

# **INITIAL STATEMENT OF REASONS**

## **PROBLEM STATEMENT**

Pursuant to Penal Code section 26710, the Department of Justice (Department) is authorized to issue Certificates of Eligibility (COE) 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. A COE can be revoked, at anytime, if the COE holder becomes prohibited from owning/possessing firearms and ammunition. A COE is a prerequisite requirement for all prospective licensed firearms dealers, licensed ammunition vendors, manufacturers, certified instructors, gun show promoters, explosive permit holders, and other firearm related employment activities, including, effective January 1, 2018, any agent or employee of a vendor who handles, sells, or delivers firearms and ammunition.

Proposition 63, approved by the voters on November 8, 2016, requires any agent or employee of a vendor who handles, sells, or delivers firearms and ammunition to obtain a COE. As a result, the Department expects to receive an increased number of COE applications. Beginning in 2018, 6,000 initial COE applications and 7,440 renewal applications are expected each year. The purpose of these regulations is to update the Department's procedures for obtaining a COE in order to limit the number of incomplete/inaccurate applications and to more efficiently address the expected influx of applications resulting from Proposition 63.

The Department has found that the existing regulations do not provide the best explanation needed for applicants to complete their COE application. The regulations need to be updated to reflect the most current application requirements and process. The proposed regulations specify the process for fingerprint submission, creating an online account through the California Firearms Application Reporting System (CFARS), submitting an initial and renewal application, modifying applicant information, and cancelling a certificate. The certificate denial, revocation, and rejection process are also detailed more thoroughly. To process COEs effectively and efficiently, the Department must amend the current regulations to establish clear and updated guidelines for COE applicants and current certificate holders.

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 (CFD) license.

These regulations repeal the sections pertaining to the transfer of a firearm between persons who do not possess a CFD. The Department found that the regulations were not necessary because 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.

## **ANTICIPATED BENEFITS FROM THE AMENDED REGULATIONS**

These regulations will provide greater clarity on the fingerprint submission process and COE application procedures, which will increase the efficiency of submitting the application and processing the certificates. The regulations further detail the application requirements, which

will reduce the amount of COE applications that are incomplete due to missing or inadequate documentation.

The revised regulations also provide updated information and add specificity regarding the CFARS electronic reporting system. The online application eliminates the need to mail an application and forms to the Department to save the applicant time and resources. Applicants will now apply, renew, modify, or cancel their COE through the online application system, as well as report any change in employment with a firearms dealer or ammunition vendor. Applicants can use the online system to check the status of their application at any time, and business owners can confirm and track employee COE statuses. These changes will save time in processing applications and reduce the time and effort spent on correspondence when returning inadequate initial and renewal COE applications. With an expected increase in COE applications resulting from Proposition 63, the electronic system will also help the Department process the applications more efficiently.

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

## PURPOSE AND NECESSITY

### **§ 4030. Scope**

This section outlines the scope of the regulations. The language in this section regarding private party transfers of firearms has been repealed. Such language is not necessary as existing Penal Code statutes sufficiently explain the law related to private party transfers of firearms.

“DOJ” has been changed to “Department” for consistency throughout the regulations. This section was also reworded for clarity and to ensure the scope applies to all individuals required by statute or regulation to obtain a COE.

### **§ 4031. Definition of Key Terms**

This section defines multiple terms used in these regulations. Existing subdivisions (a) through (f) of this section have been repealed as they primarily pertain to private party transfers. Existing Penal Code statutes sufficiently explain the law related to private party transfers of firearms.

New subdivision (a) adds the definition of “applicant.” This term is discussed throughout Chapter 3 and this addition provides a clear definition of this term.

New subdivision (b) adds the definition “California Ammunition Vendor” or “CAV.” This term is discussed throughout Chapter 3 and this addition provides a clear definition of this term.

New subdivision (c) adds the definition “California Firearms Dealer” or “CFD.” This term is discussed throughout Chapter 3 and this addition provides a clear definition of this term.

New subdivision (d) renumbers and amends existing subdivision (g). “DOJ” was changed to “Department” for consistency throughout the regulations. This term was also amended to

specify that a COE also ensures that a person who handles, sells, delivers, or has under his or her custody or control any ammunition, is eligible to do so. Pursuant to the passage of Proposition 63 (2016) and Penal Code section 30347, ammunition vendors, beginning January 1, 2018, shall require any agent or employee who handles ammunition to obtain a COE. The COE definition is amended to reflect this statutory change.

New subdivision (e) adds the definition of “certificate holder.” This term is discussed throughout Chapter 3 and this addition provides a clear definition of this term.

