

No. 24-542

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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KIM RHODE; GARY BRENNAN; CORY HENRY; EDWARD JOHNSON; SCOTT LINDEMUTH; RICHARD RICKS; DENISE WELVANG; ABLE'S SPORTING, INC., a Texas corporation; AMDEP HOLDINGS, LLC, a Florida limited liability company doing business as Ammunition Depot; R&S FIREARMS, INC., an Arizona corporation doing business as Sam's Shooters Emporium; CALIFORNIA RIFLE & PISTOL ASSOCIATION, a California corporation,

*Plaintiffs-Appellees,*

v.

ROB BONTA, in his official capacity as Attorney General of the State of California,

*Defendant-Appellant,*

BRADY CENTER TO PREVENT GUN VIOLENCE; GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE; EVERYTOWN FOR GUN SAFETY,

*Amici Curiae.*

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On Appeal from the United States District Court for the Southern District of California, No. 3:18-cv-00802-BEN-JLB

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**PLAINTIFFS-APPELLEES' SUPPLEMENTAL EXCERPTS OF  
RECORD VOLUME I**

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July 24, 2024

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Before The Honorable ROGER T. BENITEZ, District Court Judge

KIM RHODE, et al., )  
 )  
 Plaintiff, )  
 )  
 VS. )  
 )  
 XAVIER BECERRA, et al., )  
 )  
 )  
 Defendants. )  
 )

CASE NO.  
3:18-cv-802-BEN-JLB

San Diego, California  
Wednesday, April 1, 2020

APPEARANCES:

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Reported by: Ellen L. Simone, RMR, CRR, CSR No. 14261  
Official Court Reporter

1 SAN DIEGO, CALIFORNIA; APRIL 1, 2020; 1:18 P.M.

2 -o0o-

3 THE COURT: Good afternoon. This is Judge Benitez.

4 Please identify yourselves for the record.

5 MR. BRADY: Good afternoon, Judge Benitez. This is --

6 Your Honor, this is Sean Brady on behalf of the plaintiffs.

7 MR. RICHARDS: Good afternoon, Your Honor. Nelson

8 Richards on behalf of the defendants, and I have here with me

9 Mayra Morales.

10 THE COURT: well, welcome to all of you.

11 Just some ground rules. As you speak, every time that

12 you speak, please identify yourselves so -- since we're not

13 present, my court reporter is also not present, she is on the

14 phone, and so we're trying to be as compliant with government

15 nuisance orders as we possibly can be to keep people apart from

16 each other, but that means that we have to take some extra

17 precautions, which means that you have to identify yourself

18 every time that you speak. Okay? Please don't forget.

19 Let me start out by thanking you for being at this

20 conference on such short notice. I appreciate it. But I am

21 trying to get this order out, and I think there are some things

22 that are important that I just have not been able to get

23 through clear enough in my head, and so I thought we'd try and

24 get this, if we could, do it telephonically, anyway.

25 The second thing I want to do is I want to thank the

1 State for being responsive and producing information that I  
2 have requested so far, which has certainly helped, to some  
3 extent, crystalize some of the issues. Okay? So I thank you  
4 all for being here and I thank you for providing me the  
5 information.

6 Now, I have some questions, and I want to make sure  
7 that I have my numbers straight. So this may go to -- is it  
8 Ms. Gonzalez?

9 MS. MORALES: Yes. Mayra Morales.

10 THE COURT: Morales. I'm sorry. Yeah, okay.

11 So I was going through the numbers, and I want to make  
12 sure I have these right. If I understand correctly, by the end  
13 of January, there had been 616,257 standard applications; is  
14 that correct?

15 MS. MORALES: Your Honor, can you please refer me to  
16 the page that you are looking at?

17 THE COURT: No, I can't. I'm sorry. I --

18 MS. MORALES: Yes, that is -- if you're referring to  
19 AFS checks process, yes, 616,257.

20 THE COURT: Right. And that's -- that's what -- I get  
21 a little confused, because sometimes it's referred to as the  
22 standard, sometimes it's referred to as the AFS, and so for  
23 purposes of this conference, how about if we all agree that we  
24 will call that the standard background check. Agreed?

