

# NOTICE OF PROPOSED RULEMAKING

Notice to be published on December 14, 2018

Proposition 63 (The Safety for All Act of 2016) and Senate Bill (SB) 1235 (2016) are newly enacted laws that regulate the sale or transfer of ammunition in California as of July 1, 2019. The Department of Justice (Department) proposes to adopt sections 4300 – 4309, of Title 11, Division 5, Chapter 11, of the California Code of Regulations. These regulations will explain the process that must be followed to purchase or transfer ammunition, what to do if an attempted purchase or transfer is denied, and will clarify what is needed to be exempt from certain parts of the process. In brief, these regulations will provide the public and ammunition vendors with directives that will guide both in the ammunition sale and transfer process.

These processes will allow the Department to determine if an individual is lawfully eligible to possess ammunition.

## PUBLIC HEARING

The Department will hold two public hearings to receive public comments on the proposed regulatory action. The hearings will be held at the following dates, times and locations:

January 29, 2019, 10:00 am – 12:00 pm  
Ronald Reagan State Building  
300 S. Spring Street  
Los Angeles, CA 90013

January 31, 2019, 1:00 pm – 3:00 pm  
Resources Building Auditorium  
1416 9th Street  
Sacramento, California

Each location is wheelchair accessible.

At each hearing, any person may present oral or written comments regarding the proposed regulatory action. The Department requests, but does not require, that persons making oral comments at each hearing also submit a written copy of their testimony.

## WRITTEN COMMENT PERIOD

Any interested person or their authorized representative may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5:00 p.m. on January 31, 2019. Only comments received by that time will be considered. Written comments must be submitted to:

Jessie Romine  
Bureau of Firearms  
Division of Law Enforcement  
Department of Justice  
P.O. Box 160487  
Sacramento, CA 95816-0487  
Phone: 916-227-4217  
Email: [Ammoregs@doj.ca.gov](mailto:Ammoregs@doj.ca.gov)

#### AUTHORITY AND REFERENCE

Authority: Sections 30352, and 30370, Penal Code.

Reference: Sections 16150, 16151, 26710, 28180, 28220, 30300, 30305, 30312, 30314, 30342, 30352, 30370, 30385, 30390, and 30395, Penal Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Prior to the passage of Proposition 63 of 2016 (The Safety for All Act) and SB 1235 (2016), the sale or transfer of ammunition was not regulated by existing law. Penal Code section 30305 had established that an individual who is prohibited from owning or possessing a firearm is also prohibited from owning or possessing ammunition. Both Proposition 63 and SB 1235 (2016) authorize the Department to complete an ammunition eligibility check or to verify that an individual's Certificate of Eligibility (COE) is valid when the individual purchases or transfers ammunition from or through an ammunition vendor. Prior to voter approval of The Safety for All Act and the enactment of SB 1235 (2016), the Department had no mechanism to regulate the sale of ammunition, meaning the Department could not stop a prohibited individual from purchasing or receiving ammunition.

The Legislature enacted SB 1235 (2016) and the voters approved The Safety for All Act, delegating the authority to the Department to write regulations to interpret, and make specific certain Penal Code sections regulating the sale and transfer of ammunition. These regulations are beneficial as they create a process for the Department to make a determination to either approve or reject an ammunition purchase or transfer that is conducted by or processed through an ammunition vendor. The Department will make a determination to either approve or reject each ammunition purchase or transfer conducted by or processed through an ammunition vendor unless the individual is exempt from the Department's approval pursuant to Penal Code section 30352, subdivision (e).

These regulations explain that an ammunition vendor is responsible for facilitating an ammunition purchase or transfer by submitting the ammunition purchaser's or transferee's personal information to the Department, or by verifying the individual's COE status.

These regulations will benefit the state of California because an individual who is prohibited by either state or federal law to possess ammunition will be unable to obtain Department approval for an ammunition purchase or transfer from or through an ammunition vendor.

California Code of Regulations, Title 11, Division 5, Chapter 11 interprets and details the specifics of these regulations as follows:

Section 4300 specifies the scope of the new chapter, the regulation of an ammunition purchase or transfer from or through an ammunition vendor. This chapter provides guidance for an individual to purchase or transfer ammunition commencing July 1, 2019.