New subdivision (f) adds the definition of “CFARS.” This term is discussed throughout Chapter 3 and this addition provides a clear definition of this term.

New subdivision (g) adds the definition of “COE.” This term is discussed throughout Chapter 3 and this addition provides a clear definition of this term.

New subdivision (h) adds the definition of “Department.” This term is discussed throughout Chapter 3 and this addition provides a clear definition of this term.

## **§ 4032. Qualifications**

The section has been amended with the deletion of the “Transfers of Concealable Firearms” title and replaced with the “Qualifications” title. The amendment of the title is necessary to reflect the new content of this section.

The previous content of this section was repealed to remove all language regarding private party transfers. This section was repealed, as existing Penal Code statutes sufficiently explain the law related to private party transfers of firearms.

The new content of this section renumbers and amends existing section 4036 relating to qualifications.

### **§ 4032.5. Fingerprint Submission**

This section was added to clarify how new COE applicants shall submit fingerprints to the Department as part of the application process. The current regulations do not stipulate the updated fingerprint transmission process through the live scan operator and the associated fees.

Subdivision (a)(1) through (3) explain the Request For Live Scan Service form and the process associated with the live scan. The addition of subdivision (a)(1) is needed so applicants can appropriately reference the required form and ensure they obtain all the required information. Subdivision (a)(2) is necessary to identify the live scan and COE related fees. Because the Department has switched to the electronic CFARS system, described in section 4033, subdivision (a)(3) is necessary to add reference to the applicant transaction identifier (ATI) number from the electronic COE application.

Subdivision (b) clarifies that out-of-state applicants may have their fingerprints taken manually at a local law enforcement agency in their state of residence and specify where these applicants mail their fingerprint and application fees. The current regulations do not have defined

requirements for out-of-state applicants, so the addition of subdivision (b) is necessary to clarify how out-of-state applicants can be fingerprinted and submit the associated fees, including the address for sending payment.

### **§ 4033. California Firearms Application Reporting System; Account Requirements**

The section has been amended with the deletion of the “Criteria for Processing Section 28050 Transactions” title and replaced with the “California Firearms Application Reporting System; Account Requirements” title. The amendment of the title is necessary to reflect the new content of this section.

The previous content of this section was repealed to remove all language regarding processing a private party transfer. Existing Penal Code statutes sufficiently explain the law related to private party transfers of firearms.

The new content of this section details how to create a CFARS account. Subdivision (a) was added to provide the web address where applicants shall electronically file their application in the CFARS system.

Subdivision (b)(1) through (4) details the conditions of use that an applicant agrees to when creating an account in the CFARS system.

Subdivision (c)(1) through (4) explain the information required to create a CFARS account.

### **§ 4034. Service of Notices, Orders, and Communications**

The section has been amended with the deletion of the “Dealer Fees” title and replaced with the “Service of Notices, Orders, and Communications” title. The amendment of the title is necessary to reflect the new content of this section.

The previous content of this section was repealed to remove all language regarding dealer fees for private party transfers. Existing Penal Code statutes sufficiently explain the law related to private party transfers of firearms.

The new content of this section was added to specify that the Department may communicate with applicants, certificate holders, and CFD/CAVs via the CFARS system. The COE application and any associated changes are filed online through CFARS, so the Department will correspond as necessary through the system.

### **§ 4035. Applicant Information**

The section has been amended with the deletion of the “Confidentiality of Records” title and replaced with the “Applicant Information” title. The amendment of the title is necessary to reflect the new content of this section.

This section was repealed to remove language regarding confidentiality in private party transfers. This section was repealed as Penal Code section 28060 and Civil Code section 1798.24 state that

personal information obtained during a transaction with a firearm dealer shall not be disclosed by the dealer except under specific circumstances. This section of regulations is not necessary.

The new content of this section renumbers and amends existing section 4037 to specify what information the applicant must provide to complete the COE application in the CFARS system after an account is created. The CFARS application submission process is not described in the current regulations. This section is needed to provide direction to applicants about the initial application submission process and requirements.

Subdivision (a) was added to specify the link applicants click in the CFARS system when electronically filing their initial COE application.

Subdivision (b)(1) details the required information for application submission, including name, address, and other required criteria. Subdivision (b)(1)(A) through (C) outline the requirements for applicants who are applying for a COE as an employee of a CFD or a CAV. These additions are necessary for COE holders to be appropriately linked with their employer.

