

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

The Legislature's intent in enacting Penal Code sections 26840 and 31610 through 31670 was to ensure that persons who obtain firearms have a basic familiarity with those firearms by requiring them to obtain a valid Firearm Safety Certificate (FSC) prior to taking delivery of the firearm. To obtain an FSC, an individual must pass a written objective test on firearms safety administered by certified instructors. Additionally, Penal Code sections 26850 and 26860 require the person to perform a safe handling demonstration with the firearm being delivered. The applicable statutes require the Department of Justice (Department or DOJ) to create and maintain the FSC program and to establish the safe handling demonstration steps for long guns and alternative handgun designs. To do this, the Department must promulgate permanent regulations to replace the emergency regulations that are temporarily in effect.

BENEFITS

The proposed regulations will increase public safety by establishing a comprehensive Firearms Safety Certificate program. Specifically, the proposed regulations establish the requirements for the firearms safety test and specify the procedures for the immediate issuance of FSCs to persons who pass the test. Rather than having to pre-pay for FSCs in blocks of ten, DOJ Certified Instructors are able to enter the FSC recipient's personal information and pay the FSC fee electronically via the internet through the Firearms Certification System 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.

The proposed regulations also give DOJ Certified Instructor Applicants the option of applying via the internet and Firearms Certification System, thereby reducing the processing time from 3-4 weeks to 3-4 days.

PURPOSE AND NECESSITY

§4250. DOJ Certified Instructor Qualifications and Application Information

Subdivision (a) establishes the qualifications required to become a DOJ Certified Instructor. Applicants must also have and maintain a valid Certificate of Eligibility (COE) to ensure he or she is not prohibited from lawfully possessing firearms. California law does not expressly require certified instructors to have a COE but it does ban prohibited persons from possessing/owning firearms. The Department would be derelict in its duties if it were to allow a prohibited person to become a DOJ Certified Instructor. The proposed regulation is necessary to ensure DOJ Certified Instructors are not prohibited from possessing/owning firearms during their entire five year term of certification. The alternative of requiring a Basic Firearms Eligibility Check (BFEC) instead of a COE was considered by the Department. The BFEC fee is less than the COE because it is a one time check of the person's eligibility to own or possess firearms. Therefore, if a DOJ Certified Instructor had a BFEC (instead of a COE) and was subsequently arrested and convicted after the BFEC was conducted, the FSC program would not be notified the instructor is now

prohibited. In contrast, the COE includes “subsequent arrest” notification of prohibiting events that occur after the date of the initial record check.

Initial applicants must also submit a copy of prior certification to provide training from one of the organizations specified in Penal Code section 31635. This regulation is needed to confirm the applicant meets the statutory training requirement.

Subdivision (b) establishes the Department’s authority to consider the circumstances of any prior suspension or revocation of an instructor’s DOJ certification in determining whether the applicant meets the minimum level of skill, knowledge, and competency required pursuant to Penal Code section 31635. This regulation is necessary to allow the Department to deny DOJ instructor certification as it deems appropriate based on the seriousness and frequency of prior violations that resulted in a suspension or revocation.

Subdivision (c) authorizes applicants to complete and submit their application manually on form BOF 037 or electronically via the Firearms Certification System. The applicant must provide their complete name, date of birth, sex, California Driver License or Identification Card number, and COE number in order to establish their identity. Their telephone number, mailing address, business address (if different), and e-mail address are also required for communication with the Department.

Subdivision (d) specifies that an instructor’s DOJ certification is valid for five years provided a valid COE is maintained. Requiring an instructor to renew his or her certification every five years allows the Department to review and delete instructor information for those who no longer want to participate in the FSC program. See subdivision (a) for an explanation of the necessity for the COE component of this regulation.

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

Subdivision (a) establishes the following “Conditions of Use” to which DOJ Certified Instructor applicants must agree to establish a user account for access to the Firearms Certification System:

Non-Liability: Standard non-liability statement to protect DOJ against unreasonable liability claims. This is necessary as DES is incapable of causing damage to user equipment or software.

