

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

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

Subdivision (d)

This section has been revised to correct the cross-reference to subdivisions (a), (b) and (c) which should be subdivisions (a)(1), (a)(2) and (a)(3). This is a non-substantive change because it does not materially alter the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE NOTICE PERIOD OF OCTOBER 4, 2019 THROUGH 5:00 PM, NOVEMBER 19, 2019.

The Department received five comments from three different individuals. The summary of comments and responses to comments are as follows:

COMMENT 1: The proposed regulations constitute an unauthorized use of the National Instant Criminal Background Check System. (Matthew Cubeiro)

RESPONSE 1: No change has been made in response to this comment because the Department determines that the comment objects to the underlying statute which is the basis for the proposed regulation. Penal Code section 29182, subdivision (b)(1) requires the Department to conduct a firearms eligibility check pursuant to Penal Code section 28220, which includes the use of the National Instant Criminal Background Check System (NICS). Furthermore, the State is authorized to access NICS for the purpose of obtaining information in connection with determining the eligibility of applicants under Penal Code section 29180, subdivision (e), to receive a unique serial number.

COMMENT 2: The definition for "receiver or frame, unfinished" lacks the clarity required under California's APA. (Matthew Cubeiro)

RESPONSE 2: No change has been made in response to this comment. This rulemaking does not materially alter the existing definition for "receiver or frame, unfinished." It makes minor grammatical changes to the definition so that it is consistent with other Bureau regulations, and adds an additional example of an item that meets the definition. This comment objects to the part of the definition which is not being amended by this rulemaking except for grammatical changes.

COMMENT 3: Prohibiting individuals whose background check results in an “Undetermined” status from obtaining unique serial numbers lacks necessity, authority, and consistency as required under the APA. (Matthew Cubeiro)

RESPONSE 3: No change has been made in response to this comment. Pursuant to Penal Code sections 29182 and 23910, the Department has the discretion to assign a distinguishing number or mark of identification to any firearm whenever the firearm lacks a manufacturer’s number or other mark of identification. However, the Department is prohibited from granting an application for such a serial number unless, among other things, the applicant “[demonstrates] that [he or she] is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.” (Pen. Code, § 29182, subd. (b)(1).) Consequently, when an applicant for a serial number fails to establish eligibility, California law requires that the application be denied.

COMMENT 4: General opposition to the Self Manufactured and Self Assembled Firearms regulations as well as opposition based on the regulations’ perceived effects on crime rates. (Sensei David)

RESPONSE 4: No change has been made in response to this comment. The Department is adopting the regulations for the reasons stated in the Initial Statement of Reasons.

COMMENT 5: General opposition to the Self Manufactured and Self Assembled Firearms regulations. (Scott Sheldon)

RESPONSE 5: No change has been made in response to this comment. The Department is adopting the regulations for the reasons stated in the Initial Statement of Reasons.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

ALTERNATIVES DETERMINATIONS

The Department has determined that no alternative it considered, or that it otherwise identified, or was 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.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No alternatives were proposed to the Department that would lessen any adverse economic impact on small business. The Department finds that these regulations would not have statewide adverse economic impact on businesses because these regulations implement a statutory requirement on new residents and do not directly affect businesses.

NONDUPLICATION

Some of the regulations may repeat or rephrase in whole or in part a state or federal statute or regulation. This was necessary to satisfy the clarity standard set forth in Government Code section 11349.1(a)(3).