

# NOTICE OF PROPOSED RULEMAKING

Notice to be published on December 07, 2018

The Department of Justice (the Department) proposes to amend sections 4200 through 4240, of Title 11, Division 5, Chapter 8, of the California Code of Regulations (CCR) concerning the Dealer Record of Sale Entry System (DES) after considering all public comments, objections, and recommendations regarding the proposed action.

## 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 his or her authorized representative, may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5:00 p.m. on **January 23, 2019**. Only comments received by the Department by that time will be considered. Written comments must be submitted to:

Jessie Romine  
Bureau of Firearms  
Division of Law Enforcement  
Department of Justice  
P.O. Box 160487  
Sacramento, CA 95816-0487  
Phone: 916-227-4217  
Email: [DESregulations@doj.ca.gov](mailto:DESregulations@doj.ca.gov)

## AUTHORITY AND REFERENCE

Authority: Penal Code sections 28105, 28155, 28160, 28175, 28205, 28225, 30352, and 30370.

Reference: Penal Code sections 16190, 26815, 27540, 28105, 28155, 28160, 28175, 28205, 28210, 28215, 28220, and 30395.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Penal Code sections 28105 and 28155 authorize the Department to develop standards for electronic equipment for the electronic transmission of firearm purchaser/transferee/loanee (purchaser) information to the Department by California Firearm Dealers (dealers) necessary for the Department to perform a background check of the purchaser. Penal Code section 28160 authorizes the Department to write regulations regarding the manner with which the purchaser's right thumbprint shall be provided. Penal Code sections 28175, 28205, 28210 and 28225, authorize the Department to prescribe how and what information a dealer collects regarding the

sale/transfer/loan of a firearm, the form in which the information is to be provided, and the fees that are to be collected.

In addition, Penal Code sections 30352 and 30370 authorize the Department to develop a process to electronically approve the sale or transfer of ammunition that is processed through an ammunition vendor. The Department can only approve an ammunition sale or transfer after the ammunition vendor has collected an ammunition purchaser's or transferee's personal information in order to conduct a background check to ensure the individual is not prohibited by either state or federal law from possessing ammunition. Furthermore, Penal Code sections 30352 and 30370 authorize the Department to adopt regulations regarding the manner in which an ammunition purchaser's or transferee's personal information is to be collected.

#### ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

Revising the existing regulations will provide better guidance to firearms dealers on how to enter data into the DES to reduce the number of incomplete Dealer Record of Sale (DROS) transactions, and to ensure the accurate submission of information. The regulations will also describe the consequences to dealers for not completing DROS transactions. Further, the regulations will provide clear direction on special circumstances that arise when capturing a purchaser's right thumbprint for a background check.

Currently, when dealers start a DROS transaction in the DES, they do not always complete the process by submitting firearm delivery information. This is problematic because the Department does not know if the purchaser actually obtained a firearm, or if the transaction was intended to be corrected or cancelled. If the Department does not have information about a firearm purchase, sale or transfer, public safety may be at risk. It is also costly for the Department to make several attempts to follow up on an incomplete DROS transaction to determine if someone is actually in possession of a firearm.

Additionally, existing DES regulations are not applicable to ammunition vendors. Ammunition vendors will be required to use the DES to process ammunition purchases, sales and transfers commencing July 1, 2019 as prescribed by Penal Code sections 30352 and 30370.

#### SUMMARY OF THE EFFECT OF THE PROPOSED REGULATIONS

The regulations will ensure firearms dealers enter the correct information into DES to reduce the number of incomplete DROS transactions and allow for accurate submission of information.

In addition, the regulations will require firearms dealers to submit the necessary firearm delivery information to the Department. This allows the Department to receive notification on whether or not a firearm has been delivered to an individual.

These regulations provide ammunition vendors with instruction on how to use DES, which is necessary to process the sale of ammunition.

## EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

Pursuant to Government Code section 11346.5, subdivision (a)(3)(D), the Department must evaluate whether the proposed regulations are inconsistent or incompatible with existing state regulations. Pursuant to this evaluation, the Department has reviewed existing regulations pertaining to firearms within CCR Title 11, Division 5 and determined these proposed regulations are not inconsistent or incompatible. The proposed regulations amend the only existing regulations addressing use of the DES by firearms dealers and access to the DES by ammunition vendors. The use of the DES by ammunition vendors will be addressed in a separate rulemaking. Additionally, these regulations are not duplicative of existing Penal Code sections, but rather clarify and provide further detail to existing Penal Code sections.

