

# INITIAL STATEMENT OF REASONS

## PROBLEM STATEMENT

The Department of Justice (Department) is statutorily required to perform an eligibility check under state and federal law for all firearms and ammunition purchases in California. Eligibility checks also are required for certificates of eligibility, firearm ownership reports, law enforcement gun release applications, dangerous weapons license/permit applications, entertainment firearms permit applications, as well as for peace officer applicants, custodial officers, transportation officers, applicants to a basic course of training certified by the Commission on Peace Officer Standards and Training that includes the carrying and use of firearms, applicants for an explosives permit, and applicants for a permit to carry a concealed weapon. Federal law prohibits certain categories of non-citizens from purchasing or possessing a firearm or ammunition, including any alien who is “illegally or unlawfully in the United States.” (18 U.S.C. § 922 (d)(5)(A), (g)(5)(A).)

California law requires a prospective firearm purchaser to present “clear evidence of [the purchaser’s] identity and age.” (Pen. Code, §§ 26815, subd. (c), 27540, subd. (c), 28215, subd. (a)(1).) A valid California driver license or identification card satisfies this requirement. (*Id.*, § 16400.) California law also requires a prospective ammunition purchaser to provide a driver license or identification card. (Pen. Code, § 30352, subd. (a)(2).) Before recent changes in the law, an applicant for a California driver license or identification card was required to provide to the Department of Motor Vehicles proof of lawful presence in the United States during the application process. (Cal. Code Regs., tit. 13, § 15.00.)

In 2013, California passed Assembly Bill (AB) 60, the Safe and Responsible Driver’s Act, creating a driver license program for individuals who could not provide proof of lawful presence in the United States. (Stats. 2013, Ch. 524.) AB 60 became effective in 2015 and allows individuals to apply for a driver license or identification card in California regardless of their immigration status and without providing proof of lawful presence in the United States. When AB 60 first took effect, AB 60 driver licenses and identification cards were physically distinguishable from regular California driver licenses and identification cards, by the notation “FEDERAL LIMITS APPLY” imprinted on the front. After the AB 60 licenses and identification cards became available, the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) issued guidance to firearm dealers stating that because the AB 60 driver license or identification card “is only issued to a person who cannot provide proof of lawful presence in the United States,” there is “reasonable cause to believe a potential transferee in possession of an AB [60] driver license is illegally or unlawfully in the United States and prohibited from receiving or possessing firearms or ammunition. As such, you may not transfer firearms or ammunition to the person. . . .” (“Open Letter to All California Federal Firearm Licensees,” June 30, 2016.)

At the beginning of 2018, California began issuing driver licenses and identification cards in accordance with the federal REAL ID Act. Passed by Congress in 2005, the REAL ID Act sets minimum security standards for driver license and identification card issuance and production, and prohibits federal agencies from accepting for certain purposes driver licenses and identification cards from states not meeting the Act’s minimum standards. Obtaining a REAL ID version of a driver license or identification card is optional. However, after October 1, 2020, California residents will need to have a REAL ID-compliant driver license or identification card (or another

REAL ID-compliant identification, such as a passport), rather than a regular California driver license or identification card, to board a domestic flight or enter secure federal facilities. In 2018, the Department of Motor Vehicles began offering two types of identification—a federal compliant REAL ID driver license/identification card, and a federal non-compliant California driver license/identification card. The federal non-compliant California driver licenses and identification cards with the words “FEDERAL LIMITS APPLY” on the front are issued to both: (1) individuals applying under AB 60; and (2) individuals who are able to submit satisfactory proof that their presence in the United States is authorized under federal law, but who choose not to apply for a “REAL ID” driver license or identification card. Driver licenses/identification cards issued pursuant to AB 60 are no longer physically distinguishable from a regular California driver license/identification card that may be issued to someone with lawful presence in the United States. It is thus unclear whether a person with a federal non-compliant California driver license or identification card is eligible to purchase a firearm under federal law, because that person was not required to submit satisfactory proof of lawful presence in the United States. Because of this change, ATF rescinded the June 30, 2016 open letter, by removing the letter from its website.

At the end of 2018, California passed another law, Senate Bill (SB) 244, affecting AB 60 driver licenses and identification cards, which went into effect on January 1, 2019. (Stats. 2018, Ch. 885.) That law prohibits driver licenses and identification cards issued pursuant to AB 60—those issued to persons who were not required to submit satisfactory proof of lawful presence in the United States—from being used as evidence of an individual’s citizenship or immigration status for any purpose. (Veh. Code § 12801.9, subd. (l).) Because Driver licenses and identification cards issued pursuant to AB 60 are physically indistinguishable from other federal non-compliant California driver licenses and identification cards issued to individuals who have provided satisfactory proof of lawful presence in the United States, neither form of identification may be used to determine an individual’s eligibility to purchase a firearm.