25 MS. MORALES: Agreed.

1 THE COURT: Okay, good.

2 Now, if I understand it correctly, there are 101,047  
3 rejections; is that correct?

4 MS. MORALES: That is correct, yes, due to no match  
5 with AFS records.

6 THE COURT: Okay. Not matched with AFS records,  
7 meaning -- and what does that mean? Explain that to me.

8 MS. MORALES: That the individual submitted a standard  
9 check, and they did not match -- they were rejected because  
10 they did not match a record in the Automated Firearms System.  
11 One of the four criteria did not match, or any of them did not  
12 match; their criteria being name, date of birth, ID, or main  
13 address.

14 THE COURT: Okay. Now, there were 188 persons who  
15 were rejected as being prohibited persons; is that correct?

16 MS. MORALES: They were denied because they were  
17 prohibited persons, yes, that is correct.

18 THE COURT: All right. Now, out of that 188 people,  
19 how many have you been verified to, in fact, be prohibited  
20 persons?

21 MS. MORALES: Your Honor, I do not have that number  
22 readily available for you.

23 THE COURT: Can you tell me, though, the 188 people,  
24 why they were deemed to be prohibited persons?

25 MS. MORALES: No, Your Honor, I cannot.

1 THE COURT: In broad categories? I mean, I'm not  
2 talking about tell me all 188, but can you tell me in broad  
3 categories what those categories were?

4 MS. MORALES: No, your Honor, I cannot. I would have  
5 to get that information.

6 THE COURT: But you do have that information  
7 available --

8 MS. MORALES: Yes.

9 THE COURT: -- is that correct?

10 MS. MORALES: Yes. It is possible for me to get that  
11 information.

12 THE COURT: Okay. So we have 188 people that were  
13 failed to be prohibited persons, but as of right now, I don't  
14 know why they were prohibited persons, in other words, I don't  
15 know if they were persons unlawfully present in the United  
16 States, or if they were felons, or people that had been found  
17 to be mentally ill, et cetera. But you do have that  
18 information at the state level, correct?

19 MS. MORALES: Correct.

20 THE COURT: Okay. I guess you're not really  
21 identifying yourself each time you speak, but Ms. Morales,  
22 we're going to give you a pass since I think we can figure out  
23 that you're not one of the three male voices on this recording.

24 So Mr. Richards, Mr. Brady, and myself -- well,  
25 Mr. Brady and Mr. Richards will identify themselves each time

1 they speak. Ms. Morales, we'll give you a pass.

2 And I apologize for that. Okay.

3 MS. MORALES: No, I apologize. Thank you.

4 THE COURT: No, that's okay. Don't worry about that.

5 All right.

6 Now, I wanted to ask, is there an appeal process if --  
7 if someone applies for an AFS, is there an appeal process that  
8 one can go through in order to be determined to not be a  
9 prohibited person?

10 Mr. Richards, do you know?

11 MR. RICHARDS: Your Honor, this is Nelson Richards.

12 I guess, I'm not sure what you mean by "appeal  
13 process". Do you mean if they have an ammunition -- the  
14 standard eligibility ammunition check rejected, is there an  
15 internal process within the Bureau, a process that they can  
16 resort to to challenge that determination?

17 THE COURT: Yes.

18 MS. MORALES: Yes. This is Mayra speaking. Yes, I  
19 believe there is.

20 THE COURT: And what is that process? Can you  
21 summarize it for me?

22 MS. MORALES: Unfortunately, I don't know that process  
23 well enough to be able to summarize it for you.

24 THE COURT: Can you tell me where I would go to look  
25 to see what the process would be?

1 MS. MORALES: Not specifically, but I believe it is on  
2 our website.

3 THE COURT: Is that the AFS website?

4 MS. MORALES: The Bureau of Firearms website.

5 THE COURT: Okay. So please forgive me. You folks  
6 are much more familiar with this than I am, so I'm trying to  
7 work my way through this.

8 So the way I understand this, the standard background  
9 check, if I go into an ammunition vendor and I tell them I want  
10 to buy a box of ammo, they will then run my information through  
11 the AFS check, and then they will say, "You've been approved,"  
12 or, "You've been rejected."

