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September 11, 2017

VIA U.S. MAIL, FAX, AND EMAIL

Jeff Amador
Department of Justice
PO Box 160487
Sacramento, CA 95816-0487
Email: Regulations@doj.ca.gov
Fax: (916) 227-1068

**Re: Public Commentary Relating to the California Department of
Justice's Proposed Regulations and Forms for Ammunition Vendor
Licensing**

Mr. Amador,

We write on behalf of our clients, the National Rifle Association of America and the California Rifle & Pistol Association, Incorporated, in response to the request for public comment relating to the proposed regulations and forms for ammunition vendors.

While the proposed regulations address the areas required by California law, some corrections and/or clarifications are needed.

I. Proposed Section 4261(b)

Proposed section 4261(b) states in pertinent part: "The term of an ammunition vendor license is from January 1 through December 31, regardless of the date of the initial license is issued."

This restriction in the proposed regulations is contrary to California law.

Penal Code section 30385(b), which stems from Proposition 63, states: "The ammunition vendor license shall be issued in a form prescribed by the department and shall be valid for a

period of one year...” If proposed section 4261(b) is enacted, the duration of an ammunition vendor’s license can be shorter than the one-year period required by the Penal Code. For example, if a vendor were to request and receive a license on July 1, the term of that license will be 6 months and not the required year because proposed section 4261(b) states that all vendor licenses have a term ending on December 31. This is clearly contrary to the intent of the public in enacting Proposition 63, who chose to allow ammunition vendor licenses to have a term of one year, regardless of the application date.

We suggest that the California Department of Justice (“DOJ”) modify the proposed regulation so that it conforms with Penal Code section 30385(b) and states that the term of the license shall be one year from the date of issuance, regardless of when the license was issued. In the case a license is issued prior to January 1, 2018, that license will go into effect on January 1, 2018 and have a term of one year.

II. Proposed Section 4261(c)

Proposed section 4261(c) states: “Ammunition vendors must submit to the Department of Justice, a copy of renewals of the licenses specified in section 4260, within 30 days of the license’s expiration. Failure to do so will invalidate the ammunition vendor license until a copy of the renewed license is received by the Department of Justice.”

The use of the word “received” should probably be changed to “issued,” as DOJ *issues* renewed licenses and does not *receive* them. Alternatively, if DOJ means that an invalidated license is renewed when application for renewal is “received,” the sentence should be modified to read: “. . . until a copy of the application for renewal is received by the Department of Justice.”

III. Proposed Section 4262

Penal Code section 30350 states: “An ammunition vendor shall not sell or otherwise transfer ownership of, offer for sale or otherwise offer to transfer ownership of, or display for sale or display for transfer of ownership of any ammunition in a manner that allows that ammunition to be accessible to a purchaser or transferee without the assistance of the vendor or an employee of the vendor.”

Proposed section 4264 attempts to clarify Penal Code section 30350 by stating, “Pursuant to Penal Code section 30350, ammunition shall not be displayed for sale or transfer in a manner that allows that ammunition to be accessible to a purchaser or transferee without the assistance of the vendor or an employee of the vendor. Ammunition displayed in a shopping area open to the public is not considered ‘accessible’ provided it is in a locked container (e.g. display case, cabinet, cage).”

It is neither clear in the Penal Code, nor in the proposed regulations, whether ammunition “kept behind the counter” must be contained in a “locked container.” By “kept behind the counter,” we mean ammunition located typically along a wall behind both the store’s employees and counter or display case. This merchandise is not locked in a case, but a customer is not allowed in the area and would be challenged by an employee if the customer were to enter the area. We would argue that because a customer cannot go behind the counter without being challenged by an employee, ammunition “kept behind the counter” is not accessible by the public without assistance of the vendor or an employee. But this is not clear in the Code or the proposed regulations and we ask for clarification.

IV. Proposed Section 4263

Proposed section 4263 provides the following:

In addition to any applicable Department of Justice fee, an ammunition vendor may charge the purchaser a fee(s) for processing the sale of ammunition between two private parties as follows:

- (a) If the purchaser will be present for immediate delivery of the ammunition, the fee shall not exceed five dollars (\$5).
- (b) If the purchaser will not be present for immediate delivery of the ammunition, the vendor may charge an additional storage fee as agreed upon with the purchaser prior to the vendor receiving the ammunition.

