

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

§ 4031. Definition of Key Terms.

The Department of Justice (Department) revised the definition of “Certificate of Eligibility” to reference Penal Code section 18205 which addresses gun violence restraining orders. A Certificate of Eligibility (COE) means the Department has checked its records and determined that the applicant is not prohibited from acquiring or possessing a firearm or ammunition. Pursuant to Penal Code section 18205, an individual with a gun violence restraining order is prohibited from acquiring or possessing a firearm or ammunition for a five-year period. As such, this reference needs to be added to the definition of a COE.

§ 4032. Qualifications.

The Department added Penal Code section 18205, which addresses gun violence restraining orders, to the prohibiting categories described in proposed section 4032 of these regulations. A COE means the Department has checked its records and determined that the applicant is not prohibited from acquiring or possessing a firearm or ammunition. Pursuant to Penal Code section 18205, an individual with a gun violence restraining order is prohibited from acquiring or possessing a firearm or ammunition for a five-year period. As such, this reference needs to be added to the list of prohibiting offenses.

§ 4036. Modifications to Applicant Information.

When a COE holder makes any modifications to his or her name, date of birth, gender, driver license type/identification number, or citizenship, the certificate holder is required to electronically upload documents verifying the change. This requirement allows the Department to verify that the change is legitimate and accurate. The list of acceptable documents was added in proposed section 4036, subdivisions (a)(1)(A) through (a)(1)(G) for clarity and efficiency.

§ 4041. Revocation, Reasons, and Process.

The Department added Penal Code section 18205, which addresses gun violence restraining orders, to the prohibiting categories described in proposed section 4041 of these regulations. A COE means the Department has checked its records and determined that the applicant is not prohibited from acquiring or possessing a firearm or ammunition. Pursuant to Penal Code section 18205, an individual with a gun violence restraining order is prohibited from acquiring or possessing a firearm or ammunition for a five-year period. As such, this reference needs to be added to the list of prohibiting offenses that constitute grounds for the revocation of a COE.

LOCAL MANDATE DETERMINATION

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

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE NOTICE PERIOD OF MARCH 9, 2018 THROUGH APRIL 27, 2018.

The Department received 12 different comments from two persons. Attachment A (eight pages) is a summary of the comments submitted during the 45-day comment period and the Department's responses. Attachment B is an alphabetical list (one page) of the commenters and identifies (by number) the comment(s) made by each person.

COMMENTS RECEIVED DURING THE PERIOD THE MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC JULY 19, 2018 THROUGH AUGUST 6, 2018.

The Department did not receive any comments during the 15-day comment period.

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.

ALTERNATIVES DETERMINATIONS

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

PUBLIC COMMENTS AND DEPARTMENT OF JUSTICE RESPONSES

#	Summarized Comment	DOJ Response
1.	General opposition to the Certificate of Eligibility regulations.	This is a non-specific, generalized comment in opposition to the Certificate of Eligibility regulations. Absent a specific comment regarding this regulatory submittal, the Department of Justice (the Department) cannot provide a more specific response.
2.	Proposed section 4036 alters, amends and/or enlarges the scope of power conferred upon DOJ. This public comment is submitted to challenge DOJ's rulemaking authority concerning that section.	The Department rejects this comment. No change has been made in response to this comment because Penal Code section 26710 provides the Department authority to adopt regulations to administer the certificate of eligibility program.
3.	<p>Proposed section 4031(c) references "California Firearms Dealer" or "CFD" and defines that term. Throughout the proposal, the regulations also refer to a dealer's CFD number.</p> <p>The problem here is that California law only issues firearm dealer licenses to individuals, and businesses selling firearms often have multiple licensees and licenses to prevent problems if a single licensee were to die or change employment. If a firearm business only had one licensee and that licensee died, the business could no longer legally sell firearms under California law. Thus, responsible firearms businesses often have multiple licensees to protect against this potential problem.</p> <p>The proposed regulations then beg the question: Which CFD number should prospective COE holders use when a CFD number is required by the proposed regulation? The proposed regulations do not specify this, nor do they provide any guidance when there are multiple CFD numbers for one location employing multiple COE holders. Without further guidance these proposed regulations lack clarity.</p>	The Department disagrees with this comment because only one CFD number is issued per location. The Department believes the commenter is confusing the CFD number with the COE number. COEs are assigned to individuals, whereas a CFD is issued per location.