13 Now, I know one of the reasons for rejection is that I  
14 may not be in the AFS system, right?

15 MS. MORALES: Correct.

16 THE COURT: Okay. And that may be because I bought a  
17 gun a long, long time ago, perhaps a shotgun or a rifle, or  
18 could be that I inherited a gun sometime, or I purchased the  
19 gun through a private sale in some other state, or I lived in  
20 some other state and I moved into the State of California.  
21 Those are all reasons why I might not be in the AFS system; is  
22 that a fair statement?

23 MS. MORALES: Yes.

24 THE COURT: All right. So the way I understand it, if  
25 I fit one of those categories that I just mentioned, I will be



1 rejected, and I will be given a 15-digit number. I can then go  
2 to the website, and I can find out why I was rejected; is that  
3 right?

4 MS. MORALES: Correct.

5 THE COURT: Okay. And if it happens to be one of the  
6 reasons that I just stated, ie., that I, say, for example,  
7 inherited a gun -- right? -- from my father, let's just say, so  
8 now somehow I can get into the AFS system by getting this  
9 notarized statement or by -- if I can find the purchase  
10 information of when I purchased the weapon, I can submit that,  
11 and that will all get me into the AFS system; is that a fair  
12 statement?

13 MS. MORALES: Can you repeat that, please?

14 THE COURT: Yes. So I gave you a couple of  
15 examples -- or several examples of why someone might not be in  
16 the AFS system. I'll just focus on one. Okay?

17 All right. So I bought a shotgun or a rifle in 1995.  
18 My understanding is that prior to 2014, long guns did not make  
19 the AFS system; is that true?

20 MS. MORALES: Yes.

21 THE COURT: Okay. So hypothetically, I bought a long  
22 gun in 1995. I go in, I try to get an AFS standard background  
23 check, and they tell me, "You have been rejected." So they  
24 give me a 15-digit number, I go over to the website, and it  
25 tells me that I don't have a gun registered in the AFS system.

1 So now --

2 MS. MORALES: Your Honor, can I interrupt for just a  
3 moment? The system --

4 THE COURT: Absolutely.

5 MS. MORALES: -- will tell you that you were rejected,  
6 and it will give a generic statement to the effect of the  
7 information that you provided did not match an AFS record or  
8 you did not have an AFS record. It doesn't specifically state  
9 why you were rejected, though. It doesn't go into the  
10 specifics.

11 THE COURT: Okay. So then let's suppose then the  
12 average person out there, I maybe have a high school education  
13 or a ninth grade education, I bought a gun in 1995, it was a  
14 shotgun, and I go in to buy ammunition at the vendor.

15 The vendor says, "You've been rejected."

16 I go to the website, I type in my 15-digit number.  
17 Now, how do I know why I've been rejected, and how I can remedy  
18 whatever the rejection issue is?

19 MR. RICHARDS: Your Honor, this is Nelson Richards.  
20 Can I jump in for just a moment?

21 THE COURT: Sure.

22 MR. RICHARDS: I just want to clarify something about  
23 the hypothetical you're asking.

24 I think the way it's phrased -- the way that you  
25 characterize it, I think I understand where you're going with

1 this, but I'd just like to point out that, in that  
2 hypothetical, the person would not have an AFS entry and would  
3 thus not be -- because the long gun purchase in 1995 wouldn't  
4 be an AFS -- it wouldn't be eligible for the standard check.

5 That would be someone who would have at least two  
6 options. That the two main options would be to use a basic  
7 check, which are outlined in Ms. Morales' declarations, or to  
8 go through the process of having that long gun purchase in 1995  
9 entered into AFS.

10 And I think Ms. Morales could explain that process --

11 THE COURT: Yes.

12 MR. RICHARDS: -- for you.

13 THE COURT: That second option that you were referring  
14 to, Mr. Richards, is what I was trying to get at. Okay.

15 So I got my rejection that says there is no AFS  
16 record. Okay. So -- but it doesn't tell me -- or does it tell  
17 me that it's because I don't have any weapons in the AFS  
18 system, or is that just implied?

19 MS. MORALES: It won't specifically tell you you don't  
20 have any weapons in the AFS system, so it would be implied.

