

EXHIBIT 8

Finding of Emergency

The Department of Justice (Department) finds that an emergency exists, and that the immediate adoption of Chapter 4, of Division 5, of Title 11 is necessary to avoid serious harm to the public peace, health, safety, or general welfare, within the meaning of Government Code section 11346.1.

Government Code section 11346.1, subdivision (a)(2), requires that at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the Department provide a notice of this proposed action to every person who has filed a request for notice of regulatory action with the agency. The Department will also post the proposed emergency regulation amendments on its website and simultaneously disseminate notice of the proposed emergency action to all persons who have filed a request for notice.

After submission of the proposed emergency regulation amendments to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulation as set forth in Government Code section 11349.6. To determine the Office of Administrative Law's five-day comment period, interested persons are instructed to visit <http://www.oal.ca.gov/>.

Subject Matter of Proposed Regulation Amendments

Identification Requirements for Firearms and Ammunition Purchases and Eligibility Checks.

Regulation to Be Adopted

Title 11, section 4045.1.

Specific Facts Demonstrating the Need for Immediate Action

The Department is statutorily required to perform an eligibility check under state and federal law for all firearms purchases in California. The Department is also statutorily required to perform an eligibility check to determine eligibility to possess a firearm or ammunition under state and federal law in numerous other contexts. Eligibility checks are also required for certificates of eligibility, firearm ownership reports, law enforcement gun release applications, dangerous weapons license/permit applications, entertainment firearms permit applications, as well as for peace officer applicants, custodial officers, transportation officers, applicants to a basic course of training certified by the Commission on Peace Officer Standards and Training that includes the carrying and use of firearms, applicants for an explosives permit, and applicants for a permit to carry a concealed weapon. Eligibility checks are required for ammunition sales (as of July 1, 2019). Federal law prohibits certain categories of non-citizens from purchasing or possessing a firearm or ammunition, including any alien who is "illegally or unlawfully in the United States." (18 U.S.C. § 922 (d)(5)(A), (g)(5)(A).)

California law requires a prospective firearms purchaser to present "clear evidence of [the purchaser's] identity and age." (Pen. Code, §§ 26815, subd. (c), 27540, subd. (c), 28215, subd. (a)(1).) A valid California driver license or identification card satisfies this requirement. (*Id.*,

§ 16400.) California law also requires a prospective ammunitions purchaser to provide a driver license or identification card. (Pen. Code, § 30352, subd. (a)(2).) Before recent changes in the law, an applicant for a California driver license or identification card had to show to the Department of Motor Vehicles proof of lawful presence in the United States during the application process. (Cal. Code Regs., tit. 13, § 15.00.)

In 2013, California passed Assembly Bill (AB) 60, the Safe and Responsible Driver's Act, creating a driver license program for individuals who could not provide proof of lawful presence in the United States. (Stats. 2013, Ch. 524.) AB 60 became effective in 2015 and allows individuals to apply for a driver license or identification card in California regardless of their immigration status and without providing proof of lawful presence in the United States. AB 60 driver licenses and identification cards were distinguishable from regular California driver licenses and identification cards, by the notation "FEDERAL LIMITS APPLY" imprinted on the front. After the AB 60 licenses and identification cards became available, the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) issued guidance to firearm dealers stating that because the AB 60 driver license or identification card "is only issued to a person who cannot provide proof of lawful presence in the United States," there is "reasonable cause to believe a potential transferee in possession of an AB [60] driver license is illegally or unlawfully in the United States and prohibited from receiving or possessing firearms or ammunition. As such, you may not transfer firearms or ammunition to the person. . . ." ("Open Letter to All California Federal Firearm Licensees," June 30, 2016.)

At the beginning of 2018, California began issuing driver licenses and identification cards in accordance with the federal REAL ID Act. Passed by Congress in 2005, the REAL ID Act enacted the 9/11 Commission's recommendation that federal government set standards for the issuance of sources of identification. Obtaining a REAL ID version of a driver license or identification card is optional. However, after October 1, 2020, California residents will need to have a REAL ID-compliant driver license or identification card (or another REAL ID-compliant identification, such as a passport), rather than a regular California driver license or identification card, to board a domestic flight or enter secure federal facilities. In 2018, the Department of Motor Vehicles began offering two types of identification—a federal compliant REAL ID driver license/identification card, and a federal non-compliant California driver license/identification card. The federal non-compliant California driver licenses and identification cards with the words "FEDERAL LIMITS APPLY" on the front are issued to both: (1) individuals applying under AB 60; and (2) individuals who are able to submit satisfactory proof that their presence in the United States is authorized under federal law, but choose not to apply for a "REAL ID" driver license or identification card. The AB 60 driver license/identification card is no longer distinguishable from a regular California driver license/identification card. It is thus unclear whether a person with a federal non-compliant California driver license or identification card is eligible to purchase a firearm under federal law, because that person was not necessarily required to submit satisfactory proof of lawful presence in the United States. Because of this change, ATF rescinded the June 30, 2016 open letter, by removing the letter from its website.

At the end of 2018, California passed another law, Senate Bill (SB) 244, affecting AB 60 driver licenses and identification cards, which went into effect on January 1, 2019. (Stats. 2018, Ch. 885.) That law prohibits AB 60 driver licenses and identification cards—those issued to persons

who were not required to submit satisfactory proof of lawful presence in the United States—from being used as evidence of an individual’s citizenship or immigration status for any purpose. (Veh. Code § 12801.9, subd. (l).) Because AB 60 driver licenses and identification cards are indistinguishable from other federal non-compliant California driver licenses and identification cards issued to individuals who have provided satisfactory proof of lawful presence in the United States, neither form of identification may be used to determine an individual’s eligibility to purchase a firearm.

As set forth above, there have been significant changes recently to California driver licenses and identification cards, as well as to California law governing their use as evidence of citizenship or immigration status. These changes have affected the eligibility check process and have left firearm dealers and ammunition vendors, as well as law enforcement agencies, unable to rely on federal non-compliant licenses when determining whether a prospective purchaser or applicant is permitted to possess a firearm or ammunition, consistent with state and federal law.