As set forth above, there have been significant changes recently to California driver licenses and identification cards, as well as to California law governing their use as evidence of citizenship or immigration status. These changes have affected the eligibility check process and have left firearm dealers and ammunition vendors, as well as law enforcement agencies, unable to rely on federal non-compliant licenses when determining whether a prospective purchaser or applicant is permitted to possess a firearm or ammunition, consistent with state and federal law.

The result of the changes to California driver licenses and identification cards is confusion for firearm dealers, law enforcement agencies, and the public. Current regulations do not address the recent changes to California law regarding California driver licenses and identification cards. Some firearm dealers have declined to sell firearms to persons who only have a federal non-compliant license or identification card without proof of lawful presence in the United States. But the Department has no way of knowing whether all firearm dealers follow the same protocol. Before the passage of SB 244, the National Rifle Association had advised firearm dealers to ask for additional information at their discretion if the dealer had “cause to believe the individual using one of these licenses may be prohibited from possessing firearms.” (National Rifle Association Institute for Legislative Action, “California Special Alert: Update Regarding Use of Non-REAL IDs for Firearm Purchases,” March 22, 2018.)

This confusion has had a negative financial impact on approximately 1,800 firearm dealers and their employees throughout the state, as well as 250 ammunition vendors as of July 1, 2019. Firearm dealers that require additional documentation may lose business to those that do not require any additional documentation. This confusion also increases the risk that firearms or ammunition will be inadvertently sold to persons who are not eligible to make such purchases under federal law.

## BENEFITS

The proposed regulation will benefit the public by protecting them from harm. The Department is concerned that, without this regulation, firearm dealers and ammunition vendors may inadvertently sell firearms or ammunition to individuals who are not eligible under federal law because they are not lawfully present in the United States. Additionally, this regulation will benefit firearm dealers and ammunition vendors because it will clarify the eligibility check process and allow them to obtain sufficient information that will allow for an accurate determination of whether a prospective purchaser or applicant is permitted to possess firearms or ammunition, consistent with federal law. Furthermore, firearm dealers and ammunition vendors will not need to turn away customers with California driver licenses and identification cards with the words “FEDERAL LIMITS APPLY”, thereby losing revenue, because now they will be able to determine lawful presence from the additional requirement documentation.

## PURPOSE AND NECESSITY

### Informative Digest/Policy Statement Overview

Penal Code section 28060 authorizes the Department to adopt regulations to allow the seller or transferor of a firearm or the person loaning the firearm, and the purchaser or transferee of a firearm or the person being loaned the firearm, to complete a sale, loan, or transfer through a firearm dealer. Penal Code section 28220 requires the Department to examine its records to determine if a purchaser or transferee is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. Penal Code section 30370 requires the Department to approve the purchase or transfer of ammunition through a vendor to individuals who are not prohibited, and authorizes the Department to write regulations regarding this process. Further, the United States Code, Title 18, section 922, subdivisions (d) and (g), and the Code of Federal Regulations, Title 27, section 478.99, subdivision (c)(5) provide that an alien illegally or unlawfully in the United States is prohibited from owning or possessing firearms or ammunition.

This rulemaking will assist the Department to fulfill its statutory obligation to determine whether an individual is prohibited from purchasing or possessing firearms or ammunition. If this regulation is not promulgated there will be continued uncertainty regarding firearms and ammunition sales in California for which the purchaser presents a federal non-compliant driver license or identification card, as well as continued uncertainty regarding eligibility checks involving federal non-compliant driver licenses and identification cards. This uncertainty increases the risk that firearms and ammunition will fall into the hands of prohibited individuals.

## **Chapter 1. Bureau of Firearms Fees**

### **§ 4002. Miscellaneous Report Fees.**

This section identifies various forms that an individual may use to report ownership of a firearm. This section also sets the fee for filing each form at \$19, pursuant to Penal Code section 28230 and 28240, subdivision (b).

In addition to the revisions described below, subdivisions (a) through (e) of this section were revised to reflect the current revision date of each form. All of the forms to which this section refers include instructions regarding the additional documentation necessary to establish lawful presence in the United States when the individual possesses a California driver license or identification card containing the words “FEDERAL LIMITS APPLY.” Updating the revision date is necessary in order to allow a user to make sure they are using the correct version of the form.

In subdivision (a), the Firearm Ownership Report, Form BOF 4542A (Rev. 01/2010) has been revised and incorporated by reference. The name of this form was changed from “Firearm Ownership Record,” to “Firearm Ownership Report.” The name change was necessary to reflect the correct name of the form and to match the electronic form available on the California Firearms Application Reporting System which ensures consistency across all versions of the form. This subdivision imposes the fee under Penal Code section 28230 on individuals who wish to report firearm ownership to the Department. Having a firearm ownership report on file with the Department will authorize the return of a firearm in the event it is subsequently lost or stolen.

