

# INITIAL STATEMENT OF REASONS

## PROBLEM STATEMENT

Pursuant to Penal Code sections 28105 and 28155, the Department of Justice (Department), Bureau of Firearms (Bureau) is authorized to develop and prescribe standards for the electronic transfer of firearm purchaser/transferee/borrower (purchaser) information to the Department by California Firearm Dealers (dealers) necessary for the Department to perform a background check of the purchaser. Penal Code section 28160, subdivision (b) states the Department shall prescribe the manner in which a purchaser's right thumbprint shall be provided.

The purpose of these regulations is to refine the Department's instructions for using the Dealer Record of Sale Entry System (DES) to provide further instruction and clarity so dealers will be able to use the system more efficiently. Pursuant to Penal Code section 28160, subdivision (b), these regulations will inform dealers what information is to be collected and the proper way to obtain and record the purchaser's thumbprint.

Additionally, pursuant to Penal Code sections 30352 and 30370, the Department is authorized to develop a process to determine if an ammunition purchaser is eligible to purchase or possess ammunition for a transaction that is processed through an ammunition vendor. The Department will use DES for these functions. These regulations clarify how ammunition vendors and each of their authorized associates, authorized account associates, or salespersons can create a DES user account.

## BENEFITS

Revising the existing DES regulations will provide guidance to firearms dealers on how to enter data into the DES to reduce the number of incomplete Dealer Record of Sale (DROS) transactions, and to ensure the accurate submission of information. Further, the regulations will provide clear direction on special circumstances that arise when capturing a purchaser's right thumbprint.

Currently, when dealers start a DROS transaction in the DES, they do not always complete the process by submitting firearm delivery information (by either selecting the "deliver gun" or "cancel" button). This is problematic because the Department does not know if the purchaser actually obtained a firearm, or if the DROS transaction was intended to be corrected or cancelled. If the Department does not know about a firearm purchase, public safety may be at risk. It is also costly for the Department to make several attempts to follow up on an incomplete DROS transaction to determine if someone is actually in possession of a firearm.

Additionally, existing DES regulations are not applicable to ammunition vendors. Ammunition vendors need a DES user account to process the sale or transfer of ammunition. A DES user account allows an ammunition vendor to send an ammunition purchaser's personal information to the Department, to enable the Department to determine if the purchaser is eligible to purchase or possess the ammunition. Without these regulations, an ammunition vendor will be unaware of

how to create a DES user account, and therefore, be unable to sell or process the transfer of ammunition.

### PURPOSE AND NECESSITY

Throughout the chapter, the term “employee” has been replaced with “authorized associate or salesperson.”

This change is necessary, as a dealer may not have employees. A dealer may only have independent contractors who perform DROS transactions on its behalf, and anyone who works for a dealer, in any capacity, and will be using the DES needs to have his or her own account for accurate tracking and accountability.

Ammunition vendors and each of their associates or salespersons and account associates have been added to this chapter because they will use DES to process the sale or transfer of ammunition.

Additionally, throughout the chapter, the term “dealership” has been replaced with “dealer.”

This change is necessary to provide consistency with the Department’s other forms and documents.

### **§ 4200. Title and Scope.**

This section is amended to add ammunition vendors and the term “loan” as one of the three firearm business transactions that a dealer would enter in the DES. In the authority, Penal Code sections 30352 and 30370 have been cited. In the reference, Penal Code section 16190 has been cited, and Penal Code section 28225 has been removed.

The purchase, sale and transfer of ammunition by ammunition vendors have been added to the regulation as transactions that must be processed through the DES. Recently enacted Penal Code sections 30352 and 30370 explain the process for an ammunition vendor to process the sale or transfer of ammunition and authorizes the Department to adopt regulations. Ammunition vendors will use DES to process ammunition transactions, and therefore, their associates or salespersons and account associates must understand how to operate the system. Since ammunition vendors will use DES, they have been included in the Title and Scope because these regulations are applicable to them.

The addition of the term “loan” is necessary to indicate another situation in which a dealer would need to make an entry in the DES. Furthermore, Penal Code section 16190 defines “application to purchase” as including a person being loaned a firearm. Penal Code section 28225 has been removed as it discusses fees and is not relevant to this section.

#### **§ 4210. Terms of Use and Required Information.**

This section is amended to further define the “Terms of Use” for the DES. Additional language clarifies liability of the Department for persons using the DES. Terms are amended to clarify who is eligible to use the DES. A section is added to provide information on how firearms dealers and each of their authorized associates, authorized account associates, or salespersons, or ammunition vendors and each of their authorized associates, authorized account associates, or salespersons can obtain access to the system.

The amendments are necessary to clarify how a dealer or ammunition vendor should access and use the DES, and who is allowed to use it. Ammunition vendors and each of their associates or salespersons and account associates have been included in this section, so they can agree to the Department’s terms of use and receive Department instruction on how to create a DES user account, which is necessary to process the sale or transfer of ammunition.