21 THE COURT: Okay. So I guess what I'm getting at is,  
22 how would that person, that average Joe or Jill, if you will,  
23 how would they know what they need to do in order to correct  
24 whatever it is that rejected them? How would they know that?

25 MS. MORALES: Our website talks to the fact that if

1 they do not have a firearm recorded in their name, they have  
2 options to record the firearm. They have the ability to record  
3 the firearm, and therefore, then create an entry into the  
4 Automated Firearms System.

5 THE COURT: Okay. That's what I was trying to get at.

6 But somehow they learn that, right? They're told you  
7 are not in the AFS system because you do not have a firearm  
8 recorded, right?

9 MS. MORALES: They would have to glean that  
10 information.

11 THE COURT: I'm sorry. They would have to what?

12 MS. MORALES: They would not be told specifically.

13 THE COURT: So they would have to devise this  
14 information somehow? They would have to say, oh, I've been  
15 rejected, and the reason why I was rejected is because they  
16 don't have a record of me, and the reason why they don't have a  
17 record of me is because I don't have a firearm in the system?

18 MS. MORALES: Yes.

19 THE COURT: Just out of curiosity, why couldn't the  
20 state tell someone we can't process -- I'm not talking about at  
21 the point of sale, I'm talking about subsequently, when the  
22 person enters the 15-digit number -- why couldn't the State  
23 tell them this is why we can't process your application,  
24 because you do not have a firearm registered in the AFS system?  
25 That seems like such a simple thing to do.

1 MR. RICHARDS: Your Honor, this is Nelson Richards.

2 THE COURT: Yes.

3 MR. RICHARDS: I understand what you're asking, and  
4 with all due respect, I think that's a bit outside of the data  
5 that Ms. Morales has provided in her declaration.

6 THE COURT: well, I'm asking you. I mean, this  
7 doesn't have to go to Ms. Morales.

8 Look, you're the State. You folks have this set of  
9 laws and these sets of rules. And one of the things that I'm  
10 trying to work my way through is whether or not this is a  
11 reasonable fit. And in determining whether or not it's a  
12 reasonable fit, I have to determine the degree of burden.

13 I mean, certainly, Mr. Richards, I think you would  
14 agree that if the State said, "well, you know, we'll allow you  
15 to buy ammunition, but you can only buy ammunition on  
16 February 29," my guess is that you would agree that that  
17 probably would be rather an onerous burden. Don't you think?

18 MR. RICHARDS: Yes, Your Honor. In other words, a law  
19 that says you can only buy ammunition on the leap day of Leap  
20 Year? I think that would be constitutionally problematic. I  
21 would agree.

22 THE COURT: Okay. So all I'm trying to find out is,  
23 if there is a reason why we make a process difficult for the  
24 citizen -- and I assume, Mr. Richards -- I don't recall from  
25 what you've filed -- but I assume that you agree that the right

1 to buy ammunition is protected by the Second Amendment,  
2 correct?

3 MR. RICHARDS: Yes, Your Honor.

4 THE COURT: Okay.

5 MR. RICHARDS: Under Jackson and other cases, yes.

6 THE COURT: That's right. That's right.

7 So what I'm trying to find out -- and this is kind --  
8 this is really important, is, okay, so are the restrictions,  
9 the manner of restricting the purchase of ammunition,  
10 reasonable?

11 And all I'm trying to find out is, is there some  
12 reason why that hypothetical 9th grade graduate or 12th grade  
13 graduate who goes to and puts in and asks for a standard  
14 background check, and is rejected, and is then given the  
15 15-digit number, why he or she could not go to the website and  
16 simply be told, rather than given this vague, ambiguous  
17 response, that you're not in the system -- that they would be  
18 told you're not in the system because there's not a firearm  
19 registered to you in the AFS system.

20 See what I'm saying? Why not make it easier for the  
21 citizen rather than more difficult? Is there something I'm  
22 missing as to why that can't be done?

23 MR. RICHARDS: Your Honor, I'm not sure that I'm able  
24 to answer that question. I think I'd say that there may be  
25 reasons that it can't be done, but I don't know them off the

1 top of my head.

2 I do know that it's perhaps easy, from the outside, to  
3 look at this as a monolithic system where you can very easily  
4 change things, but that is not, in fact, the case.