Failure to act may result in significant public harm. The Department is concerned that firearm dealers and ammunition vendors may inadvertently sell firearms or ammunition to individuals who are not eligible under federal law because they are not lawfully present in the United States.

The result is widespread confusion for firearm dealers, law enforcement agencies, and the public. Current regulations do not address the recent changes to California law regarding California driver licenses and identification cards. Some firearm dealers have declined to sell firearms to persons who only have a federal non-compliant license or identification card without proof of lawful presence in the United States. But the Department has no way of knowing whether all firearm dealers follow the same protocol. Before the passage of SB 244, the National Rifle Association had advised firearm dealers to ask for additional information at their discretion if the dealer had “cause to believe the individual using one of these licenses may be prohibited from possessing firearms.” (National Rifle Association Institute for Legislative Action, “California Special Alert: Update Regarding Use of Non-REAL IDs for Firearm Purchases,” March 22, 2018.)

This confusion has had a negative financial impact on 1800 firearm dealers and their employees throughout the state, and will negatively impact 250 ammunition vendors (as of July 1, 2019). Also, firearm dealers that require additional documentation may lose business to those that do not require any additional documentation. This confusion also increases the risk that firearms or ammunition will be inadvertently sold to persons who are not eligible to make such purchases under federal law.

This emergency regulation is necessary to secure the eligibility check process, and to assist firearm dealers and ammunition vendors, as well as law enforcement agencies, to obtain sufficient information that will allow for an accurate determination of whether a prospective purchaser or applicant is permitted to possess firearms or ammunition, consistent with federal law.

Explanation of Failure to Adopt Nonemergency Regulations

After the passage of SB 244 in September 2018, the Department issued guidance to firearm dealers suggesting that they consider asking prospective purchasers with federal non-compliant driver

licenses or identification cards for additional documentation establishing lawful presence in the United States. The Department also issued a consumer alert to California residents with a federal non-compliant license or identification that a firearm dealer may require additional documentation for firearm purchases.

But the guidance issued by the Department is voluntary and not all firearm dealers follow the guidance. After six months the Department has determined that the guidance is not sufficient to address the threat to public harm resulting from changes in California law relating to California driver licenses and identification cards.

Technical, Theoretical, and Empirical Study, Report, or Similar Document, Upon Which the Department Relied

National Rifle Association Institute for Legislative Action, “California Special Alert: Update Regarding Use of Non-REAL IDs for Firearm Purchases,” March 22, 2018.

U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, “Open Letter to All California Federal Firearms Licensees,” June 30, 2018.

Authority and Reference Citations

Authority: Sections 28060, 28100, 28155, 28215, and 28220, Penal Code.

Reference: Sections 832.15, 832.16, 13511.5, 16400, 18900, 18905, 23000, 26150, 26155, 26170, 26710, 26815, 27540, 27560, 27565, 27875, 27920, 27966, 28000, 28160, 28215, 28220, 28250, 29182, 29500, 30105, 30370, 31000, 31005, 32650, 32655, 32700, 32705, 32710, 32715, 33300, 33305, and 33850, Penal Code; Section 12101, Health & Safety Code; 18 U.S.C. § 922(d) and (g); and Title 27, Part 178.32, Code of Federal Regulations.

Informative Digest/Policy Statement Overview

Penal Code section 28060 authorizes the Department to adopt regulations to allow the seller or transferor of a firearm or the person loaning the firearm, and the purchaser or transferee of a firearm or the person being loaned the firearm, to complete a sale, loan, or transfer through a firearm dealer. Penal Code section 28220 requires the Department to examine its records to determine if a purchaser or transferee is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. Penal Code section 30370 requires the Department to approve the purchase or transfer of ammunition through a vendor to individuals who are not prohibited, and authorizes the Department to write regulations regarding this process. Further, the United States Code, Title 18, section 922, subdivisions (d) and (g), and the Code of Federal Regulations, Title 27, section 478.99, subdivision (c)(5) provide that an alien illegally or unlawfully in the United States is prohibited from owning or possessing firearms or ammunition.

The only way for the Department to fulfill its statutory obligation to determine that an individual is not prohibited from purchasing or possessing firearms or ammunition is through this emergency

rulemaking. This regulation is also imperative for firearm dealers and ammunition vendors to determine that an individual is not prohibited. If this regulation does not become effective by July 1, 2019, there will be continued uncertainty regarding firearms and ammunition sales in California for which the purchaser presents a federal non-compliant driver license or identification card, as well as continued uncertainty regarding eligibility checks involving federal non-compliant driver licenses and identification cards. This uncertainty increases the risk that firearms and ammunition will fall into the hands of individuals who are prohibited by either state or federal law, creating an imminent threat to the public safety and general welfare of California residents.

The Department has determined that this proposed regulation is not inconsistent or incompatible with existing state regulations which do not address the possibility that persons without lawful presence in the United States could hold a validly issued California driver license or identification card.

§ 4045.1. Additional Documentation Requirements for Eligibility Checks.

This section describes “eligibility checks” as background checks based on any application or report for which an applicant is required to submit a driver license or identification card, or the number of a driver license or identification card, so that the Department may determine whether the applicant is eligible to possess a firearm or ammunition. California law requires eligibility checks in multiple contexts. This section is necessary to capture all eligibility checks required under California law. Furthermore, this section establishes guidelines regarding how copies of the driver licenses or identification cards and proof of lawful presence in the United States shall be retained by law enforcement agencies, firearm dealers, ammunition vendors, or submitted by the applicant.

Subdivision (a) states the basic requirement that when submitting any application or report for which an applicant is required to submit a driver license or identification card, or the number from a driver license or identification card, a copy of the applicant’s driver license or identification card shall also be submitted. This subdivision is necessary to inform applicants that a copy of the applicant’s driver license or identification card is required as part of the application or report.

