

CALIFORNIA DEPARTMENT OF JUSTICE
TITLE 11. LAW
DIVISION 5. FIREARMS REGULATIONS
CHAPTER 2. CENTRALIZED LIST OF FIREARMS DEALERS

NOTICE OF PROPOSED RULEMAKING

Notice published October 21, 2022

The Department of Justice (Department) proposes to adopt section 4025 of title 11, division 5, chapter 2 of the California Code of Regulations concerning notice to the Department upon the transfer of a firearm to law enforcement subsequent to a denied private party sale, transfer, or loan when the firearm cannot be returned to the seller, transferor, or loaner.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed regulatory action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days before the close of the written comment period.

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 on December 6, 2022 at 5:00 p.m. Only written comments received by that time will be considered. Please submit written comments to:

Kelan Lowney
Department of Justice
P.O. Box 160487
Sacramento, CA 95816
(916) 210-2377
bofregulations@doj.ca.gov

NOTE: Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Authority: Section 28050, Penal Code.
Reference: Section 28050, Penal Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

A private party sale of a firearm must be conducted through a licensed firearms dealer. Existing law requires a firearms dealer who is unable to process the sale, transfer, or loan of a firearm to return the firearm to the person making the sale, transfer, or loan. However, the dealer is prohibited from returning the firearm if that person is prohibited from possessing a firearm. In those cases, the dealer is required to transfer the firearm to a law enforcement agency. (Pen. Code, § 28050, subd. (e).)

Effective January 1, 2022, a dealer who delivers possession of a firearm to a law enforcement agency is required to notify the Department within 72 hours after the delivery of the firearm in a manner and format prescribed by the Department. (Pen. Code, § 28050, subd. (g).)

The Department maintains the Dealer Record of Sale (DROS) Entry System, a web-based application used by firearms dealers to report the sale, loan, transfer, redemption, and acquisition of handguns and long guns to the Department, as required by state law. (Pen. Code, § 28205; Cal. Code Regs., tit. 11, § 4200 et seq.)

Effect of the Proposed Rulemaking:

The proposed regulation prescribes the procedure for a dealer to notify the Department that a firearm has been delivered to a law enforcement agency. The Report of Dealer Relinquishment, forms BOF 1401A and 1401B, have been developed for this purpose. Starting July 1, 2024, the dealer will report this information electronically via the DROS Entry System (DES). The DES will generate a form for the dealer and law enforcement officer to sign.

Anticipated Benefits of the Proposed Regulations:

The proposed regulation provides the procedure for a dealer to meet their obligation of notifying the Department that a firearm has been delivered to a law enforcement agency. This regulation protects public safety by implementing a statutory requirement that the Department be notified of each transfer of a firearm. This is particularly important when the original firearm possessor has been determined to be prohibited from possessing a firearm.

Comparable Federal Regulations:

There are no existing federal regulations or statutes comparable to these proposed regulations.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that these proposed regulations are not inconsistent or incompatible with existing State regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only

regulations that concern the transfer of a firearm to law enforcement when a private party transfer or loan is denied.

Forms Incorporated by Reference:

None.

Other Statutory Requirements:

None.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department's Initial Determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: The cost to the Department to process the form will be approximately \$447.00 annually.

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

Other non-discretionary costs or savings imposed on local agencies: None.

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

Cost impacts on representative person or business: The Department estimates that a representative private person or business will necessarily incur \$2.91 to complete and submit the required form. The average firearms dealer will face the above scenario once every 49 years.

Significant effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete: The Department has made an initial determination that that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Assessment (EIA):

The Department concludes that it is (1) unlikely that the proposal will create or eliminate jobs within the state, (2) unlikely that the proposal will create new businesses or eliminate existing businesses within the state, (3) unlikely that the proposal will result in the expansion of businesses currently doing business within the state.

The Department also concludes that:

(1) The proposal would benefit the health and welfare of California residents by creating a procedure for a dealer to report to the Department that a firearm has been delivered to a law enforcement agency because the owner is not eligible to own a firearm. The regulation would protect public safety by implementing a requirement that keeps firearms out of the hands of persons who are prohibited from owning or possessing a firearm.

(2) The proposal would not benefit worker safety because it does not regulate worker safety standards.

(3) The proposal would not benefit the state's environment because it does not change any applicable environmental standards.

Business report requirement: The proposed regulation requires the dealer to report the delivery of a firearm to law enforcement on a form prescribed by the Department. On and after July 1, 2024, the dealer shall report the information to the Department via the DES. The DES will generate a form for the dealer and law enforcement officer to sign. The Department finds it is necessary for the health, safety or welfare of the people of this state that proposed section 4025, which requires a report, applies to businesses.

Small business determination: The Department has determined that this proposed action affects small businesses. Requiring the dealer to notify the Department via the prescribed form is the easiest way to make sure that the dealer provides all required information. Once the DES is updated, the dealer will make the report electronically via the DES. Dealers are already familiar with using the DES to report transactions to the Department. The DES will also generate a form for the dealer and law enforcement officer to sign.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or 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.

The Department has determined that the proposed regulation is the most effective way for a dealer to report the delivery of a firearm to law enforcement. A simple form was created for the dealer to report this information to the Department while the Department updates the DES. Starting July 1, 2024, the dealer will report this information electronically via the DES. The DES will generate a form for the dealer and law enforcement officer to sign.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Kelan Lowney
Department of Justice
P.O. Box 160487
Sacramento, CA 95816
(916) 210-2377
bofregulations@doj.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Timothy Mulligan
Department of Justice
P.O. Box 160487
Sacramento, CA 95816
(916) 210-2153
bofregulations@doj.ca.gov

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process upon request to the contact person above. As of the date this Notice of Proposed Rulemaking (Notice) is published in the Notice Register, the rulemaking file consists of this Notice, the Text of Proposed Regulations (the “express terms” of the regulations), the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based. The text of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department’s website at <https://oag.ca.gov/firearms/regs>. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the Department analyzes all timely and relevant comments received during the 45-day public comment period, the Department will either adopt these regulations substantially as described in this notice or make modifications based on the comments. 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 before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the name and address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons will be available on the Department's website at <https://oag.ca.gov/firearms/regs>. Please refer to the contact information included above to obtain a written copy of the Final Statement of Reasons.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department's website at <https://oag.ca.gov/firearms/regs>.