Authorization: Confirmation of DOJ Certified Instructors’ responsibility to protect the confidentiality of the password selected to access the Firearms Certification System, and that the Department shall not be liable for transaction charges fraudulently incurred.

Fees: The FSC fee is fifteen dollars (\$15) per issuance for new FSCs and five dollars (\$5) for replacement FSCs. Multiple FSCs can be queued and paid for in a single transaction. The Department will not provide refunds after issuance of an FSC. The \$15 fee is necessary for the Department to recover its FSC program costs, and is statutorily mandated pursuant to Penal Code section 31650. The Department is authorized to charge a fee (not to exceed fifteen dollars (\$15)) for a duplicate certificate pursuant to Penal Code section 31660(c). However, the Department has determined that \$5 is sufficient to recover costs associated with processing a duplicate FSC.

True and Accurate Information: All of the information submitted to the Department through the Firearms Certification System shall be true, accurate, and complete to the best of the DOJ Certified Instructor's knowledge. This is necessary to ensure the information submitted and retained within the Firearms Certification System is accurate.

Subdivision (b) specifies the information that must be provided to create a user account. The user name is necessary to verify identity of the instructor. The three identity verification questions and the user selected password are necessary to ensure system security.

Subdivision (c) requires the DOJ Certified Instructor to assume responsibility for the acquisition and maintenance of the device and software used to access the internet and interface with the Firearms Certification System. This regulation is necessary to make the user aware that the Department does not furnish or maintain their equipment or software.

§4251.5 DOJ Certified Instructor Suspensions and Revocations

Subdivision (a) is necessary to establish the Department's authority to suspend an instructor's DOJ certification for up to six months for a violation of the regulations or conduct deemed by the Department to be contrary to the best interests of public safety. A suspension of up to six month's is reasonable and necessary to communicate the seriousness of the violation.

Subdivision (b) is necessary to establish the Department's authority to revoke an instructor's DOJ certification for a violation of Penal Code sections 27550, 31620, or 31625.

Subdivision (c) is necessary to inform DOJ certified instructors that hearings related to suspensions or revocations will be conducted in the manner required by Government Code section 1500 et. seq.

Subdivision (d) is necessary to inform DOJ certified instructors that they can re-apply for DOJ certification one year after the effective date of the DOJ revocation. DOJ determined the one year restriction is appropriate for more serious violations.

§4252. FSC Test Applicant Qualifications and Fee

Subdivision (a) 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. This regulation is necessary to confirm compliance with the Penal Code section 31625(a) requirement that persons obtaining an FSC be a minimum of 18 years of age.

Subdivision (b) establishes the FSC fee for taking the written test (twice if failed the first time) and being issued an FSC. The fee is twenty-five dollars (\$25), fifteen dollars (\$15) of which is forwarded to the Department pursuant to Penal Code section 31650. This regulation is necessary to allow the Department to recover its costs for developing and maintaining the FSC program.

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

Subdivisions (a) through (i) repeat information specified in the Penal Code regarding the FSC test for the purpose of clarity for DOJ Certified Instructors and persons who take the FSC test.

Subdivision (a) 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(c):

- 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

Subdivision (b) is necessary to inform that only DOJ Certified Instructors are authorized to administer the FSC test pursuant to Penal Code section 31640(a).

Subdivision (c) is necessary to establish that DOJ Certified Instructors cannot provide any additional test assistance beyond issuing administrative instruction.

Subdivision (d) establishes that FSC test applicants may not use any notes, review materials, or obtain assistance from any person once he/she begins the FSC test, and that DOJ Certified Instructors must maintain adequate supervision to ensure that test applicants do not receive outside assistance. This regulation is necessary to inform DOJ Certified Instructors of their responsibility to ensure applicants do not cheat during the test.

