

# Finding of Emergency

## **Statement Regarding Compliance With Government Code section 11346.1(e)**

As explained herein, the Department of Justice (Department) has made substantial progress and proceeded with diligence toward compliance with Government Code section 11346.1, subdivision (e). Specifically, as a result of experience gained since the implementation of the initial emergency regulation, the Department has identified changes that will be reflected in the regulations that the Department intends to adopt by regular rulemaking (Certificate of Compliance). These changes include providing instructions for new residents on how to apply their unique serial number to their firearm and establish a deadline to submit digital photos to the Department confirming compliance. The Department is also implementing a process for new residents to reapply for a unique serial number if they fail to engrave their firearm in the allotted time. Finally, the Department has instituted numerous changes throughout the text of the regulations for clarity and consistency, making the unique serial number application process more accessible to the public. The Department has completed the proposed text of the regulations and will begin the 45-day comment period for the Certificate of Compliance on October 5, 2019. The Certificate of Compliance will be filed with the Office of Administrative Law no later than December 31, 2019. This second readoption is necessary because the Department will not have completed the rulemaking process by the time the regulations expire on October 1, 2019. This will cause a lapse in the regulations and render the Department unable to provide unique serial numbers to new residents of the state.

## **Statement Regarding Emergency Circumstances Since the First Readoption of Emergency Regulations**

The Department finds it necessary to readopt these emergency regulations because the circumstances demonstrating the existence of an emergency are unchanged since the initial adoption of the emergency regulations and the first emergency readoption.

## **Subject Matter of Proposed Regulation Amendments**

Firearms: Identifying Information and the Unique Serial Number Application Process for Self-Manufactured or Self-Assembled Firearms; Existing and New California Residents

## **Existing Regulations to Be Amended**

Title 11, sections 5505, 5507, 5509, 5510, 5511, 5513, 5514, 5516, and 5517

## **Specific Facts Demonstrating the Need for Immediate Action:**

Many homemade, or personally manufactured, firearms have no serial number, and therefore no record of existence. New technology makes it very easy to manufacture untraceable firearms

and has created a threat to public safety. These untraceable firearms are showing up at crime scenes and in the hands of violent criminals, and criminal organizations are now in the business of manufacturing these firearms for criminal activity and profit. (Assem. Floor, Concurrence in Senate Amendments to Assem. Bill 857 (2015-2016 Reg. Sess), as amended by May 4, 2016.) In 2013, a man, who had a history of mental illness and was ineligible to purchase a firearm, killed five people and injured several others in Santa Monica using a firearm he had built. (Sen. Com. on Public Safety, Analysis of Assem. Bill 857 (2015-1026 Reg. Sess.) as amended by May 4, 2016.)

In 2016, to address the threat to public safety caused by untraceable firearms (“ghost guns”), the Legislature passed Penal Code section 29180. Subject to certain exceptions, Penal Code section 29180 requires a person beginning on July 1, 2018 to first apply for and obtain a unique serial number from the Department before manufacturing or assembling a firearm. (Pen. Code, § 29180, subd. (b).) The statute also requires, any person who, as of July 1, 2018, owns a firearm without a serial number to apply for and obtain a serial number from the Department by January 1, 2019. (Pen. Code, § 29180, subd. (c).) Before issuing a serial number, the Department must perform a background check to ensure the applicant is not prohibited from owning a firearm. (Pen. Code, § 29182, subd. (b)(2).) The failure to obtain a serial number for an untraceable firearm is a misdemeanor. (Pen. Code, § 29180, subd. (g).) Untraceable firearms may be confiscated and destroyed by law enforcement officials. (Pen. Code, § 29180, subd. (d)(3).)

Penal Code section 29182 authorizes the Department to adopt regulations establishing an application process for issuing serial numbers for untraceable firearms. In 2018, the Department adopted regulations implementing an electronic application process on its California Firearms Application Report System. (Cal. Code Regs., tit. 11, § 5505 et seq.) The regulations became effective on July 1, 2018.

