# State of California Office of Administrative Law

In re: Department of Justice

**Regulatory Action:** 

**Title 11, California Code of Regulations** 

Adopt sections: Amend sections: 4031, 4035, 4036, 4045.1, 4210 Repeal sections: NOTICE OF FILING AND PRINTING ONLY

**Government Code Section 11343.8** 

OAL Matter Number: 2022-1130-01

OAL Matter Type: File and Print Only (FP)

This action by the Department of Justice makes changes to regulations relating to firearm precursor parts.

OAL filed this regulation(s) or order(s) of repeal with the Secretary of State and will publish the regulation(s) or order(s) of repeal in the California Code of Regulations.

Date: January 11, 2023

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Kevin D. Hull Senior Attorney

For: Kenneth J. Poque Director

Original: Rob Bonta, Attorney General Copy: Marlon Martinez

STD. 400 (REV. 10/2019)		E PR		
OAL FILE NOTICE FILE NUMBER		ACTION NUMBER		
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NOTICE			REGULATIONS	
AGENCY WITH RULEMAKING AUTHORIT Department of Justice	Ŷ			AGENCY FILE NUMBER (If any)
A. PUBLICATION OF NOT	TICE (Complete for	nublication in Noti	co Register)	
1. SUBJECT OF NOTICE			FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE		DNTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ACTION ON PROPOSED ONLY Approved as Submitted		Disapproved/ Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE
B. SUBMISSION OF REG	ULATIONS (Comple	ete when submittin	g regulations)	
1a. SUBJECT OF REGULATION(S)			1b. ALL PREVIOUS RELAT	ED OAL REGULATORY ACTION NUMBER(S)
AP 1621 Modifications to Ei	irearm Brequirear Day	rt Regulations	A	
AB 1621 Modifications to Fi 2. SPECIFY CALIFORNIA CODE OF REGU			s related)	
	LATIONS TITLE(S) AND SECTION	N(S) (Including title 26, if toxics	s related)	
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# **CALIFORNIA DEPARTMENT OF JUSTICE**

# TITLE 11. LAW DIVISION 5. FIREARMS REGULATIONS CHAPTER 3. CERTIFICATES OF ELIGIBILITY CHAPTER 4. DOCUMENTATION REQUIREMENTS FOR FIREARMS, AMMUNITION, AND FIREARM PRECURSOR PART ELIGIBILITY CHECKS and CHAPTER 8. DROS ENTRY SYSTEM (DES)

#### **TEXT OF PROPOSED REGULATIONS**

#### **Chapter 3. Certificates of Eligibility**

#### **Article 2. Definitions**

### § 4031. Definition of Key Terms.

(a) "Applicant" means a person applying to obtain a Certificate of Eligibility.

(b) "California Ammunition Vendor" or "CAV" has the same meaning as "ammunition vendor" as defined in section 4281.

(c) "California Firearms Dealer" or "CFD" has the same meaning as "firearms dealer" or "dealer" as defined in section 4017.

(d) "California Firearm Precursor Part Vendor" or "CFPPV" has the same meaning as "California Firearm Precursor Part Vendor" as defined in section 4301.

(e)(d) "Certificate of Eligibility" or "COE" means a certificate which states that the Department has checked its records and the records available to the Department in the National Instant Criminal Background Check System and determined that the applicant is not prohibited from acquiring or possessing firearms pursuant to Penal Code sections 18205, 29800, 29805, 29815 through 29825, and 29900, or Welfare and Institutions Code sections 8100 and 8103, or Title 18, sections 921 and 922 of the United States Code, or Title 27, Part 478.32 of the Code of Federal Regulations at the time the check was performed and which ensures that anyone who handles, sells, delivers, or has under their custody or control any ammunition, is eligible to do so pursuant to Penal Code section 30347, and that anyone who handles, sells, delivers or has under their eustody and control any firearm precursor part, is eligible to do so pursuant to Penal Code section 30447.

(f)(e) "Certificate Holder" means a person who obtains a valid Certificate of Eligibility. (g)(f) "CFARS" means California Firearms Application Reporting System. (h)(g) "Department" means the California Department of Justice.

