

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

Proposition 63 (The Safety for All Act of 2016) and Senate Bill 1235 (2016) are newly enacted laws that regulate the sale or transfer of ammunition in California. Proposition 63, section 2, paragraphs 6 and 7 state:

“6. We know background checks work. Federal background checks have already prevented more than 2.4 million gun sales to convicted criminals and other illegal purchasers in America. In 2012 alone, background checks blocked 192,043 sales of firearms to illegal purchasers including 82,000 attempted purchases by felons. That means background checks stopped roughly 225 felons from buying firearms every day. Yet California law only requires background checks for people who purchase firearms, not for people who purchase ammunition. We should close that loophole.

7. Right now, any violent felon or dangerously mentally ill person can walk into a sporting goods store or gun shop in California and buy ammunition, no questions asked. That should change. We should require background checks for ammunition sales just like gun sales, and stop both from getting into the hands of dangerous individuals.”

Proposition 63 and Senate Bill 1235 (2016) authorize the Department of Justice (Department) to adopt these regulations to interpret, and make specific the Penal Code sections that implement a background check for the purchase and transfer of ammunition.

ANTICIPATED BENEFITS

These regulations will benefit public safety by various means, including regulating the sale of ammunition to prevent the acquisition by convicted felons, the dangerously mentally ill and other persons who are prohibited from possessing firearms and ammunition.

These regulations will explain the process that must be followed to purchase or transfer ammunition, or what to do if an attempted purchase or transfer is denied, and will clarify what is needed to be exempt from Department approval to purchase or transfer ammunition. In brief, these regulations will provide the public and ammunition vendors with the directives that will guide both in the ammunition sale and transfer process.

PURPOSE & NECESSITY

§ 4300. Title and Scope.

This regulation identifies the scope of the new chapter - Chapter 11, “The Department of Justice Regulations for Ammunition Purchases or Transfers.” This regulation is necessary to identify the title and explain the scope of the regulations.

§ 4301. Definition of Key Terms.

Subdivisions (a) through (p) of this regulation define firearm-related words used throughout this chapter. This section is necessary because it clarifies commonly used firearm-related terms. The Department and members of the public can apply the same definitions to the firearm-related terminology used in this chapter; therefore, it will help to eliminate any misunderstandings between the Department and the public.

§ 4302. Standard Ammunition Eligibility Check.

This section establishes the fee for conducting a Standard Ammunition Eligibility Check and explains the process for an individual to purchase or transfer ammunition pursuant to Penal Code section 30370, subdivision (b).

Subdivision (a) establishes the fee for a Standard Ammunition Eligibility Check as \$1.00. The fees collected from the Standard Ammunition Eligibility Check will be used to repay the loan for start up costs including consultant and payment processing contract fees, software and hardware purchases, and personnel. (See Penal Code section 30371.) The fees also will provide for ongoing system maintenance (including recordkeeping and storage), and salaries of the 73 permanent employees. The Department will repay the loan on an ongoing basis as revenues from the Standard Ammunition Eligibility Check are collected. This subdivision is necessary to specify the fee assessed pursuant to Penal Code section 30370, subdivision (e) and to recover the total cost of implementation.

Subdivision (b) specifies the personal information that is to be collected from the purchaser or transferee, and outlines the submission process. This subdivision is necessary because an ammunition vendor needs to know what personal information to collect and submit in order for the Department to complete a Standard Ammunition Eligibility Check.

Subdivisions (c) through (d) specify that the Department shall approve or reject an ammunition purchase or transfer and outlines the process if a purchase or transfer is rejected. These subdivisions are necessary to explain that the Department will approve or reject ammunition purchases or transfers and provides the purchaser or transferee with the ability to understand why their transaction was rejected.

§ 4303. One-Time Ammunition Transactions.

This regulation establishes the process for one-time ammunition purchases or transfers. This regulation is necessary because an individual may have to request to undergo a Basic Ammunition Eligibility Check from the Department for a one-time ammunition purchase or transfer.

Subdivision (a) establishes the fee for a Basic Ammunition Eligibility Check as \$19.00. The \$19.00 fee allows the Department to recover the cost of processing the Basic Ammunition Eligibility Check, and is consistent with the fee paid for a firearms eligibility check. The Basic Ammunition Eligibility Check is essentially the same background check as a firearms eligibility

check. This subdivision is necessary to specify what the purchaser or transferee will need to pay for a Basic Ammunition Eligibility Check, as authorized by Penal Code section 30370, subdivision (c).