The problem with this section lies with subsection (b), which requires that the storage fee be agreed upon prior to the vendor receiving the ammunition. What remains unclear is what must be done if no agreement is made prior to the ammunition being sent to and received by the vendor. Penal Code section 30312 appears to require ammunition vendors to “promptly and properly” process an ammunition transaction. But proposed section 4263 appears to allow an ammunition vendor to refuse shipment of ammunition when it is sent to the vendor for processing (pursuant to Penal Code section 30312) but the customer does not agree to the transfer fees prior to the vendor receiving the ammunition.

Therefore, we request that DOJ revise proposed section 4263 to clarify what an ammunition vendor must do if the ammunition vendor and purchaser have not reached an agreement prior to the vendor receiving the ammunition.

V. BOF 1021: Proposed Application for Ammunition Vendor License (Non-Firearm Dealer)

Proposed State of California form BOF 1021, entitled “Application for Ammunition Vendor License (Non-Firearms Dealer),” presents another problem. Part D located on page 3 of 5 appears to require the Certificate of Eligibility (“COE”) numbers for all ammunition vendor

employees prior to the issuance of the ammunition vendor license. In fact, the requirements for the form, located on page 4 of 5, all but confirm that assumption. Under “**Application Requirements**[.]” the form states in pertinent part: “Applications must be accompanied by ... a listing of all employees with a certificate of eligibility (COE).” Likewise, the instructions for Part D state:

For each agent or employee who has access to ammunition for this business, the licensee must provide the agent’s or employee’s name as it appears on their California driver license or identification card along with their corresponding COE number and expiration date. Part D may be copied to accommodate as many additional employees as necessary.

This requirement puts the proverbial cart before the horse.

California law does not require, as a prerequisite for the application and/or obtainment of an ammunition vendor’s license, that all the vendor’s employees who have access to ammunition possess a COE. Quite the opposite. California Penal Code section 30347(a) states:

An ammunition vendor shall require any agent or employee who handles, sells, delivers, or has under his or her custody or control any ammunition, to obtain and provide to the vendor a certificate of eligibility from the Department of Justice issued pursuant to Section 26710. On the application for the certificate, ***the agent or employee shall provide the name and address of the ammunition vendor with whom the person is employed***, or the name and California firearms dealer number of the ammunition vendor if applicable.

(emphasis added.)

Not only does Penal Code section 30347(a) presume that the business will be an ammunition vendor prior to the employee being hired and handling the ammunition, but the Code also requires the employee to provide the (licensed) ammunition vendor’s name with whom the person is employed and the corresponding address of the vendor. Accordingly, to give effect to BOF 1021 would nullify Penal Code section 30347(a), by potentially preventing a current agent or employee of an ammunition vendor from ever *applying* for a COE by listing the employer’s ammunition vendor information on the COE application. Therefore, the aforesaid COE prerequisite in BOF 1021 is irreconcilably inconsistent with the Code and will be struck down by courts pursuant to canons of statutory construction. (*See Gade v. National Solid Wastes Management Ass’n* (1992) 505 U.S. 88, 100 [holding that it is the court’s duty to give effect, if possible, to every clause and word of a statute and that a provision cannot be inconsistent with the necessary assumption of a statute]; *see also Santa Clarita Organization for Planning and the Environment (SCOPE) v. Abercrombie* (2015) 240 Cal.App.4th 300, 318, *as modified* (Sept. 22, 2015), *review denied* (Nov. 18, 2015).)

Moreover, it bears pointing out that the requirements for an ammunition vendor license located in Penal Code sections 30385 and 30395 do not require the business to provide COE

numbers of employees to DOJ prior to the issuance of the license. Only the individual applying for the license or the “responsible person” acting on behalf of an entity is required to have a COE.

Last, given the time constraints in which vendors now find themselves, requiring a vendor to have its employees acquire a COE prior to the application of a vendor license will prove counterproductive. Logistically and equitably, it is better to allow the vendor to acquire its license and then have the employees acquire their COEs once the license is granted. Then, at a minimum, if the employee does not possess a COE prior to January 1, 2018—either by the employee’s own delay in applying or DOJ’s delay in processing (as all California licensed firearm dealers in addition to ammunition vendors’ employees are required to have COEs as of January 1, 2018)—the vendor can restrict the employee’s access to ammunition until the COE is obtained. It makes no sense to delay and force a vendor to cease business because a vendor license is delayed for want of a COE by one of its employees.

Thus, due to the aforesaid reasons, we ask DOJ to revise proposed form BOF 1021.

