

# NOTICE OF PROPOSED RULEMAKING

Notice to be published on December 20, 2019

The Department of Justice (Department) proposes to adopt section 4045.1 of Chapter 4, and to amend section 4002 of Chapter 1, section 4142 of Chapter 7, and section 5478 of Chapter 39, of Title 11, Division 5 of the California Code of Regulations. Chapter 4 is now titled “Documentation Requirements for Firearms and Ammunition Eligibility Checks.” The adoption and amendments provide what documentation shall be presented if someone possesses a California driver license or identification card with the words “FEDERAL LIMITS APPLY” at the top.

## 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 his or her 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 at 5:00 p.m. on Tuesday, February 4, 2020. Only comments received by that time will be considered. Written comments must be submitted to:

Kamran Ali  
Bureau of Firearms  
Division of Law Enforcement  
Department of Justice  
P.O. Box 160487  
Sacramento, CA 95816-0487  
Phone: 916-210-2353  
Email: REALIDregs@doj.ca.gov

## AUTHORITY AND REFERENCE

Authority: Sections 18900, 18910, 27560, 27565, 27875, 27920, 27966, 28000, 28060, 28100, 28155, 28215, 28220, 28230, 28240, 31000, 30900, 32655, 32700, 32705, 32710, 32715, 32720 and 33305, Penal Code.

Reference: Sections 832.15, 832.16, 13511.5, 16400, 18900, 18910, 18905, 23000, 26150, 26155, 26170, 26710, 26815, 27540, 27560, 27565, 27875, 27920, 27966, 28000, 28160, 28215, 28220, 28230, 28235, 28240, 28250, 29182, 29500, 30105, 30370, 30515, 30900, 31000, 31005, 32650, 32655, 32700, 32705, 32710, 32715, 32720, 33300, 33305, and 33850, Penal Code; Section 12101, Health & Safety Code; 18 U.S.C. § 922(d) and (g).

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Penal Code section 28060 authorizes the Department to adopt regulations to allow the seller or transferor of a firearm or the person loaning the firearm, and the purchaser or transferee of a firearm or the person being loaned the firearm, to complete a sale, loan, or transfer through a firearm dealer. Penal Code section 28220 requires the Department to examine its records to determine if a purchaser or transferee is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. Penal Code section 30370 requires the Department to approve the purchase or transfer of ammunition through a vendor to individuals who are not prohibited, and authorizes the Department to write regulations regarding this process. Further, the United States Code, Title 18, section 922, subdivisions (d) and (g), and the Code of Federal Regulations, Title 27, section 478.99, subdivision (c)(5) provide that an alien illegally or unlawfully in the United States is prohibited from owning or possessing firearms or ammunition.

These regulations are necessary for the Department to fulfill its statutory obligation to determine whether an individual is prohibited by state or federal law from purchasing or possessing firearms or ammunition. This regulation will also assist firearm dealers and ammunition vendors to determine whether an individual is prohibited by state or federal law from purchasing or possessing firearms. If this regulation is not promulgated there will be continued uncertainty regarding firearms and ammunition sales in California for which the purchaser presents a federal non-compliant driver license or identification card, as well as continued uncertainty regarding eligibility checks involving federal non-compliant driver licenses and identification cards. This uncertainty increases the risk that firearms and ammunition will fall into the hands of prohibited individuals. This uncertainty hinders the Departments ability to fulfill its statutory duties and increases the risk that weapons will be possessed in California in violation of state and/or federal law.

This rulemaking action would interpret and make specific the details of these laws as follows:

Chapter 1, section 4002 was amended to include the current revision dates for the forms that are incorporated by reference.

The title of Chapter 4 was amended to better represent the subject of the chapter.

Article 2 was added to organize the chapter and create a new article for the new section.

Section 4045.1 was added to identify what additional documentation shall be presented to a firearm dealer or ammunition vendor for an eligibility check when the individual possess a federal non-compliant California driver license or identification card that states "FEDERAL LIMITS APPLY" at the top. Additionally, this section instructs individuals what documents need to be presented if the name on his or her driver license or identification card does not match the document presented to prove lawful presence in the United States. This section also provides the process for providing additional documentation when submitting paper applications and reports to the Department. In addition, this section describes the process for providing additional

documentation when submitting electronic applications and forms through the California Firearms Application Reporting System (CFARS), and the Dealer Record of Sale (DROS) Entry System. There are detailed descriptions of the changes that have been made to forms that are incorporated by reference as well as two forms newly being incorporated by reference. Lastly, this section includes instruction for eligibility check initiated by applications or reports submitted to other agencies that include fingerprint data to be used by the Department in order to determine whether an individual is eligible to possess a firearm or ammunition under state or federal law.

Chapter 7, section 4142 was amended to include the current revision dates for the forms that are incorporated by reference.

Chapter 39, section 5478 was amended to include the current revision dates for the forms that are incorporated by reference.

### ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

The proposed regulation will benefit the public by ensuring compliance with state and federal firearm laws and preventing firearms from falling into the hands of prohibited persons. The Department is concerned that, without this regulation, firearm dealers and ammunition vendors may inadvertently sell firearms or ammunition to individuals who are not eligible under federal law because they are not lawfully present in the United States. Additionally, this regulation will benefit firearm dealers and ammunition vendors because it will clarify the eligibility check process and allow them to obtain sufficient information that will allow for an accurate determination of whether a prospective purchaser or applicant is permitted to possess firearms or ammunition, consistent with state and federal law. Furthermore, firearm dealers and ammunition vendors will not need to turn away customers with California driver licenses and identification cards with the words “FEDERAL LIMITS APPLY”, thereby losing revenue, because now they will be able to determine lawful presence from the additional required documentation.

### EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

Pursuant to Government Code section 11346.5, subdivision (a)(3)(D), the Department shall evaluate whether the proposed regulation is inconsistent or incompatible with existing state regulations. Pursuant to this evaluation, the Department has reviewed existing regulations pertaining to firearms within California Code of Regulations (“CCR”) Title 11, Division 5, and has determined that these proposed regulations are not inconsistent or incompatible. This determination is based on the fact that no regulations currently exist which address the process of additional documentation for eligibility checks when an individual possesses a federal non-compliant California driver license or identification card that states “FEDERAL LIMITS APPLY” at the top. The Department has also determined that the proposed regulations are consistent with California Code of Regulations, title 13, section 15.00, the Department of Motor Vehicle regulation concerning acceptable proof of lawful residence.

## COMPARABLE FEDERAL REGULATIONS

The proposed action does not differ substantially from an existing comparable federal regulation or statute. Per the Code of Federal Regulations, Title 27 section 478.99 subdivision (c)(5), an alien illegally or unlawfully in the United States is prohibited from owning or possessing firearms or ammunition. Federal regulations explain who is prohibited from what activities. The Department's regulation is necessary to explain the process of how the Department will determine if an individual is prohibited (i.e. does not have lawful presence in the United States). In addition, it clarifies what documentation an individual shall provide to prove they have lawful presence in the United States if they possess a driver license or identification card that states, "FEDERAL LIMITS APPLY."

## FORMS INCORPORATED BY REFERENCE

Form BOF 030 (Rev. 01/2020), Dangerous Weapons License/Permit(s) Application

Form BOF 031 (Rev. 01/2020), Dangerous Weapons License/Permit(s) Renewal Application

Form BOF 051, (Rev. 01/2020), Entertainment Firearms Permit Application

Form BOF 116, (Rev. 01/2020), Personal Firearm Eligibility Check Application

Form BOF 961 (Rev. 01/2020), Collector In-State Acquisition of Curio or Relic Long Gun Report

Form BOF 4010A (Rev. 01/2020), New Resident Report of Firearm Ownership

Form BOF 4100A (Rev. 01/2020), Curio or Relic Firearm Report

Form BOF 4542A (Rev. 01/2020), Firearm Ownership Report

Form BOF 4544A (Rev. 01/2020), Report of Operation of Law or Intra-Familial Firearm Transaction

## OTHER STATUTORY REQUIREMENTS

None.

## DISCLOSURES REGARDING THE PROPOSED ACTION

The Department made the following initial determinations:

Mandate on local agencies or school districts: None

Cost to any local agency or school district which shall 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.

Cost or savings to any state agency: The fees related to newly incorporated forms 051 and 116 will generate revenue for the Department that will not exceed the costs incurred by the Bureau of Firearms to process the forms. The Department estimates that the fees will generate approximately \$76,228 in revenue to help offset costs that can be as high as \$797,620.

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 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.

Small business determination: The Department determined that the proposed regulation will not affect the creation or elimination of small businesses because the regulations pertain to new residents to the state and does not directly affect small business.

## RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department concludes that it is not likely that the proposed rulemaking will

- (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 proposed regulation will benefit the public by protecting them from harm. The Department is concerned that, without this regulation, firearm dealers and ammunition vendors may inadvertently sell firearms or ammunition to individuals who are not eligible under federal law because they are not lawfully present in the United States.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered 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. Any person interested in presenting statements or arguments with respect to alternatives to the proposed

regulations may do so at the scheduled hearing (if one is requested) or during the written comment period.

### CONTACT PERSONS

Please direct inquiries concerning the proposed administrative action to:

Kamran Ali  
Bureau of Firearms  
Division of Law Enforcement  
Department of Justice  
P.O. Box 160487  
Sacramento, CA 95816-0487  
Phone: 916-210-2353  
Email: REALIDregs@doj.ca.gov

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  
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Email: REALIDregs@doj.ca.gov

### AVAILABILITY OF RULEMAKING FILE INCLUDING THE INITIAL STATEMENT OF REASONS

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process. The text of the proposed regulation (the “express terms”), the initial statement of reasons, and the information upon which the proposed rulemaking is based are available at the Department’s website at <http://oag.ca.gov/firearms/regs>. Copies may also be obtained by contacting Kamran Ali at the address or phone number listed above.

### 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, it 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’s website at <http://oag.ca.gov/firearms/regs>. A written copy of any modified text may be obtained by contacting Kamran Ali at the address or phone number listed above.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon completion, the Final Statement of Reasons will be available on the Department's website at <http://oag.ca.gov/firearms/regs>. You may also obtain a written copy of the final statement of reasons by contacting Kamran Ali at the address or phone number listed above.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format, as well as the Final Statement of Reasons once completed, are available on the Department's website at <http://oag.ca.gov/firearms/regs>.