Section 4301 defines all firearm-related words throughout this new chapter so that the Department and members of the public can apply the same definitions to the firearm-related terminology used in the regulations to understand what the Department requires of them.

Section 4302 establishes the process for an individual to purchase or transfer ammunition as prescribed by Penal Code section 30370, subdivision (b).

Section 4303 establishes the process for one-time ammunition purchases or transfers.

Section 4304 establishes the process for an individual to purchase a firearm and ammunition within the same transaction.

Section 4305 establishes the process for an individual with a COE to purchase or transfer ammunition.

Section 4306 establishes the process for an exempted individual to purchase or transfer ammunition.

Section 4307 establishes the application process for an ammunition vendor to acquire telephonic access to the Department, which will allow the Department to complete an ammunition eligibility check or verify that an individual's COE is valid, as a result of the ammunition vendor being unable to electronically submit information to the Department's DES website.

Section 4308 specifies that the ammunition vendor can only deliver ammunition after the ammunition purchase or transfer is approved.

Section 4309 explains that an ammunition vendor will collect the fee for the ammunition eligibility check or COE verification, from the purchaser or transferee, and transfer the funds to the Department.

#### ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

An ammunition purchase or transfer completed in the state of California must be conducted through an ammunition vendor unless otherwise exempted. Prior to the sale or transfer, an ammunition vendor will initiate an eligibility check to ensure the purchaser or transferee is not prohibited from possessing ammunition. These proposed regulations will benefit public safety because they create a process which will ensure an individual prohibited by either state or federal law from possessing ammunition will be unable to purchase or transfer ammunition.

These regulations will explain the process that must be followed to purchase or transfer ammunition, what to do if an attempted purchase or transfer is denied, and will clarify what is needed to be exempt from certain parts of the process. In brief, these regulations will provide the public and ammunition vendors with directives that will guide both in the ammunition sale and transfer process.

#### EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

Pursuant to Government Code section 11346.5, subdivision (a)(3)(D), the Department shall evaluate whether the proposed regulation is inconsistent or incompatible with existing state regulations. Pursuant to this evaluation, the Department has reviewed existing regulations pertaining to firearms within California Code of Regulations (“CCR”) Title 11, Division 5, and determined that these proposed regulations are not inconsistent or incompatible. This determination is based on the fact that the proposed regulations clarify and provide further detail for existing Penal Code sections.

#### COMPARABLE FEDERAL REGULATIONS

The proposed regulations are not mandated by federal statute or regulation.

#### INCORPORATED BY REFERENCE

The following form is Incorporated by Reference: Application for Telephonic Vendor Approval, BOF 1020 (Orig. 05/2018)

#### DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which shall be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant effect on housing costs: None.

Business report requirement: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

### RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Assessment regarding effect on jobs/businesses: Adoption of the proposed regulation will create permanent jobs within the Department. Adoption of the proposed regulations will not:

- (1) Create or eliminate jobs within California, with the exception of the Department's permanent positions needed to conduct tasks associated with ammunition eligibility checks and COE verifications;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

The Department has made the determination on items (1) through (3) based on the fact that the fee for an ammunition eligibility check or the COE verification process is minimal and will not deter an individual from purchasing or transferring ammunition in California. Therefore, an individual will still purchase or transfer ammunition from an ammunition vendor, and an ammunition vendor will not be losing business from these regulations.

The Department has also made this determination after considering implied costs to ammunition vendors and ammunition purchasers for the processing time of a Standard Ammunition Eligibility Check. The Department estimates that it will take approximately two minutes for a Standard Ammunition Eligibility Check to be processed, so the implied costs for an ammunition vendor can be derived from taking the two-minute processing time and multiplying it by the 13 million transactions while valuing ammunition vendor staff and ammunition purchaser time at \$11 per hour. In total, the annual implied cost that comes from the Department's processing time for these transactions is \$9,533,334, and this cost independently applies to ammunition vendors (\$4,766,667) and ammunition purchasers (\$4,766,667). Although ammunition vendors and ammunition purchasers have implied costs attributed to the time it takes to process a transaction, ammunition vendors have the ability to process multiple transactions simultaneously and ammunition purchasers are still able to shop and be productive while waiting for their transaction to be processed. Therefore, the Department's processing time for the Standard Ammunition Eligibility Check will not be burdensome for ammunition vendors nor restrict ammunition purchasers in their leisurely activity of shopping.