Subdivision (b) specifies the information an ammunition vendor must collect and submit into the Dealer Record of Sale Entry System (DES) website. This subdivision is necessary because an ammunition vendor needs to know what personal information to collect and submit in order for the Department to complete a Basic Ammunition Eligibility Check.

Subdivision (c) establishes that an ammunition vendor will provide the purchaser or transferee with an Ammunition Transaction Number (ATN), which may be used to check the status of the Basic Ammunition Eligibility Check on the Department's California Firearms Application Reporting System (CFARS) website. This subdivision is necessary to inform an individual how to use an ATN to obtain the status for the Basic Ammunition Eligibility Check from the Department.

Subdivisions (c)(1) through (2) establish that an approved Basic Ammunition Eligibility Check can be used for one ammunition purchase or transfer, and expires 30 days after issuance, and if a Basic Ammunition Eligibility Check is denied, the Department will provide the reason for the denial via U.S. Mail. These subdivisions are necessary to explain the limitations of a Basic Ammunition Eligibility Check, and its expiration period, and to explain the denial notification process.

Subdivision (d) explains that upon completion of the Basic Ammunition Eligibility Check, the transaction status will be updated in DES. This subdivision is necessary because the DES transaction status change is an indication to the ammunition vendor that the Department has completed the Basic Ammunition Eligibility Check, and upon approval, the ammunition vendor may then proceed with the ammunition sale or transfer.

§ 4304. Firearms Eligibility Check.

As authorized pursuant to Penal Code section 30352, subdivision (c), an individual that has been approved to purchase or transfer a firearm shall also be approved to purchase or transfer ammunition within the same transaction. This regulation establishes the process for an individual to purchase or transfer one or more firearms and ammunition in the same transaction.

Subdivision (a) explains that, except as provided in subdivision (b), an individual purchasing or transferring one or more firearms and ammunition within the same transaction shall only pay the fee prescribed by the California Code of Regulations, Title 11, section 4001, for a firearms eligibility check. This subdivision is necessary because both the firearms dealer and the individual need to understand the fee to be collected when one or more firearms and ammunition are purchased or transferred in the same transaction.

Subdivision (b) specifies two scenarios when a California resident may receive ammunition prior to the completion of the firearms eligibility check. Purchasers may take possession of the ammunition if they pay the \$1.00 fee for either the Standard Ammunition Eligibility Check or

the Certificate of Eligibility (COE) verification process, and are approved by the Department. This subdivision is necessary to explain to a firearms dealer that when ammunition is purchased or transferred within the same transaction as a firearm, ammunition can only be delivered prior to the firearms eligibility check if the individual has been approved following the completion of either the Standard Ammunition Eligibility Check or the COE verification.

§ 4305. COE Verification Process.

This regulation explains the process for the Department to process a COE holder's ammunition purchase or transfer. Pursuant to Penal Code section 30370, subdivision (a), the Department has the authority to process a COE holder's ammunition purchase or transfer. This regulation is necessary to establish a process for a COE holder to be approved by the Department to purchase or transfer ammunition.

Subdivision (a) establishes the fee for a COE verification as \$1.00. The fees collected from the COE verification will contribute toward start up costs and ongoing system maintenance, including employee salaries. This subdivision is necessary to specify the fee for a COE verification.

Subdivision (b) specifies what information the ammunition vendor will collect from the COE holder for the Department to verify the status of his or her COE in order to approve a purchase or transfer of ammunition. The ammunition vendor is required to submit the COE holder's personal information along with the COE number to the DES website. This subdivision is necessary to explain to an ammunition vendor how to process a COE holder's purchase or transfer.

Subdivision (c) specifies that the Department will approve or reject a COE holder's ammunition purchase or transfer and inform the ammunition vendor of the determination. If the Department determines the individual has a valid COE, the ammunition purchase or transfer shall be approved, but if the Department determines the individual's COE is not valid, the Department shall reject the ammunition purchase or transfer. This subdivision is necessary to ensure the ammunition vendor understands the Department must approve or reject the ammunition purchase or transfer.