In subdivision (b), the Report of Operation of Law or Intra-Familial Firearm Transaction, Form BOF 4544A (Rev. 01/2020) has been revised and incorporated by reference. This subdivision imposes the fee under Penal Code section 28230 on individuals who wish to report the possession of a firearm by operation of law, or the transfer of a firearm to a family member (intra-familial transfer) to Department.

In subdivision (c), the New Resident Report of Firearm Ownership, Form BOF 4010A (Rev. 01/2020) has been revised and incorporated by reference. This subdivision imposes the fee under Penal Code section 28230 on individuals who are moving into California from another state and own firearms. In this circumstance, an individual is considered a personal firearm importer and must report all of their California-legal firearms to the Department within 60 days.

In subdivision (d), the Curio or Relic Firearm Report, Form BOF 4100A (Rev. 01/2020) has been revised and incorporated by reference. This subdivision imposes the fee under Penal Code section 28230 on individuals who wish to report their out of state purchase of a curio or relic firearm. These individuals are licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. This individual must possess a Federal Firearms License Type 03, and Certificate of Eligibility issued by the California Department of Justice.

In subdivision (e), the Collector In-State Acquisition of Curio or Relic Long Gun Report, Form BOF 961 (Rev. 01/2020) has been revised and incorporated by reference. This subdivision

imposes the fee under Penal Code section 28230 on individuals who wish to report their curio or relic firearm. These individuals are licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. This individual must possess a Federal Firearms License Type 03, and Certificate of Eligibility issued by the California Department of Justice. This report must be made within 30 days of acquiring the firearm.

#### **Chapter 4. Documentation Requirements for Firearms and Ammunition Eligibility Checks**

The title for this chapter has been amended from “Evidence of Residency Documentation” to “Documentation Requirements for Firearms and Ammunition Eligibility Checks” because federal firearm and ammunition eligibility requirements in this respect are predicated on lawful presence in the United States, not residency. Updating the title better describes the intent of the regulations.

#### **Article 2. Additional Documentation Requirements**

This article is new and was added to organize the chapter and have a separate article to add the new section.

#### **§ 4045.1. Additional Documentation Requirements for Eligibility Checks with Federal Non-Compliant California Driver License or Identification Card.**

This section describes “eligibility checks” as background checks based on any application or report for which an applicant is required to submit a driver license or identification card, or the number of a driver license or identification card, to allow the Department to determine whether the applicant is eligible to possess a firearm or ammunition. The section describes the process and document retention requirements for the eligibility checks.

##### Subdivision (a)

Subdivision (a) states the basic requirement that when submitting any application or report to the Department’s Bureau of Firearms for which an applicant is required to submit a driver license or identification card, or the number from a driver license or identification card, a copy of the applicant’s driver license or identification card shall also be submitted. This subdivision is necessary to inform applicants that a copy of the applicant’s driver license or identification card is required as part of the application or report they are submitting as listed in subdivisions (d) through (g) of this section.

##### Subdivision (b)

Subdivision (b) establishes that if the applicant presents a federal non-compliant California driver license or identification card with the notation “FEDERAL LIMITS APPLY” on the front, the applicant shall also submit proof of lawful presence in the United States. This subdivision establishes the forms of acceptable proof of lawful presence in the United States, which is drawn from the list of documents that the California Department of Motor Vehicles accepts as proof of lawful presence. (Cal. Code Regs., tit. 13, § 15.00.). This subdivision is necessary so that individuals with a federal non-compliant California driver license or identification card will know what additional document(s) they need to provide to firearm dealers, ammunition vendors, law

enforcement agencies or the Department when undergoing an eligibility check to purchase a firearm or ammunition.

#### Subdivision (c)

Subdivision (c) addresses the situation where the name on the driver license or identification card does not match the name on the document proving lawful presence in the United States because of a name-changing event. The acceptable types of documentation for the name-change are listed. This subdivision is necessary because it is common, whether due to marriage, divorce, or some other circumstance, that an individual's name may not match their birth certificate, passport, or other document listed in subdivision (b).

#### Subdivision (d)

Subdivision (d) relates to applications or reports submitted to the Department's Bureau of Firearms in a paper format. For these applications or reports, it requires that the documents required in subdivisions (a) through (c) be submitted with the paper application. Additionally, there is a caution against sending an original. This subdivision is necessary to inform applicants who are submitting a paper application or report, and possess a federal non-compliant California driver license or identification card with the notation "FEDERAL LIMITS APPLY" on the front, that a photocopy or certified copy of the documents proving lawful U.S. presence, as applicable, must accompany a paper application or report. The Department has been receiving original birth certificates with these applications or reports and wants to establish that individuals are not to submit an original.