(4) Benefits of the Proposed Regulations: These proposed regulations are beneficial to the health and welfare of California's residents because they create a process which will ensure an individual prohibited by either state or federal law to possess ammunition will be unable to purchase or transfer ammunition. An ammunition purchase or transfer completed in California must be conducted by or processed through an ammunition vendor unless otherwise exempted. An ammunition vendor is required to submit an ammunition purchaser's or transferee's personal information directly to the Department, to allow the Department to complete an ammunition eligibility check or verify that the individual has a valid COE prior to approving an ammunition purchase or transfer. Furthermore, these regulations will benefit the welfare of California residents because the Department shall only approve an ammunition purchase or transfer for an

individual who is not prohibited by either state or federal law from possessing ammunition. These regulations minimize the likelihood of a dangerous prohibited individual taking possession of ammunition.

Cost impacts on a Private Person or Business:

The Department has determined that the cost to a private individual would be either the \$1.00 fee for the Department's Standard Ammunition Eligibility Check, the \$1.00 fee for the Department to verify that a COE is valid, or the \$19.00 fee for the Department's Basic Ammunition Eligibility Check. The actual cost to the individual depends on the number of times an individual attempts to purchase or transfer ammunition. The Department is unable to determine how many times an individual will attempt to purchase or transfer ammunition. As mentioned above, ammunition purchasers and ammunition vendors will have an annual implied cost of \$4,766,667 each that comes from the Department's processing time for a Standard Ammunition Eligibility Check.

The Department determines that these regulations will not have a significant impact on the creation or elimination of private sector jobs within the state of California. The estimated impact on businesses considers the implied costs that stem from the processing time for a Standard Ammunition Eligibility Check. The processing time for a Standard Ammunition Eligibility Check does not limit the amount of ammunition transactions that an ammunition vendor can initiate, and therefore, ammunition vendors will not lose business as a result.

Small business determination: The Department has determined that the proposed regulation will not affect the creation or elimination of businesses because the effects from these regulations will be minimal. The estimated impact on small businesses considers the implied costs that come from the processing time for a Standard Ammunition Eligibility Check. The processing time for a Standard Ammunition Eligibility Check does not limit the amount of ammunition transactions that an ammunition vendor that is a small business can initiate, and therefore, these ammunition vendors will not lose business as a result.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Any person interested in presenting statements or arguments with respect to alternatives to the proposed regulations may do so at the scheduled hearing or during the written comment period.

#### CONTACT PERSONS

Please direct inquiries concerning the proposed administrative action to:

Jessie Romine  
Bureau of Firearms  
Division of Law Enforcement  
Department of Justice  
P.O. Box 160487  
Sacramento, CA 95816-0487  
Phone: (916) 227-4217  
Email: [Ammoregs@doj.ca.gov](mailto:Ammoregs@doj.ca.gov)

The back-up contact person for these inquiries is:

Kelan Lowney  
Bureau of Firearms  
Division of Law Enforcement  
Department of Justice  
P.O. Box 160487  
Sacramento, CA 95816-0487  
Phone: (916) 227-7614  
Email: [Ammoregs@doj.ca.gov](mailto:Ammoregs@doj.ca.gov)

#### AVAILABILITY OF RULEMAKING FILE INCLUDING THE INITIAL STATEMENT OF REASONS

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process. The text of the proposed regulation (the “express terms”), the initial statement of reasons, and the information upon which the proposed rulemaking is based are available at the Department’s website at <http://oag.ca.gov/firearms/regs>. Copies may also be obtained by contacting Jessie Romine.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days and accept written comments before the Department adopts the regulations. Copies of any modified text will be available on the Department’s website at <http://oag.ca.gov/firearms/regs>. A written copy of any modified text may be obtained by contacting Jessie Romine.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon completion, the final statement of reasons will be available on the Department’s website at <http://oag.ca.gov/firearms/regs>. You may also obtain a written copy of the final statement of reasons by contacting Jessie Romine.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format, as well as the Final Statement of Reasons once completed, are available on the Department's website at <http://oag.ca.gov/firearms/regs>.