Subdivision (e) is necessary to inform DOJ Certified Instructors that pursuant to Penal Code section 31640(b) that if an FSC test applicant is unable to read, an FSC translator can be utilized, but that the FSC translator can only interpret the language of the test.

Subdivision (f) is necessary to inform DOJ Certified Instructors that test applicants are not allowed to keep a copy of their test or answer sheet to prevent sharing of test contents with other potential applicants.

Subdivision (g) is necessary to establish a minimum score for successful completion of the FSC test pursuant to Penal Code 31645(a).

Subdivision (h) is necessary to inform DOJ Certified Instructors that if an applicant fails the FSC test, after 24 hours have elapsed, he or she may take a different version of the FSC test without any additional fee (one free retest). The retest must be taken from the same DOJ Certified Instructor except upon permission by the Department, which shall be granted only for good cause shown. The instructor shall make himself or herself available to the applicant during regular business hours in order to retake the test pursuant to Penal Code section 31645(b).

Subdivision (i) is necessary to establish steps DOJ Certified Instructors will need to take when disqualifying an applicant they observe using reference materials or receiving unauthorized assistance during an FSC exam.

Subdivision (i)(1) requires DOJ Certified Instructors to note their observations and reasons for the disqualification on the back of the applicant's test answer sheet, and also sign and date the answer sheet. This regulation is necessary to provide documentary evidence of the violation.

Subdivision (i)(2) requires the instructor to return \$15 to the applicant. This regulation is necessary because the \$15 certificate portion of the fee must be returned since the FSC was not issued. Pursuant to Penal Code section 31645(b) the applicant may retake the test after 24 hours, but he or she will be required to pay the entire \$25 dollar fee.

Subdivision (j) requires DOJ Certified Instructors to retain all completed FSC test answer sheets for five years from the test date, and make the completed answer sheets available for inspection upon request by any peace officer or authorized DOJ personnel. This regulation is necessary to document DOJ Certified Instructors' compliance with FSC laws and regulations.

§4254. FSC Issuance

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

Subdivision (a) Pursuant to Penal Code section 31645(a), "Any person receiving a passing grade on the objective test shall immediately be issued a firearm safety certificate by the instructor."

Subdivision (b) specifies that FSCs are issued via the Firearms Certification System. This regulation is necessary to inform instructors of the new online system for issuance of FSCs. Rather than having to pre-pay for FSCs in blocks of ten, DOJ Certified Instructors are able to enter the FSC recipient's personal information and pay the FSC fee electronically via the internet through the Firearms Certification System 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.

Subdivision (c) requires 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. This regulation is necessary because the electronic Firearms Certification System accepts major credit cards and debit cards, but is not designed to process cash or check payments, including electronic checks.

Subdivision (d) requires the FSC recipient's complete name, California identification type, California driver license or identification card number, and date of birth to 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. This regulation is necessary because the requested date of birth acts as a final verification of the FSC holder's identity. The FSC issue and expiration dates are necessary to inform an FSC holder and firearms dealers of the date the FSC expires.

Subdivision (e) specifies DOJ Certified Instructors can preview the information and make changes prior to submission into the Firearms Certification System. This regulation is necessary to make DOJ Certified Instructors aware of the importance of confirming the accuracy of the information before it's submitted. Allowing changes would increase the likelihood of fraudulent certificates being issued.

Subdivision (f) specifies that each FSC will be available for reprint, without any additional fee, for 24 hours from the date and time payment is received. This regulation is necessary to allow the FSC to be reprinted free of charge in the event of an unexpected printing problem (printer malfunction, out of paper, power loss, etc.). Accordingly, the Firearms Certification System was designed to keep the FSC recipient information readily available in queue for only 24 hours.

Subdivision (g) requires the DOJ Certified Instructor and the recipient to sign the FSC once it is printed. This regulation is necessary to decrease the likelihood of fraudulent FSCs being issued.