#### Subdivisions (d)(1) and (d)(2)

Subdivisions (d)(1) and (d)(2) sets forth the applications or reports submitted to the Department's Bureau of Firearms in a paper format that would require an eligibility check. These forms have been revised and are incorporated by reference, as it would be cumbersome, unduly expensive, or otherwise impractical to publish all of the forms listed in their entirety in the California Code of Regulations. This section is necessary to identify all the paper applications and reports that will be affected by the regulation.

#### Subdivisions (d)(2)(A), (d)(2)(C), and (d)(2)(D)

Under Penal Code section 27560, subdivision (a), the "New Resident Report of Firearm Ownership," form BOF 4010A is used by individuals who are moving into California and wish to bring all of their California-legal firearms with them. These individuals must report the firearm(s) to the Department. Under Penal Code section 27565, the "Curio or Relic Firearm Report," form BOF 4100A, is used by individuals who must report their out-of-state purchase of a curio or relic firearm. Under Penal Code section 27966, the "Collector In-State Acquisition of Curio or Relic Long Gun Report," form BOF 961 is used by individuals who must report their in-state acquisition of a curio or relic firearm. These three forms have been revised as follows:

On page one of each form, in the heading, the word "total" was added to state, "The total processing fee of \$19.00 must accompany this report." This addition was necessary as the public did not understand the amount of the fee to send, and they were sending varying amounts. The

checks would have to be returned and the correct amount of payment resubmitted. This caused a delay in the process.

The Department revised the first line of the owner information section to match the sequence of information listed in the California Firearms Application Reporting System (CFARS). This is necessary for staff entering information from a paper form into CFARS, so they can follow the same order of information and will have fewer errors.

Each form was revised to indicate with an asterisk (\*) what fields are mandatory. This is necessary so the applicant will complete the form and it will not have to be returned without processing, which is time-consuming, costly for the Department, and frustrating for the individual making the report.

The section "sex" on the form was revised to say "gender." The Department determined this term more accurately describes the information being sought.

The Firearm(s) Information section was revised to provide more options when reporting firearms and explains what the additional options are. This is necessary so an applicant can better describe the firearm, and so the Department will have a better understanding of the type of firearm the applicant is reporting.

In the Firearm(s)/Long Gun(s) Information section, boxes were added asking if the firearm is self-built and if the owner obtained a serial number from the Department. This is necessary so that the Department can clearly identify the origin of the firearm. Additionally, by law new residents have to report to the Department and request a serial number for any self-built firearms brought into the state within 60 days of arrival. A box asking if the firearm is a frame or receiver only was added. This is necessary so the Department enters the correct information in CFARS. Once "frame only" or "receiver only" is selected in CFARS, applicants will select either "yes" or "no." If the applicant selects "yes", no additional information is required. If the applicant selects "no", additional boxes will open up, requiring applicants to enter the caliber of the firearm as well as barrel length.

For the BOF 4010A, a box asking if the firearm is in law enforcement custody was added. This is necessary because if an individual indicates that a firearm is in law enforcement custody, the individual must complete the Bureau's Law Enforcement Gun Release Application Form BOF 119 to redeem the firearm. The Department will need to coordinate the sequence of the two applications. If the BOF 119 application is processed before the BOF 4010A, there will be no record to indicate that the individual owns the firearm in question.

Page two is a new page added to each form to describe the document(s) that should be included if the applicant has a "FEDERAL LIMITS APPLY" driver license or identification card. This is necessary so an individual will know what document(s) copies to include when submitting the form, to prevent the form from being returned without processing. If a form is incomplete and has to be returned it is time-consuming and costly for the Department and frustrating for the individual making the report.

On page three of BOF 4100A and 4010A, under "Part A. Owner Information," the Department added a sentence informing military personnel that if they are not actively stationed in California, by law they are required to have a California driver license or identification card to record a

firearm in their name. This is necessary to inform military personnel when they may need a California driver license or identification card since it takes some time to obtain either of these identification types. On page three of each form, under “Part B. Firearm Information,” some additional identifying information has been added that corresponds to the questions on page one. The additions are firearm/long gun type, category, and date acquired. These additions were necessary to explain what information is requested of the individual reporting. It is important to receive correct information as it allows Department staff to process the forms quicker and not have to return one because it is incomplete thereby saving time and money.

#### Subdivision (d)(2)(B)

Under Penal Code section 28000, the “Firearm Ownership Report,” form BOF 4542A is used by individuals who wish to report firearm ownership to the Department. The Department revised this form to change the name from “Firearm Ownership Record” to “Firearm Ownership Report.” The new name for this report is better suited as the applicant is reporting ownership of a firearm not creating a “record” of that ownership.

On page one of the Firearm Ownership Report, the word “total” in the heading was added to state, “The total processing fee of \$19.00 must accompany this report.” This addition was necessary as the public did not understand the amount of the fee to send, and they were sending varying amounts. The checks would have to be returned and the correct amount of payment resubmitted. This caused a delay in the process.