5 We have several databases working with one another,  
6 interacting, and what may seem, from the outside, like a simple  
7 change to the system may be, in fact, quite a difficult thing  
8 to accomplish.

9 I'm not saying as a matter -- you know, certainly,  
10 that that's the case, but I do know that these questions are  
11 more complex than could the system just be changed to do that,  
12 and there may be reasons that I'm not aware of right now that  
13 we -- that that may not be either feasible or optimal from,  
14 say, a law enforcement point of view.

15 THE COURT: But -- okay. Well, it's just that it  
16 seems to me, Mr. Richards, this. Look, you, as the State,  
17 create some --

18 So prior to July of last year, citizens of this State  
19 could go in and buy ammunition anytime they wanted to, however  
20 they wanted to, there were no restrictions.

21 Now, suddenly, the State says, "well, we're going to  
22 put restrictions on your buying the ammunition." And  
23 certainly, you can't make those restrictions such that it makes  
24 it unnecessarily difficult for the citizens to buy the  
25 ammunition.

1           And so I was looking at this, and I was thinking,  
2 okay. So fine. So you go in, you put your dollar, and you ask  
3 for an AFS check, and you get a rejection, you get the 15-digit  
4 number, you go to the website, and you try to find out, okay,  
5 so why was I rejected?

6           And by the way, I have -- you know, I'm probably a  
7 little older -- or quite a bit older than any of you. Some of  
8 my buddies either do not have a computer or are not computer  
9 literate. So, you know -- and we may not understand all that's  
10 in that computer website.

11           But if the State creates the restriction, it would  
12 seem that it would be the State's responsibility to make it as  
13 simple or as easy for a citizen to be able to exercise their  
14 Second Amendment right, rather than making it more difficult  
15 for them.

16           So that's why I was asking the question. To me, it  
17 seems like it would be so simple to be able to say -- I mean,  
18 somehow or another, whatever databases you're working with,  
19 somehow that database is figuring out that this individual does  
20 not have an AFS record. Somehow, it figures that out.

21           And if it can figure that out, why can't it tell the  
22 citizen, this is why we're rejecting you. We're rejecting you  
23 because you do not have a firearm registered to your name.

24           Now the person knows. They don't have to devise this,  
25 they can -- they know. And so they know that there's a



1 process, right? As Ms. Morales just indicated, there's a  
2 process that you can go to in order to register your firearm,  
3 right?

4 So, for example, going back to my hypothetical, the  
5 individual bought a shotgun in 1995. Maybe, maybe they have a  
6 record of the purchase, or maybe they remember, if they bought  
7 it through an FSL, who the FSL was, maybe they can go back and  
8 get that record, and now they can submit the requisite  
9 information to whomever that is so that they can get their  
10 record created so that, from now on, they can use an AFS check.  
11 I don't know. Does that seem unreasonable?

12 MR. RICHARDS: I understand what Your Honor is saying.  
13 And if -- if that -- if you're asking for us to look into  
14 whether that's possible and whether that can be done, that's  
15 something I think we could do and get back --

16 THE COURT: That would be great. That would be great,  
17 Mr. Richards. If you could do that, I really would appreciate  
18 that.

19 Now, as I understand this -- and Ms. Morales can  
20 probably answer this --

21 All right. Well, let me go back just a minute.

22 So I asked the question about what happens if you are  
23 a citizen who wants to buy ammunition, you go through the AFS,  
24 you're rejected. And I asked whether or not there was some  
25 appeal process, some due process that is provided to this

1 person, somewhere where they can go where they can correct the  
2 issue.

3 And I think Ms. Morales said that there was, but she  
4 didn't know what it was.

5 Did I get that correct? Did I understand you  
6 correctly?

7 MS. MORALES: This is Mayra.

8 Yes, I said I believe there is, but I do not know the  
9 details of that process.

10 THE COURT: Okay. So could you provide me,  
11 Mr. Richards, with information of how -- what due process is  
12 provided to an individual that has been rejected so that they  
13 can go to some process that would help them resolve, if the  
14 State says, no, you don't qualify for whatever reason, and the  
15 individual says, well, the State's wrong, is there some vehicle  
16 by which the individual can get that resolved, or is it just  
17 simply that the State says, well, we're the State, too bad, so  
18 sad, you're stuck with whatever we say?