NOTE: Authority cited: Section 26710, Penal Code. Reference: Sections 12101, 12756 and 12757, Health and Safety Code; Sections, 16140, 16800, 18205, 26525, 26585, 26700, 26705, 26710, 26915, 26970, 27200, 27535, 27670, 27966, 28450, 29050, 29120, 29800, 29805, 29815, 29820, 29825, 29900, 30312, 30314, 30342, 30347, 30370, 30412, 30414, 30442, 30470 and 31700, Penal Code; Sections 8100 and 8103, Welfare and Institutions Code; Title 18, Sections 921 and 922, United States Code; and Title 27, Parts 478.32 and 478.41, Code of Federal Regulations.

### Article 3. Certificate of Eligibility

# § 4035. Applicant Information.

(a) Once a CFARS account has been created, the initial application form for a COE is located on CFARS under the link "Certificate of Eligibility (COE)."

(b) Initial COE applicants shall electronically provide the following information to complete the application:

(1) Applicant's full name; driver license type and number or California identification number; date of birth; residence street address; phone number; gender; <u>applicant transaction</u> <u>identifier (ATI)</u> number; business type(s); United States citizenship; if not a United States citizen, the country of citizenship and the federal Citizenship and Immigration Services (USCIS) Number or federal I-94 number. The application shall also require additional information requesting responses to questions asking if the applicant: 1) is a current COE holder; and 2) has submitted COE fingerprint impressions through a live scan provider, as required by section 4032.5.

(A) If applicant is applying for a COE as an employee of a California Firearms Dealer (CFD), applicant shall provide the name of the dealer, the dealer address, the dealer store number if applicable, the dealer's CFD number, and the COE number provided by the employer.

(B) If applicant is applying for a COE as an employee of a California Ammunition Vendor (CAV), applicant shall provide the name of the ammunition vendor, the ammunition vendor address, the ammunition vendor store number if applicable, the vendor's CAV number, and the COE number provided by the employer. (C) If applicant is applying for a COE as an employee of both a CFD and a CAV, the applicant shall list only the CFD information as specified in subdivision (b)(1)(A) of this section.

(D) If applicant is applying for a COE as an employee of a California Firearm Precursor Part Vendor (CFPPV), applicant shall provide the name of the Firearm Precursor Part Vendor, the vendor's address, the vendor's store number if applicable, the vendor's CFPPV number, and the COE number provided by the employer.

(E) if applicant is applying for a COE as an employee of both a CFD and a CFPPV, the applicant shall list only the CFD information as specified in subdivision (b)(1)(A) of this section.

... (Omitting subsection (b)(2))

... (Omitting subsection (b)(3))

... (Omitting subsections (c)-(d))

NOTE: Authority cited: Sections 11105 and 26710, Penal Code. Reference: Sections 12101, 12756 and 12757, Health and Safety Code; Sections 16410, 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, 30412, 30414, 30442, 30447 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.

# § 4036. Modifications to Applicant Information.

... (Omitting subsection (a))

(b) Any modifications to the employment status of a certificate holder of a CFD, or CAV or CFPPV shall be reported via CFARS by both the employee and the CFD, or CAV and/or CFPPV.

(1) A certificate holder shall make changes to the certificate holder's employment status via CFARS.

(A) To report employment, a certificate holder shall select "Report Employment" and shall enter the employers CFD, and/or CAV and/or CFPPV number, business name, and business address.

(B) To terminate employment, a certificate holder shall select "Report Termination of Employment," shall select the employment location, and shall agree to the following Department notification:

(i) This is to notify the DOJ that effective today, I am no longer associated with the aforementioned firearms dealership/ammunition vendor/firearm precursor part vendor. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(2) A CFD<sub>7</sub> <u>and/or CAV and/or CFPPV</u> shall make changes to the employment status of an employee by logging into the employer CFARS account and utilizing the links under the "Manage Employees" tab.

(A) To add an employee, a CFD, <u>and/or CAV</u> and/or <u>CFPPV</u>-shall select "Report Employment" and shall enter the employee's full name, COE number, identification number, and employment location.

(B) To terminate an employee, a CFD<del>,</del> <u>and/or</u> CAV <del>and/or CFPPV</del>-shall select "Report Termination of Employment," shall select the employment location and employee, and shall agree to the following Department notification:

(i) This is to notify the DOJ that as of the date stated on this form, this COE holder/employee is no longer associated with the aforementioned firearms dealership/ammunition vendor/firearm precursor part vendor. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am the licensee of the aforementioned firearms dealership/ammunition vendor/firearm precursor part vendor, and possess the authority to submit this form.

