

NOTICE OF PROPOSED RULEMAKING

Notice to be published on March 9, 2018

The Department of Justice (Department) proposes to repeal sections 4032, 4033, 4034, 4035, amend sections 4030, 4031, renumber and amend sections 4036, 4037, 4039, 4040, 4041, and adopt new sections 4032, 4032.5, 4033, 4034, 4035, 4038 of title 11, division 5, Chapter 3, of the California Code of Regulations concerning Non-Dealer Sales or Transfers of Firearms through Licensees or Dealers and Issuance of Certificates of Eligibility, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department will hold a public hearing to receive public comments on the proposed regulatory action. The hearing will be held on April 27, 2018, at 10:00 am, at the following location:

Resources Building Auditorium
1416 9th Street
Sacramento, California 95814

The auditorium is wheelchair accessible.

At the 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 the 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 April 27, 2018. Only comments received by that time will be considered. Written comments must be submitted to:

Audrey Durfor
Bureau of Firearms
Division of Law Enforcement
Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487
Phone: 916-227-7615
Email: COEregs@doj.ca.gov

AUTHORITY AND REFERENCE

Authority: Sections 11105 and 26710, Penal Code.

Reference: Sections 12101, 12756, and 12757, Health and Safety Code; Sections 16140, 16800, 26525, 26585, 26700, 26705, 26710, 26915, 26970, 27200, 27535, 27545, 27670, 27966, 28450, 29050, 29120, 29800, 29805, 29815, 29820, 29825, 29900, 30312, 30314, 30342, 30347, 30370, and 31700, Penal Code; Sections 8100 and 8103, Welfare and Institutions Code; Title 18, Sections 921 and 922, United States Code; and Title 27, Part 478.32, Code of Federal Regulations.

Repeal: The Department proposes to repeal content in sections 4032, 4033, 4034, and 4035 of title 11, division 5, Chapter 3, of the California Code of Regulations concerning Non-Dealer Sales or Transfers of Firearms through Licensees or Dealers.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Laws and Regulations

This rulemaking action clarifies and makes specific the Certificate of Eligibility (COE) requirements and process for initial and renewal application submission with the Department.

Penal Code section 26710 authorizes the Department to issue COEs that certify the Department has checked its records and determined the recipients are not prohibited from acquiring or possessing firearms at the time the firearms eligibility criminal background check was performed. The Department is authorized to adopt regulations to administer the program and shall recover the full cost of the administration by imposing applicant fees.

11105 authorizes the Department to require the submission of fingerprints for conducting summary criminal history information checks that are authorized by law.

Pursuant to Penal code section 28060, the Bureau of Firearms is authorized to develop regulations regarding the sale or transfer of a firearm between persons who do not possess a California Firearms Dealer license.

The regulations proposed in this rulemaking action would do the following:

California Code of Regulations, Title 11, Division 5, Chapter 3

Section 4030 has been amended to repeal the portion of the regulation pertaining to the transfer of firearms as Penal Code sections 26875, 28050, 28055, and 28060 sufficiently explain how both a CFD and the public shall perform a private party transfer of firearms.

Section 4031 has been amended to repeal the key terms pertaining to the transfer of firearms as Penal Code sections 26875, 28050, 28055, and 28060 sufficiently explain how both a CFD and the public shall perform a private party transfer of firearms. Key terms related to Certificates of Eligibility were added.

Section 4032 has been repealed as Penal Code sections 26875, 28050, 28055, and 28060 sufficiently explain how both a CFD and the public shall perform a private party transfer of

firearms. This section now renumbers and amends section 4036, specifying the qualifications required to obtain a COE.

Section 4032.5 has been added to specify that COE applicants must submit fingerprints to the Department for a firearms eligibility background check. This section also establishes the live scan operator process, where the applicant's fingerprints are electronically captured and transmitted. This section specifies that out-of-state applicants may have their fingerprints taken manually at a local law enforcement agency in their state of residence and details the fees and mailing address for sending payment.

Section 4033 has been repealed as Penal Code sections 26875, 28050, 28055, and 28060 sufficiently explain how both a CFD and the public shall perform a private party transfer of firearms. This section now establishes the process for creating a California Firearms Application Reporting System (CFARS) account, including the conditions of use and the required account information.

Section 4034 has been repealed as Penal Code sections 26875, 28050, 28055, and 28060 sufficiently explain how both a CFD and the public shall perform a private party transfer of firearms. This section now specifies that the Department may communicate with applicants and certificate holders via CFARS.

Section 4035 has been repealed as Penal Code sections 26875, 28050, 28055, and 28060 sufficiently explain how both a CFD and the public shall perform a private party transfer of firearms. This section now details the steps for submitting an application once a CFARS account has been created, including the required applicant information and associated fees.

