

Finding of Emergency

The Department of Justice (Department or DOJ) finds it necessary to re-adopt these emergency regulations because the circumstances demonstrating the existence of an emergency are unchanged since the emergency regulations' initial adoption. Specifically, the emergency regulations are still necessary to avoid serious harm to the public peace, health, safety, or general welfare. The text of these re-adopted emergency regulations is substantially equivalent to the emergency regulations previously adopted. The Department has already started the regular rulemaking process (notice published 10/09/2015) to make the emergency regulations permanent. The Department anticipates submitting the permanent regulations to the Office of Administrative Law (OAL) for review approximately 2-3 weeks after the current emergency regulations are set to expire. Consequently, the emergency regulations must be readopted to avoid the problem of having no regulations in place for that 2-3 week period.

Specific Facts Demonstrating the Need for Immediate Action

Pursuant to Penal Code section 26840, effective January 1, 2015, a firearms dealer shall not deliver a firearm unless the recipient presents a valid Firearm Safety Certificate (FSC) that was acquired by passing a written test on firearm safety. Additionally, Penal Code sections 26850 and 26860 state a firearms dealer shall not deliver a firearm unless the recipient performs a safe handling demonstration with the handgun or long gun being delivered.

These emergency regulations are necessary for the implementation and ongoing management of the FSC program and the establishment of safe handling demonstrations for long guns and for handguns with an alternative design.

Because California law generally requires the recipient of a firearm to have an FSC, without these emergency regulations the retail sale of firearms would have essentially stopped as of January 1, 2015. The negative financial impact on over 2,000 firearms dealers and their employees throughout the state would be immediate and severe. Absent the revenue from retail gun sales, within a few weeks, hundreds of dealerships will be forced into bankruptcy. The negative fiscal impact will not be limited to the firearms industry. Because the general public would no longer be able to lawfully acquire firearms, the state will undoubtedly face civil lawsuits claiming California firearm laws violate an individual's second amendment right to bear arms. The cost of defending such lawsuits could be hundreds of thousands of dollars.

Explanation of Failure to Adopt Nonemergency Regulations

The Department originally intended to develop a manual, pre-paid process for the issuance of FSCs. In addition to being generally inefficient for the Department and the firearms industry, a manual process would create an unreasonable financial burden for certified instructors who would have to purchase FSCs in blocks of ten in advance of issuing them to persons who pass the written test. Many low volume dealers who are also certified instructors would not issue ten FSCs in an entire year. In response to input received from stakeholders within the California firearms industry, the Department developed an automated, web-based application (Firearms Certification System) by which certified instructors are able to submit payment for and issue FSCs on demand. The increased efficiency (versus a manual process) of the automated Firearms

Certification System benefits firearms dealers, certified instructors, gun purchasers, and the Department. However, its development necessitated an 8 to 10 month delay in drafting the accompanying FSC regulations that establish the business rules of the Firearms Certification System. In fact, the design, development, and implementation of the Firearms Certification System remained ongoing through January 1, 2015. Additionally, several months of extensive research were needed to identify and determine the appropriate safe handling demonstration steps for six types of long guns and eight types of handguns with alternative designs.

Statement Regarding Compliance With Government Code section 11346.1(e)

The Department has proceeded with diligence toward compliance with Government Code section 11346.1(e). On October 9, 2015, the Department's notice of proposed rulemaking to make the FSC regulations permanent (Certificate of Compliance) was published in the California Regulatory Notice Register. This rulemaking action is currently in the 45 day comment stage of the rulemaking process required by the Administrative Procedure Act.

The permanent regulations reflect significant changes to the FSC program as a result of public comments and experience gained since the implementation of the initial emergency regulations. These changes include use of an online application process for instructor certifications (initial and renewal) that will reduce the time frame for processing applications from 3-4 weeks to 3-4 business days. The regulations also establish a process for the decertification of instructors who are found to be in violation of applicable firearms laws and regulations.

Authority and Reference Citations

Authority: Penal Code sections 26710, 26850, 26853, 26856, 26859, 26860, 31625, 31635, 31640, 31645, 31650, 31655, 31660, and 31665.

Reference: Penal Code sections 16400, 26710, 26840, 26850, 26853, 26856, 26859, 26860, 29800-29825, 31625, 31635, 31640, 31645, 31650, 31655, 31660, and 31665; 18 U.S.C. § 922(d) and (g); Code of Federal Regulations, Title 27, Part 178.32.

