

PUBLIC COMMENTS AND DEPARTMENT OF JUSTICE RESPONSES

#	Summarized Comment	DOJ Response
1.	<p>Objection No. 1 [Proposed § 2000(b)/(q) "Business Day"/ "Work Day" Defined]</p> <p>Section 2000(b) and 2000(q), respectively, proposes to define both "Business Day" and "Working Day" in exactly the same terms, which in pertinent part states, "Monday through Friday, excluding official California state holidays."</p> <p>The problem with this definition is that pawnbrokers, which are a subset of secondhand dealers, and secondhand dealers are non-governmental, private businesses that set their own schedules. To take advantage of customer patterns, many businesses are open on some or all of the weekend, and are closed one or more days in the typical business week. This proposed definition would cause such a dealer to be in violation of the regulations and Bus & Prof. C. § 21630.</p>	<p>The Department accepts this comment. In response to this comment, the Department will remove subdivisions (b) and (q), the proposed definitions for "Business day" and "Working day," from section 2000 of the proposed regulations.</p>
2.	<p>Objection No. 2 [Proposed § 2002(e) Denial of CAPSS Access for Delinquent License]</p> <p>As written in proposed section 2002(e), the Department projects denying a secondhand dealer access to preclude that dealer from reporting their acquisitions to CAPSS if their renewal fees are delinquent. This is entirely unacceptable because it fails to provide any prior notice protections to the secondhand dealer.</p> <p>If the Department desires to provide for the suspension of CAPSS access for delinquent license fees, there must be embedded in the rule minimum due process protections for the secondhand dealer before that dealer's livelihood is terminated.</p>	<p>The Department accepts this comment. In response to this comment, the Department will amend subdivision (e) of proposed regulation section 2002 as provided:</p> <p style="padding-left: 40px;">"Access to CAPSS shall be denied whenever license renewal fees are delinquent for 60 calendar days beyond the expiration date of the license."</p>

<p>3.</p>	<p>Objection No. 3 [Proposed § 2003(a) Property Description]</p> <p>New section 2003(a) mandates the reporting of eleven data points: (1) Brand name, (2) Model, (3) Serial Number, (4) Owner-applied number, (5) Inscription, (6) Size, (7) Color, (8) Material, (9) Article Field, (10) Plain text description, (11) Manufacturer's pattern name</p> <p>The error is that the proposed regulation presumes two things: (1) These data points, other than the article field and plain text description, are present and (2) The property is actually reportable pursuant to Bus & Prof. C. § 21627. The proposed rule needs to be clarified so as to not make these presumptions.</p>	<p>The Department rejects this comment. Functionality has been built into CAPSS that enables the dealer to input “Unknown” to report a data point that is not present for the item being entered. The Department will make no changes in response to this comment because the complete elimination of any of these data points would violate Business and Professions Code section 21628.</p>
<p>4.</p>	<p>Objection No. 3 [Proposed § 2003(a) Property Description]</p> <p>Moreover, in connection with the actual reporting of these data points as required by proposed section 2006(c)(4) of the Property Transaction Report, the secondhand dealer will be forced to input "Unknown" when these data points are not present, rather than simply skipping over the points that are inapplicable. This will be unduly burdensome in respect to the transaction itself and will require extensive reprogramming to secondhand dealers' software.</p>	<p>The Department rejects this comment. The functionality to input “Unknown” to report a data point that is not present for an item being entered was created to comply with the requirements of Business and Professions Code section 21627. The Department will make no changes in response to this comment because the complete elimination of any of these data points would violate Business and Professions Code section 21628.</p>
<p>5.</p>	<p>Objection No. 4. [Proposed § 2005(a)/(b) Fingerprint]</p> <p>However, subdivision (a) of the proposed regulation mandates the reporting of the alternate finger or, where the customer has no fingers, that data point shall be reported.</p> <p>This would unduly require extensive reprogramming to the software creating batch uploads by secondhand dealers for these alternatives. This additional cost is not taken into consideration by</p>	<p>The Department rejects this comment. The commenter has presented no viable alternative. Subdivision (g) of Business and Professions Code section 21628 directs the Department to collect a legible fingerprint, but in the case that the data point for collecting a fingerprint is not completed, the Department has no way of confirming if the data point was left incomplete inadvertently or if it was because the intended seller or pledger had no fingers.</p> <p>The Department does not require a secondhand dealer to purchase third party software that enables batch uploads of transactions, so it is not</p>