Subdivision (b) establishes that if the applicant presents a federal non-compliant California driver license or identification card with the notation “FEDERAL LIMITS APPLY” on the front, instead of a REAL ID, the applicant shall also submit proof of lawful presence in the United States. In addition, this subdivision establishes the forms of acceptable proof of lawful presence in the United States. This subdivision is necessary so that individuals with a federal non-compliant California driver license or identification card will know what additional document(s) they need to provide the Department when undergoing an eligibility check to purchase a firearm or ammunition.

Subdivision (c) addresses name mismatches. If the name on the driver license or identification card does not match the name on the document submitted in accordance with subdivision (b), the applicant must provide additional documentation as to the name change. The acceptable types of documentation are listed. This subdivision is necessary because it is common, whether due to marriage, divorce, or some other circumstance, that an individual’s name may not match their birth certificate, passport, or other document listed in subdivision (b).

Subdivision (d) describes eligibility checks initiated by applications or reports submitted to the Department in a paper format and establishes how an individual shall prove lawful presence in the United States when using a paper form. These forms have been updated and are incorporated by reference, as it would be cumbersome, unduly expensive, or otherwise impractical to publish all of the forms listed in their entirety in the California Code of Regulations. This section is necessary to identify all the paper applications and reports that will be affected by the regulation.

Under Penal Code section 27560, subdivision (a), the “New Resident Report of Firearm Ownership,” form BOF 4010A is used by individuals who are moving into California and wish to bring all of their California-legal firearms with them. These individuals must report the firearm(s) to the Department. The Department revised this form to indicate what fields are mandatory, so the applicant will complete the form and it will not be returned without processing. The Firearm(s) Information section was revised to provide more options when reporting firearms and explains what the additional options are. This was necessary so an applicant can better describe the firearm, and so the Department will have a better understanding of the type of firearm the applicant is reporting. In addition, language was added regarding the document(s) that should be included if the applicant has a “FEDERAL LIMITS APPLY” driver license or identification card and not a REAL ID. This was necessary so an individual will know what document(s) to include preventing the form from being returned without processing.

Under Penal Code section 28000, the “Firearm Ownership Report,” form BOF 4542A is used by individuals who wish to report firearm ownership to the Department. The Department revised this form to change the name from “Firearm Ownership Record” to “Firearm Ownership Report.” The new name for this report is better suited as it is an optional form and dependent upon an owner choosing to report their firearm(s). The form was revised to indicate what fields are mandatory, so the applicant will complete the form and it will not be returned without processing. The Firearm(s) Information section was revised to provide more options when reporting firearms and explains what the additional options are. This was necessary so the applicant can better describe the firearm, and so the Department will have a better understanding of the type of firearm the applicant is reporting. In addition, language was added regarding the document(s) that should be included if the applicant has a “FEDERAL LIMITS APPLY” driver license or identification card and not a REAL ID. This was necessary so an individual will know what document(s) to include preventing the form from being returned without processing.

Under Penal Code section 27565, the “Curio or Relic Firearm Report,” form BOF 4100A, is used by individuals who must report their out-of-state purchase of a curio or relic firearm. The Department revised this form to indicate what fields are mandatory, so the applicant will complete the form and it will not be returned without processing. The Firearm(s) Information section was revised to provide more options when reporting firearms and explains what the additional options are. This was necessary so the applicant can better describe the firearm, and so the Department will have a better understating of the type of firearm the applicant is reporting. In addition, language was added regarding the document(s) that should be included if the applicant has a “FEDERAL LIMITS APPLY” driver license or identification card and not a REAL ID. This was necessary so an individual will know what document(s) to include preventing the form from being returned without processing.

Under Penal Code section 27966, the “Collector In-State Acquisition of Curio or Relic Long Gun Report,” form BOF 961 is used by individuals who must report their in-state acquisition of a curio or relic firearm. The Department revised this form to indicate what fields are mandatory, so the applicant will complete the form and it will not be returned without processing. The Firearm(s) Information section was revised to provide more options when reporting firearms and explains what the additional options are. This was necessary so the applicant can better describe the firearm, and so the Department will have a better understanding of the type of firearm the applicant is reporting. In addition, language was added regarding the document(s) that should be included if the applicant has a “FEDERAL LIMITS APPLY” driver license or identification card and not a REAL ID. This was necessary so an individual will know what document(s) to include preventing the form from being returned without processing.

Under Penal Code sections 27875 and 27920, the “Report of Operation of Law or Intra-Familial Transaction,” form BOF 4544A is used by individuals who must report the possession of a firearm by operation of law, or the transfer of a firearm to a family member (Intra-Familial transfer). The Department revised this form to indicate what fields are mandatory, so the applicant will complete the form and it will not be returned without processing. The Firearm(s) Information section was revised to provide more options when reporting firearms and explains what the additional options are. This was necessary so an applicant can better describe the firearm, and so the Department will have a better understanding of the type of firearm the applicant is reporting. In addition, language was added regarding the document(s) that should be included if the applicant has a “FEDERAL LIMITS APPLY” driver license or identification card and not a REAL ID. This was necessary so an individual will know what document(s) to include preventing the form from being returned without processing.

Under various Penal Code statutes, the “Dangerous Weapons License/Permit(s) Application,” form BOF 030, and the “Dangerous Weapons License/Permit(s) Renewal Application,” form BOF 031, are used by individuals who wish to apply for or renew a dangerous weapons license of permit. The Department revised these forms to add language regarding the document(s) that should be included if the applicant has a “FEDERAL LIMITS APPLY” driver license or identification card and not a REAL ID. This was necessary so an individual will know what document(s) to include preventing the form from being returned without processing.

Subdivision (e) describes the eligibility checks initiated by applications and reports submitted electronically through the Department’s California Firearms Application Reporting System (CFARS). This subdivision also indicates what forms to upload in CFARS to prove lawful presence in the United States. This subdivision is necessary to identify the forms that may be submitted electronically through CFARS.

Subdivision (f) describes the eligibility checks initiated by applications or reports submitted electronically through the Department’s Dealer Record of Sale (DROS) Entry System. This subdivision also indicates what documentation an individual shall provide through the DROS Entry System to prove lawful residence in the United States. This subdivision is necessary to identify the forms that may be submitted electronically through the DROS Entry System.

