

NOTICE OF PROPOSED RULEMAKING

The Department of Justice (Department or DOJ) proposes to make permanent sections 4250, 4251, 4252, 4253, 4254, 4255, 4256, 4257, 4258, and 4259 of Title 11, Division 5, of the California Code of Regulations (CCR) after considering all comments, objections, and recommendations regarding the proposed action. In addition, the Department proposes to add section 4251.5 to Title 11 after consideration of public comment.

PUBLIC HEARING

The Department will hold a public hearing to receive public comments on the proposed regulatory action at 10:00 a.m.-12:00 noon on November 24, 2015, at the location listed below:

Resources Building Auditorium
1416 9th Street
Sacramento, California 95814

The auditorium is wheelchair accessible.

At the hearing, any person may present oral or written comments regarding the proposed regulatory action. The Department requests, but does not require, that persons making oral comments at the hearing also submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested person or their authorized representative may submit written comments relevant to the proposed regulatory action. The written comment period closes at 12:00 noon on November 24, 2015. Only comments received by that time will be considered. Written comments must be submitted to:

Jeff Amador
Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487
Email: jeff.amador@doj.ca.gov

AUTHORITY AND REFERENCE

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

Reference: Sections 16400, 26710, 26840, 26850, 26853, 26856, 26859, 26860, 29800-29825, 31625, 31635, 31640, 31645, 31650, 31655, 31660, and 31665, Penal Code; title 18, section 922(d) and (g), United States Code; title 27, part 178.32, Code of Federal Regulations.

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 Firearm Safety Certificate (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 administered by certified instructors.

The proposed regulations establish a comprehensive program for the firearms safety test and the issuance of FSCs. The proposed regulations also establish safe handling demonstrations for long guns and for handguns with alternative designs as statutorily mandated. As of the date of this notice, with the exception of the addition of section 4251.5, the proposed regulations are currently in effect as emergency regulations.

§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 to ensure he or she is not prohibited from lawfully possessing firearms. Initial applicants must also submit a copy of prior certification to provide training from one of the specified organizations delineated in Penal Code section 31635.

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.

Subdivision (c) authorizes applicants to complete and submit their application manually on a BOF 037 form or electronically via the Firearms Certification System. The BOF 037 is incorporated by reference.

Subdivision (d) specifies that an instructor's DOJ certification is valid for five years provided a valid COE is maintained.

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

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

Subdivision (b) specifies the information that must be provided to create a user account.

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 Firearms Certification System.

§4251.5 DOJ Certified Instructor Suspensions and Revocations

Subdivision (a) establishes 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.

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

Subdivision (c) specifies all hearings related to a suspension or revocation will be conducted in accordance with Government Code section 1500 et. seq.

Subdivision (d) authorizes an instructor to re-apply for DOJ certification one year after the effective date of DOJ revocation.

§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 years old.

Subdivision (b) establishes 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

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:

- 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

Subdivisions (b) through (i) specify 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.

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.

§4254. FSC Issuance

This section establishes the process by which Firearm Safety Certificates (BOF 034 rev. 01/2015) are issued via the Firearms Certification System. The BOF 034 is incorporated by reference.

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.

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.

Subdivision (e) specifies DOJ Certified Instructors can preview the information and make changes prior to submission into the Firearms Certification System. Changes cannot be made after the information has been submitted.

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.

Subdivision (g) requires the DOJ Certified Instructor and the recipient to 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.

Subdivision (a) 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.

Subdivision (b) If only the serialized or finished frame or receiver of a weapon is being delivered, no safe handling demonstration is required.

Subdivision (c) 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) 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.

Subdivision (e) The DOJ Certified Instructor must provide instruction regarding how to render the firearm safe in the event of a jam (malfunction).

Subdivision (f) 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). The BOF 039 is incorporated by reference. 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.

Subdivision (g) 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.

Subdivision (h) “Muzzle awareness” means the firearm is pointed in a safe direction, preferably down at the ground.

