

CALIFORNIA DEPARTMENT OF JUSTICE
TITLE 11. LAW
DIVISION 5. FIREARMS REGULATIONS
CHAPTER 2. CENTRALIZED LIST OF FIREARMS DEALERS

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

A private party sale, transfer, or loan (private party transfer) of a firearm must be conducted through a licensed firearms dealer. (Pen. Code, § 27545.) Existing law requires a firearms dealer who is unable to process the private party transfer to return the firearm to the person making the sale, transfer, or loan (seller). However, the dealer is prohibited from returning the firearm to the seller if that person is prohibited from possessing a firearm. In those cases, the dealer must transfer the firearm to a law enforcement agency. (Pen. Code, § 28050, subd. (e).)

A dealer who delivers possession of a firearm to a law enforcement agency must notify the Department within 72 hours after the delivery of the firearm in a manner and format prescribed by the Department. (Pen. Code, § 28050, subd. (g).) Currently, dealers give notification on the Report of Dealer Relinquishment, forms BOF 1401A and 1401B. Starting July 1, 2024, the dealer will report this information electronically via the Dealer Record of Sale (DROS) Entry System (DES).¹ (Cal. Code Regs., tit. 11, § 4025.)

Effective July 1, 2024, if the dealer cannot legally return the firearm to the seller, then the seller may request that the dealer retain possession of the firearm for a period of up to 45 days so that the seller may designate another person to take possession of that firearm in accordance with Penal Code section 27540. (Pen. Code, § 28050, subd. (f).) A dealer who retains possession of a firearm for this purpose must notify the Department within 72 hours in a manner and format prescribed by the Department. (Pen. Code, § 28050, subd. (g).)

BENEFITS ANTICIPATED FROM REGULATORY ACTION

The proposed regulation amends the procedure for a dealer to notify the Department that a firearm has been delivered to a law enforcement agency. Dealers will no longer be required to send a form to the Department once the information is reported via the DES.

The proposed regulation creates the procedure for a dealer to notify the Department that a firearm has been retained after a failed private party transfer. Starting July 1, 2024, the dealer will report this information electronically via the DES.

¹ The Department maintains the DES, a web-based application used by firearms dealers to report the sale, loan, transfer, redemption, and acquisition of handguns and long guns to the Department, as required by state law. (Pen. Code, § 28205; Cal. Code Regs., tit. 11, § 4200 et seq.)

This regulation protects public safety by implementing a statutory requirement that the Department be notified of the outcome of a failed private party transfer. This is particularly important when the original firearm possessor is prohibited from possessing of a firearm.

SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION

§ 4025. Notification of Dealer Relinquishment After a Failed Private Party Transfer.

Subdivision (a)(4) requires the dealer to report information about the seller, transferor, or person loaning the firearm to whom the dealer could not legally return the firearm. Identification type is added as information that must be reported to the Department. This is necessary because more than one type of identification can be used by the person who originally has possession of the firearm. Keeping accurate track of persons who are prohibited by state or federal law from possessing a firearm is a core public safety function of the Department's Bureau of Firearms. (Pen. Code, § 30000.)

Subdivision (c) requires the dealer to report the delivery of a firearm to law enforcement through the DES starting July 1, 2024. Dealers are already familiar with using the DES to report transactions to the Department. (See Cal. Code Regs., tit. 11, § 4200 et seq.) Dealers will also be required to enter the DROS or 45-day storage number for the failed private party transfer so that the record is linked to the failed private party transfer. The dealer shall certify that the information reported is true and correct under penalty of perjury. The necessity for a certification under penalty of perjury is to impress upon dealers the seriousness and importance of the report, to attest to the accuracy and completeness of the information submitted, and to deter misrepresentations and submission of false information.

Dealers will no longer be required to send a form to the Department once the report is made via the DES.

Changes without regulatory effect. Title is amended. Authority citation is amended.

§ 4026. Notification of Dealer Retention After a Failed Private Party Transfer.

Subdivision (a) provides three categories of information that must be reported to the Department.

Subdivision (a)(1) requires the firearms dealer to report information about the dealer. This is necessary so that the Department can identify the dealer who retained possession of the firearm.

Subdivision (a)(2) requires the dealer to report a description of the firearm. This is necessary so that the Department can identify the firearm. Keeping accurate records of firearms is a core public safety function of the Department's Bureau of Firearms. (Pen. Code, § 11106.)