	<p>the Department, and it becomes cost prohibitive for most secondhand dealers.</p>	<p>necessary for the Department to take these additional costs into consideration. CAPSS allows a secondhand dealer to enter a single transaction at a time and it allows it to be done free of cost. If a dealer chooses to use batch upload software, it is a cost that the dealer imposes on his or her self. Thus, when an intended seller or pledger has no fingers, the dealer has the ability to enter a single transaction into CAPSS if s/he does not want to pay for the reprogramming of the software in a way that it meets the requirements of this regulation.</p>
<p>6.</p>	<p>Objection No. 4. [Proposed § 2005(a)/(b) Fingerprint]</p> <p>Secondly, pursuant to subdivision (b) of new section 2005, the Department proposes to define "legible," in the context of a fingerprint capture required pursuant to Bus & Prof C. § 21628(a)(6), as "if a reasonable person can see clearly defined ridges" or where no clearly defined ridges are present, "the fingerprint of the finger with the most clearly defined ridges."</p> <p>CAPA objects to this proposed rule on the basis that current hardware and software available to members which the Department has either directly recommended to be purchased or which is available to secondhand dealers is not always capable of rendering a view of the customer's fingerprint before its capture by the secondhand dealer. This makes determining whether or not ridges are present virtually impossible for the secondhand dealer. Second, the cost to secondhand dealers of upgrading their software to accommodate the requirement of the proposed rule would again be cost prohibitive.</p>	<p>The Department rejects this comment because the Department has used its discretion to define "legible" in the clearest manner as possible so that there is no confusion. The commenter has proposed no alternative definitions for the Department to consider.</p> <p>The Department has recommended specifications for data submission, but has not recommended items to be purchased.</p>

7.	<p>Objection No. 5 [Proposed § 2006(c) Property Transaction Report]</p> <p>The Department proposes to interpret "current address" as used in Bus & Prof. C. §21628(a)(1) to mean "street address" when a secondhand dealers reports their customer's transaction</p> <p>There is no requirement in the statute that a "street address" be obtained from the customer. The statute simply requires a "current address." Consequently, the proposed regulation contradicts the statute and is improper.</p> <p>The address provided to the secondhand dealer by the customer, in whatever format the customer chooses to provide, must be accepted by the Department. If it is not, secondhand businesses will cease to exist.</p>	<p>The Department rejects this comment because it is necessary for law enforcement agencies to investigate fraudulent sellers or pledgers and if any address other than a street address was provided, it may make it difficult for the law enforcement agency to investigate the fraudulent seller or pledger.</p>
8.	<p>Objection No. 5 [Proposed § 2006(c) Property Transaction Report]</p> <p>If the customer provides an address outside of the United States, the proposed rule requires the secondhand dealer delete the state or territory, city and postal zip code from the CAPSS Property Transaction Report. This would require extensive and consequently expensive reprogramming by the secondhand dealers to make their software compatible.</p> <p>Secondhand dealers, especially pawnbrokers, use all the address information, regardless of if the address is located inside or outside the United States, to issue default notices to customers. The Department should simply take the city and country that the customer provides.</p>	<p>The Department rejects this comment. CAPSS currently accepts addresses out of the United States to be entered in totality. CAPSS does not require the deletion of any related fields for any address that is entered.</p>

<p>9.</p>	<p>Objection No. 6 [Proposed § 2006(c)(4) A-N Property Transaction Report]</p> <p>By proposing, as section 2006(c)(4) A-N does, that all secondhand dealers report "Unknown" in any of the eleven fields now required to be completed in a Property Transaction Report, new and burdensome duties are imposed on the secondhand dealer. The secondhand dealer should be permitted to omit from reporting data points that are inapplicable, and not be mandated to report " Unknown " in lieu. By mandating this reporting, secondhand dealers are going to incur expensive reprogramming to their software.</p>	<p>The Department rejects this comment. The purpose of CAPSS is to protect the public from the dissemination of stolen property and to assist criminal investigations by tracing and recovering stolen property. If “Unknown” is not reported for any of these data points, it would confuse the person using the system to conduct a criminal investigation because s/he will be unable to determine if a data point was left incomplete inadvertently or if it was because the property did not have information to complete that data point.</p>
<p>10.</p>	<p>Objection No. 7 [Mandatory Advisement to Consumer]</p> <p>The Department's proposed section 2006(e) imposes a new duty on the secondhand dealer, i.e., a duty to "[A]dvis[e] the intended seller or pledger that the use of the intended seller or pledger's electronic signature and fingerprint on the Property Transaction Report constitutes certification by the intended seller or pledger that "(1) He or she is the owner or has authority of the owner to sell or pledge the property and (2) To his or her knowledge and belief the information he or she provided is true and complete."</p> <p>First, the proposed rule is directly contrary to the applicable statute. In pertinent part, Bus. & Prof. C. § 21628(a) states, "The report shall be legible, prepared in English, completed where applicable, and include only the following:" Thereafter, subdivision (a)(5) states, "A certification by the intended seller or pledger that to his or her knowledge and belief the information is true and complete." Thus, there is no duty for a secondhand dealer to provide an advisement. It is a certification by the intended seller or pledger that is required.</p>	<p>The Department rejects this comment in part as there is a statutory duty to submit this certification to the Department. The Department has used its discretion to determine the least burdensome way for a secondhand dealer to fulfill this requirement. The Department is not imposing a new duty to provide an advisement, but is implementing a statutory duty for the secondhand dealer to collect this certification from the intended seller or pledger. The commenter has proposed no alternative for the Department to consider.</p> <p>In response to this comment, the Department will amend subdivision (e) of proposed regulation section 2006 as follows:</p> <p>"The person taking the information shall notify the intended seller or pledger that the use of the intended seller or pledger’s electronic signature and fingerprint on the Property Transaction Report constitutes certification by the intended seller or pledger that:"</p>