## COMPARABLE FEDERAL REGULATIONS

The proposed action does not differ substantially from an existing comparable federal regulation or statute.

## 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 may occasionally lose revenue in the form of lost DROS transaction fees. If a dealer is locked out of its account for failing to complete a DROS transaction, then it cannot conduct business by submitting DROS transactions. If dealers are not making sales, the Bureau is not collecting the fee(s). The revenue loss is likely to be temporary until the dealer is in compliance.

Cost to any local agency or school district which must 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.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. The Department has made an initial determination that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Any adverse impact arises from statutes requiring a background check and reporting system for firearms and ammunition purchases.

Cost impacts that a representative person or business would incur in reasonable compliance with the proposed action: If a dealer does not comply with the proposed regulations, the dealer could lose revenue. This could occur because if the dealer does not complete the transaction in DROS

within the approved 30-day delivery period. A dealer's access to the DES will be suspended until the DROS transaction has been completed (by either selecting the "deliver gun," or "cancel" button). During the suspension period, the dealer or its authorized associate(s) or salesperson(s) will not be able to use the DROS account to sell, transfer, or deliver firearms.

If an ammunition vendor does not comply with the proposed regulations, it could lose revenue. If an ammunition vendor fails to establish a DES user account, it will have no mechanism to collect an ammunition purchaser's or transferee's personal information to submit to the Department. If the Department does not receive this personal information, it will not be able to approve an ammunition purchase or transfer and the ammunition vendor will be unable to sell or process the transfer of ammunition legally.

Significant effect on housing costs: None.

Small business determination: This proposed regulation may affect small business. If a dealer that is a small business does not comply with the proposed regulations, it could lose revenue. This could occur if the dealer does not complete the transaction in DROS within the approved 30-day delivery period. A dealer's access to the DES will be suspended until the DROS transaction has been completed (by either selecting the "deliver gun" or "cancel" button). During the suspension period, the dealer(s) or its authorized associate(s) or salesperson(s) will not be able to use the DROS account to sell, transfer, or deliver firearms.

If an ammunition vendor that is a small business does not comply with the proposed regulations by using the DES, it could lose revenue. If an ammunition vendor fails to establish a DES user account, then it has no mechanism to collect an ammunition purchaser's or transferee's personal information to submit to the Department. If the Department does not receive this personal information, the Department will not be able to approve an ammunition purchase or transfer and the ammunition vendor will be unable to sell or process the transfer of ammunition legally.

Results of the Economic Impact Assessment/Analysis:

The proposed regulations refine a process that is explained in existing regulations and clarify how to obtain a purchaser's thumbprint, the types of DES accounts needed for business, and the consequences for a dealer that does not complete the DROS transaction in DES. In addition, the proposed regulations provide a process for ammunition vendors to create a DES user account.

The Department has concluded that amendment of the proposed regulations will not likely:

- (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

Benefits of the Proposed Amendments: Revising the existing regulations will provide better guidance to firearms dealers on how to enter data into the DES to reduce the number of incomplete Dealer Record of Sale (DROS) transactions, and to ensure the accurate submission of information. Complete and accurate DROS entries by dealers regarding firearm ownership protects public safety and saves Department resources. Additionally, expanding the regulation to

incorporate ammunition vendors will protect public safety by providing a way for ammunition vendors to report ammunition sales.

### BUSINESS REPORT

In accordance with Government Code sections 11346.5, subdivision (a)(11) and 11346.3, subdivision (d), the proposed regulations do not require a report to be made to businesses or anyone.

### 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 its attention would be more effective in carrying out the purpose for which the action is proposed, 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.

### CONTACT PERSONS

Please direct inquiries concerning the proposed administrative action to:

Jessie Romine  
Bureau of Firearms  
Division of Law Enforcement  
Department of Justice  
P.O. Box 160487  
Sacramento, CA 95816-0487  
Phone: 916-227-4217  
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The back-up contact person for these inquiries is:

Jacqueline Dosch  
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### AVAILABILITY OF RULEMAKING FILE INCLUDING THE INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process. The text of the proposed regulations (the “express terms”),

the initial statement of reasons, and the information upon which the proposed rulemaking is based are available at the DOJ website at <http://oag.ca.gov/firearms/regs>. Copies may also be obtained by contacting Jessie Romine.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may amend 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 amends 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 Jessie Romine.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon completion, the final statement of reasons will be available on the Department website at <http://oag.ca.gov/firearms/regs>. You may also obtain a written copy of the final statement of reasons by contacting Jessie Romine.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

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