Subdivision (i) “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 long guns:

Section (a) Pump Action Long Gun

Section (b) Break-Top Long Gun

Section (c) Bolt Action Long Gun

Section (d) Lever Action Long Gun

Section (e) Semiautomatic Long Gun with a Detachable Magazine

Section (f) 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:

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

Section (b) Semiautomatic Pistol with a Fixed Magazine

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

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

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

Section (f) Break-Top Revolver

Section (g) Single Shot Pistol

Section (h) Derringer

§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:

Section (a) Applications must be submitted on DOJ form BOF 946 (Rev. 01/2015). The BOF 946 is incorporated by reference.

Section (b) 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.

Section (c) The 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.

Section (d) 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.

Section (e) Upon successful completion of the comparable training course, each student must be issued a Certificate of Completion.

Anticipated Benefits of the Proposed Regulations

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. As established by the proposed regulations, the FSC program improves public safety by ensuring persons who obtain firearms have a basic familiarity with those firearms. 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 reducing the processing time from 3-4 weeks to 3-4 days.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

Pursuant to Government Code 11346.5(a)(3)(D), the Department must evaluate whether the proposed regulations are inconsistent or incompatible with existing state regulations. Pursuant to this evaluation, the Department has reviewed existing regulations pertaining to firearms within California Code of Regulations (CCR) Title 11, Division 5 and determined these proposed regulations are not inconsistent or incompatible. This determination is based on the fact that there are no existing regulations that address the specific subject matter of the proposed regulations.

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).

Comparable Federal Regulations:

The proposed action does not differ substantially from an existing comparable federal regulation or statute.

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)

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: 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. Subdivisions (c) and (d) of section 31650 of the Penal Code specifically authorize use of surplus revenue from those fees to be used to cover the Department's cost of conducting various firearms related enforcement activities unrelated to the FSC program.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative person or businesses: An individual who intends to obtain a firearm would be subject to a \$25 fee for taking the firearm safety test and receiving an FSC. DOJ Certified Instructors would be subject to a \$71 fee the first year and a \$22 fee each year thereafter for a Certificate of Eligibility confirming he or she is not prohibited from possessing firearms.

Statewide adverse economic impact directly affecting businesses and individuals: Although the proposed action *will* directly affect businesses statewide, including small businesses, the Department concludes the adverse economic impact, including the ability of California businesses to compete with businesses in other states, *will not* be significant.

Business report requirement: None.

Significant effect on housing costs: None.

Other matters prescribed by statute applicable to the agency or to any specific regulation or class of regulations: None.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department concludes it is unlikely the proposed regulations will affect (1) the creation of jobs within the State of California, (2) the elimination of any jobs within the State of California (3) the creation of new businesses within the State of California (4) the elimination of existing businesses within the State of California (5) the expansion of businesses currently doing business within the State of California.

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.

Small Business Determination: The Department has determined the proposed regulations will affect small business.

CONSIDERATION OF 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 alternative has been identified and brought to the attention of DOJ that would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any person interested in presenting statements or arguments with respect to alternatives to the proposed regulations may do so at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

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The back up contact person for these inquiries is:

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AVAILABILITY OF RULEMAKING FILE INCLUDING THE INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DOJ will have the entire rulemaking file available for inspection and copying throughout the rulemaking process. The text of the proposed regulations (the “express terms”), the initial statement of reasons and the information upon which the proposed rulemaking is based are available on the DOJ website at <http://oag.ca.gov/firearms>. Copies may also be obtained by contacting Jeff Amador.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, DOJ may adopt the proposed regulations substantially as described in this notice. If DOJ makes modifications which are sufficiently related to the originally proposed text, DOJ will make the modified text (with the changes clearly indicated) available to the public for at least 15 days and accept written comments before DOJ adopts the regulations. Copies of any modified text will be available on the DOJ website at <http://oag.ca.gov/firearms>. A written copy of any modified text may be obtained by contacting Jeff Amador.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon completion, the Final Statement of Reasons will be available on the DOJ website at <http://oag.ca.gov/firearms>. You may also obtain a written copy of the Final Statement of Reasons by contacting Jeff Amador.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout format, as well as the Final Statement of Reasons once completed, can be accessed through the DOJ website at <http://oag.ca.gov/firearms>.