NOTE: Authority cited: Section 26710, Penal Code. Reference: Sections 12101, 12756 and 12757, Health and Safety Code; and Sections 16410, 16800, 26525, 26585, 26700, 26705, 26710, 26915, 26970, 27200, 27535, 27670, 27966, 28450, 29050, 29120, <del>30312, 30314, 30342, 30347, 3</del>0370, 30412, 30414, 30442, 30447 and 31700, Penal Code.

Chapter 4. Documentation Requirements for Firearms, <u>and Ammunition, and Firearm</u> Precursor Part Eligibility Checks

**Article 2. Additional Documentation Requirements** 

# § 4045.1. Additional Documentation Requirements for Eligibility Checks with Federal Non-Compliant California Driver License or Identification Card.

This section applies to all firearms, and ammunition, and firearm precursor part eligibility checks, including any eligibility check described in Division 5. For the purposes of this section, "eligibility checks" refers to background checks based on any application or report for which an applicant is required to submit a driver license or identification card, or the number from a driver license or identification card, so that the Department of Justice may determine the applicant's eligibility to possess a firearm, <u>or</u> ammunition, <del>or firearm precursor part</del> under state or federal law.

... (Omitting subsections (a)-(e))

(f) Applications or reports submitted electronically via the Dealer Record of Sale (DROS) Entry System (DES), including applications or reports submitted pursuant to Chapters 8, 10, and 11 of this Division 5.

For eligibility checks based on applications or reports submitted to the Department of Justice electronically via the DES, the firearms dealer, <u>or</u> ammunition vendor, or firearm precursor part vendor shall examine the applicant's driver license or identification card. If the applicant's California driver license or identification card is federal non-compliant with the notation "FEDERAL LIMITS APPLY" on the front, the firearms dealer, <u>or</u> ammunition vendor, or firearm precursor part vendor shall require the applicant to submit a copy of the document required in subdivision (b), as well as a copy of the document required in subdivision (c) if applicable. The firearms dealer, <u>or</u> ammunition vendor, or firearm precursor part vendor shall retain a copy of the "FEDERAL LIMITS APPLY" driver license or identification card, as well as the supporting documents, as part of the permanent record. These applications and reports include:

... (Omitting subsections (f)(1)-(f)(2))

(3) Applications to purchase firearm precursor parts, as described in Penal Code section 30470. The firearms dealer, ammunition vendor, or firearm precursor part vendor shall confirm compliance with this subdivision on DES, as necessary during the application or reporting process. The firearms dealer, ammunition vendor or firearm precursor part vendor shall keep a copy of the document(s) required in subdivisions (a) through (c).

(g) Applications or reports submitted to other agencies that include fingerprint data to be used by the Department of Justice to determine the applicant's eligibility to possess a firearm<del>, or</del> ammunition<del>, or firearm precursor part</del> under state or federal law.

For eligibility checks based on applications or reports submitted to other agencies that include fingerprint data to be used by the Department of Justice to determine the applicant's eligibility to possess a firearm, or ammunition, or firearm precursor part under state or federal law, if the applicant presents a federal non-compliant California driver license or identification card with the notation "FEDERAL LIMITS APPLY" on the front, the agency shall require the applicant to submit copies of the documents required in subdivision (b), as well as a copy of the document required in subdivision (c) if applicable. The agency shall keep a copy of the documents required in subdivisions (a) through (c) as part of the permanent record of the application. The Department of Justice may request a copy of the document(s) at a future date. Applicants of these applications and reports include:

... (Omitting subsections (g)(1)-(g)(4))

NOTE: Authority cited: Sections 28060, 28100, 28155, 28215 and 28220, Penal Code. Reference: Sections 832.15, 832.16, 13511.5, 16400, 18900, 18905, 23000, 26150, 26155, 26170, 26710, 26815, 27540, 27560, 27565, 27875, 27920, 27966, 28000, 28160, 28215, 28220, 28250, 29182, 29500, 30105, 30370, <del>30470, 3</del>1000, 31005, 32650, 32655, 32700, 32705, 32710, 32715, 33300, 33305 and 33850, Penal Code; Section 12101, Health and Safety Code; and Section 922, Title 18, United States Code.