#	Summarized Comment	DOJ Response
4.	<p>Proposed sections 4031, 4032, and 4041 reference firearm prohibiting categories located under California and federal law. COEs act as continuing background checks, confirming a person's eligibility to own and possess firearms and ammunition. Noticeably absent from the referenced California and federal code sections is Penal Code Section 18205 which restricts a person from owning and possessing firearms because of a "Gun Violence Restraining Order." These types of protective orders are not covered by the Penal Code sections referenced in proposed sections 4031(d), 4032(b), and 4041(a). An individual could be prohibited from possessing firearms because of a GVRO and still obtain, keep, and renew a COE. This oversight is inconsistent with California law.</p>	The Department accepts this comment. In response to this comment, the Department has added Penal Code section 18205 to proposed sections 4031, 4032, and 4041.
5.	<p>Proposed Section 4036(a)(l) requires COE holders to notify DOJ when there are any changes to the person's "name, date of birth, gender, driver license type/identification number, or citizenship" from what was originally provided during the application process. The COE holder is required to "electronically upload documents verifying the change as prompted by CFARS" but the code is silent on what types of documents are acceptable for this purpose. DOJ's initial statement of reasons just refer to these as "verifying documents to prove the change."</p> <p>This proposed regulation leaves it up to DOJ to determine what types of documents are acceptable and does not specify what options, if any, a COE holder has when DOJ determines the information is insufficient for this purpose. This proposed regulation is unclear and does not meet APA requirements.</p>	The Department accepts this comment. In response to this comment, the Department has amended proposed section 4036 to detail each acceptable document.

#	Summarized Comment	DOJ Response
6.	Proposed Section 4036(b)(2) requires firearm and ammunition dealers to update the CFARS system when an employee who holds a COE is hired and no longer works for the licensee. But this requirement is unnecessary because in the proceeding subsection (b)(1), DOJ already requires employees to update the CFARS database when they are hired or no longer employed by their employer. DOJ is placing identical burdens on two different people to do the same thing. It is unnecessary.	The Department rejects this comment. It is in the interest of public safety for the Department to be notified any time there is a change in employment. This requirement is an added safeguard to protect the employer and the employee when a COE holder's employment status changes. The Department is required, pursuant to Penal Code sections 26915, subdivision (b) and 30347, subdivision (b) to notify employers of the employee COE holders in the event they become lawfully ineligible to possess firearms or ammunition during the term of the COE, so it is necessary for the Department to know when to associate and disassociate an employee with an employer.
7.	The proposed Section 4036(b)(2) requirement also exceeds DOJ's authority to issue, renew, and revoke COEs. According to Penal Code section 26710, DOJ is authorized to issue COEs that certify the Department of Justice has checked its records and determined that the recipient of the COE is not prohibited from possessing firearms. The DOJ is also, according to section 26710, required to adopt regulations to administer the COE program. This application and background check process is conducted between the individual and DOJ. To add a requirement for licensed firearm and ammunition dealers, who are not part of this process, places an additional burden on firearm and ammunition vendors that is unsupported by California law and exceeds DOJ's authority.	The Department rejects this comment. Both California Firearm Dealers and California Ammunition Vendors are required to have a COE, hence section 4036 (b)(2) refers to those parties in their capacity pertaining to the COE program. Proposed section 4036 (b)(2) seeks to identify who is associated with which business. The Department is required, pursuant to Penal Code sections 26915, subdivision (b) and 30347, subdivision (b) to notify employers of the employee COE holders in the event they become lawfully ineligible to possess firearms or ammunition during the term of the COE, so it is necessary for the Department to know when to associate and disassociate an employee with an employer.

