT) following the guidelines of Policy 301.156, "Emergency Response Team/Special Operations Response Team – Training Requirements."

8. If the employee holds a bid position requiring firearm eligibility, the employee must be temporarily reassigned for up to six months to a bid position that does not require firearm eligibility until all conditions of sentencing/restitution have been met.
   a) If the issue has not been resolved within six months, the WIRC reassesses the situation.
   b) Should the employee not be eligible to use, handle, or possess firearms after completion of the temporary reassignment, the employee may be permanently reassigned to a position in the same classification that does not require the use or possession of firearms and is within the seniority unit.
   c) However, if the use or possession of firearms is an essential function of all positions in the same classification within that seniority unit, or, if a permanent reassignment is impossible, the employee may be terminated for failure to maintain qualifications of the position or classification.

9. An employee on the "no firearms" list who wishes to be considered for a transfer or promotion to a different facility or location within the DOC must notify the HR office of the receiving facility or location that the employee is on the "no firearms" list.

10. When an employee moves work locations from a facility or location without firearms to one with firearms, the HR office of the receiving facility must verify the employee has had a firearms eligibility check during employment with the DOC.
    a) If none is found, the employee must complete the Firearms and Chemical Irritant Eligibility form.
    b) OSI staff assist the receiving appointing authority in determining whether the employee is eligible to possess or carry a firearm.

11. Employees are not permitted to carry a firearm while on duty, in a state vehicle, or utilizing any state property, unless specifically required by the employee's position description or facility post order, or if the employee is a licensed peace officer assigned to the office of special investigations (OSI).

D. Employees issued chemical irritants

1. If an employee authorized to carry chemical irritants has been convicted of a crime, the appointing authority/designee routes the Firearms and Chemical Irritant Eligibility form and related information to the central office OSI director/designee for evaluation of a continuance to carry the irritant based upon chemical irritant law.

2. The OSI director/designee determines whether the employee is disqualified from using or possessing a chemical irritant based on state and federal law.

3. The OSI director/designee provides the verification and determination to the appointing authority, policy and legal services unit, and HR and makes a recommendation on the best course of action.

4. WIRC reviews the information.
   a) The appointing authority/designee notifies the employee, supervisor, HR, and scheduler (if appropriate) of the decision.
   b) HR retains all investigative data according to the retention schedule.

5. If the employee is no longer legally, or by DOC policy, eligible to use chemical irritants, the employee must be placed on the "no chemical irritant" list at the employee's work location. The employee remains on this list until the employee informs the appointing authority/designee the employee is legally eligible to possess chemical irritants.

6. Employees required to carry and to use chemical irritants who become legally ineligible to possess a chemical irritant due to a criminal conviction may be discharged from employment. Employees issued chemical irritants at their own request under Policy 201.012, "Safety – Field Services," who become legally ineligible to possess chemical irritants, must be placed on a "no chemical irritants list." Additionally:
   a) The employee is prohibited from employment in a position requiring chemical irritants.
   b) The employee may be terminated for failure to maintain qualifications of the position/classification if the employee must carry and use chemical irritants as an essential function of all positions in the same classification within that seniority unit, or if a permanent reassignment is impossible.
   c) The employee remains on the "no chemical irritant" list until the employee informs the appointing authority/designee that the conviction was expunged and the employee's eligibility status has changed.
   d) The employee is not eligible to be a member of the emergency response team (ERT) or special operations response team (SORT) following the guidelines of Policy 301.156, "Emergency Response Team/Special Operations Response Team – Training Requirements."

7. Chemical irritant use laws only apply after a conviction.

E. OSI licensed peace officers serving as sworn officers for the Minnesota DOC are governed under additional policies and procedures. (For example, see Policy 107.009, "Office of Special Investigations – Code of Conduct and Ethics;" Policy 107.010, "Weapons – Office of Special Investigations;" and Policy 107.105, "Allegations of Fugitive Apprehension Unit Employee Misconduct.")

INTERNAL CONTROLS:

A. The regional HR director/designee receives and retains the documentation and the appointing authority's written decision(s) according to the retention schedule.

ACA STANDARDS: 4-4204

REFERENCES: Minn. Stat. §§ 624.712 and 624.713
Policy 103.014, "Background Checks for Applicants and Current Employees"
Policy 103.0141, "Employees Who Are the Subject of Criminal Investigation(s), Arrest(s), and/or Conviction(s)"
Policy 103.135, "Personal Firearms"
Policy 103.220, "Personal Code of Conduct of Employees"
Policy 107.007, "Criminal Investigations"
Policy 301.105, "Facility Firearms Qualifications"
Policy 201.012, "Safety – Field Services"
Policy 301.081, "Use of Force and Restraints - Adult"
Policy 301.079, "Juvenile Restrictive Procedures"
Policy 107.022, "Office of Special Investigations – Use of Force – Fugitive Apprehension"
Policy 301.156, "Emergency Response Team/Special Operations Response Team – Training Requirements"
Policy 107.009, "Office of Special Investigations – Code of Conduct and Ethics"
Policy 107.010, "Weapons – Office of Special Investigations"
Policy 107.105, "Allegations of Fugitive Apprehension Unit Employee Misconduct"
18 United States Code section 922 (g)(9)Omnibus Consolidated Appropriations Act of 1997, amending the Gun Control Act of 1968

REPLACES: Policy 103.130, "Firearms and Chemical Irritants Eligibility," 7/3/18.
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS: Firearms and Chemical Irritant Eligibility form (103.130C)

APPROVALS:
Deputy Commissioner, Community Services
Deputy Commissioner, Facility Services
Assistant Commissioner, Operations SupportAssistant Commissioner, Facility Services