The Department revised the first line of the owner information section to match the sequence of information listed in the California Firearms Application Reporting System (CFARS). This is necessary for staff entering information from a paper form into CFARS, so they can follow the same order of information and will have fewer errors.

This form was revised to indicate with an asterisk (\*) what fields are mandatory. This is necessary so the applicant will complete the form and it will not be returned without processing which is time-consuming, costly for the Department, and frustrating for the individual making the report.

The section “sex” on the form was revised to say “gender.” The Department determined this term more accurately describes the information being sought.

The Firearm(s) Information section was revised to provide more options when reporting firearms and explains what the additional options are. This was necessary so the applicant can better describe the firearm, and so the Department will have a better understanding of the type of firearm the applicant is reporting. In the Firearm(s) Information section, boxes were added asking if the firearm is self-built and if they obtained a serial number from the Department. This is necessary so that the Department can clearly identify the origin of the firearm. Additionally, by law a person must contact the Department prior to building a firearm, so if someone did not, they may have to surrender their firearm. Once “frame only” or “receiver only” is selected in CFARS, applicants will select either “yes” or “no.” If the applicant selects “yes”, no additional information is required. If the applicant selects “no”, additional boxes will open up, requiring applicants to enter the caliber of the firearm as well as barrel length.



A box asking if the firearm is in law enforcement custody was added. This is necessary because if an individual indicates that a firearm is in law enforcement custody, the individual must complete the Bureau's Law Enforcement Gun Release Application Form BOF 119 to redeem the firearm. The Department will need to coordinate the sequence the two applications. If the BOF 119 application is done before the BOF 4542A, there will be no record to indicate that the individual owns the firearm in question.

Page two is a new page added to this form to describe the document(s) that should be included if the applicant has a "FEDERAL LIMITS APPLY" driver license or identification card and not a REAL ID. This is necessary so an individual will know what document(s) copies to include when submitting the form, to prevent the form from being returned without processing. If a form is incomplete and has to be returned it is time-consuming, costly for the Department, and frustrating for the individual making the report.

On page three, under "Part A. Owner Information," the Department added a sentence letting military personnel know if they are not actively stationed in California, by law they are required to have a California driver license or identification card to record a firearm in their name. This is necessary to inform military personnel when they may need a California driver license or identification card since it takes some time to obtain either of these identification types. On this page, under "Part B. Firearm Information," some additional identifying information has been added that corresponds to the questions on page one. The additions are firearm type, category, and date acquired. These were all necessary to explain what information is being requested of the individual reporting. It is important to receive correct information as it allows Department staff to process the forms quicker and not have to return one because it is incomplete thereby saving time and money.

On each form, the privacy notice was updated to conform to California Civil Code section 1798.17 and to make it consistent with the privacy notices on our other forms.

#### Subdivision (d)(2)E)

Under Penal Code sections 27875 and 27920, the "Report of Operation of Law or Intra-Familial Transaction," form BOF 4544A is used by individuals who must report the possession of a firearm by operation of law, or the transfer of a firearm to a family member (intra-familial transfer).

On page one of this form, in the heading, the word "total" was added to state, "The total processing fee of \$19.00 must accompany this report." This addition was necessary as the public did not understand the amount of the fee to send, and they were sending varying amounts. The checks would have to be returned and the correct amount of payment resubmitted. This caused a delay in the process.

The Department revised the first line of the owner information section to match the sequence of information listed in the California Firearms Application Reporting System (CFARS). This is necessary for staff entering information from a paper form into CFARS, so they can follow the same order of information and will have fewer errors.

This form was revised to indicate with an asterisk (\*) what fields are mandatory. This is necessary so the applicant will complete the form and it will not be returned without processing which is time-consuming, costly for the Department, and frustrating for the individual making the report.

The section “sex” on the form was revised to say “gender.” The Department determined this term more accurately describes the information being sought.

In the Firearm(s) Information section, boxes were added asking if the firearm is self-built and if they obtained a serial number from the Department. This is necessary so that the Department can clearly identify the origin of the firearm. Additionally, by law an individual must contact the Department prior to building a firearm, so if someone did not, they may have to surrender their firearm.

A box asking if the firearm is a frame or receiver only was added. This is necessary so the Department enters the correct information in CFARS. If “frame only” is selected in CFARS, more options open, requiring additional information, where as if “receiver only” is selected, there are not more options. A box asking if the firearm is in law enforcement custody was added. This is necessary because if an individual indicates that a firearm is in law enforcement custody, the individual must complete the Bureau’s Law Enforcement Gun Release Application Form BOF 119 to redeem the firearm. The Department will need to coordinate the sequence of the two applications. If the BOF 119 application is processed before the BOF 4544A, there will be no record to indicate that the individual owns the firearm in question

Page two is a new page added to this form to describe the document(s) that should be included if the applicant has a “FEDERAL LIMITS APPLY” driver license or identification card and not a REAL ID. This is necessary so an individual will know what document(s) copies to include when submitting the form, to prevent the form from being returned without processing. If a form is incomplete and has to be returned it is time-consuming, costly for the Department, and frustrating for the individual making the report.