Subdivision (g) addresses eligibility checks initiated by applications or reports submitted to other agencies that include fingerprint data to be used by the Department in order to determine whether

an individual is eligible to possess a firearm or ammunition under state or federal law. This subdivision is necessary to inform other government agencies of what the Department has determined is acceptable documentation to prove lawful presence in the United States.

Forms Incorporated by Reference

Form BOF 030 (Rev. 05/2019), Dangerous Weapons License/Permit(s) Application

Form BOF 031 (Rev. 05/2019), Dangerous Weapons License/Permit(s) Renewal Application

Form BOF 961 (Rev. 05/2019), Collector In-State Acquisition of Curio or Relic Long Gun Report

Form BOF 4010A (Rev. 05/2019), New Resident Report of Firearm Ownership

Form BOF 4100A (Rev. 05/2019), Curio or Relic Firearm Report

Form BOF 4542A (Rev. 05/2019), Firearm Ownership Report

Form BOF 4544A (Rev. 05/2019), Report of Operation of Law or Intra-Familial Firearm Transaction

Mandate on Local Agencies or School Districts

The Department has determined the proposed emergency regulation does not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed emergency regulations.

Duplication of State Statutes as Necessary to Satisfy Government Code Section 11349.1(a)(3)

To satisfy the requirements of Government Code section 11349.1(a)(6), the text of the proposed regulations are non-duplicative.

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations

None.

Fiscal Impacts

The Department has assessed the potential for significant adverse impact that might result from the proposed emergency action and has determined:

- There will be no non-discretionary costs or savings to local agencies
- There will be no costs to school districts
- There will be no costs or savings in federal funding to the State

As detailed on the attachment to the Economic and Fiscal Impact Statement (STD 399), the Department estimates its costs (state agency) directly related to the additional documentation

requirements relating to “FEDERAL LIMITS APPLY” driver licenses or identification cards will be insignificant.

**STATEMENT OF CONFIRMATION OF MAILING OF FIVE-DAY
EMERGENCY NOTICE**

(Title 1, CCR section 11346.1(a)(2))

The Department sent notice of the proposed emergency action to every person who has filed a request for notice of regulatory action at least five working days before submitting the emergency regulation to the Office of Administrative Law in accordance with the requirements of Government Code section 11346.1(a)(2).

EXHIBIT 9



APPEARS IN LEGAL & LEGISLATION

California Special Alert: Update Regarding Use of Non-REAL IDs for Firearm Purchases

THURSDAY, MARCH 22, 2018



NRA and CRPA attorneys recently received further clarification from the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") regarding the use of non-REAL IDs when purchasing a firearm at a California licensed firearms dealer. According to ATF, California licensed firearm dealers:

[M]ay accept post-January 22, 2018 licenses/identification documents that meet the definition in 18 U.S.C. 1028(d) in fulfilling their requirements under 18 U.S.C. 922(t)(1)(C) and 27 CFR 478.124(c)(3) (i). However, licensees may consider asking for additional documentation (e.g., passport) so that the transfer is not further delayed.

As a result, California residents who are issued non-REAL IDs after January 22, 2018, by the California Department of Motor Vehicles (“DMV”) may use their IDs for the purposes of purchasing a firearm, even if the ID contains the language “FEDERAL LIMITS APPLY” on the front of the license and states on the back of the license that “This card is not acceptable for official federal purposes.”

Prior ATF Open Letter to Dealers Rescinded

ATF also informed NRA and CRPA attorneys that the letter issued in June of 2016 concerning “FEDERAL LIMITS APPLY” licenses, will be rescinded. A recent review of the ATF website for the letter states “Page Not Found.”

Pursuant to AB 60, the California Department of Motor Vehicles (“DMV”) may issue licenses and identification cards to individuals who cannot prove legal status in the United States. The licenses and identification cards issued pursuant to AB 60 stated “FEDERAL LIMITS APPLY” on the front of the card making them distinguishable from licenses issued to U.S. citizens.

Federal law prohibits those who are illegally in the United States from receiving and possessing firearms. In June 30, 2016, ATF sent a letter to firearm dealers informing them they could not transfer firearms to individuals using AB 60 licenses (licenses with “FEDERAL LIMITS APPLY” on their front) due to the likelihood the individual was in the country illegally and thus prohibited from receiving and possessing firearms.

Recently California started to implement the federal REAL ID Act, which requires state-issued licenses and identification cards to meet federal requirements for verification. AB 60 licenses do not meet these requirements. On January 22, 2018, DMV started issuing licenses to people who did not apply for or go through the process to acquire a REAL ID. Unfortunately, after January 22, 2018, the licenses issued pursuant to AB 60 and those issued to Californians who didn’t apply for a REAL ID state on their face “FEDERAL LIMITS APPLY,” and thus, according to the June 30, 2016 ATF letter, are unacceptable for firearm purchases.

Presumably this problem was corrected by DMV. ATF initially stated that licenses issued pursuant to the AB 60 undocumented individuals differed from those issued to U.S. citizens because on the back of the AB 60 licenses the license stated, “This card is not acceptable for official federal purposes.” Thus, there would be a way to differentiate between licenses issued pursuant to AB 60 and to U.S.

citizens who did not apply for a REAL ID license. Unfortunately, this information was incorrect as both AB 60 licenses and the licenses issued to U.S. citizens stated, "This card is not acceptable for official federal purposes" on the reverse side.

NRA and CRPA attorneys pointed this concern out to ATF soon after it was discovered. ATF now realizes that they cannot avoid this problem as these licenses with the same language on the front and back are sent out to U.S. citizens and undocumented individuals alike. Thus, ATF's position changed, and they are withdrawing the June 30, 2016 letter concerning "FEDERAL LIMITS APPLY."

Lingering Concerns

Not all "FEDERAL LIMITS APPLY" licenses can be used to acquire firearms. Licenses issued prior to January 22, 2018 with "FEDERAL LIMITS APPLY" on them were likely issued to individuals who cannot show lawful citizenship status. Firearm dealers are strongly advised to insist on an additional form of identification before accepting a license issued before January 22, 2018 with "FEDERAL LIMITS APPLY" marker.