Subdivision (b)(2) was added to include the privacy notice that applicants shall agree to before submitting their application. This is the standard Department privacy notice and was included in the regulations since the application is now submitted electronically via CFARS.

Subdivision (c) was added to clarify that, in addition to the application, the applicant shall submit fingerprints for a COE to the Department through the live scan process detailed in section 4032.5. Although detailed in a prior section, this subdivision was included to reiterate all requirements needed for an initial application and for clarity in reading the regulations.

Subdivision (d) was added to clarify that, in addition to the application, the applicant shall submit the required fees as detailed in section 4038. Although detailed in a later section, this subdivision was included to reiterate all requirements needed for an initial application and for clarity in reading the regulations.

#### **§ 4036. Modifications to Applicant Information**

The section has been amended with the deletion of the “Qualifications” title and replaced with the “Modifications to Applicant Information” title. The amendment of the title is necessary to reflect the new content of this section. The previous content of this section now appears in section 4032.

New subdivision (a) was added to specify how certificate holders make changes to information provided in their initial or renewal application. This subdivision includes the link that COE holders click on CFARS to submit modifications. The existing regulations do not outline how to make modifications to required information, such as name, citizenship, gender, et cetera.

New subdivision (a)(1) was added to clarify that changes to certain information in CFARS will require the certificate holder to upload documents that verify the change. For example, if a certificate holder changes their name, he or she would be required to upload verifying documents to prove the change. The Department requires this for security purposes and to avoid inaccurate changes to COE information.

New subdivision (b) was added to clarify that any change to a certificate holder's employment status shall be reported via CFARS by both the employee and the employer. Subdivision (b)(1) outlines the process for a certificate holder submitting a change of employment. Specifically, subdivision (b)(1)(A) details how a certificate holder reports employment and subdivision (b)(1)(B) specifies how a certificate holder terminates employment. Subdivision (b)(1)(B)(i) is necessary to detail the Department notice that a COE holder must agree to when terminating employment from a CFD/CAV.

New subdivision (b)(2) outlines the process for a CFD or CAV modifying the status of an employee. Beginning January 1, 2018, any agent or employee of a vendor who handles, sells, or delivers firearms and ammunition will be required to obtain a COE. This subdivision is necessary to specify the process for modifying employment status to ensure that COE holders are appropriately linked to their CFD/CAV employer. Subdivision (b)(2)(A) details how a CFD/CAV shall report employment of a new certificate holder, and subdivision (b)(2)(B) specifies how a CFD/CAV terminates the employment of an employee. Subdivision (b)(2)(B)(i) is necessary to detail the Department notice that a CFD/CAV must agree to when terminating the employment of an employee. These additions are necessary to outline the modification process through CFARS, which is absent from the existing regulations. Furthermore, the modification of employment section ensures that CFD/CAVs and employees are accurately linked.

#### **§ 4037. Renewal of Certificate**

The section has been amended with the deletion of the "Application for Certificate of Eligibility" title and replaced with the "Renewal of Certificate" title. The amendment of the title is necessary to reflect the new content of this section. The previous content of this section has been amended and now appears in section 4035, which details the application requirements.

The new content of this section outlines the COE renewal application process. The renewal requirements were not detailed in the previous regulations, so the addition of this section is necessary.

New subdivision (a) specifies that renewal applications shall be submitted within a 60 day window before the current certificate expires. The timeline for renewal was absent from the existing regulations.

New subdivision (b) specifies the link in CFARS that applicants click to access the renewal application. Subdivision (b)(1) is a necessary addition that details the information required to submit a renewal application. Subdivision (b)(1)(A) through (C) outline the requirements for applicants who are applying for a COE as an employee of a CFD or a CAV. These additions are necessary for renewal applicants to be appropriately linked with their employer. Subdivision (b)(2) was added to refer to the privacy notice that applicants shall agree to before submitting their application. This is the standard Department privacy notice and was included in the regulations since the application is now submitted electronically via CFARS.

New subdivision (c) specifies that any changes to the information submitted during the initial application shall be updated when the renewal application is submitted. This addition is

necessary to clarify that the most updated information needs to be included with the renewal application.

New subdivision (d) specifies that renewal fees shall be submitted via CFARS. The COE application process has transitioned to an online system. The addition of this subdivision is necessary to clarify that renewal fees shall be paid via CFARS. Initial application fees are paid during the live scan fingerprint process, so it was necessary to clarify that renewal fees are submitted online.

New subdivision (e) specifies that applicants attempting to renew a COE 90 days after the certificate expiration shall resubmit fingerprints to the Department and subsequently submit a new COE application. This addition is necessary for the Department to ensure that the applicant remains qualified to obtain a COE and has passed a firearms eligibility background check.