On page three, the first paragraph has been changed to say that if a person is reporting more than two firearms they need to use additional copies of the form. This is necessary as when boxes were added on page one, the section became larger and we were only able to fit report information for two firearms and not three.

Under “Part A. Owner Information,” the Department added a sentence letting military personnel know if they are not actively stationed in California, by law they are required to have a California driver license or identification card to record a firearm in their name. This is necessary to inform military personnel when they may need a California driver license or identification card since it takes some time to obtain either of these identification types. On this page, under “Part B. Firearm Information,” some additional identifying information has been added that corresponds to the questions on page one. The additions are firearm type, category, date acquired, and a breakdown of the options for acquired from. These were all necessary to explain what information is being requested of the individual reporting. It is important to receive correct information as it allows Department staff to process the forms quicker and not have to return one because it is incomplete, thereby saving time and money. The privacy notice was updated to conform to California Civil Code section 1798.17 and to make it consistent with the privacy notices on our other forms.

Subdivision (d)(3)(A) through (d)(3)(E)

The “Dangerous Weapons License/Permit(s) Application,” form BOF 030, and the “Dangerous Weapons License/Permit(s) Renewal Application,” form BOF 031, are used by individuals who wish to apply for or renew a dangerous weapons license or permit. The Department revised these forms to add space for an email address in several sections. This is necessary because email is the preferred method of communication.

On page one of both forms, the “M/F” was changed to “Gender.” The Department determined this term more accurately describes the information that is sought. Language was added identifying the document(s) required if the applicant has a “FEDERAL LIMITS APPLY” driver license or identification card. This was necessary to inform applicants what document(s) to include with their application so as to prevent the form from being returned without processing.

The privacy notice was updated to conform to California Civil Code section 1798.17 and to make it consistent with the privacy notices on our other forms.

Subdivision (d)(4)

Under Penal Code section 29505, the “Entertainment Firearms Permit Application,” form BOF 051, is used by individuals who wish to apply for an Entertainment Firearms Permit. An Entertainment Firearms Permit authorizes the permit holder to possess firearms loaned to the permit holder for use solely as a prop in a motion picture, television, video, theatrical, or other entertainment production or event. This form is used for both new permits and renewals of permits. Additionally, this form is being incorporated by reference.

The Entertainment Firearms Permit fee is set in Penal Code section 29510 at \$104 for an initial application, and \$29 for a renewal application. The Penal Code also notes that of the initial application fee of \$104, \$56 shall be deposited into the Fingerprint Fee Account, and only \$48 shall be deposited into the Dealers’ Record of Sale (DROS) account.

The processing costs for the initial application was determined by analyzing the average time it takes to review an application. It takes a Staff Services Analyst roughly 80 minutes to process an initial application, which includes reviewing the application for accuracy and completeness as well as potentially contacting the applicant if any of the required fields are missing any information. At an average hourly rate of \$39, it costs the Department about \$50.67 to process the application.

The processing costs for the renewal application was determined by analyzing the average time it takes to review an application. It takes a Staff Services Analyst slightly less time to process a renewal application (about 70 minutes) due to renewal applicants being more familiar with the process and potentially having less information missing from the form. At an average hourly rate of \$39, it costs the Department about \$43.67 to process the application.

As is indicated by the chart below, the revenue generated by the fee and designated to the Bureau of Firearms does not exceed the approximate costs to process the forms.

**Entertainment Firearms Permit (BOF 051)**

<b>Form</b>	<b>Average Number Received Per Year</b>	<b>BOF Portion of Fee*</b>	<b>Total Revenue Received</b>	<b>Processing Cost Per Form</b>	<b>Total Cost to Process</b>
Initial Application	94	\$48	\$ 4,512	\$50.67	\$4,763
Renewal Application	404	\$29	\$11,716	\$43.52	\$17,582
		<b>Total</b>	<b>\$16,228</b>		<b>\$22,345</b>

On page one of this form, the Department asks for general identification information. Penal Code section 29505, subdivisions (a)(1) through (a)(9) indicate the following information is the minimum that should be contained on the form: complete name, residential and mailing addresses, telephone number, date of birth, place of birth, country of citizenship or Alien Registration or I-94 number, California driver license or identification card number, Social Security Number, and signature. Additionally the Department asks for an alias name, email address, and gender. All of this information is necessary to accurately identify an individual. Additionally, the Department added email address as much of today’s communication and business is performed electronically through email, and it is a faster method of communication and the preferred method of communication.