On September 26, 2018, after the Department adopted regulations establishing an electronic application process for issuing serial numbers, the Legislature passed Senate Bill 746 amending Penal Code section 29180 to require new residents to apply for a serial number for any firearm they own that does not have a serial number or other mark of identification. (Pen. Code, § 29180, subd. (e).) SB 746 went into effect on January 1, 2019.

The amendment fixes an omission in the statute caused by new residents who moved to California after July 1, 2018, but who may already own a firearm without a serial number. Without the amendment, new residents who already own an untraceable firearm were not eligible to apply for a serial number. This omission defeated the statute’s purpose of protecting public safety through reducing the number of untraceable firearms in the state and ensuring that an owner of a self-built firearm is not prohibited from owning it. The omission also created risk for new law-abiding residents who could be arrested and charged with a misdemeanor for possessing an untraceable firearm, and who might have their firearm confiscated by law enforcement. The omission also created confusion for law enforcement officials and prosecutors who would otherwise have to sort out whether an owner of an untraceable firearm is a new or existing resident.

As amended, Penal Code section 29180 requires new residents to apply for a serial number within 60 days of arrival for any firearm the resident wishes to possess in the state that does not have a unique serial number or other mark of identification. (Pen. Code, § 29180, subd. (e).)

The Department must readopt the existing emergency regulations to continue to allow new residents to apply for a serial number through its CFARS. Failure to readopt will threaten public safety, put new law-abiding residents at risk of violating the law, and create confusion for law enforcement.

### **Authority and Reference Citations**

Authority: Section 29182, Penal Code.

Reference: Sections 11106, 16400, 16520, 16535, 16590, 16670, 16880, 17170, 17180, 23910, 26710, 27510, 28160, 28220, 29180, 29181, 29182, 29183 and 29184, Penal Code, Section 8104, Welfare and Institutions Code, and Section 1798.17, Civil Code.

### **Information Digest/Policy Statement Overview**

Summary of the Law: In 2016, the Legislature adopted Penal Code sections 29180, 29181, 29182, 29183 and 29184 to regulate the possession of self-manufactured or self-assembled firearms. Prior to adopting the statutes, there were no provisions in existing law addressing the do-it-yourself manufacturing of a firearm for personal use. Since a person purchasing an unfinished receiver under prior law did not have to undergo a background check, any person, even a person prohibited from possessing a firearm, could make a firearm at home. Thus, any person prohibited from owning a firearm could easily circumvent the law and build a firearm that could potentially be used in the commission of a crime.

Subject to certain exceptions, Penal Code section 29180 requires a person beginning on July 1, 2018 to first apply for and obtain a unique serial number or other identifying mark from the Department before manufacturing or assembling a firearm. (Pen. Code, § 29180, subd. (b).) The statute also requires, any person who, as of July 1, 2018, owns a firearm without a serial number or other identifying mark to apply for and obtain a serial number from the Department by January 1, 2019. (Pen. Code, § 29180, subd. (c).) Before issuing a serial number, the Department must perform a background check to ensure the applicant is not prohibited from owning a firearm. (Pen. Code, § 29182, subd. (b)(2).) The failure to obtain a serial number for an untraceable firearm is a misdemeanor. (Pen. Code, § 29180, subd. (g).) Untraceable firearms may be confiscated and destroyed by law enforcement officials. (Pen. Code, § 29180, subd. (d)(3).)

Penal Code section 29182 authorizes the Department to adopt regulations establishing an application process for issuing serial numbers for untraceable firearms. In 2018, the Department

adopted regulations implementing an electronic application process on its CFARS. (Cal. Code Regs., tit. 11, § 5505 et seq.) The regulations became effective on July 1, 2018.

The Legislature amended Penal Code section 29180 through 29184, which regulate the Department's issuance of unique serial numbers for self-manufactured or self-assembled firearms, and for firearms that do not have a unique serial number or other identifying mark. As amended, Penal Code section 29180 requires new residents to apply for a serial number within 60 days of arrival for any firearm the resident wishes to possess in the state that does not have a unique serial number or other mark of identification. (Pen. Code, § 29180, subd. (e).)