Subdivision (a)(3) requires the dealer to report information about the seller, transferor, or person loaning the firearm to whom the dealer could not legally return the firearm. This is necessary so the Department can identify the person who originally had possession of the firearm. Keeping

track of persons who are prohibited by state or federal law from possessing a firearm is a core public safety function of the Department's Bureau of Firearms. (Pen. Code, § 30000.)

Subdivision (b) requires the dealer to report the retention of a firearm through the DES. Dealers are already familiar with using the DES to report transactions to the Department. (See Cal. Code Regs., tit. 11, § 4200 et seq.) After the dealer enters the DROS number for the failed private party transfer, DES will auto-populate the required information. The dealer shall certify that the information reported is true and correct under penalty of perjury. The necessity for a certification under penalty of perjury is to impress upon dealers the seriousness and importance of the report, to attest to the accuracy and completeness of the information submitted, and to deter misrepresentations and submission of false information.

Subdivision (c) clarifies that the 45-day period specified in Penal Code section 28050, subdivision (f)(1), begins when the seller, transferor, or person loaning the firearm requests that the dealer retain the firearm. This is consistent with the language in Penal Code section 28050, subdivision (f)(1) and (3). Before the end of the 45-day period, the seller, transferor, or person loaning the firearm may designate one person to receive the firearm. This is consistent with the language in Penal Code section 28050, subdivision (f)(1) and (2) ("a person") and (3) ("the person"). If the dealer cannot legally deliver the firearm to the designated person, the dealer shall forthwith deliver possession of the firearm to a law enforcement agency pursuant to Penal Code section 28050, subdivision (f)(3). Including this statutory requirement in the regulation is necessary for clarity so that all procedures are in one place.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department concludes:

(1) It is unlikely that the proposal would create or eliminate jobs within the state because the proposed regulation prescribes the procedure for existing firearm dealers to notify the Department that a firearm has been relinquished or retained after a failed private party transfer. Electronic instead of paper notification will not likely affect the number of customers purchasing firearms, or the time it takes for a dealer to complete the notification.

(2) It is unlikely that the proposal would create new businesses or eliminate existing businesses within the state because the proposed regulation prescribes the procedure for existing firearm dealers to notify the Department that a firearm has been relinquished or retained after a failed private party transfer. Electronic instead of paper notification will not likely affect the number of customers purchasing firearms, or the time it takes for a dealer to complete the notification.

(3) It is unlikely that the proposal would result in the expansion of businesses currently doing business within the state because the proposed regulation prescribes the procedure for existing firearm dealers to notify the Department that a firearm has been relinquished or retained after a failed private party transfer. Electronic instead of paper notification will not likely affect the number of customers purchasing firearms in California.

The Department also concludes that:

(1) The proposal would benefit the health and welfare of California residents by creating a procedure for a dealer to report to the Department that a firearm has been relinquished or retained after a failed private party transfer because the owner is not eligible to own or possess that firearm. This regulation protects public safety by implementing a statutory requirement that keeps firearms out of the hands of persons who are prohibited from owning or possessing a firearm.

(2) The proposal would not benefit worker safety because it does not regulate worker safety standards.

(3) The proposal would not benefit the state's environment because it does not change any applicable environmental standards.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR SIMILAR DOCUMENTS RELIED UPON

The Department did not rely on any technical, theoretical, or empirical studies, reports or similar documents in proposing these regulations.

EVIDENCE SUPPORTING DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the proposed action would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulation prescribes the procedure for a dealer to notify the Department that a firearm has been relinquished or retained after a failed private party transfer. The proposed regulation requires the dealer to report the outcome electronically via the DES.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Department finds that no reasonable alternatives were presented to, or considered by, the Department that would lessen any adverse impact on small business. Requiring the dealer to notify the Department electronically via the DES is the most efficient way to make sure that the dealer provides all required information. Dealers are already familiar with using the DES to report transactions to the Department.

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES

The Department finds that no alternatives were presented to, or considered by, the Department that would be more effective in carrying out the purpose of these proposed regulations or would be as effective and less burdensome to affected private persons than these proposed regulations.

Performance Standard as Alternative:

Penal Code section 28050, subdivision (g)(1), requires a dealer who retains possession of a firearm after a failed private party transfer to notify the Department within 72 hours after the retention of the firearm in a manner and format prescribed by the Department. Subdivision (g)(2) requires a dealer who delivers possession of a firearm to a law enforcement agency after a failed private party transfer to notify the Department within 72 hours after the delivery of the firearm in a manner and format prescribed by the Department.

The proposed regulation requires the dealer to notify the Department electronically via the DES. This is the most efficient way to make sure that the dealer provides all required information. Dealers are already familiar with using the DES to report transactions to the Department.