Section 4036 has been amended as the content related to qualifications will appear in section 4032. This section now specifies how certificate holders modify information associated with their COE, including any changes to a certificate holder's employment status.

Section 4037 has been amended as the content related to the application process will appear in section 4035. This section now specifies how to renew a COE, including the renewal period, required information, and payment process.

Section 4038 has been added and renumbers section 4039 and 4040, detailing the term of the COE and the initial and renewal application fees.

Section 4039 has been amended as the content relating to the term of a COE will appear in section 4038. This section now specifies how to cancel a COE via CFARS.

Section 4040 has been amended as the content relating to the fees will appear in section 4038. This section now renumbers and amends section 4041 detailing the applicant denial review process. The process was not changed. However, after the correction of records, the resubmission of an application will now be submitted via CFARS.

Section 4041 has been amended as the content relating to the applicant denial review process will appear in section 4040. This section now specifies the revocation process.

Anticipated Benefits of the Proposed Regulations

The broad objective of the regulation is to provide greater clarity on the COE application procedure and requirements. Revising the regulations will help ensure completion of applications and the accurate submission of information. The regulations provide applicants additional guidance on the live scan operator fingerprint process. The online account system, CFARS, will increase the efficiency of submitting the COE application, making any changes to required information, and processing the certificates. The proposed regulations also specify how to modify and cancel a COE, as well as the denial and revocation process, which are not detailed in the existing regulations.

The Department has found that the existing regulations regarding the private party transfer process were not necessary. Existing Penal Code sections explain the appropriate actions; therefore, the Department has chosen to repeal those regulations.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

Pursuant to Government Code section 11346.5(a)(3)(D), the Department must evaluate whether the proposed regulations are inconsistent or incompatible with existing state regulations. The Department has reviewed existing regulations pertaining to firearms and ammunition within California Code of Regulations (CCR) Title 11, Division 5 and determined the proposed regulations are not inconsistent or incompatible.

This determination is based on the fact that the Department proposes the repeal of sections 4032, 4033, 4034, and 4035 to eliminate duplication of Penal Code sections 26875, 28050, 28055, and 28060. The amendments proposed in sections 4030 and 4031 remove references pertaining to the transfer of firearms to eliminate duplication of existing Penal Code sections, as detailed above. The addition of new sections 4032, 4032.5, 4033, 4034, 4035 and 4038 is not inconsistent or incompatible with existing state regulations, but rather updates the existing regulations related to the COE application process. The renumbering and amendment of sections 4036, 4037, 4039, 4040, and 4041 is not inconsistent or incompatible with existing state regulations, but rather details a new process for the electronic submission of COEs.

Comparable Federal Regulations

The proposed action does not differ substantially from an existing comparable federal regulation or statute.

Mandated by Federal Law or Regulations

The proposed regulations are not mandated by federal law or regulations.

Other Statutory Requirements

None

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

Cost impacts on a representative private person or business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Business report requirement: None.

Significant effect on housing costs: None.

Other matters prescribed by statute applicable to the agency or to any specific regulation or class of regulations: None.

Results of the Economic Impact Analysis

The Department has concluded that the adoption of the proposed regulation will not:

- (1) Create or eliminate jobs within California;
- (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 a determination on items (1) through (3) based on the fact that the proposed regulations update the COE process to reflect the most current application requirements. There are no changes to the application fee, and the fees are paid for by the COE applicant.

(4) Benefits of the Proposed Regulations: Applicants will properly complete their fingerprint submission process and submit COE applications and changes through CFARS, thereby making the process more clear and efficient for the user and the Department.

Small Business Determination: The Department has determined the proposed regulations will not affect small business. This determination is based on the fact that the regulations propose no change to the application fee, and the fees are paid for by the COE applicant. Although the

regulations establish a process for fingerprint submission for out-of-state applicants, the out-of-state fee matches the already existing applicant fingerprint processing fee for in-state applicants.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, 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

Inquiries concerning the proposed administrative action may be directed to:

Audrey Durfor
Bureau of Firearms
Division of Law Enforcement
Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487
Email: COEregs@doj.ca.gov
Telephone: (916) 227-7615

The back up contact person for these inquiries is:

Jacqueline Dosch
Bureau of Firearms
Division of Law Enforcement
Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487
Email: COEregs@doj.ca.gov
Telephone: (916) 227-5419

AVAILABILITY OF RULEMAKING FILE INCLUDING THE INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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

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, the Department 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 website at <http://oag.ca.gov/firearms>. A written copy of any modified text may be obtained by contacting Audrey Durfor.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon completion, the Final Statement of Reasons will be available on the Department website at <http://oag.ca.gov/firearms>. You may also obtain a written copy of the Final Statement of Reasons by contacting Audrey Durfor.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout format, as well as the Final Statement of Reasons once completed, can be accessed through the Department website at <http://oag.ca.gov/firearms>.