The form must also be signed under penalty of perjury. This is necessary to help ensure the information provided is true and correct, and to deter misrepresentations and submission of false information.

Page two is a new page added to this form to describe the document(s) that should be included if the applicant has a “FEDERAL LIMITS APPLY” driver license or identification card and not a REAL ID. This is necessary so an individual will know what document(s) copies to include when submitting the form, to prevent the form from being returned without processing. If a form is incomplete and has to be returned it is time-consuming, costly for the Department, and frustrating for the individual making the report.

Page three contains additional instructions for the application. These include how to submit fingerprints and fees to the Department through the Live Scan Service, and where to send the completed form, and renewal fees. This is necessary so an applicant will know the amount to be paid to the Live Scan operator, where to submit the application, and the fee for renewing an application.

Page four of this form includes the Department’s privacy notice as required by Civil Code section 1798.17. This is necessary to inform applicants what may be done with their personal information.

Subdivision (d)(5)

The “Personal Firearm Eligibility Check Application,” form BOF 116, is used by individuals who would like the Department to perform an eligibility check on them prior to purchasing a firearm. Additionally, this form is being incorporated by reference.

The Personal Firearms Eligibility Check (PFEC) form fee is set at \$20 in Penal Code section 30105, subdivision (b). The Department receives about 3,000 forms per year total. Eighty-five percent of the forms are routine to process and take roughly 15 minutes to complete. The Criminal Identification Specialist III assigned to conduct the PFEC and determine if the applicant is not prohibited from purchasing a firearm has an average hourly rate of \$41.75. At this rate, the total costs for processing a regular form is \$10.50.

The remaining fifteen percent of applications are more difficult to process. The Department determined this fifteen percent rate by examining the historical data on the number of forms received over the last three years. Along with this data, the Department utilized staff knowledge and expertise and determined that roughly fifteen percent of forms require additional work hours to determine firearm ownership eligibility. This includes spending several hours trying to obtain outside information from courts, law enforcement agencies, and/or district attorney’s offices to determine the disposition of an arrest. The amount of time to process the more difficult forms can vary depending on the circumstances. It can take anywhere from 5 hours to more than 40 hours in some cases. As a whole, the revenue generated by the fee does not exceed the approximate costs to process the forms. The remaining costs to process the PFEC form are paid for through the Dealer Record of Sale fee under Penal Code section 28225, subdivision (a)(11). (Penal Code section 28233 effective January 1, 2020.)

**Personal Firearms Eligibility Check (PFEC) (BOF 116)**

<b>Form</b>	<b>Average Number Received Per Year</b>	<b>Current Fee</b>	<b>Total Revenue Received</b>	<b>Processing Cost Per Form</b>	<b>Total Cost to Process</b>
PFEC regular (85%)	2,550	\$20	\$ 51,000	\$10.50	\$ 26,775
PFEC difficult (15%)	450	\$20	\$ 9,000	\$209 - \$1,670	\$94,050 - \$751,500
		<b>Total :</b>	<b>\$ 60,000</b>		<b>\$120,825 to \$775,275</b>

On page one of this form, the Department asks for general identification information consisting of name, alias name, date of birth, gender, California driver license or identification card number, U.S. Citizenship or Alien Registration or I-94 number, height, weight, eye color, hair color, race, telephone number, residence address and mailing address (if different). All of this information is necessary to accurately identify an individual. At the bottom of page one is a section to be completed by a licensed California Notary Public as required by Penal Code section 30105, subdivision (c).

The form must also be signed under penalty of perjury. This is necessary to help ensure the information provided is true and correct, and to deter misrepresentations and submission of false information.

Page two and page three contain application instructions. These instructions include submission requirements and also explain what additional documentation is necessary if the applicant has a "FEDERAL LIMITS APPLY" driver license or identification card. This information is necessary so an applicant can fill out the form completely and avoid delay in processing the form, or potential return of the form for lack of information.

Page three also alerts the applicant that a \$20 fee (set by Penal Code section 30105, subdivision (b)) must accompany the form. This is necessary to inform an applicant what the fee is for this eligibility check.

Page four of this form include the Department's privacy notice as required by Civil Code section 1798.17. This is necessary to inform applicants what may be done with their personal information.

#### Subdivision (e)

Subdivision (e) describes the applications and reports submitted electronically through the Department's CFARS that require an eligibility check. This subdivision also indicates what forms to upload in CFARS to prove lawful presence in the United States. This subdivision is necessary to identify the forms that may be submitted electronically through CFARS.

#### Subdivision (f)

Subdivision (f) describes the eligibility checks initiated by applications or reports submitted electronically through the Department's Dealer Record of Sale (DROS) Entry System. This subdivision also indicates what documentation an individual shall provide through the DROS Entry System to prove lawful presence in the United States. This subdivision is necessary to identify the forms that may be submitted electronically through the DROS Entry System.

