

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. The Department uses the Dealer Record of Sale (DROS) Entry System (DES) for this function. Additionally, 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 DES to provide further instruction and clarity so dealers will be able to use the system more efficiently. Also, they provide further clarification on who may use the DES. 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.

BENEFITS

The Department has found that the existing regulations regarding the DES could be improved to provide further guidance necessary to ensure completion of DROS transactions. Revising the regulations will assist the Department with providing guidance to ensure completion of DROS transactions, accurate submission of information, and ensure accurate Department records. Further, the regulations will provide clear direction with special circumstances regarding capturing a purchaser's right thumbprint and consequences to dealers for not completing DROS transactions.

Currently, when dealers process 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 whether or not an individual is in possession of a firearm, it becomes an issue of public safety. It is also costly for the Department to make several attempts to track down the information to determine if someone is actually in possession of a firearm.

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. They may only have hired independent contractors to perform DROS transactions on their behalf, and anyone who works for a dealer, in any capacity, and will be using the DES needs to have their own account for accurate tracking and accountability.

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 was amended to add the term “loan” as one of the three firearm business transactions that a dealer would enter in the DES. In the reference, Penal Code section 16190 has been cited, and Penal Code section 28225 has been removed.

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 was amended to further define the “Terms of Use” for the DES. Additional language was added to clarify liability for the Department for persons using the DES. Terms have been amended to clarify who is eligible to use the DES. A section was added to provide dealers with information on how authorized associates, salespersons, account associates, licensed ammunition vendors, and licensed ammunition vendor account associates, can obtain access to the system.

The addition of the language is necessary to clarify how a dealer should access and use the DES, and who is allowed to use it. 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 same account access for multiple users. Since the DES logs the user who is delivering a firearm, it was not clear if multiple people were using one account. Additionally, it was necessary to add the licensed ammunition vendor accounts due to recent legislation.

Also, in the authority cited, Penal Code section 28205 was 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. Furthermore, the addition to the reference section was necessary as Penal Code section 28220 discusses recordkeeping and background checks related to the sale, lease or transfer of firearms; and Penal Code section 30395 authorizes the Department to issue ammunition vendor licensed to applicants who meet the 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 addition is necessary as Penal Code section 28160, subdivision (b) requires the Department to prescribe the manner in which the thumbprint shall be obtained. This section also provides exceptions for a purchaser who is unable to provide a right thumbprint.

Penal Code sections 28160, and 28210 have been added to the reference section, and Penal Code section 28225 has been 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.

§ 4230. Delivery of Firearms following DROS Submission.

This section added additional status options to the DROS transaction process so that the status details are clearly defined. Also, instructions have been added regarding how to use the system and how to complete a DROS transaction, which button to click, where to call if you need help or have questions, and the timeframes in which 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. Some of the status options that were added are “Undetermined,” “Approval after Delay,” and “30 Day Reject.” Providing more options will allow 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 was 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.

Furthermore, subsection (e) was added to fix the “undelivered DROS” problem, (when dealers would not select the “deliver” button after a firearm had been delivered to the owner.) This portion of the regulations makes it so that if nothing is selected for a single DROS, the dealer will lose access until they have “delivered” or “canceled” the firearm in DROS.

Additionally, Penal Code sections 28160 and 28175 were added to the authority section. Penal Codes sections 28175, 28210, and 28215 were added to the reference section, and Penal Code section 28225 was removed from the reference section.

The Penal Code sections were added to authority because they allow the Department to collect information about the firearm purchaser through the dealer. Penal Code sections 28175, 28210, and 28215 were 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.

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

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

The Department wanted to provide dealers with more options on the type of card they could use to pay their bill, and be clear on which accounts would 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, and 28225.

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 their 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 regulations is to enhance the Department’s instructions for using the DES to provide further instruction and clarity, so dealers will be able to use the system more efficiently. 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 regulations were designed to 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 regulations also further clarify for current dealers how to collect and record a purchaser's thumbprint. Therefore, no jobs in California will be created or eliminated.

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

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

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Benefits of the Regulations

Currently, when dealers process 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. When the dealer fails to select the "deliver gun" or "cancel" button, the Department does not know if the purchaser obtained the firearm, or if the DROS transaction was intended to be corrected or cancelled. The regulations will ensure that dealers complete DROS transactions, which will make the process complete and more efficient. In addition, this will allow

the Department to know if the purchaser obtained the firearm, or if the DROS transaction was intended to be corrected or cancelled.

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.

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. Consequently, no reasonable alternatives were proposed or considered by the Department.