§ 4306. Ammunition Purchases or Transfers for Exempted Individuals.

Subdivisions (a)(1) through (5) specify the types of identification that will identify an individual who is exempt from Department approval to purchase or transfer ammunition. These subdivisions are necessary because an ammunition vendor will need to verify exempted individuals' identities before processing an ammunition purchase or transfer without Department approval.

Subdivision (b) specifies that an ammunition vendor shall keep copies of the identification that identify sworn state or local peace officers or federal law enforcement officers and the original verifiable written certification from the head of the agency, and these records are to be made available to the Department upon request. Pursuant to Penal Code section 30352, subdivision

(e)(8)(iii), an ammunition vendor is required to keep the certification with the record of sale for ammunition transactions processed for sworn state or local peace officers or federal law enforcement officers. This subdivision is necessary to explain how this information must be recorded and reported to the Department.

Subdivision (c) clarifies that once an ammunition vendor has verified that an individual is exempt from Department approval for an ammunition purchase or transfer, the ammunition vendor may provide possession of the ammunition to the exempt individual. This subdivision is necessary because the ammunition vendor can only provide ammunition to an individual after it has verified that individual is exempt from the Department's ammunition eligibility check or the COE verification process.

§ 4307. Telephonic Access for Ammunition Vendors.

This regulation explains the process for an ammunition vendor to obtain telephonic access to the Department for the purposes of processing the sale or transfer of ammunition, which will allow the Department to manually determine if an individual can possess ammunition. If the ammunition vendor is able to demonstrate it does not have access to Internet service, the ammunition vendor will be able to obtain telephonic access to the Department. This regulation is necessary because an ammunition vendor needs a mechanism to apply for telephonic access to the Department, and the Department is required to process each ammunition purchase or transfer that is conducted by or processed through an ammunition vendor on a telephone line. Telephonic access for an ammunition vendor will allow the Department to manually verify that an individual is eligible to possess ammunition following the completion of a Standard Ammunition Eligibility Check, Basic Ammunition Eligibility Check, or the COE verification process.

Subdivisions (a) and (b) explain what document(s) an ammunition vendor can submit to prove that the service provider in their area does not offer Internet service at the ammunition vendor's place of business. This document is required to be mailed with the Ammunition Vendor (Non-Firearms Dealer) Application for Telephonic Approval, Form BOF 1020 (Orig. 05/2018) to apply for telephonic access to the Department. This subdivision is necessary because an ammunition vendor needs to understand the requirement to show it needs telephonic access because it cannot obtain Internet access. Telephonic access is the only mechanism for an ammunition vendor to submit an ammunition purchaser's or transferee's personal information to the Department when it does not have Internet service.

Penal Code section 30370 provides that it is important that this form be signed under penalty of perjury because the vendor is attempting to utilize a service the Legislature has made available only under specified conditions. By signing under penalty of perjury, the vendor confirms for the Department that it is aware of the restrictions and meets them.

Subdivision (c) clarifies that the Department shall either approve or deny the ammunition vendor's application for telephonic access. This subdivision is necessary because the Department shall approve telephonic access before an ammunition vendor can utilize the

Department's telephone line to submit an ammunition purchaser's or transferee's personal information to the Department.

§ 4308. Delivery of Ammunition Following DES Submission.

Subdivision (a) specifies that when the Department approves an ammunition purchase or transfer, the DES transaction record will change from "Pending" to "Approved." The DES transaction record indicates the Department's determination for the ammunition purchase or transfer. This subdivision is necessary because the ammunition vendor can only deliver ammunition to a purchaser or transferee if the DES transaction record shows as "Approved." Subdivision (b) specifies that ammunition may only be delivered if the status of the DES transaction record is approved. This subdivision is necessary to let ammunition vendors know when ammunition can be delivered to a purchaser or transferee.

Subdivision (c) requires that when an ammunition vendor delivers ammunition to a purchaser or transferee, the ammunition vendor shall submit the ammunition sale information to the Department. This subdivision is necessary because this records the ammunition transaction information as required pursuant to Penal Code section 30352, subdivision (b).

§ 4309. Billing, Payment, and Suspension for Non-Payment.

