

NOTICE OF PROPOSED RULEMAKING

Notice to be published on March 16, 2018

The Department of Justice (the Department) proposes to amend sections 4200 through 4240, of Title 11, Division 5, Chapter 8, of the California Code of Regulations (CCR) concerning the Dealer Record of Sale (DROS) Entry System (DES) after considering all public comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department will hold a public hearing to receive public comments on the proposed regulatory action.

The hearing will be May 4, 2018, from 10:00 am to 12:00 pm, at the following location:

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 who make oral comments at the hearing also submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5:00 p.m. on May 4, 2018. Only comments received by the Department by that time will be considered. Written comments must be submitted to:

Jacqueline Dosch
Bureau of Firearms
Division of Law Enforcement
Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487
Phone: 916-227-7614
Email: DESregulations@doj.ca.gov

AUTHORITY AND REFERENCE

Authority: Penal Code sections 28105, 28155, 28160, 28175, 28205, and 28225.

Reference: Penal Code sections 16190, 26815, 27540, 28105, 28155, 28160, 28175, 28205, 28210, 28215, 28220, and 30395.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

EXISTING LAWS AND REGULATIONS

Penal Code sections 28105 and 28155 authorize the Department to develop standards for electronic equipment for the electronic transmission of firearm purchaser/transferee/borrower (purchaser) information to the Department by California Firearm Dealers (dealers) necessary for the Department to perform a background check of the purchaser. Penal Code section 28160 authorizes the Department to write regulations regarding the manner with which the purchaser's right thumbprint shall be provided. Penal Code sections 28175, 28205, 28210 and 28225, authorize the Department to prescribe how and what information a dealer collects regarding the sale/transfer/loan of a firearm, the form in which the information is to be provided, and the fees that are to be collected.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

The Department has found that the existing regulations regarding the DES could be improved to provide further guidance necessary to ensure completion of DROS transactions. Revising the regulations will assist the Department with providing guidance to ensure completion of DROS transactions, accurate submission of information, and accurate Department records. Further, the regulations will provide clear direction with special circumstances regarding capturing a purchaser's right thumbprint and consequences to California Firearm Dealers (dealers) for not completing DROS transactions.

Currently, when dealers are processing a DROS transaction in the DES, they do not always complete the process by submitting firearm delivery information. This is problematic because the Department does not know if the purchaser actually obtained a firearm, or if the transaction was intended to be corrected or cancelled. If the Department does not know whether or not an individual is in possession of a firearm, it becomes an issue of public safety. It is also costly for the Department to make several attempts to track down the information to determine if someone is actually in possession of a firearm.

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

Pursuant to Government Code 11346.5, subdivision (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 CCR Title 11, Division 5 and determined these proposed regulations are not inconsistent or incompatible. This determination is based on the fact that the proposed regulations amend the existing regulations that address the specific subject matter. Additionally, these regulations are not duplicative of existing Penal Code sections, but rather clarify and provide further detail to existing Penal Code sections.

EFFECT OF THE PROPOSED REGULATION

The proposed regulations will refine the Department's instructions for using the DES to provide further instruction and clarity so dealers will be able to use the system more efficiently. Also, they provide further clarification on who may use the DES, and will inform dealers what information is to be collected and the proper way to obtain and record the purchaser's thumbprint.

COMPARABLE FEDERAL REGULATIONS

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

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: There is a potential for the Department to lose revenue in the form of lost DROS transaction fees. If a dealer is locked out of his/her account then he/she cannot conduct business by submitting DROS transactions. If dealers are not making sales, the Bureau is not collecting fee(s).

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.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. The Department had made an initial determination that the 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 has been made on the fact that these regulations involve California businesses that are operating within California.

Cost impacts that a representative person or business would incur in reasonable compliance with the proposed action: If a dealer does not comply with the proposed regulations it could lose revenue. This could occur because if the dealer does not complete the transaction in DROS within the approved 30-day delivery period, their access will be suspended until the DROS transaction has been completed (by either selecting the "deliver gun," or "cancel" button). During the suspension period, the dealer or its authorized associate(s) or salesperson(s) will not be able to use the DROS account to sell, transfer, or deliver firearms.

Significant effect on housing costs: None.

Small business determination: This proposed regulation may affect small business. If a dealer that is a small business does not comply with the proposed regulations it could lose revenue. This could occur because if the dealer does not complete the transaction in DROS within the approved 30-day delivery period, their access will be suspended until the DROS transaction has been completed (by either selecting the “deliver gun” or “cancel” button). During the suspension period, the dealer(s) or its authorized associate(s) or salesperson(s) will not be able to use the DROS account to sell, transfer, or deliver firearms.

Results of the Economic Impact Assessment/Analysis:

The proposed regulations refine a process that is explained in existing regulations and clarify how to obtain a purchaser’s thumbprint, the types of DES accounts needed for business, and creates consequences for a dealer that does not complete the DROS transaction in DES.

Adoption of the proposed regulations will not:

- (1) Create or eliminate jobs within California as these regulations are simply refining current processes;
- (2) Create new businesses or eliminate existing businesses within California as these regulations are simply refining current processes; or
- (3) Affect the expansion of businesses currently doing business within California as these regulations are simply refining current processes; and
- (4) As stated above under the “Anticipated Benefits of the Proposed Regulation,” these regulations will provide an improved process for better recordkeeping.

BUSINESS REPORT

In accordance with Government Code sections 11346.5, subdivision (a)(11) and 11346.3, subdivision (d), the proposed regulations do not require a report to be made to businesses or anyone.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSONS

Please direct inquiries concerning the proposed administrative action to:

Jacqueline Dosch
Bureau of Firearms
Division of Law Enforcement
Department of Justice

P.O. Box 160487
Sacramento, CA 95816-0487
Phone: 916-227-5419
Email: DESregulations@doj.ca.gov

The back-up contact person for these inquiries is:

Jessie Romine
Bureau of Firearms
Division of Law Enforcement
Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487
Phone: 916-227-4217
Email: DESregulations@doj.ca.gov

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

The Department 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 at the DOJ website at <http://oag.ca.gov/firearms/regs>. Copies may also be obtained by contacting Jacqueline Dosch.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon completion, the final statement of reasons will be available on the Department website at <http://oag.ca.gov/firearms/regs>. You may also obtain a written copy of the final statement of reasons by contacting Jacqueline Dosch.

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, are available on the Department website at <http://oag.ca.gov/firearms/regs>.