

CALIFORNIA DEPARTMENT OF JUSTICE
TITLE 11. LAW
DIVISION 5. FIREARMS REGULATIONS
CHAPTER 14. CARRY CONCEALED WEAPONS LICENSES

March 25, 2024

FINDING OF EMERGENCY

Pursuant to the requirements of Government Code section 11346.1, subdivision (a)(1), the Department of Justice (Department) is providing notice of proposed emergency adoption of regulations regarding carry concealed weapons (CCW) licenses. The Department finds that an emergency exists, and that the immediate amendment of sections 4410 and 4412 of Title 11, Division 5, of the California Code of Regulations is necessary to avoid serious harm to the public peace, health and safety, and general welfare.

SUBMISSION OF COMMENTS

Government Code section 11346.1, subdivision (a)(2), requires that, at least five (5) working days before submission of the proposed emergency action to the Office of Administrative Law (OAL), the Department provide a notice of proposed emergency action (Finding of Emergency) and proposed text to every person who has filed a request for notice of regulatory action with the Department. After submission of the proposed emergency regulation to OAL, OAL shall allow interested persons five (5) calendar days to submit comments on the proposed emergency regulation as set forth in Government Code section 11349.6.

The Proposed Text of the emergency regulation and the Finding of Emergency are posted on the Department's website at <https://oag.ca.gov/regulations>.

The Department plans to file the emergency rulemaking package with OAL at least five (5) working days from the date provided at the top of this notice. If you would like to comment on the Finding of Emergency or the proposed text, those comments must be made in writing only, must contain a notation that identifies the emergency regulation to which they relate, and must be received by both the Department and OAL within five calendar days after the Department's filing with OAL. Emergency rulemaking packages filed with OAL can be found on OAL's website at https://oal.ca.gov/emergency_regulations/emergency_regulations_under_review/. The Department may respond to public comments at its discretion.

Send comments simultaneously to:

Attorney General Rob Bonta
Department of Justice
P.O. Box 160487
Sacramento, CA 95816
(916) 210-2372
bofregulations@doj.ca.gov

and

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

EXPRESS STATEMENT OF EMERGENCY

The proposed regulations are, by legislative mandate, necessary for the immediate preservation of the public peace, health and safety, and general welfare within the meaning or purposes of Government Code section 11346.1. (Pen. Code, § 26225, subd. (d).)¹

SPECIFIC FACTS DEMONSTRATING NEED FOR IMMEDIATE ACTION

Purpose and Necessity of Each Provision

Article 2. CCW DOJ Certified Instructors.

§ 4410. CCW DOJ Certified Instructor Qualifications and Applications.

Penal Code section 26165 requires CCW license applicants to complete a course of firearms training as a condition of obtaining a license. Except for the component on mental health and mental health resources, the course must be taught and supervised by firearms instructors certified by the Department under Penal Code section 31635, or in a manner to be prescribed by regulation. (§ 26165, subd. (a)(4).) Section 4410 establishes the qualifications required to become a CCW DOJ Certified Instructor and creates the application process.

As originally drafted, subdivision (c) required applicants to provide a training certificate from one of the following programs: (1) Bureau of Security and Investigative Services (BSIS), Department of Consumer Affairs, State of California-Firearm Training Instructor; (2) Commission on Peace Officer Standards and Training (POST), State of California-Firearms Instructor or Rangemaster; or (3) Authorization from a State of California accredited school to teach a firearm training course. Subdivision (c) was amended to clarify that the certificate must be active or unexpired. For example, the BSIS Firearm Training Instructor certificates list expiration dates. Requiring the certificate to be active or unexpired ensures that the applicant's qualification is current.

Subdivision (c) was further amended to add the word "entities." This is necessary to make the regulation text consistent with the Concealed Carry Weapon Program DOJ Certified Instructor Application, Form BOF 1034 (Rev. 02/2024), which is incorporated by reference.

In addition, the following new programs were added to subdivision (c): (1) POST Concealed Carry Tactics Instructor; (2) California Highway Patrol (CHP) or California Department of Corrections and Rehabilitation (CDCR)-Firearms Instructor, Weapons Instructor, or Rangemaster; or (3) National Rifle Association (NRA)-Law Enforcement Instructor or Basics of Personal Protection Outside the Home Instructor. Basics of Personal Protection Outside the

¹ All references are to the Penal Code unless otherwise indicated.

Home Instructors must additionally be both an NRA Certified Pistol Instructor and Personal Protection in the Home Instructor. These programs were added in response to stakeholder feedback and applications submitted. CHP and CDCR are state agencies that certify firearms instructors for their own purposes. The NRA is one of the country's largest firearm training programs. As the name implies, NRA Law Enforcement Instructors train law enforcement. The Department also received public comments that NRA Basics of Personal Protection Outside the Home Instructors are particularly qualified to teach the course required by Penal Code section 26165.

The expanded requirements continue to ensure the applicant has the minimum level of skill, knowledge, and competency to teach the course required by Penal Code section 26165. Specifically, a certification from one of these entities ensures the applicant is qualified to teach firearm safety, firearm handling, shooting technique, safe storage, legal methods to transport firearms and securing firearms in vehicles, and laws governing where permit holders may carry firearms, the permissible use of a firearm, and the permissible use of lethal force in self-defense. (§ 26165, subd. (a)(2).)