The addition of the access section is to ensure each person who delivers firearms has his or her own account. Previously DES users were not required to have separate accounts. Some dealers were using the one account for multiple users. Since the DES logs the user who is delivering a firearm, an account with multiple users provides incomplete and/or inaccurate information about the user.

Also, in the authority cited, Penal Code sections 28205, 30352, and 30370 are added, and in the reference section Penal Code sections 28205, 28220, and 30395 were added.

The addition to the authority and reference sections of Penal Code section 28205 was necessary as the Penal Code section authorizes the Department to determine the method the firearm purchaser information is submitted to the Department. The addition of Penal Code sections 30352 and 30370 to the authority section was necessary because this provides the Department with the authority to adopt regulations pertaining to the sale of ammunition, which includes ammunition vendors and ammunition vendor associates agreeing to the terms of use in this section.

Furthermore, the addition of Penal Code sections 28220 and 30395 to the reference section is necessary as section 28220 discusses recordkeeping and background checks related to the sale, lease or transfer of firearms; and section 30395 authorizes the Department to issue ammunition vendor licenses to applicants who meet its requirements.

#### **§ 4220. Capturing Applicant’s Thumbprint.**

This section’s title has changed from “System Access,” to “Capturing Thumbprint of Purchaser/Transferee/Loanee” and adds specific instructions, per Penal Code section 28160, subdivision (b), of how to properly obtain the right thumbprint of the purchaser on the delivered DROS, and which other digits to use if the right thumb is not available. This section also provides exceptions for a purchaser who is unable to provide a right thumbprint.

This addition is necessary as Penal Code section 28160, subdivision (b) requires the Department to prescribe the manner in which the thumbprint shall be obtained and to provide exceptions for a purchaser who is unable to provide a right thumbprint. Furthermore, this section will allow for firearms dealers to properly collect a purchaser's thumbprint as well as provide firearms dealers with instruction on what to do if the necessary thumbprint cannot be taken, which allows for compliance with Penal Code section 28160.

Penal Code sections 28160, and 28210 is added to the reference section, and Penal Code section 28225 is removed from the reference section.

The additions were necessary as Penal Code sections 28160 and 28210 describe the form of records of electronic transfer, recordkeeping, background checks, and fees relating to the sale, lease, or transfer of firearms. Penal Code section 28225 has been removed as it discusses fees and is not relevant to this section.

#### **§ 4230. Delivery of Firearms following DROS Submission.**

This section adds new status options to the DROS transaction process for clarification. Also, instructions are added regarding how to use the DES system, how to complete a DROS transaction, which button to click, where to call if a user needs help or has questions, and the timeframes in which all of the steps must be completed.

This addition is necessary because the Department is required to respond to a DROS application within 10 days, and can only delay the response for 30 days, but the final status of the DROS transaction is not always available at that time. Further, unless exempt, a purchaser can only purchase one handgun from the Roster of Handguns certified for sale in a 30-day period of time. The new status options include "Undetermined," "Approval after Delay," and "30-Day Reject." Providing more options allows the Department to clearly and concisely communicate with the dealers on a purchaser's status. Subsection (b) details the various status options and explains what they are. It is also necessary to add instructions for using the DES because the Department has found that many dealers were not completing a DROS transaction properly, (by either selecting the "Deliver Gun" or "Cancel" button), which left it unprocessed in the DES.

Finally, consequences for not completing a DROS transaction have been added so that dealers will have more incentive to properly complete a DROS transaction. Subsection (e) was added to fix the "Undelivered DROS" dilemma, (when dealers fail to select the "Deliver Gun" or "Cancel" button after a firearm had been delivered to the owner.) This regulation provides that if neither button is selected for a single DROS, the dealer will lose access to the DES until they have "delivered" or "canceled" the firearm in DROS.

Additionally, Penal Code sections 28160 and 28175 are added to the authority section. Penal Codes sections 28175, 28210, and 28215 are added to the reference section, and Penal Code section 28225 is removed from the reference section. The Penal Code sections are added to the authority section because they allow the Department to collect information about the firearm purchaser through the dealer. Penal Code sections 28175, 28210, and 28215 are added to the reference section because they describe how the Department collects information about a

purchaser, recordkeeping, background checks, and fees relating to the sale, lease, or transfer of firearms. Penal Code section 28225 has been removed as it discusses fees and is not relevant to this section.

#### **§ 4240. Billing, Payment and Suspension for Non-Payment.**

This section is amended to add other types of cards that can be used for payment, to clarify whose accounts will be shut off, and to describe what a dealer will be unable to do while their account is suspended.

The Department wants to provide dealers with more options on the type of card they can use to pay their bill, and be clear on which accounts will be affected for non-payment.