#	Summarized Comment	DOJ Response
8.	<p>Proposed section 4036(b)(2) references an “employer CFARS account.” It does not make any further or additional reference to this account anywhere in the proposed regulations. Nor does this account appear to be anywhere in the Penal Code or anywhere else in the California Code of Regulations. The account therefore appears to exist only for this subsection.</p> <p>The reference to this “account” raises several troubling questions. For instance, where does DOJ obtain the authority to create this account? Who has access to it? How is this account established, verified, suspended, maintained, and/or renewed? As mentioned above, multiple CFD holders may employ multiple COE holders. Which CFD holder is responsible for this account? None of these questions are addressed anywhere because there is no regulation creating or controlling this account.</p> <p>We are informed and believe that this account already exists in the CFARS system, if this is the case it constitutes an underground regulation and raises substantial privacy concerns relating to access of confidential employee information. The proposed regulations should be amended to create and clarify the requirements of this “employer CFARS account.” Without supporting regulations, proposed section 4036(b)(2) exceeds DOJ authority to implement.</p>	<p>The Department rejects this comment because all individuals that have a COE must also have a CFARS account. There is no specific distinction between the employer and employee CFARS accounts. Both accounts have the functionality to associate employment with one another without disclosing personal information. However, the employer is able to associate and disassociate employees in order to maintain an accurate record of employment.</p> <p>The Department is required, pursuant to Penal Code sections 26915, subdivision (b) and 30347, subdivision (b) to notify employers of the employee COE holders in the event they become lawfully ineligible to possess firearms or ammunition during the term of the COE, so it is necessary for the Department to know when to associate and disassociate an employee with an employer.</p>

#	Summarized Comment	DOJ Response
9.	<p>Proposed section 4031 (a) defines “California Ammunition Vendor” or “CAV” as “an individual with a valid ammunition vendor license issued pursuant to Penal Code section 30342.” (Emphasis added.) Penal Code section 30342, however, expressly states mandates that such licenses are mandated for “any person, firm, corporation, or other business enterprise.”</p> <p>The proposed definition is not necessary, as there is no justifiable reason to limit the definition solely to individuals. With regard to the Penal Code generally, private corporations stand on the same footing as individuals, since this statute provides that “person” includes corporation. <i>People v. Palermo Land & Water Co.</i> (Cal. App. Jan. 31, 1907), 4 Cal. App. 717. Moreover, the DOJ lacks the authority to implement the provision, since the regulation attempts to redefine the meaning of California Ammunition Vendors in such a manner that limits their applicability solely to a subset of those that the legislature included within the scope of Penal Code section 30342. Finally, the proposed regulation is inconsistent with the statutory scheme, which is demonstrated by the inclusion of firms, corporations, or other business enterprises in the set of entities that are entitled to California Ammunition Vendors within Penal Code section 30342.</p>	<p>The Department accepts this comment in part because we acknowledge the fact that Penal Code section 30342 includes “any person, firm, corporation, or other business enterprise.” We used “individual” with the intention of simplifying the regulations to address the intended audience. However, the Department is not attempting to limit Penal Code section 30342. In this context, individual will mean “person, firm, corporation, or other business enterprise” pursuant to Penal Code section 30342. Thus, no change is required in response to this comment.</p>

#	Summarized Comment	DOJ Response
10.	<p>Proposed section 4031 (d) defines “Certificate of Eligibility.” This is inconsistent with the meaning of COE found in Penal Code section 26710(b), which void of any reference to the eligibility to possess ammunition and is limited to the eligibility of to possess, receive, own, or purchase a firearm, stating: “The Department of Justice shall examine its records and records available to the department in the National Instant Criminal Background Check System in order to determine if the applicant is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.”</p> <p>Moreover, subsection (c) mandates that the DOJ issue the Certificate if the person is not prohibited from possessing firearms. Thus, regardless of whether a person is prohibited from possessing ammunition, if they are permitted to possess firearms, the DOJ shall issue a COE.</p> <p>Penal Code section 30347 does place a duty on the Department to notify vendors if the agent or employee with the Certificate of Eligibility becomes prohibited from possessing firearms or ammunition, but that duty to notify is a mandate separate and apart from the statutory mandate on issuing and administering certificates of eligibility, which is limited to firearm eligibility alone.</p> <p>The DOJ lacks the authority to change the meaning and scope of a Certificate of Eligibility, as the Legislature merely granted the DOJ the authority to administer the COE program – not redefine it.</p>	<p>The Department rejects this comment. No change has been made in response to this comment. California Penal Code section 30305, subdivision (a) states that “No person prohibited from owning or possessing a firearm under Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, shall own, possess, or have under custody or control, any ammunition or reloaded ammunition.” (Pen. Code, § 30305, subd. (a).)</p> <p>Furthermore, Penal Code section 30347, subdivision (b) states, “An ammunition vendor shall require any agent or employee who handles, sells, delivers, or has under his or her custody or control any ammunition, to obtain and provide to the vendor a certificate of eligibility from the Department of Justice issued pursuant to Section 26710...”</p>