Informative Digest/Policy Statement Overview

Prior to taking delivery of a firearm from a licensed firearms dealer, Penal Code sections 26840, 26850, and 26860 require the recipient to present a valid FSC and perform a safe handling demonstration with the firearm being delivered. To obtain an FSC, an individual must pass a written objective test on firearms safety developed by the Department and administered by certified instructors. As detailed below, the regulations create a comprehensive program for the issuance of FSCs and establish safe handling demonstrations for long guns and for handguns with alternative designs as statutorily mandated by the Penal Code sections specified above.

§4250. DOJ Certified Instructor Qualifications and Application Information

This section establishes the qualifications required to become a DOJ Certified Instructor. Applicants must have prior certification to provide training from one of the specified organizations specified in Penal Code section 31635. Applicants must also have and maintain a valid Certificate of Eligibility (COE) to ensure he or she is not prohibited from lawfully possessing firearms. Personal information (e.g. complete name, date of birth, address, telephone

number) is required to confirm identity and for contact purposes. This section also specifies that a DOJ Certified Instructor's certification is valid for five years provided a valid COE.

§4251. Firearms Certification System “Conditions of Use” and User Accounts

This section establishes the “Conditions of Use” to which DOJ Certified Instructors must agree to establish a user account for access to the Firearms Certification System. This section also specifies the information that must be provided to create a user account.

§4252. FSC Test Applicant Qualifications and Fee

This section requires FSC test applicants to present a valid California driver license or identification card issued by the Department of Motor Vehicles showing the applicant to be at least 18 years old. This section also identifies the FSC fee for taking the written test (twice if failed the first time) and being issued an FSC as twenty five dollars (\$25), fifteen dollars (\$15) of which is forwarded to the Department pursuant to Penal Code section 31650.

§4253. FSC Test Topics, Guidelines, Scoring, and Recordkeeping

This section specifies the FSC test consists of 30 questions (10 true/false, 20 multiple choice) covering, but not limited to, the following topics specified in Penal Code section 31640:

- The laws applicable to carrying and handling firearms, particularly handguns
- The responsibilities of ownership of firearms, particularly handguns
- Current law as it relates to the private sale and transfer of firearms
- Current law as it relates to the permissible use of lethal force
- What constitutes safe firearm storage
- Issues associated with bringing a firearm into the home
- Prevention strategies to address issues associated with bringing firearms into the home

To pass the test and receive an FSC, the applicant must correctly answer at least 23 of the 30 questions.

This section also specifies additional requirements regarding the testing process such as the allowed use of a translator and retaking the FSC test if the applicant fails on the first attempt.

§4254. FSC Issuance

This section establishes the process by which FSCs are issued via the Firearms Certification System including:

Payment of the fifteen dollar (\$15) DOJ fee must be made with a major credit/debit card prior to issuance of an FSC. Payment by cash or check is not accepted.

The FSC recipient's complete name, California identification type, California driver license or identification card number, and date of birth must be entered to create the FSC record. The FSC issue and expiration dates and the DOJ Certified Instructor's first name and first initial of his or her last name will be generated by the Firearms Certification System and printed on the FSC.

DOJ Certified Instructors are able to preview the information and make changes, if needed, prior to submission into the Firearms Certification System. Changes cannot be made after the information has been submitted.

Each FSC will be available for reprint, without any additional fee, for 24 hours from the date and time payment is received.

The DOJ Certified Instructor and the recipient must sign the FSC once it is printed.

§4255. FSC Replacement

This section establishes that if an FSC is lost or destroyed, the DOJ Certified Instructor who issued the original FSC is authorized to issue a replacement FSC via the Firearms Certification System to the original FSC holder. A five dollar (\$5) fee, collected from the FSC holder, must be paid to the Department for issuance of the replacement FSC.

§4256. Safe Handling Demonstration Steps Applicability and Definitions

This section establishes the following requirements and definitions applicable to safe handling demonstrations:

- The safe handling demonstration steps specified are generally applicable to the various models of each firearm “type” (e.g. pump action long gun, break-top revolver, etc.). However, they may not be appropriate for a particular firearm model. If necessary, the DOJ Certified Instructor will inform the firearm recipient of the safe handling demonstration steps for the firearm being delivered.
- If only the serialized or finished frame or receiver of a weapon is being delivered, no safe handling demonstration is required.
- If the DOJ Certified Instructor determines the firearm being delivered uses a cartridge size/type for which no dummy round is available on the retail market, the safe handling demonstration may be performed without using a dummy round.
- The firearm recipient must safely perform each step of the safe handling demonstration from start to finish without error. If an error is made at any time during the demonstration, the firearm recipient must start over from step number one.
- The DOJ Certified Instructor must provide instruction regarding how to render the firearm safe in the event of a jam (malfunction).
- Upon successful completion of the safe handling demonstration, the DOJ Certified Instructor, firearm recipient, and firearms dealer (or dealer authorized employee) must sign and date a Safe Handling Demonstration Affidavit, BOF 039 (Rev. 01/2015). If the DOJ Certified Instructor is also the licensed firearms dealer or an employee of the dealer, he or she is authorized to sign the affidavit as both the DOJ Certified Instructor and as the dealer/employee delivering the firearm.
- A “dummy round” must be brightly colored orange, red, or otherwise readily identifiable. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.
- “Muzzle awareness” means the firearm is pointed in a safe direction, preferably down at the ground.
- “Trigger discipline” means the trigger finger is outside of the trigger guard and alongside the frame or receiver, at all times.