Licenses issued after January 22, 2018 that state "FEDERAL LIMITS APPLY" may or may not have been issued to a person who is within the United States illegally. If a firearm dealer has cause to believe the individual using one of these licenses may be prohibited from possessing firearms, as ATF suggests, the dealer may want to consider asking for additional documentation.

Californians who want to make sure they have zero problems purchasing a firearm in the future may want to consider applying for and acquiring a REAL ID through the DMV. Remember these licenses can be used to board airplanes, gain access to military bases, and other federal facilities in 2020. Californians will not be able to use their non-REAL IDs for these purposes after 2020 and will be required to provide some other form of identification.

California licensed firearm dealers should be aware, however, that the California Department of Justice ("DOJ") may nonetheless continue to hold the position that any "FEDERAL LIMITS APPLY" licenses cannot be used for the purposes of purchasing a firearm. That position is an unlawful overreach because the question of lawful presence in the United States as it relates to firearm purchases falls directly under ATF's control. Under California law, one only needs to provide "clear evidence of the person's identity and age" when attempting to acquire a firearm from a California licensed dealer. "Clear evidence" is defined as a valid California Driver's License or Identification Card. Because both AB 60 licenses and non-REAL IDs are considered valid California identification, regardless if they satisfy federal requirements or not, both satisfy California's requirement of "clear evidence of the person's identity and age." In addition, ATF has informed NRA and CRPA attorneys that they will be rescinding their previous policy prohibiting the use of such licenses.

Continue to check your inbox and the California Stand and Fight web page for updates on issues impacting your Second Amendment rights and hunting heritage in California.

IN THIS ARTICLE

CALIFORNIA

SECOND AMENDMENT

FEDERALLY LICENSED FIREARMS RETAILERS

NRAEXPLORE MORE LIKE THIS FROM AROUND THE NRA



AMERICA'S 1ST FREEDOM

Now a Democrat Running for President Wants to Require You Apply for Your Rights



AMERICAN HUNTER

California Statewide Lead Ammo Ban Goes Into Effect July 1



SHOOTING ILLUSTRATED

Springfield Armory Announces Partnership With Hillsdale College

EXHIBIT 10



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington, DC 20226

www.atf.gov

JUN 30 2016

OPEN LETTER TO ALL CALIFORNIA FEDERAL FIREARM LICENSEES

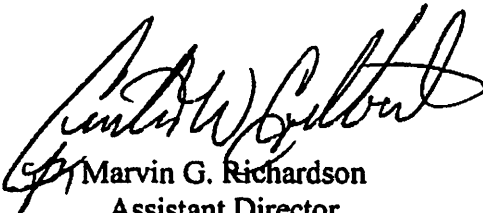
The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received an inquiry from the California Department of Justice regarding California driver licenses issued pursuant to The Safe and Responsible Driver Act, also known as California State Assembly Bill 60 (AB 60) and its applicability to Federal firearms laws. This open letter responds to that inquiry and provides guidance on the issue and to assist you, a Federal firearms licensee (FFL), in complying with Federal firearms laws and regulations. As of January 1st, 2015 California began issuing driver licenses, commonly referred to as an AB 60 license, to persons with a California residence who are unable to provide satisfactory proof that his or her presence in the United States is authorized under federal law. AB 60 driver licenses are identified by the statement "FEDERAL LIMITS APPLY" in bold on the front of the license and a notice on the back that states "This card is not acceptable for official federal purposes. This license is issued only as a license to drive a motor vehicle. It does not establish eligibility for employment, voter registration, or public benefits."

As you know, Federal law, 18 U.S.C. § 922(g)(5)(A), prohibits any person who is illegally or unlawfully in the United States from shipping, transporting, receiving or possessing firearms or ammunition. Further, Federal Law, 18 U.S.C. § 922(d)(5)(A), makes it unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or **having reasonable cause to believe** that such person is illegally or unlawfully in the United States. As provided by 27 C.F.R. § 478.11, an alien illegally or unlawfully in the United States means someone "who is not in a valid immigrant, nonimmigrant or parole status." An AB 60 driver license is only issued to a person who cannot provide proof of lawful presence in the United States;¹ given this fact, a FFL has a reasonable cause to believe a potential transferee in possession of an AB driver license is illegally or unlawfully in the United States and prohibited from receiving or possessing firearms or ammunition. As such, you may not transfer firearms or ammunition to the person, even if the person answered "no" to question 11.k. on ATF Form 4473.

¹ Pursuant to California Vehicle Code § 12801.9, a California driver's license may be issued if the applicant attests that he or she is both ineligible for a social security number and although unable to submit satisfactory proof that his or her presence in the United States is authorized under federal, is able to establish identity and proof of California residency.

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ATF is committed to assisting you in complying with Federal firearms laws. If you have any questions, please contact ATF's Firearms Industry Programs Branch at (202)648-7190 OR FIPB@atf.gov.



Marvin G. Richardson
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Enforcement Programs and Services

EXHIBIT 11

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April 9, 2018

VIA CERTIFIED MAIL

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Re: Pre-Litigation Demand to Rescind Policy Prohibiting Purchase of
Firearms Using Non-REAL IDs

To Whom It May Concern:

We write on behalf of our clients the National Rifle Association of America and the California Rifle & Pistol Association, Incorporated, as well as their hundreds of thousands of members who reside in California.

It is our understanding that several California licensed firearm dealers are receiving instruction from the California Department of Justice, Bureau of Firearms, ("CA DOJ") to not accept a driver's license with "FEDERAL LIMITS APPLY" language as "clear evidence of the person's identity and age"¹ when attempting to purchase a firearm no matter when the license was issued. As illustrated below, CA DOJ's policy is unsupported under both state and federal law. This letter constitutes a pre-litigation demand for CA DOJ to rescind this policy for California IDs² issued after January 22, 2018 and provide any further clarification of its intentions to do so.