§4255. FSC Replacement

A five dollar (\$5) fee, collected from the FSC holder, must be paid to the Department for issuance of the replacement FSC. This regulation is necessary to allow persons to get a replacement FSC at a reduced fee in the event their original FSC is lost or destroyed.

Subdivision (a) 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. The restrictions in this regulation are specifically mandated by Penal Code section 31660 and are repeated here for purposes of clarity.

Subdivision (b) establishes that DOJ Certified Instructors may search the Firearms Certification System only for FSC records that he or she issued. This regulation is necessary because Penal Code section 31660 states that only the instructor who issued an FSC can issue a replacement.

Subdivisions (c) and (d) authorize issuance of a replacement FSC via the Firearms Certification System upon the DOJ Certified Instructor's payment of a five dollar (\$5) fee to DOJ. This regulation is necessary to allow the Department to recover its costs. It should be noted that although Penal Code section 31660(d) authorizes a DOJ fee of up to fifteen dollars (\$15) for a replacement FSC, the Department has determined that a five dollar (\$5) fee is sufficient to recover its costs.

§4256. Safe Handling Demonstration Steps Applicability and Definitions

This section establishes requirements and definitions applicable to safe handling demonstrations. This regulation provides clarity making it easier to understand all of the FSC regulations in Chapter 9.

Subdivision (a) states 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. This regulation is necessary for the DOJ Certified Instructor to inform the firearm recipient of the safe-handling demonstration steps applicable to the specific firearm being delivered.

Subdivision (b) establishes that if only the serialized or finished frame or receiver of a weapon is being delivered, no safe handling demonstration is required. This regulation is necessary because

it is not possible to perform a safe handling demonstration on an incomplete firearm (frame or receiver).

Subdivision (c) establishes that 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.

Subdivision (d) requires a firearm recipient to 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. This is necessary to ensure that the firearm recipient can safely load and unload the firearm being acquired.

Subdivision (e) requires the DOJ Certified Instructor to provide instruction regarding how to render the firearm safe in the event of a jam (malfunction). This regulation is necessary because it is not uncommon for a firearm to jam. This regulation will ensure the firearm recipient is able to clear their firearm in the event of a jam.

Subdivision (f) establishes that 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. This regulation is necessary to document compliance with the safe handling demonstration requirement.

Subdivision (g) establishes that 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. This regulation is necessary to provide clarity regarding the term “dummy round.”

Subdivision (h) establishes that “muzzle awareness” means the firearm is pointed in a safe direction, preferably down at the ground. This regulation is necessary to provide clarity regarding the term “muzzle awareness.”

Subdivision (i) establishes that “trigger discipline” means the trigger finger is outside of the trigger guard and alongside the frame or receiver, at all times. This regulation is necessary to provide clarity regarding the term “trigger discipline.”

§4257. Safe Handling Demonstration Steps for Conventional Long Guns

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

Subdivision (a) Pump Action Long Gun

Subdivision (b) Break-Top Long Gun

Subdivision (c) Bolt Action Long Gun

Subdivision (d) Lever Action Long Gun

Subdivision (e) Semiautomatic Long Gun with a Detachable Magazine

Subdivision (f) Semiautomatic Long Gun with a Fixed Magazine

This section is necessary because pursuant to Penal Code section 26860, the Department has an express mandate to adopt regulations establishing a long gun safe handling demonstration.

§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:

Subdivision (a) Semiautomatic Pistol with a Non-Locking Slide

Subdivision (b) Semiautomatic Pistol with a Fixed Magazine

Subdivision (c) Semiautomatic Pistol with a Magazine Operated Toggle Lock

Subdivision (d) Semiautomatic Pistol with a Top-Feeding Magazine

Subdivision (e) Semiautomatic Pistol with a Tip-Up Barrel

Subdivision (f) Break-Top Revolver

Subdivision (g) Single Shot Pistol

Subdivision (h) Derringer

This section is necessary because Penal Code section 26850 requires a safe handling demonstration prior to a person receiving any handgun. Penal Code sections 26853 and 26856 establish the safe handling demonstration steps for semiautomatic pistols and revolvers respectively. This regulation is necessary to establish the safe handling demonstration steps for handguns with alternative designs.