§4257. Safe Handling Demonstration Steps for Conventional Long Guns

This section establishes the steps that comprise a safe handling demonstration for the following types of long guns:

- Pump Action Long Gun
- Break-Top Long Gun
- Bolt Action Long Gun
- Lever Action Long Gun
- Semiautomatic Long Gun with a Detachable Magazine
- Semiautomatic Long Gun with a Fixed Magazine

§4258. Safe Handling Demonstration Steps for Handguns with Alternative Designs

This section establishes the steps that comprise a safe handling demonstration for the following types of handguns with alternative designs:

- Semiautomatic Pistol with a Non-Locking Slide
- Semiautomatic Pistol with a Fixed Magazine
- Semiautomatic Pistol with a Magazine Operated Toggle Lock
- Semiautomatic Pistol with a Top-Feeding Magazine
- Semiautomatic Pistol with a Tip-Up Barrel
- Break-Top Revolver
- Single Shot Pistol
- Derringer

§4259. Comparable Training Qualifications, Course Content, and Certificates of Completion

This section establishes the requirement for an entity to be recognized by the Department as providing comparable firearm training pursuant to Penal Code section 31635. The requirements include the following:

- Applications must be submitted on DOJ form BOF 946 (Rev. 01/2015)
- Comparable training entity must be staffed with at least one DOJ Certified Instructor who has a minimum of 100 hours of verifiable experience teaching firearms safety
- Training course must include instruction on the safe handling demonstration steps for specified types of handguns and long guns and instruction on how to render a firearm safe in the event of a malfunction
- All students to successfully perform the safe handling demonstration with the conventional firearms provided by the DOJ Certified Instructor
- Upon successful completion of the comparable training course, each student must be issued a Certificate of Completion

Forms Incorporated by Reference

Comparable Training Entity Application, BOF 946 (Rev. 01/2015)

DOJ Certified Instructor Application, BOF 037 (Rev. 01/2015)

Firearm Safety Certificate, BOF 034 (Rev. 01/2015)

Safe Handling Demonstration Affidavit, BOF 039 (Rev. 01/2015)

Duplication of State Statutes as Necessary to Satisfy Government Code Section 11349.1(a)(3)

Sections 4250 and 4253 of the proposed regulations duplicate and cite as authority California Penal Code sections 31635(b) and 31640(b) (c) respectively. The duplication provides clarity as

necessary for the regulations to satisfy the requirements of Government Code section 11349.1(a)(3).

Government Code Section 11346.5(a)(3)(D) Evaluation

The proposed regulations are not inconsistent or incompatible with existing state regulations.

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations

None.

Mandate on Local Agencies or School Districts

The Department has determined the proposed emergency regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed emergency regulations.

Technical, Theoretical, and Empirical Study, Report, or Similar Document, if any, Upon Which the Department Relied

None.

Cost Estimates

The Department has assessed the potential for significant adverse impact that might result from the proposed emergency action and has determined:

- There will be no non-discretionary costs or savings to local agencies
- There will be no costs to school districts
- There will be no costs or savings in federal funding to the State

As detailed on the attachment to the Economic and Fiscal Impact Statement (STD. 399), the Department estimates its costs (state agency) directly related to the Firearm Safety Certificate program will be approximately \$8,900,000 over the three year period from 7/1/2014 through 6/30/2017. During that same period, the Department anticipates statutorily authorized fee revenue of \$12,000,000 from the issuance of an estimated 800,000 FSCs. Subdivision (b) of Penal Code section 31650 authorizes “a fee of twenty-five dollars (\$25), fifteen dollars (\$15) of which is to be forwarded to the department....” Subdivisions (c) and (d) of Penal Code section 31650 specifically authorize use of surplus revenue from those fees to cover the Department’s cost of conducting various firearms related enforcement activities unrelated to the FSC program.