<p>11. Proposed section 4035(b)(2)(D) states that “we may need to share the information you provide us with any Bureau of Firearms representative or other persons designated by the Attorney General upon request.” Proposed Regulation 4037(b)(2) incorporates Section 4035(b)(2)(D) by reference. While the other disclosure provisions contained therein are limited to those authorize or mandated by federal or state law, this clause is open ended. Agreeing to this mandates that the applicant waive their privacy rights with regard to the information submitted during the process, which includes the applicant’s full name, residence street address, email address, telephone number, date of birth, gender, ATI number, country of citizenship, and alien registration number, their criminal history and mental health information, if any, their passwords for accessing their mandated electronic application system, and other private and personal information.</p> <p>This waiver goes so far as permitting the disclosure of this information to any person designated by the Attorney General upon request. This is, essentially, a wholesale grant for the California Attorney General to use the personal information of firearms as they see fit, even for personal or political gain and retribution. The information contained in firearms databases are statutorily maintained in confidence. For example, Under the Public Records Act (PRA), government records are open and subject to inspection by and disclosure to the public, unless they are “exempt from disclosure by express provisions of law.” (Gov’t Code, § 6253, subd. (b).) The PRA specifically exempts certain types of documents from public disclosure, including those described in Government Code sections 6254 and 6255. In addition, Government Code section 6254, subdivision (k) incorporates confidentiality privileges set forth elsewhere in law, and makes those privileged documents exempt from the disclosure requirements of the PRA. The Department of Justice’s database containing information from Dealers’ Record of Sale information (including firearm ownership record) is specifically exempt from disclosure pursuant to Penal Code sections 11105 and 11106. Yet, the DOJ seeks to mandate that those seeking to comply with Chapter 3 waive their statutory rights to privacy.</p>	<p>The Department rejects this comment. No change has been made in response to this comment. The Department is committed to promoting and protecting the privacy rights of individuals. Department policies regarding the collection and maintenance of personal information must conform to the requirements of the Information Practices Act (Civil Code § 1798 et seq.), the Public Records Act (Government Code § 6250 et seq.), Government Code sections 11015.5 and 11019.9, and other laws pertaining to information privacy. The Department does not disclose personal data without the consent of an applicant, unless authorized by law. The Department uses security technologies to protect an applicant’s personal information against loss, unauthorized access, and illegal use of disclosure.</p>
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#	Summarized Comment	DOJ Response
12.	Proposed Regulation 4039(b) provides a denied applicant the ability to challenge the denial by both seeking a copy of their criminal history record pursuant to Penal Code section 11121 and have those criminal history records corrected pursuant to 11126, if inaccurate. It does not, however, provide the same for applicants denied on the basis that they are incorrectly identified as prohibited from possessing firearms on non-criminal grounds, such as those prohibited by the Welfare and Institutions Code.	The Department rejects this comment. No change has been made in response to this comment. A person's criminal record can be in error, and be corrected, but a person seeking to make the correction can only make it as to his or her own record. However, a person who believes he or she is misidentified as being prohibited because of mental health reasons can "correct" that error by simply proving he or she is not the same person associated with the mental health constraint. Under this scenario, the Department cannot simply delete or remove the restriction because it must remain in place as to the correct person, that is, there can be nothing for the Department to "correct."

Attachment B

ALPHABETICAL LIST OF COMMENTERS