Benefits: This rulemaking protects public safety and new California residents by allowing new residents to access the Department's CFARS to obtain a unique serial number for a self-manufactured or self-assembled firearm or a firearm they own that does not have a unique serial number or other identifying mark.

#### **Chapter 41. Firearms: Identifying Information and the Unique Serial Number Application Process for Self-Manufactured or Self-Assembled Firearms; Existing and New California Residents**

The title of Chapter 41 has changed to specify existing and new California residents.

##### **§ 5505. Title and Scope.**

This section has been amended to include new California residents in the title and scope of the regulations.

##### **§ 5507. Definition of Key Terms.**

This section has been amended to delete language that has been superseded by a changed statute and to add language to conform to mandated statutory language by redefining firearms eligibility check as the state and federal background check pursuant to Penal Code section 28220 that is used to determine an individual's eligibility to possess a firearm.

This section has also been amended with the addition of Penal Code section 28220 and the removal of Penal Code section 30105 as a reference citation in order to comply with existing law.

##### **§ 5509. Persons Affected by These Regulations.**

This section has been amended to include new California residents who wish to possess in the state a previously self-manufactured or self-assembled firearm, or a firearm the resident owns, that does not have a unique serial number or other mark of identification.

##### **§ 5510. Effective Dates.**

This section has been amended to include the January 1, 2019 effective date for new California residents.

##### **§ 5511. Online Reporting with CFARS.**

This section has been amended to allow new California residents to use CFARS to apply for a unique serial number or other mark of identification for a self-manufactured or self-assembled firearm, or for a firearm that the new California resident owns that does not have a unique serial number or other identifying mark.

**§ 5513. Applicant and Firearm Information Entered into CFARS by Applicant and the Department’s Privacy Notice.**

This section has been amended to delete language that has been superseded by a changed statute and to add language to conform to mandated statutory language by including the new age restriction of 21 to obtain a unique serial number for a firearm that is not a handgun.

**§ 5514. Recording Fee for a Self-Manufactured or Self-Assembled Firearm.**

This section has been amended with the addition of Penal Code section 28220 and the removal of Penal Code section 30105 as a reference citation in order to comply with existing law.

**§ 5516. Firearms Eligibility Check Conducted by the Department Prior to Issuing a Unique Serial Number.**

This section has been amended with the addition of Penal Code section 28220 and the removal of Penal Code section 30105 as a reference citation in order to comply with existing law.

**§ 5517. 15 Day Period for the Department to Approve or Deny the Applicant’s Request for a Unique Serial Number.**

This section has been amended with the addition of Penal Code section 28220 and the removal of Penal Code section 30105 as a reference citation in order to comply with existing law.

**Forms Incorporated by Reference**

None.

**Evaluation of the Proposed Regulation for Consistency and Compatibility with Existing Regulations**

CCR sections within title 11, division 5, Chapter 41 are consistent and compatible with the proposed rulemaking.

**Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations**

None.

**Mandate on Local Agencies or School Districts**

The Department has determined the proposed emergency regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

**Technical, Theoretical, and Empirical Study, Report, or Similar Document, if any, Upon Which the Department Relied**

None.

**Cost Estimates/Impact of Regulatory Action**

The Department has assessed the potential for significant adverse impact that might result from the proposed emergency action and has determined:

- There will be no non-discretionary costs or savings to local agencies
- There will be no costs to school districts
- There will be no costs or savings in federal funding to the State
- There will be no effect on housing costs.

The Department will receive a minimal increase in revenue from recording fees paid by new residents who apply for a serial number. The Department estimates that between 25 and 125 new residents will apply for unique serial numbers per year. The fee for submitting an application for a serial number is \$35, which covers the cost for the background check and one serial number. (Cal. Code of Regs., tit. 11, § 5514.) If the applicant requests multiple serial numbers in the same application, the fee is \$15 for each additional serial number. The increase in revenue to the Department as a result of this rulemaking will depend on how many new residents move to California and apply for a serial number for an untraceable firearm.

**Nonduplication**

Pursuant to the California Code of Regulations title 1, section 12, the proposed regulations duplicate Penal Code section 29180, which is necessary to satisfy the clarity standard.