Subdivision (c) requires initial and renewal applications to be completed and submitted on the Concealed Carry Weapon Program DOJ Certified Instructor Application, Form BOF 1034 (Rev. 02/2024), which is incorporated by reference. Form BOF 1034 was revised to include the additional certifications described above.

Subdivision (d) requires the applicant to pass a live-fire shooting qualification course within six months before submitting their application. This requirement ensures the applicant has the minimum level of skill, knowledge, and competency to teach the live-fire shooting exercises to CCW license applicants. (§ 26165, subd. (a)(6).) As originally drafted, the live-fire qualification course must be administered by someone with a certification from one of the following training programs: (1) Bureau of Security and Investigative Services (BSIS), Department of Consumer Affairs, State of California-Firearm Training Instructor; (2) Federal Government, Certified Rangemaster or Firearm Instructor; (3) Federal Law Enforcement Training Center, Firearm Instructor Training Program or Rangemaster; (4) United States Military, Military Occupational Specialty (MOS) as marksmanship or firearms instructor; (5) Commission on Peace Officer Standards and Training (POST), State of California-Firearm Instructor or Rangemaster; or (8) Authorization from a State of California accredited school to teach a firearm training course.

The same programs added to subdivision (c) were added to Form BOF 1034 so that people certified by these programs can also administer and score the shooting qualification. These requirements continue to ensure the shooting qualification is administered and scored by a skilled instructor.

In subdivision (d), language was added to clarify the instructions for the "object in hands" drill. This was added to clarify that during this drill, the shooter drops the object before performing the sequence of fire.

§ 4412. POST-Certified Firearms Instructors May Serve as CCW Instructors.

Section 4412 allows any active or honorably retired peace officer who is certified as a Firearms Instructor by the California Commission on Peace Officer Standards and Training (POST) to provide the course of training described in Penal Code section 26165. Such officers are exempt from the application procedure described in section 4410. POST-certified peace officers have the minimum level of skill, knowledge, and competency to teach the course required by Penal Code section 26165.

Language clarifying that reserve peace officers do not qualify for this exemption was added to section 4412. Reserve peace officers who are POST-certified must meet the standards in section 4410 and complete the Concealed Carry Weapon Program DOJ Certified Instructor Application, Form BOF 1034.

Explanation of Failure to Adopt Nonemergency Regulations

The Legislature deemed the Department's regulations necessary to address an emergency because of the public's safety interests in preventing persons who are prohibited from owning or possessing a firearm from obtaining CCW licenses.

RELIED ON DOCUMENTS

The Department relied on written public comments from the following stakeholders:

1. Retired peace officer and current CCW instructor (Dec. 15, 2023, 12:02 p.m.)
2. Army infantry combat veteran and current NRA Training Counselor (Dec. 15, 2023, 2:39 p.m.)
3. CDCR Rangemaster (Dec. 14, 2023, 11:08 a.m.)
4. CHP Firearms Instructor (Dec. 20, 2023, 8:18 a.m.)
5. California resident (Dec. 8, 2023)
6. CDCR Rangemaster (Dec. 27, 2023, 7:23 p.m.)

AUTHORITY AND REFERENCE CITATIONS

Authority: Sections 26165 and 26225, Penal Code.

Reference: Section 26165, Penal Code.

INFORMATION DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

In late June 2022, the Supreme Court issued the *New York Rifle and Pistol Association v. Bruen* (2022) 597 U.S. 1 decision holding that licensing schemes requiring concealed carry license applicants to show "proper cause" (or something similar) to carry firearms are unconstitutional. The decision required a legislative response given California's similar concealed carry laws.

Penal Code section 26165 requires CCW license applicants to complete a course of firearms training as a condition of obtaining a license. With the passage of Senate Bill 2 (SB 2), all CCW training instructors must now be certified by the Department under Penal Code section 31635, or in a manner to be prescribed by regulation. (§ 26165, subd. (a)(4).)

On January 2, 2024, the Department's first emergency package adopting CCW license regulations was filed with the Secretary of State.

Effect of the Proposed Rulemaking:

The proposed regulations revise the qualifications necessary to become a CCW DOJ Certified Instructor. They also clarify that a reserve peace officer does not qualify for the exemption in section 4412.

Anticipated Benefits of the Proposed Regulations:

The Department's regulations protect public health and safety by ensuring that CCW instructors have the minimum level of skill, knowledge, and competency to teach the course required by Penal Code section 26165.

Comparable Federal Regulations:

There are no existing federal regulations or statutes comparable to the proposed regulations.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern CCW licenses.

Forms Incorporated by Reference:

- Concealed Carry Weapon Program DOJ Certified Instructor Application, Form BOF 1034 (Rev. 02/2024)

Other Statutory Requirements: These emergency regulations are exempt from review by the OAL. These emergency regulations shall be submitted to the OAL for filing with the Secretary of State and shall remain in effect no later than two years after the effective date of Senate Bill No. 2. (§ 26225, subd. (d).)

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: The Department anticipates \$3.235 million in costs for January 1, 2024, through June 30, 2024. The Department anticipates \$14.797 million in costs for FY 2024-25, and \$20.837 million in costs for FY 2025-26.

These costs may be partially offset by fees collected pursuant to Penal Code section 11105 and 26190. The Department anticipates \$12.354 million in revenue for FY 2024-25, and \$16.179 million in revenue for FY 2025-26.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary costs or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.