### **§ 4038 Term and Fees**

This section specifies the term of the certificate and the fees for the initial and renewal COE application. The term length and fees are unchanged. Subdivision (a) renumbers existing section 4039, and subdivision (b) renumbers existing section 4040. The term and fees have been combined and added to this section due to the renumbering of prior sections and for clarity.

### **§ 4039 Cancellation of Certificate**

The section has been amended with the deletion of the “Term of Certificate of Eligibility” title and replaced with the “Cancellation of Certificate” title. The amendment of the title is necessary to reflect the new content of this section. The previous content of this section now appears in section 4038, subdivision (a).

The new content in this section is necessary to specify the process and the link for cancelling a COE. The cancellation process was not specified in the existing regulations. Additionally, the cancellation is now completed through CFARS so the regulations need to be updated to reflect the change.

### **§ 4040 Applicant Denial Review Process**

The section has been amended with the deletion of the “Fees” title and replaced with the “Applicant Denial Review Process” title. The amendment of the title is necessary to reflect the new content of this section. The previous content of this section now appears in section 4038, subdivision (b).

New subdivision (a) is necessary to inform applicants that a Notice of Denial will be sent through CFARS if the application is denied. This addition reiterates that all correspondence regarding the COE, including a Notice of Denial, will be sent through CFARS.

New subdivision (b) renumbers and amends existing section 4041 relating to the process for applicants wishing to review and/or change the records upon which a denial is based. The previous process remains unchanged. However, if an applicant is successful in correcting the applicant’s records, the applicant must now resubmit the application through CFARS.

## **§ 4041 Revocation, Reasons, and Process**

The section has been amended with the deletion of the “Applicant Denial Review Process” title and replaced with the “Revocation, Reasons and Process” title. The amendment of the title is necessary to reflect the new content of this section. The previous content of this section has been amended and now appears in section 4040.

New subdivision (a) specifies that a certificate may be revoked by the Department if a certificate holder becomes prohibited from acquiring or possessing firearms and ammunition. This subdivision is necessary as the revocation authority and process are not detailed in the existing regulations.

New subdivision (b) is necessary to inform applicants that a Notice of Intent to Revoke will be sent through CFARS. This addition reiterates that all correspondence regarding the COE, including a Notice of Revocation, will be sent through CFARS.

### 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.

### TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

Department staff relied upon their experience and expertise when writing these proposed regulations. The Department did not rely upon any technical, theoretical, or empirical studies or reports in proposing the amendments to these regulations.

### ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department determined the proposed regulations will not have a significant adverse economic impact. The Department concludes it is unlikely the proposed regulations will affect (1) the creation or elimination of jobs within California, (2) the creation of new businesses or the elimination of existing businesses within California, (3) the expansion of businesses currently doing business within California.

This assessment is based on the fact that these regulations propose no change to the current COE application fees. Although the regulations now specify the fingerprint processing fee, under existing law, applicants are charged for the processing of fingerprints prepared by the Department or any other agency who is qualified to provide fingerprinting services (i.e. the State Criminal Offender Record Information (CORI) fee and the Federal CORI fee). The amendments simply clarify the fingerprint and fee processes in the regulations. The live scan operator may also charge a fee for service, which is not regulated by the Department. Additionally, the out-of-state fee matches the already existing applicant fingerprint processing fee for in-state applicants. Similarly, the effect on sales volume, if any, will not be significant enough to affect the creation nor elimination of businesses or jobs. In addition to the previously described fees, the other sections of the regulations should have no negative economic impact on the regulated public or the Department. Any economic changes from the specification of the fingerprinting submission process and the creation of a CFARS account/application would likely be positive, resulting from time and resources saved.

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

#### EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department finds that the proposed regulations would not have statewide adverse economic impact on businesses. As previously stated, there are no proposed changes to the current COE application fees, and the fees are paid for by the COE applicant.

#### REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other reasonable alternatives were presented to, or considered by, DOJ that would be either more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome.

#### REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES, AND THE AGENCY'S REASONS FOR REJECTING THEM

The proposed regulations would not have an adverse impact on small businesses because the COE application fees remain unchanged. Furthermore, the fees are paid for by the COE applicant. Consequently, no reasonable alternatives were proposed or considered by the Department.

#### MANDATES

The proposed regulatory action does not mandate the use of specific technologies or equipment or prescribe specific action or procedures.

REGULATIONS MANDATED BY FEDERAL LAW

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