### Chapter 8. DROS Entry System (DES)

# § 4210. Terms of Use and Required Information.

(a) Firearms dealers and each of their authorized associates, authorized account associates, or salespersons, and; ammunition vendors and each of their authorized associates, authorized account associates, or salespersons; and firearm precursor part vendors and each of their authorized associates, authorized account associates, or salespersons, who will use DES on behalf of the firearms dealer, or ammunition vendor, or firearm precursor part vendor must agree to the following "Terms of Use:"

... (Omitting subsection (a)(1))

# (2) AUTHORIZATION

I am a licensed firearms dealer Certificate of Eligibility (COE) Holder, authorized associate, authorized account associate, or salesperson of the firearms dealer, or an ammunition vendor, authorized ammunition vendor associate, authorized ammunition vendor account associate, or ammunition vendor salesperson, or a firearm precursor part vendor, firearm precursor part vendor authorized account associate, or firearm precursor part vendor authorized to use DES on behalf of the firearms dealer, or ammunition vendor, or firearm precursor part vendor.

## (3) ACCESS

The acquisition and maintenance of the device and software used to access the internet and interface with DES shall be the responsibility of each firearms dealer, <u>or</u> ammunition vendor, <del>or</del> <del>firearm precursor part vendor</del>. Each authorized associate, authorized account associate, or salesperson shall request and use their own DES account after the Dealer COE Holder, <u>or</u> ammunition vendor, <del>or firearm precursor part vendor</del> has granted authorization. The DES enables the Dealer COE Holder, <u>or</u> ammunition vendor, <u>or firearm precursor part vendor</u> has granted authorization. The DES enables the Dealer COE Holder, <u>or</u> ammunition vendor, <u>or firearm precursor part vendor</u> to authorize the functions each user is able to access.

### (4) CONFIDENTIALITY AND UNAUTHORIZED USE

It is the responsibility of the user and the firearms dealer, <u>or</u> ammunition vendor, <del>or firearm</del> <del>precursor part vendor</del> to protect the confidentiality of the individual password selected by each user to access DES.

If a Dealer COE Holder, authorized associate, authorized account associate, salesperson, ammunition vendor, authorized ammunition vendor associate, authorized ammunition vendor account associate; <u>or</u> ammunition vendor salesperson, firearm precursor part vendor, firearm precursor part vendor authorized associate, firearm precursor part vendor authorized account associate, or firearm precursor part vendor salesperson becomes aware that an unauthorized user has obtained access to DES, they must notify the Customer Support Center immediately. Contact information is available upon logging into the DES account. Notwithstanding such notification, the Department shall not be liable for transaction charges fraudulently incurred on a DES account. It is the responsibility of the dealer; <u>or</u> ammunition vendor, or firearm precursor part <del>vendor</del> to pay these transaction charges.

... (Omitting subsections (a)(5)-(a)(6))

... (Omitting subsections (b)(1)-(b)(6))

(7) To establish a DES user account as a firearm precursor part vendor, who may sell, deliver or handle firearm precursor parts, the following information shall be provided:

(A) Certificate of Eligibility (COE) number

(B) Firearm precursor part vendor license number

(C) Unique personal ID number (e.g., CDL number or CID number)

(D) Complete name

(E) Three identity verification questions/answers

(F) User selected password

(8) To establish a DES user account as an authorized firearm precursor part vendor associate or salesperson, who may sell, deliver or handle firearm precursor parts, the following information shall be provided:

(A) Certificate of Eligibility (COE) number

(B) Firearm precursor part vendor license number of firearm precursor part vendor

(C) Unique personal ID number (e.g., CDL number or CID number)

(D) Complete name

(E) Three identity verification questions/answers

(F) User selected password

(9) To establish a DES user account as an authorized firearm precursor part vendor account associate, who shall not sell, deliver or handle firearm precursor parts, the following information shall be provided:

(A) Certificate of Eligibility (COE) number of firearm precursor part vendor

(B) Firearm precursor part vendor license number of a firearm precursor part vendor

(C) Unique personal ID number (e.g., CDL number or CID number)

(D) Complete name

(E) Three identity verification questions/answers

(F) User selected password

NOTE: Authority cited: Sections 28105, 28155, 28205, 30352, and 30370, 30452 and 30470, Penal Code. Reference: Sections 28105, 28155, 28205, 28220, and 30395 and 30495, Penal Code.