This subdivision also requires firearm dealers and ammunition vendors that submit applications and reports pursuant to this subdivision to keep copies of any "FEDERAL LIMITS APPLY" driver license or identification cards and any supporting documents proving lawful presence. This is necessary in order for the Department to confirm compliance with the law when conducting routine inspections and further ensures that firearms and ammunition are not being sold or transferred to unauthorized individuals

### Subdivision (g)

Subdivision (g) addresses eligibility checks initiated by applications or reports submitted to other agencies that include fingerprint data to be used by the Department in order to determine whether an individual is eligible to possess a firearm or ammunition under state or federal law. This subdivision is necessary to inform other government agencies of what the Department has determined is acceptable documentation to prove lawful presence in the United States.

## **Chapter 7. Dangerous Weapons**

### **Article 6. Application Forms, Processing Time, Reporting Requirements, Renewals, Fees, Denials, Revocations**

§ 4142. Application Forms.

Subdivisions (a) and (b) of this section were revised to update the form revision date. The forms were revised to include instructions regarding the additional documentation necessary to establish lawful presence in the United States for an individual who possesses a California driver license or identification card with the words “FEDERAL LIMITS APPLY.” This is necessary to ensure that the form revision date is consistent throughout Division 5 of the California Code of Regulations so that an individual seeking one of the forms listed will use the correct version of the form.

## **Chapter 39. Assault Weapons and Large-Capacity Magazines**

### **Article 3. Assault Weapon Registration**

§ 5478. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Voluntary Deregistration.

Subdivision (b) of this section was revised to include the most recent revision date of the Firearm Ownership Form, BOF 4542A. This form was revised to include instructions regarding the additional documentation necessary if the individual possess a California driver license or identification card with the words “FEDERAL LIMITS APPLY” at the top, as well as other items previously mentioned. This is necessary to ensure that the form revision date is consistent throughout Division 5 of the California Code of Regulations so that an individual seeking this form will use the correct version.

### **Economic Impact Assessment**

#### **Impacts on Jobs/New Businesses:**

The Department has determined it is unlikely the proposed regulations will affect: (1) the creation or elimination of permanent jobs within California; (2) the creation of new businesses or the elimination of existing businesses within California; or (3) the expansion of businesses currently doing business within California. This determination is based on the fact that because California already requires background checks to purchase a firearm, the number of firearm purchases statewide will not likely be affected by a minor change to the background check process. Also, it is likely that the number of California residents who opt to obtain a REAL ID will continue to increase in the future, negating the requirement for additional documentation.

**Health and Welfare of California Residents:**

The Department determined that the proposed actions will protect the health, safety, and general welfare of California residents by providing an additional safeguard to ensure firearms and ammunition do not fall into the hands of prohibited persons.

**Worker Safety:**

The Department determined that the proposed action will not affect worker safety because it has nothing to do with working conditions or worker safety issues.

**State's Environment:**

The Department determined that the proposed action may result in more use of paper when applicants provide paper forms of proof of lawful U.S. presence.

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

National Rifle Association Institute for Legislative Action, "California Special Alert: Update Regarding Use of Non-REAL IDs for Firearm Purchases," March 22, 2018.

U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, "Open Letter to All California Federal Firearms Licensees," June 30, 2018.

**Evidence Supporting Determination of No Significant Statewide Adverse Economic Impact Directly Affecting Business**

The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This determination is based on the fact that because California already requires background checks to purchase a firearm, the number of firearm purchases statewide will not likely be affected by a minor change to the background check process. Also, it is likely that the number of California residents who opt to obtain a REAL ID will continue to increase in the future, negating the requirement for additional documentation.

**Reasonable Alternatives**

No reasonable alternative has been identified and brought to the attention of the Department or otherwise considered by the Department, that would be more effective in carrying out the purpose for which this 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 implementing the statutory policy or other provisions of law.

No other reasonable alternatives were presented to, or considered by, the Department that would lessen any adverse impact on small businesses.



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

To satisfy the requirements of Government Code section 11349.1(a)(6), the text of the proposed regulations are not duplicative and do not pose a conflict with federal regulations.

**Mandates or Prescriptive Standards**

The proposed regulations do not impose the use of specific technologies or equipment. The proposed regulations do prescribe a specific procedure by requiring additional documentation to prove lawful U.S. presence if an applicant presents a California driver license or identification card with the words "FEDERAL LIMITS APPLY" in a transaction regulated by the Bureau of Firearms. This prescriptive standard is necessary to ensure that firearms and ammunition do not fall into the hands of prohibited persons. But the Department provides several different options to the applicant regarding the type of documentation that can be used to prove lawful U.S. presence.

**Mandate on Local Agencies or School Districts**

The Department determined the proposed regulation does 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 regulations.

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

None.