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

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

Subdivision (a) establishes that applications for DOJ recognition as a comparable training entity must be submitted on DOJ form BOF 946 (Rev. 01/2015). The BOF 946 form requires the following information to be provided under penalty of perjury: name of the training entity, the

address, telephone number, and email address, as well as the complete name of the owner/responsible party. This regulation is necessary so DOJ has current contact information.

Subdivision (b) establishes that every five years, the comparable training entity will receive a notice that requires a reply confirming the entity wants to continue being recognized by the Department as providing comparable training. Failure to reply will result in DOJ recognition being discontinued. This regulation is necessary so the Department can delete information regarding entities that no longer want to be recognized as providing comparable training.

Subdivision (c) requires the comparable training entity to be staffed with at least one DOJ Certified Instructor who has a minimum of 100 hours of verifiable experience teaching firearms safety. The comparable training entity must report the addition or removal of a DOJ Certified Instructor. This regulation is necessary because a person who is teaching people to become an instructor requires an increased level of skill and experience. Reporting the addition and removal of a DOJ Certified Instructor is necessary to ensure the entity has at least one instructor qualified to teach the comparable training course.

Subdivision (d) establishes that the 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 must successfully perform the safe handling demonstration with the conventional firearms provided by the DOJ Certified Instructor. This regulation is necessary because the duties of a DOJ Certified Instructor require the ability to correctly perform safe handling demonstrations and render a firearm safe in the event of a malfunction.

Subdivision (e) establishes the required documentation (Certificate of Completion) to prove the student has completed the comparable training course. This regulation is necessary because DOJ Certified Instructor applicants are required to submit a copy of their Certificate of Completion to the Department.

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

The Department relied on the experience of operating the Firearms Safety Certificate program since January 1, 2015 under emergency regulations. The Department did not rely upon any other technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of the regulations in this rulemaking.

ECONOMIC IMPACT ASSESSMENT

The Department concludes it is unlikely the proposed regulations will affect (1) the creation or elimination of jobs within California, (2) the creation of new businesses or the elimination of existing businesses within California, (3) the expansion of businesses currently doing business within California. This assessment is based on the minimal cost (\$25 once every five years) of obtaining an FSC, relative to the cost of the firearm, thus having no impact on sales volume. Similarly, the cost to DOJ Certified Instructors (\$71 fee the first year and a \$22 fee each year

thereafter for COE) is insignificant and much lower than most professional licensing and certification fees. As far as firearm dealerships, the FSC program will not affect personnel costs. Rather than requiring these businesses to hire additional staff, existing staff will simply have additional duties related to the FSC program.

Benefits of the Proposed Regulations: The proposed regulations will increase public safety by ensuring persons who obtain a firearm have a basic familiarity with that firearm including its safe handling and storage pursuant to Penal Code sections 26840, 26850, and 26860.

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

The Department has determined that the proposed regulations will not have a significant, statewide, adverse economic impact affecting business for the reasons explained in the preceding section. Furthermore, to the extent there is any economic impact, it is the result of the applicable statutes which require the Department to recover its costs through the assessment of fees.

SPECIFIC TECHNOLOGIES AND EQUIPMENT

The proposed regulatory action requires DOJ Certified Instructors to have a personal computer and a common web browser (e.g., Google Chrome, Internet Explorer, Mozilla Firefox, Safari). A standard printer is also required to issue FSCs.

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE DEPARTMENT'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Department considered using a manual process for issuance of FSCs. However, in response to input from stakeholders within the California firearms industry, a more efficient, automated, application (Firearms Certification System) was designed which allows issuance and payment of FSCs on demand.

No other reasonable alternatives were presented to or considered by DOJ 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.