I. BACKGROUND

In 2005, the federal government enacted the REAL ID Act, which requires states to issue driver's licenses or identification cards that meet minimum federal requirements by the year 2020 for use when boarding airplanes. As the law began to be implemented, questions arose regarding the purchase of firearms using non-REAL IDs. In response, the Bureau of Alcohol, Tobacco, Firearms and

¹ Cal. Penal Code § 27540(e).

² For purposes of this letter we will use the term "ID" to include driver's licenses and identification cards.

Explosives ("ATF") issued a newsletter in 2012 to all Federal Firearm Licensees ("FFLs") discussing the implications of the READ ID Act on the sale and transfer of firearms.³ According to this newsletter, a non-REAL ID may still be used to purchase a firearm provided the ID used satisfies the criteria required under the Gun Control Act.⁴

But the following year, California enacted Assembly Bill No. 60 ("AB 60"). Among its provisions, AB 60 requires the California Department of Motor Vehicles ("CA DMV") to "issue an original driver's license to a person who is unable to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law," provided that the person meets several additional requirements.⁵ Licenses issued pursuant to AB 60 stated on their face "FEDERAL LIMITS APPLY."

On or about February 2016, California Department of Justice sent an "Important Notice" to firearm dealers concerning AB 60 licenses.⁶ The Notice stated that the AB 60 license "does not establish eligibility to purchase firearms." The rationale behind this statement was that individuals who are unable to provide proof of their lawful residence within the United States are those generally prohibited from owning or possessing firearms under federal law. Federal law prohibits an individual from possessing firearms if he or she is an alien illegally or unlawfully in the United States.⁷

The notice further stated:

"An applicant who does not have proof of lawful presence can receive an AB 60 license; however, as an alien applicant it would not establish legal or lawful presence even when admitted under a non-immigrant visa. A person who is illegally or unlawfully in the United States is federally prohibited from receiving firearms."⁸

ATF on June 30, 2016 in an open letter to all California firearm dealers provided guidance to firearm dealers, stating:

"[I]t [is] unlawful for any person to sell or otherwise dispose of any firearm or ammunition knowing or having reasonable cause to believe that such person is illegally or unlawfully in the United States... **An AB 60 driver license is only issued to a person who cannot provide proof of lawful presence in the United States; given this fact, a FFL has reasonable cause to believe a potential transferee in possession of an AB driver licenses is illegally or unlawfully in the United States and prohibited**

³ As stated on the required 4473, the FFL "must establish the identity, place of residence, and age of the transferee/buyer. The transferee/buyer must provide a valid government-issued photo identification document to the transferor/seller that contains the transferee's/buyer's name, residence address, and date of birth." *See ATF E-Form 4473 (5300.9)*.

(Oct.

2016).

⁵ Cal. Vehicle Code § 12801.9(a).

⁶ *See* attached DOJ "IMPORTANT NOTICE Re: Assembly Bill (AB) 60 Driver's License" (undated) (Exhibit A.)

⁷ 18 U.S.C. § 922(g)(5).

⁸ Emphasis in original (Exhibit A.)

from receiving or possessing firearms or ammunition. As such, you may not transfer firearms or ammunition to the person.”⁹

Regular IDs issued by CA DMV, did not possess the “FEDERAL LIMITS APPLY” language, were different than AB 60 IDs, and this did not present a problem for lawful U.S. residents at the time.

But in January 2018, CA DMV began issuing IDs in accordance with the REAL ID Act. In doing so, *all* non-REAL IDs issued by CA DMV became identical in appearance to that of AB 60 IDs and included the same “FEDERAL LIMITS APPLY” language printed on the front.

At first, CA DMV informed ATF that AB 60 IDs were still slightly different from standard non-REAL IDs. But it was quickly apparent that this was not the case, as all non-REAL IDs issued by CA DMV are identical in their appearance. As a result, lawful U.S. residents were now being issued IDs that could no longer be used for the purposes of purchasing a firearm according to ATF’s 2016 revised opinion and DOJ’s “IMPORTANT NOTICE”.

In response, our office contacted ATF and CA DMV. Following these communications, ATF clarified their position to us that California licensed firearm dealers:

[M]ay accept post-January 22, 2018 licenses/identification documents that meet the definition in 18 U.S.C. 1028(d) in fulfilling their requirements under 18 U.S.C. 922(t)(1)(C) and 27 CFR 478.124(c)(3)(i). However, licensees may consider asking for additional documentation (e.g., passport) so that the transfer is not further delayed.

Given ATF’s recent clarification, California residents who are issued non-REAL IDs after January 22, 2018, by CA DMV may use their ID’s to purchase firearms in accordance with federal law, even if the ID contains the “FEDERAL LIMITS APPLY” language. ATF also stated it was rescinding its revised 2016 open letter to all California firearm dealers. A review of ATF’s website reveals that the June 30, 2016 letter is not available.

II. California IDs Issued Before and After January 22, 2018

But not all non-REAL IDs are acceptable. Any license issued prior to January 22, 2018 with “FEDERAL LIMITS APPLY”, could only have been issued pursuant to AB 60. For that reason, these licenses are not acceptable because there is reasonable cause to believe the individual was within the United States unlawfully. All Non-REAL IDs issued after January 22, 2018 state “FEDERAL LIMITS APPLY”, however, these are not necessarily issued pursuant to AB 60. Therefore, they do not provide sufficient cause for a dealer to believe the individual purchasing the firearm is prohibited under federal law. If a dealer has reasonable cause to believe that the individual using such a license may be prohibited from purchasing or possessing firearms due to their immigration status, ATF has suggested dealers ask for additional documentation. Otherwise a firearm dealer may deny the transfer.