		<p>The purpose of the Department’s amendment of this section is to clarify that the dealer shall find a uniform method, whether the dealer wants to do it verbally or by printing out a sign that the dealer points to while conducting each transaction, to notify the seller or pledger that the seller or pledger’s signature has special legal significance that certifies that he or she is the owner of the property or has the authority of the owner to sell or pledge the property and that to his or her knowledge and belief the information is true and complete.</p>
<p>11.</p>	<p>Objection No. 7 [Mandatory Advisement to Consumer]</p> <p>Second, Bus & Prof. C. § 21628(d)(3) states, "Unless specifically identified in this section, the Department of Justice, chiefs of police, and sheriffs shall not require a secondhand dealer to include any additional information concerning the seller, the pledger, or the property received by the secondhand dealer in the report required by this section." Consequently, proposed subdivision (e) of section 2006 is contrary to statute.</p>	<p>The Department rejects this comment as there is a statutory duty to submit this certification to the Department. The Department has used its discretion to determine the least burdensome way for a secondhand dealer to fulfill this requirement. The Department is not imposing a new duty to provide an advisement, but is implementing a statutory duty for the secondhand dealer to collect this certification from the intended seller or pledger. The commenter has proposed no alternative for the Department to consider.</p>
<p>12.</p>	<p>Discussion Point Only [Proposed § 2004(a)(1) / (a)(2) Intended Seller ID Issuance Date]</p> <p>The Department proposed in new section 2004 details how to report the intended seller's identification where (1) the ID is expired or has no evident expiration date and (2) where the ID evidences an expiration date has not been reached. CAPA has no objection to the proposed rule, per se. However, neither the proposed rule nor the current manner in which the system is operating won't likely support the proposed rule.</p>	<p>The Department rejects this comment. No change is required in response to this comment because CAPSS has already been set up in a way that supports an eight digit entry.</p>

<p>Currently, the system only supports a four digit entry reserved for the year of issuance. This creates false "expired" ID exceptions via CAPSS where the ID is, in fact, valid. This occurs when the customer's birthday or identification issuance date occurs at the end of the year. An eight digit entry would cure the error created by the current system and would support the proposed rule effectively.</p>	
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15-DAY COMMENT PERIOD

<p>13. The proposed additional data points that will be added to the CAPSS system (namely color, size, material and pattern), which are already required to be inserted into the open description area, should be made as optional.</p> <p>Removing the color, size, pattern, etc., from the open description field would unduly require expensive reprogramming to the software creating batch uploads. These additional costs, we feel, were not taken into consideration by the Department.</p> <p>Whatever the new CAPSS system implements from rule making, both existing and new xml files should be accepted by licensed dealers.</p>	<p>The Department rejects this comment. No change has been made in response to this comment because these data points are mandated based on statute. As the open description area is free form, the system does not require the data points to be entered. Resultantly, dealers could omit some or all of these required data points in their submission if they choose. Moreover, interpreting the results of an omission in a free form field is problematic. For example, it would be unclear whether the absence of a data point in the free form field would represent “none” or “unknown,” or whether it would reflect an omission by the reporter.</p> <p>The Department does not require a secondhand dealer to purchase third party software that enables batch uploads of transactions, so it is not necessary for the Department to take these additional costs into consideration. CAPSS allows a secondhand dealer to enter a single transaction at a time and it allows it to be done free of cost. If a dealer chooses to use batch upload software, it is a cost that the dealer imposes on him or her self.</p> <p>Allowing two files to be accepted would negate the existence of the adopted regulations.</p>
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<p>14.</p>	<p>We ask if any changes to the current CAPSS system be implemented that the Department gives all secondhand dealers a full two-year license cycle to implement.</p>	<p>The Department rejects this comment. No change has been made in response to this comment because all licensed businesses have access to CAPSS and have the ability to comply with the statute and regulations when the changes go into effect.</p>
<p>15.</p>	<p>Denying a secondhand dealer access to upload transactional information due to a delinquent renewal payment is not the jurisdiction of the DOJ, rather, this is held by the local licensing authority. The department fails to provide any prior notice protections or payment remedies. Curing a delinquency only can be accomplished through local jurisdiction.</p>	<p>The Department rejects this comment. No change has been made in response to this comment because the Department cannot permit uploads to CAPSS by a business in violation of Business and Professions Code section 21642 (unlicensed secondhand dealers).</p> <p>Additionally, the renewal fees are necessary for the operation and maintenance of CAPSS. The department cannot support access to CAPSS by a business that fails to pay the required fee.</p> <p>The CAPSS programmatically sends email notifications to businesses 60, 30, and 10 days prior to expiration. These regulations also allow for a 60-day grace period after expiration for a business to continue to submit their transactions. The 60-day grace period will remedy the delay of any processing of renewals by law enforcement agencies.</p>