

CALIFORNIA DEPARTMENT OF JUSTICE
TITLE 11. LAW
DIVISION 5. FIREARMS REGULATIONS
CHAPTER 2. CENTRALIZED LIST OF FIREARMS DEALERS

NOTICE OF PROPOSED RULEMAKING

Notice published November 3, 2023

The Department of Justice (Department) proposes to amend section 4025 and adopt section 4026 of title 11, division 5, chapter 2 of the California Code of Regulations concerning a dealer's notice to the Department following a failed private party sale, transfer, or loan of a firearm.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed regulatory action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days before the close of the written comment period.

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 on December 19, 2023 at 5:00 p.m. Only written comments received by that time will be considered. Please submit written comments to:

Quentin Farris
Department of Justice
P.O. Box 160487
Sacramento, CA 95816
(916) 210-2377
bofregulations@doj.ca.gov

NOTE: Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Authority: Section 28060, Penal Code.
Reference: Section 28050, Penal Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

A private party sale, transfer or loan (private party transfer) of a firearm must be conducted through a licensed firearms dealer. (Pen. Code, § 27545.) Existing law requires a firearms dealer who is unable to process the private party transfer to return the firearm to the person making the sale, transfer, or loan (seller). However, the dealer is prohibited from returning the firearm to the seller if that person is prohibited from possessing a firearm. In those cases, the dealer must transfer the firearm to a law enforcement agency. (Pen. Code, § 28050, subd. (e).)

A dealer who delivers possession of a firearm to a law enforcement agency must notify the Department within 72 hours after the delivery in a manner and format prescribed by the Department. (Pen. Code, § 28050, subd. (g).) Currently, dealers give notification on the Report of Dealer Relinquishment, forms BOF 1401A and 1401B. Starting July 1, 2024, the dealer will report this information electronically via the Dealer Record of Sale (DROS) Entry System (DES).¹ (Cal. Code Regs., tit. 11, § 4025.)

Also starting July 1, 2024, dealers must follow a new procedure after a failed private party transfer when they cannot legally return the firearm to the seller:

- (1) The seller, transferor, or person loaning the firearm may request, and the dealer shall grant, that the dealer retain possession of the firearm for a period of up to 45 days so that the transferor or seller or the person loaning the firearm may designate a person to take possession of that firearm. This 45-day period shall be in addition to any time necessary to process a transaction;
- (2) If, before the end of the 45-day period, the seller, transferor, or person loaning the firearm designates a person to receive the firearm and that person completes an application to purchase, the dealer shall process the transaction as specified; and,
- (3) If the seller, transferor, or person loaning the firearm, does not request that the firearm be held by the dealer, or the firearm cannot be delivered to the designated person, the dealer, shall forthwith deliver the firearm to law enforcement. (Pen. Code, §28050, subd. (f).)

After a failed private party transfer, the new procedure allows the seller to request the dealer to hold the firearm for 45 days and to designate another person to receive the firearm. Dealers may charge a fee of up to \$10 for any firearm stored by the dealer. (Pen. Code, § 28055, subd. (b).)

¹ The Department maintains the DES, a web-based application used by firearms dealers to report the sale, loan, transfer, redemption, and acquisition of handguns and long guns to the Department, as required by state law. (Pen. Code, § 28205; Cal. Code Regs., tit. 11, § 4200 et seq.)

A dealer who retains possession of a firearm for this purpose must notify the Department within 72 hours in a manner and format prescribed by the Department. (Pen. Code, § 28050, subd. (g).)

Effect of the Proposed Rulemaking:

The proposed regulation amends the procedure for a dealer to notify the Department that a firearm has been delivered to a law enforcement agency. Dealers will no longer be required to send a form to the Department once the information is reported via the DES.

The proposed regulation creates the procedure for a dealer to notify the Department that a firearm has been retained at the request of the seller, transferor, or person loaning the firearm. Starting July 1, 2024, the dealer will report this information electronically via the DES.

Anticipated Benefits of the Proposed Regulations:

The proposed regulations provide the procedure for a dealer to meet their obligation of notifying the Department that a firearm has been relinquished or retained after a failed private party transfer. This regulation protects public safety by implementing a statutory requirement that the Department be notified of the outcome of a failed private party transfer. This is particularly important when the original firearm possessor is prohibited from possessing a firearm.

Comparable Federal Regulations:

There are no existing federal regulations or statutes comparable to these proposed regulations.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that these proposed regulations are not inconsistent or incompatible with existing State regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern the dealer's notification that a firearm has been relinquished or retained after a failed private party transfer.

Forms Incorporated by Reference:

None.

Other Statutory Requirements:

None.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department's Initial Determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: The cost to the Department to process the report will be approximately \$427 annually. When dealers start reporting the information electronically via the DES on July 1, 2024, there will be no cost to the Department.

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

Other non-discretionary costs or savings imposed on local agencies: None.

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

Cost impacts on representative person or business: The Department estimates that a representative private person or business will necessarily incur \$2.58 to complete and submit the required report. The average firearms dealer will face the above scenario once every 58 years.

Significant effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete: The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Assessment (EIA):

The Department concludes that it is (1) unlikely that the proposal will create or eliminate jobs within the state, (2) unlikely that the proposal will create new businesses or eliminate existing businesses within the state, (3) unlikely that the proposal will result in the expansion of businesses currently doing business within the state.

The Department also concludes that:

(1) The proposal would benefit the health and welfare of California residents by creating a procedure for a dealer to report to the Department that a firearm has been relinquished or retained because the owner is not eligible to own a firearm. The regulation would protect public safety by implementing a requirement that keeps firearms out of the hands of persons who are prohibited from owning or possessing a firearm.

(2) The proposal would not benefit worker safety because it does not regulate worker safety standards.

(3) The proposal would not benefit the state's environment because it does not change any applicable environmental standards.

Business report requirement: Effective July 1, 2024, the proposed regulations require the dealer to report the relinquishment or retention of a firearm to the Department via the DES. The Department finds it is necessary for the health, safety or welfare of the people of this state that proposed sections 4025 and 4026, which require a report, applies to businesses.

Small business determination: The Department has determined that this proposed action affects small businesses. Requiring the dealer to notify the Department electronically via the DES is the easiest way to make sure that the dealer provides all required information. Dealers are already familiar with using the DES to report transactions to the Department.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative considered by the Department 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.

The Department has determined that the proposed regulation is the most effective way for a dealer to report the relinquishment or retention of a firearm after a failed private party transfer. Requiring the dealer to notify the Department electronically via the DES is the easiest way to make sure that the dealer provides all required information. Dealers are already familiar with using the DES to report transactions to the Department.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Quentin Farris
Department of Justice
P.O. Box 160487
Sacramento, CA 95816
(916) 210-2377
bofregulations@doj.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Gilbert Mac
Department of Justice
P.O. Box 160487
Sacramento, CA 95816
(916) 210-2153
bofregulations@doj.ca.gov

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process upon request to the contact person above. As of the date this Notice of Proposed Rulemaking (Notice) is published in the Notice Register, the rulemaking file consists of this Notice, the Text of Proposed Regulations (the “express terms” of the regulations), the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based. The text of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department’s website at <https://oag.ca.gov/firearms/regs>. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the Department analyzes all timely and relevant comments received during the 45-day public comment period, the Department will either adopt these regulations substantially as described in this notice or make modifications based on the comments. 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 before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the name and address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons will be available on the Department’s website at <https://oag.ca.gov/firearms/regs>. Please refer to the contact information included above to obtain a written copy of the Final Statement of Reasons.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department’s website at <https://oag.ca.gov/firearms/regs>.