CA DOJ appears to have taken the position that contradicts ATF’s recent clarification by stating that *any* ID issued by the CA DMV with “FEDERAL LIMITS APPLY” printed on the front cannot be used as “clear evidence of the person’s identity and age” for the purposes of purchasing a

⁹ See attached ATF “OPEN LETTER TO ALL CALIFORNIA FEDERAL FIREARMS LICENSEES” (Jun. 30, 2016) (Exhibit B), (emphasis added).

firearm. To take just one example, CA DOJ Operator 213 (who provided her first name "Chelsea") advised a California licensed firearms dealer that because of AB 60, only federally-approved "REAL ID"-type driver licenses were acceptable as "clear evidence of the person's identity and age" for the purposes of purchasing a firearm. We are aware of one other DOJ employee and DOJ inspector who provided similar advice to firearm dealers. The employee's name and employee number were not obtained when the advice was received. The DOJ inspector wishes to remain anonymous. Ultimately, this position has no basis under California law.

III. CALIFORNIA LAW

a. "Clear Evidence" of Identity and Age Requirement

Under California law, a firearm dealer may not deliver a firearm without "clear evidence of the person's identity and age."¹⁰

For the entirety of the Part 6 of the Penal Code, "clear evidence of the person's identity and age" is defined as either 1) a valid California driver's license; or, 2) a valid California identification card issued by the Department of Motor Vehicles.¹¹ No other requirements under California law or CA regulations exist regarding a person's clear evidence of identity and age. In other locations where identification is referred to, the reference is to a person's driver's license or valid driver's license. There is no basis under California law or regulation to state IDs with "FEDERAL LIMITS APPLY" language are unacceptable for these requirements. Regardless of whether the license is issued pursuant to the REAL ID Act or AB 60, or the ID is a non-REAL Act ID, all of these licenses are "valid" under California law. Requiring or insisting on any other type of license other than a "valid" driver's license is contrary to the requirements of California law.

b. California Firearm Restrictions

ATF's initial opinion regarding AB 60 IDs was based on the idea that a dealer could reasonably infer a person's immigration status from the AB 60 ID. The validity of the ID was never at issue. As stated above, an individual who cannot prove lawful status in the United States can still obtain an AB 60 license. But if identical licenses are issued after January 22, 2018 to U.S. citizens and persons who have entered, or are in, the country illegally, dealers cannot use those licenses as prima facie evidence the individual is prohibited from possessing firearms under federal law.

CA DOJ may attempt to claim that licenses issued after January 22, 2018 are unacceptable because there is a concern that anyone possessing these licenses may be prohibited from possessing firearms. But because that concern is based on a person's immigration status, and because the question of immigration status as it relates to the purchase of a firearm is solely the concern of federal law enforced by the ATF, CA DOJ has no basis for such a claim. There are no restrictions under California law against the possession of a firearm by a person who is illegally or unlawfully present in the United

¹⁰ Cal. Penal Code §§ 26815 and 27540

¹¹ Cal. Penal Code § 16400.

States, such individuals are not considered to be "prohibited persons" merely because of their immigration status under California law.¹²

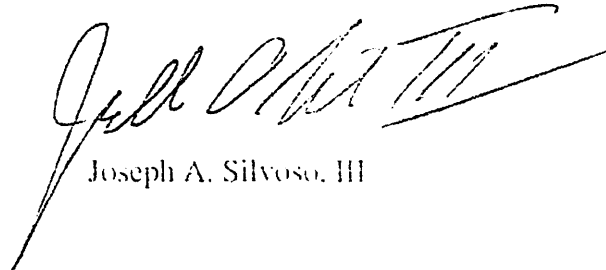
IV. CONCLUSION

If CA DOJ is taking the position that the only valid form of identification is one meeting the requirements of the REAL ID Act, that position amounts to an illegal underground regulation. What's more, because the question of lawful presence in the United States as it relates to firearm purchases falls directly under ATF's control, the restriction also amounts to an unlawful overreach of CA DOJ's authority concerning immigration issues. Unless CA DOJ reverses its current policy immediately, our clients will proceed with litigation to declare the policy invalid and have its enforcement enjoined.

The confusion and problems created by this current misunderstanding of California and federal law is affecting countless Californians every day this continues. Should our clients be forced to pursue litigation, they will also seek to recover all attorney's fees authorized by law. However, if DOJ changes its position our clients would be happy to convey that change to members of the public without additional time or expense exerted by the CA DOJ.

If you have any questions or concerns relating to the forgoing, please contact me at your earliest convenience. If we do not hear from you before April 18, 2018, our clients may need to seek legal action.

Sincerely,
Michel & Associates, P.C.



Joseph A. Silviso, III

¹² California had a similar restriction, but prohibiting all aliens, but was held to be unconstitutional in 1972 in *People v. Rappard* 28 Cal.App3d 302. And the restriction on aliens was later removed from Penal Code section 12021 (the predecessor to current Penal Code section 29800).

cc.

VIA CERTIFIED MAIL

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Exhibit A

IMPORTANT NOTICE**Re: Assembly Bill (AB) 60 Driver's License**

The purpose of this notice is to advise California Firearms Dealers (CFDs) that the AB 60 driver's licenses are meant to grant the licensee legal ability to drive and does not establish eligibility to purchase firearms.

In 2013, Governor Brown signed AB 60 into law which directed the Department of Motor Vehicles (DMV) to issue an original driver's license to any California resident who is eligible for a driver's license, regardless of immigration status. An applicant who does not have proof of lawful presence can receive an AB 60 license; however, as an alien applicant it would not establish legal or lawful presence even when admitted under a non-immigrant visa. A person who is illegally or unlawfully in the United States is federally prohibited from receiving a firearm.

See below examples (circled red) that identify the distinguishing license characteristics.