Subdivision (a) explains how an ammunition vendor is billed by the Department for the completion of ammunition eligibility checks and COE verifications. This subdivision is necessary because the ammunition vendor is required to collect fees for ammunition eligibility checks and COE verifications and these fees need to be paid to the Department.

Subdivision (b) specifies that an ammunition vendor shall pay the Department via a major credit card or debit card, and that this payment is due within 30-days of the billing statement date. This subdivision is necessary, so the ammunition vendor can both understand how to pay the bill and when specifically the bill is due.

Subdivision (c) explains that if the ammunition vendor does not pay the bill for the ammunition eligibility check and COE verification activity to the Department, the ammunition vendor's access to DES will be suspended until full payment for the past due amount is received. This subdivision is necessary because it explains the consequence for not paying this bill to the Department. If the ammunition vendor does not pay this bill to the Department, the ammunition vendor will be unable to facilitate an ammunition eligibility check or COE verification because the Department will suspend its access to DES.

Subdivision (d) clarifies that when an ammunition vendor's access to DES is suspended, the ammunition vendor will be unable to process or conduct an ammunition purchase or transfer for an individual that needs to undergo an ammunition eligibility check or COE verification. While an ammunition vendor's access to DES is suspended, the ammunition vendor shall still maintain its status as an ammunition vendor licensee. This subdivision is necessary to explain that if an ammunition vendor loses access to DES, its ammunition vendor license status will not be affected.

AUTHORITY AND REFERENCE

Authority: Sections 30352, and 30370, Penal Code.

Reference: Sections 16150, 16151, 26710, 28180, 28220, 30300, 30305, 30312, 30314, 30342, 30352, 30370, 30385, 30390, and 30395, Penal Code.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

Department staff relied upon their experience, expertise, and the following sources when writing these proposed regulations:

Popken, Ben, Consumer News and Business Channel, “America’s Gun Business, By the Numbers” <https://www.cnn.com/2015/10/02/americas-gun-business-by-the-numbers.html>, published on October 2, 2015.

Henderson, Peter and Daniel Trotta, Reuters, “What’s missing in U.S. gun control scramble? Bullets” <https://www.reuters.com/article/us-usa-guns-ammunition/whats-missing-in-u-s-gun-control-scramble-bullets-idUSBRE90J02K20130120>, published on January 20, 2013.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Purpose

The Department proposes to adopt California Code of Regulations Title 11, sections 4300 through 4309 to interpret, and make specific the Penal Code sections that implement an eligibility check for the purchase and transfer of ammunition.

The Department estimates there will be approximately 13 million ammunition purchases or transfers conducted each year with a Standard Ammunition Eligibility Check. This calculation was based on the fact that in 2014, California residents accounted for just 931,037 firearms background checks, which is just 4.44 percent of the 20,968,273 firearms background checks that were completed nationally in the United States.¹ Additionally, U.S. residents purchase around 12 billion rounds annually.² If this rate of firearm background checks is an indicator of approximate overall gun ownership, and in turn ammunition usage, then this equates to approximately 13.2 million boxes of ammunition per year. For this calculation, the Department has assumed that 4.44 percent of 12 billion is 528 million, and 528 million divided by 40 (40 being the amount of rounds in each box ammunition) ultimately totals approximately 13.2 million boxes of ammunition purchased by California residents each year.

¹ Ben Popken, “America’s Gun Business, By The Numbers,” Consumer News and Business Channel (CNBC), published October 2, 2015, <https://www.cnn.com/2015/10/02/americas-gun-business-by-the-numbers.html>.

² Peter Henderson and Daniel Trotta, “What’s missing in the U.S. gun control scramble? Bullets,” Reuters, published on January 20, 2013, <https://www.reuters.com/article/us-usa-guns-ammunition/whats-missing-in-u-s-gun-control-scramble-bullets-idUSBRE90J02K20130120>.

The Department translated the 13.2 million boxes of ammunition to the estimated 13 million ammunition transactions (conducted with a Standard Ammunition Eligibility Check) after careful consideration of mitigating factors which include ammunition purchased at the same time of a firearm, multiple boxes of ammunition purchased in the same transaction, and individuals transitioning to reloading their own ammunition.