Additionally, Penal Code sections 26815 and 27540 were removed from the authority because they were not relevant to this regulations section.

#### AUTHORITY AND REFERENCE

Authority: Penal Code sections 28105, 28155, 28160, 28175, 28205, 28225, 30352, and 30370.

Reference: Penal Code sections 16190, 26815, 27540, 28105, 28155, 28160, 28175, 28205, 28210, 28215, 28220, and 30395.

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

The Department relied upon its experience and expertise, the Penal Code and the following documents forming the basis of these proposed regulations:

“Capturing Legible Fingerprints,” US Department of Justice, Federal Bureau of Investigation, January 2013

“Defining Morphology: Hands and Feet,” Am J Med Genet A, National Institute of Health, January 2009

“Guidelines for Preparation of Fingerprint Cards and Associated Criminal History Information,” US Department of Justice, Federal Bureau of Investigation, September 30, 2016

#### ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The purpose of these regulation amendments is to enhance the Department’s instructions for using the DES more efficiently. These regulations also provide ammunition vendors and each of their authorized associates, authorized account associates, or salespersons with instructions on

how to create DES user accounts, which is necessary for the sale or transfer of ammunition. In addition, pursuant to Penal Code section 28160, subdivision (b), these regulations will inform dealers what information is to be collected and the proper way to obtain and record the purchaser's thumbprint.

#### The Creation or Elimination of Jobs Within the State of California

The regulation amendments revise the Department's instructions for dealer to use the DES, which allows a dealer to electronically submit firearm purchaser information to the Department. The regulations only change the process for a dealer to use the DES, requiring a dealer to complete a DROS transaction after the Department has responded to the DROS application. The amendments also clarify for current dealers how to collect and record a purchaser's thumbprint. In addition, the amendments provide ammunition vendors and each of their authorized associates, authorized account associates, or salespersons with instructions on how to create DES user accounts, which is necessary for the sale or transfer of ammunition. No jobs in California will be created or eliminated by revising the existing process for firearms dealers to report information to the Department about firearms sales or by instructing ammunition vendors how to open a DES account.

#### Creation of New or Elimination of Existing Businesses Within the State of California

The regulation amendments revise the Department's instructions for a dealer to use the DES, which allows a dealer to electronically submit firearm purchaser information to the Department. The regulations only change the process for a dealer to use the DES, requiring a dealer to complete a DROS transaction after the Department has responded to the DROS application. The amendments also clarify for current dealers how to collect and record a purchaser's thumbprint. In addition, the amendments also provide ammunition vendors and each of their authorized associates, authorized account associates, or salespersons with instructions on how to create DES user accounts, which is necessary for the sale or transfer of ammunition. No new businesses in California will be created, and no existing businesses will be eliminated by revising the existing process for firearms dealers to report information to the Department about firearms sales or by instructing ammunition vendors how to open a DES account.

#### The Expansion of Businesses Currently Doing Business Within the State of California

The regulation amendments revise the Department's instructions for a dealer to use the DES, which allows a dealer to electronically submit firearm purchaser information to the Department. The regulations only change the process for a dealer to use the DES, requiring a dealer to complete a DROS transaction after the Department has responded to the DROS application. The amendments also clarify for current dealers how to collect and record a purchaser's thumbprint. In addition, amendments also provide ammunition vendors and each of their authorized associates, authorized account associates, or salespersons with instructions on how to create DES user accounts, which is necessary for the sale or transfer of ammunition. No existing businesses in California will be expanded or eliminated by revising the existing process for firearms dealers to report information to the Department about firearms sales or by instructing ammunition vendors how to open a DES account.

## Benefits of the Regulations

Revising the existing regulations will provide better guidance to firearms dealers on how to enter data into the DES to reduce the number of incomplete DROS transactions, and to ensure the accurate submission of information. Complete and accurate DROS entries by dealers regarding firearm ownership protects public safety and saves Department resources. Additionally, expanding the regulation to incorporate ammunition vendors will protect public safety by providing a way for ammunition vendors to report ammunition sales.

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

The Department finds that the proposed regulations would not have significant adverse economic impact on businesses. These regulations ensure dealers respond to DROS transactions after the Department has responded to a DROS application. A dealer would only be impacted if the dealer fails to comply with these regulations. These regulations provide clarity to the existing DROS process, making it easier for the dealer to comply. In addition, these regulations also provide ammunition vendors and each of their authorized associates, authorized account associates, or salespersons directives on how to create DES user accounts, which is necessary for the sale or transfer of ammunition.

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

No other reasonable alternatives were presented to, or considered by, the Department 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 proposed instructions and process additions are minimal relative to the regular DROS transaction process. In addition, the proposed regulations provide the process for ammunition vendors and each of their authorized associates, authorized account associates, or salespersons to create a DES user account. Consequently, no reasonable alternatives were proposed or considered by the Department.