VI. BOF/CAV-0012: License Renewal “Form”

We do not know what to make of the “Ammunition Vendor License Renewal Fee Transmittal” document, referenced as form BOF/CAV-0012. The document, attached for reference purposes, appears to be an incomplete form or some kind of template for a renewal letter. If the former is true, we ask DOJ to resubmit the form and reopen the public comment period for that form. If BOF/CAV-0012 is supposed to be a template for a renewal letter, it is woefully lacking in clarity. One need only read the first paragraph to note the problems:

Instructions

Make any business information changes next to the line number that requires correction. If no changes are made, indicate no change by checking the appropriate box. All licensees must sign and date the renewal form. Submit the signed form and fee to:

**Department of Justice
Bureau of Firearms – Ammunition Vendor Licensing Unit
P.O. Box 160487
Sacramento, CA 95816-0487**

What “lines” are these instructions referring to? Next, following the instructions and address stated above is an outline of what appears to be the required information for an ammunition vendor license, but this information is not provided in the same order as the application form (BOF 1021). If BOF/CAV-0012 is a “transmittal,” where is the “form” that is referenced in the instructions? Certainly, this document cannot be the form, as it appears to

require information, like the business name, address, city, and California zip code, inserted into place holders at the top of the document.

Perhaps an actual renewal form is in order. Or, even modifying the application form (BOF 1021) to make it an application/renewal form would make more sense than what is proposed now.

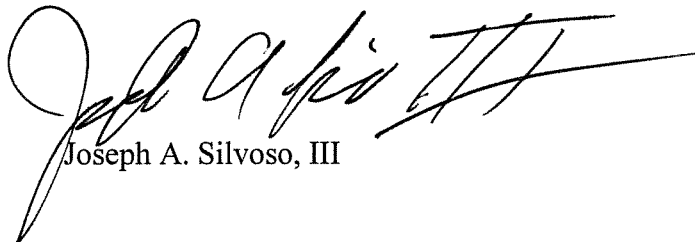
Lastly, like the application form, this “transmittal” document appears to require the vendor to provide COE information for employees. For the stated reasons above, this remains incorrect.

VII. Conclusion

DOJ’s proposed regulations and forms for ammunition vendor licensing require some additional modifications and/or clarifications. We hope that this letter proves helpful to DOJ as to what changes should be made, and we look forward to DOJ’s efforts in addressing the issues we highlighted. If you have any questions, please do not hesitate to contact us.

Sincerely,

Michel & Associates, P.C.



Joseph A. Silvoso, III

ADOPT

**CALIFORNIA DEPARTMENT OF JUSTICE
Ammunition Vendor Licensing Unit
Ammunition Vendor License Renewal Fee Transmittal**

<Business Name>

Vendor:

<Address>

<City, CA Zip>

Total Annual Fee:

Instructions

Make any business information changes next to the line number that requires correction. If no changes are made, indicate no change by checking the appropriate box. All licensees must sign and date the renewal form. Submit the signed form and fee to:

**Department of Justice
Bureau of Firearms – Ammunition Vendor Licensing Unit
P.O. Box 160487
Sacramento, CA 95816-0487**

1. Ammunition Vendor/Business Information:

- a. Ammunition Vendor Number
- b. Business Telephone Number
- c. Business Fax Number
- d. Physical Address
- e. Mailing Address (if different)
- f. Business Email Address

2. Days and Hours of Operation

3. Business Type

4. Agent for Service of Process Information:

- a. Name
- b. Title
- c. Physical Address
- d. Telephone Number
- e. Email Address

5. Alternate Contact Person Information:

- a. Name
- b. Title
- c. Physical Address
- d. Telephone Number
- e. Email Address

6. Local Business License Authority

7. Local Law Enforcement Agency

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**CALIFORNIA DEPARTMENT OF JUSTICE
Ammunition Vendor Licensing Unit
Ammunition Vendor License Renewal Fee Transmittal**

8. Ammunition Vendor Licensee(s) Information
- a. Names(s)
 - b. Certificate of Eligibility Number(s)
 - c. Federal Firearms License Number (if applicable)
 - d. Local Business License Number
 - e. Other Local License Number (if applicable)
 - f. California Board of Equalization Sellers Permit Number
9. Employee of Certificate of Eligibility Information
- a. Names(s)
 - b. Certificate of Eligibility Number(s)
 - c. Certificate of Eligibility Expiration Date

☐ **No changes**

Printed Name: _____ **Signature:** _____ **Date:** _____

Printed Name: _____ **Signature:** _____ **Date:** _____

Printed Name: _____ **Signature:** _____ **Date:** _____

Printed Name: _____ **Signature:** _____ **Date:** _____

Allow 20 business days to process the renewal.

Please note: Not receiving a renewal notice does not remove a vendor from responsibility of timely payment.