Private Sector

The Department determines that these regulations will not have a significant impact on the creation or elimination of private sector jobs within the state of California. The estimated impact on businesses stems from the implied cost for ammunition vendors to process ammunition transactions. The Department estimates that it will take approximately two minutes to process a Standard Ammunition Eligibility Check, so the implied costs for an ammunition vendor can be derived from taking the approximate two-minute processing time and multiplying it by the estimated 13 million transactions, while valuing ammunition vendor staff time at \$11 per hour. In total, the annual direct cost for ammunition vendors to process these transactions is \$4,766,667. Ammunition purchasers will also have the same annual implied cost of \$4,766,667 since they have to wait for the transaction to be processed and their time is valued at \$11 per hour. An ammunition vendor can initiate a Standard Ammunition Eligibility Check, and even when the Department is processing the transaction, the ammunition vendor can still initiate additional ammunition transactions while ammunition purchasers continue to shop and likely purchase other items.

The Department has determined that these regulations will not have a significant impact on the creation of new businesses or elimination of businesses within California or affect the expansion of businesses currently doing business in California because the effects of these regulations will be minimal. The costs for a business to comply with these regulations are minimal because although it takes time for the Department to process an ammunition eligibility check, ammunition purchasers will be shopping for other products in the store, allowing the ammunition vendor to sell more items to the public.

Public Sector

The Department determines that these regulations will not have a significant impact on the creation or elimination of public sector jobs within the state of California. The Department anticipates hiring personnel to develop the systems and manage ongoing ammunition sales and transfers. The revenue to pay for these employees is derived from the following fees. The Department is authorized to charge a \$1.00 fee for a Standard Ammunition Eligibility Check, a \$19.00 fee for a Basic Ammunition Eligibility Check, and a \$1.00 fee for the verification of a COE. The Department expects to collect \$13 million per year in revenue from the Standard Ammunition Eligibility Check and COE verification process (based on 13 million ammunition transactions per year). The Department expects to collect \$950,000 per year from the Basic Ammunition Eligibility Check (based on approximately 50,000 Basic Ammunition Eligibility Checks conducted per year). From this revenue, the Department will repay a \$25 million loan to the General Fund used for the start-up costs (that include consultant and payment processing contracts, software and hardware purchases, and personnel) of the implementation of

Penal Code sections 30352 and 30370, and ongoing employee salaries, system maintenance, and payment processing contracts.

The Department has made these determinations based on the fact that the fee for an ammunition eligibility check or the COE verification process is minimal and will not deter an individual from purchasing or transferring ammunition in California. Therefore, an individual will still purchase or transfer ammunition from an ammunition vendor, and an ammunition vendor will not be losing business from these regulations.

The proposed regulations are beneficial to the health and welfare of California's residents because they create a process which will ensure an individual prohibited by either state or federal law to possess ammunition will be unable to purchase or transfer ammunition. An ammunition purchase or transfer completed in California must be conducted by or processed through an ammunition vendor unless otherwise exempted. An ammunition vendor is required to submit an ammunition purchaser's or transferee's personal information directly to the Department, so the Department can complete an ammunition eligibility check or verify that the individual has a valid COE prior to approving an ammunition purchase or transfer to take place. Furthermore, these regulations will benefit the welfare of California residents because the Department shall only approve an ammunition purchase or transfer for an individual who is not prohibited by either state or federal law to possess ammunition. These regulations minimize the likelihood of a dangerous prohibited individual taking possession of ammunition.

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

The primary evidence supporting the Department's determination that these regulations will not result in adverse economic impact directly affecting business is that despite there being direct and implied costs to ammunition vendors and ammunition purchasers for the time it takes the Department to process a Standard Ammunition Eligibility Check, there is no evidence that these regulations will deter ammunition sales or be a significant burden to ammunition purchasers. Ammunition purchases are considered a leisurely activity, and oftentimes done while out shopping for other items or browsing for future purchases, which is beneficial to both parties.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other reasonable alternatives were presented to, or considered by, the Department that would be either more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES, AND THE AGENCY'S REASONS FOR REJECTING THEM

No other reasonable alternatives were presented to, or considered by, the Department that would be either more effective in carrying out the purpose for which the action is proposed, or would be

as effective and less burdensome.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

The proposed regulations are not mandated by federal law or regulations.