Exhibit B



U.S. Department of Justice

**Bureau of Alcohol, Tobacco,
Firearms and Explosives**

Washington, DC 20226

www.atf.gov

JUN 30 2013

OPEN LETTER TO ALL CALIFORNIA FEDERAL FIREARM LICENSEES

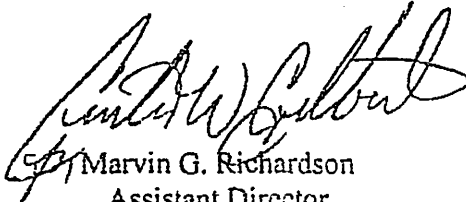
The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received an inquiry from the California Department of Justice regarding California driver licenses issued pursuant to The Safe and Responsible Driver Act, also known as California State Assembly Bill 60 (AB 60) and its applicability to Federal firearms laws. This open letter responds to that inquiry and provides guidance on the issue and to assist you, a Federal firearms licensee (FFL), in complying with Federal firearms laws and regulations. As of January 1st, 2015 California began issuing driver licenses, commonly referred to as an AB 60 license, to persons with a California residence who are unable to provide satisfactory proof that his or her presence in the United States is authorized under federal law. AB 60 driver licenses are identified by the statement "FEDERAL LIMITS APPLY" in bold on the front of the license and a notice on the back that states "This card is not acceptable for official federal purposes. This license is issued only as a license to drive a motor vehicle. It does not establish eligibility for employment, voter registration, or public benefits."

As you know, Federal law, 18 U.S.C. § 922(g)(5)(A), prohibits any person who is illegally or unlawfully in the United States from shipping, transporting, receiving or possessing firearms or ammunition. Further, Federal Law, 18 U.S.C. § 922(d)(5)(A), makes it unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person is illegally or unlawfully in the United States. As provided by 27 C.F.R. § 478.11, an alien illegally or unlawfully in the United States means someone "who is not in a valid immigrant, nonimmigrant or parole status." An AB 60 driver license is only issued to a person who cannot provide proof of lawful presence in the United States;¹ given this fact, a FFL has a reasonable cause to believe a potential transferee in possession of an AB driver license is illegally or unlawfully in the United States and prohibited from receiving or possessing firearms or ammunition. As such, you may not transfer firearms or ammunition to the person, even if the person answered "no" to question 11.k. on ATF Form 4473.

¹ Pursuant to California Vehicle Code § 12801.9, a California driver's license may be issued if the applicant attests that he or she is both ineligible for a social security number and although unable to submit satisfactory proof that his or her presence in the United States is authorized under federal, is able to establish identity and proof of California residency.

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ATF is committed to assisting you in complying with Federal firearms laws. If you have any questions, please contact ATF's Firearms Industry Programs Branch at (202)648-7190 OR FIPB@atf.gov.



Marvin G. Richardson
Assistant Director
Enforcement Programs and Services

EXHIBIT 12

IMPORTANT NOTICE

CALIFORNIA DEPARTMENT OF JUSTICE UPDATE REGARDING THE USE OF “FEDERAL LIMITS APPLY” DRIVER LICENSES AND IDENTIFICATION CARDS TO PERFORM ELIGIBILITY CHECKS

“*Eligibility checks*” refers to applications or reports for which an applicant is required to submit a driver license or identification card, or the number from a driver license or identification card, so that the Department of Justice may determine the applicant’s eligibility to possess a firearm or ammunition under state or federal law.

Eligibility checks are required upon submission of the following DES transactions:

- Applications to purchase a firearm
- Applications to purchase ammunition

For all eligibility checks, a copy of the applicant’s driver license or identification card shall be submitted.

If the applicant presents a California driver license or identification card with the notation “FEDERAL LIMITS APPLY” on the front, the applicant shall also submit a copy of a document that proves their lawful presence in the United States, in the form of one of the following documents:

- Valid, unexpired U.S. passport or passport card
- Certified copy of U.S. birth certificate
- Certification of Birth Abroad (FS-545), Certification of Report of Birth (DS-1350) or Consular Report of Birth Abroad of a Citizen of the United States of America (FS-240), issued by the U.S. Department of State
- Valid, unexpired foreign passport with valid U.S. immigrant visa and approved Record of Arrival/Departure (I-94) form
- Certified copy of birth certificate from a U.S. Territory
- Certificate of Naturalization or U.S. Citizenship
- Valid, unexpired Permanent Resident Card

For all eligibility checks, if the applicant’s California driver license or identification card has the notation “FEDERAL LIMITS APPLY” on the front and the applicant’s name as it appears on the driver license or identification card differs from the name on the document supplied, the applicant shall also submit a copy of one of the following certified documents:

- An adoption document that contains the legal name of the applicant as a result of the adoption.
- A name change document that contains the applicant’s legal name both before and, as a result of, the name change.
- A marriage certificate.
- A dissolution of marriage document that contains the legal name of the applicant as a result of the court action.

- A certificate, declaration or registration document verifying the formation of a domestic partnership.
- A dissolution of domestic partnership document that contains the legal name of the applicant as a result of the court action.

The dealer shall keep copies of the documents required as part of the permanent record of the transaction.

These requirements also pertain to an application or report submitted to the Department of Justice in a paper format. Copies of the documents required shall be submitted along with the paper application. These applications and reports include:

- New Resident Report of Firearms Ownership (*BOF 4010A*)
- Firearms Ownership Report (*BOF 4542A*)
- Curio or Relic Firearm Report (*BOF 4100A*)
- Collector In-State Acquisition of Curio and Relic Long Gun Report, (*BOF 961*)
- Report of Operation of Law or Intra-Familial Firearm Transaction (*BOF 4544A*)
- Dangerous Weapons License/Permit(s) Application (*BOF 030*) or (*BOF 031*)

These requirements also pertain to an application or report submitted to the Department of Justice electronically via CFARS. Copies of the documents required shall be uploaded to CFARS as prompted during the application or reporting process. These applications and reports include:

- Certificate of Eligibility Application
- Unique Serial Number Application
- New Resident Report of Firearms Ownership
- Firearms Ownership Report
- Curio and Relic Firearm Report
- Collector In-State Acquisition of Curio and Relic Long Gun Report
- Report of Operation of Law or Intra-Familial Firearm Transaction

Please see the examples of California “REAL ID” and “Federal Limits Apply” Driver Licenses on the following page.

For additional information, please refer to the California Code of Regulations, Title 11, Division 5, Chapter 4 § 4045. Definitions and Requirements.

Should you have any questions please contact the Bureau of Firearms, Customer Support Center at (855) 365-3767 or via e-mail at bofdes@doj.ca.gov.

