

## Addendum to Finding of Emergency

### **Explanation of Failure to Adopt Nonemergency Regulations**

The change to California driver licenses and identification cards that created confusion over identification requirements for firearms purchases took effect on January 22, 2018. The Department did not have advance notice of this change, and the issue came to the Department's attention through inquiries from firearm dealers and the public in the spring of 2018. Through the spring and summer of 2018, the Department was consulting with the California Department of Motor Vehicles and the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives, regarding the changes to California driver licenses and identification cards, and their effect on eligibility checks. The Department was also analyzing, preparing guidance, and drafting potential regulations regarding the driver license and identification card changes and their impact on the eligibility check process and firearms dealers' ability to comply with their obligations under federal law.

Senate Bill (SB) 244 had been introduced in the Legislature in 2017, but was substantively amended and ultimately passed by the Legislature on August 31, 2018. It was signed into law by the Governor on September 28, 2018. As described in the Finding of Emergency, the Department determined that SB 244, which was scheduled to take effect on January 1, 2019, would further impact the eligibility check process and firearms dealers' and ammunition vendors' ability to comply with their obligations under federal law.

On November 20, 2018, the Department issued guidance to firearm dealers suggesting that they consider asking prospective purchasers with federal non-compliant driver licenses or identification cards for additional documentation establishing lawful presence in the United States, as well as a consumer alert to California residents with a federal non-compliant license or identification that a firearm dealer may require additional documentation for firearm purchases.

Because the guidance issued by the Department is voluntary and not all firearm dealers follow the guidance, the Department has determined after six months that the guidance is not sufficient to address the threat of public harm resulting from changes in California law relating to California driver licenses and identification cards. The Department has also determined that the additional procedures required to secure the eligibility check process for firearm purchases should be implemented for all other eligibility check processes through which the Department determines whether an applicant is permitted to possess a firearm or ammunition. The Department thus needed to develop procedures and revise documentation for various types of eligibility checks, as part of this emergency rulemaking. The Department filed these proposed emergency regulations with the Office of Administrative Law on June 17, 2019.

Sections 4002, 4142, and 5478 were added to the text in order to update the version dates for documents incorporated by reference amended in this rulemaking and make the document titles uniform across all sections.

### **Documents Incorporated by Reference**

Regarding the documents incorporated by reference in this rulemaking, the only changes being made pertain to adding instructions that correspond to requirements being adopted in section 4045.1.

### **Technical, Theoretical, and Empirical Study, Report, or Similar Document, Upon Which the Department Relied**

This document was listed in the finding of emergency as being dated June 30, 2018, which was incorrect.

U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, “Open Letter to All California Federal Firearms Licensees,” June 30, 2016.

### **Informative Digest/Policy Statement Overview**

In determining that the proposed regulations are not inconsistent or incompatible with existing state regulations, the Department performed a search of existing state regulations on this subject.

#### **§ 4045.1. Additional Documentation Requirements for Eligibility Checks.**

Subdivision (b) establishes the forms of acceptable proof of lawful presence in the United States. This list of documents is drawn from the list of documents that the California Department of Motor Vehicles accepts as proof of lawful presence. (Cal. Code Regs., tit. 13, § 15.00.)

### **Fiscal Impacts**

There will not be any cost or savings to any other state agency.