19 So if you could provide me, Mr. Richards, with  
20 whatever information you can that helps me determine whether or  
21 not there's due process provided to the citizen to help the  
22 citizen resolve any disagreement or dispute that may arise out  
23 of his or her request for an AFS standard background check.  
24 Will you do that for me?

25 MR. RICHARDS: This is Nelson Richards.

1 Yes, Your Honor. And may I have a moment to confer  
2 with Ms. Morales? I just have a question for her. Would you  
3 mind?

4 THE COURT: I'm sorry? I didn't hear you. I  
5 apologize.

6 MR. RICHARDS: Would you mind if I take one moment to  
7 confer with Ms. Morales on mute?

8 THE COURT: Oh, absolutely not. Go ahead.

9 MR. RICHARDS: Okay. One moment. Thank you.

10 THE COURT: Sure.

11 (Pause in the proceedings)

12 MR. RICHARDS: Your Honor, I was just checking with  
13 Ms. Morales because she has, in her declaration, described the  
14 process by which someone who's been rejected, that is, someone  
15 who has an AFS mismatch, can correct their record using the  
16 CFARS's method in her declaration. I think she was familiar  
17 with that. I just wanted to clarify that with her.

18 There is a second category of people, those are --  
19 those who are denied as prohibited people, and I think it might  
20 help us if we had some clarification from Your Honor. Are you  
21 talking about the process for someone who's been rejected  
22 because of a mismatch in the Automated Firearms System, what  
23 steps that person can take, or are you talking about the person  
24 who's been denied because the Department's records showed them  
25 as being prohibited, and what steps that person can take?

1 Because I think they might be on two separate tracks.

2 THE COURT: Okay. Well, I'm sorry, Mr. Richards, but  
3 the problem with this case for me is that every time that I  
4 answer a question, it results in my asking two more questions,  
5 and that's a little troublesome. But okay.

6 Let's assume, for example -- let's assume that my  
7 address -- or my address is XYZ, and the State says this does  
8 not comply -- or does not meet our records. Your address is  
9 not XYZ, your address is ABC. And you, the citizen, say, well,  
10 your records are wrong, my address is XYZ.

11 How does that get resolved?

12 MS. MORALES: Your Honor, this is Mayra.

13 That individual would have the option of logging onto  
14 the California Firearms Application Reporting System and  
15 submitting an AFS information update application for the  
16 purpose of updating their address.

17 THE COURT: I see. Okay. All right.

18 So the appeal process, I guess -- and we're then  
19 limited to -- is whether or not someone is deemed to be a  
20 prohibited person, but they don't think they are a prohibited  
21 person, maybe they're not even the same person that is  
22 determined to be a prohibited person. What is the appeal  
23 process that they have to go through in order to rid themselves  
24 of that prohibited person designation?

25 I think that's -- to me, that might be important. But

1 so anyway.

2 If there is an appeal process by which that can be  
3 resolved, I'd like to know what that is.

4 MR. RICHARDS: This is Nelson Richards.

5 Yes. I understand the question.

6 THE COURT: All right, great. Thank you.

7 Now, turning my attention to the basic check.

8 Through January, as best as I can tell, there were 770  
9 basic checks that were submitted, and that was through January  
10 of this year. Oh, no. I'm sorry. There was 19,000 -- I'm  
11 sorry. I misspoke. I know what happened. Just a second.  
12 Let's backtrack for just a second.

13 so we know for a fact that there were 770 people  
14 altogether who were determined to be prohibited persons. And  
15 that includes the standard and the basic checks. And out of  
16 those, there are 590 that were checked, and 16 of those citizen  
17 eligible; is that right?

18 so 16 out of the 590 were found to be not prohibited  
19 persons, even though the original finding was that they were  
20 prohibited persons.

21 MS. MORALES: A total of 10 were -- excuse me. Just a  
22 moment. A total of -- this is Mayra.

23 A total of 10 purchasers who were ineligible to  
24 purchase ammunition on the face of their official records were  
25 later determined to be eligible.

1 THE COURT: A total of 10 out of the 590?

2 MR. RICHARDS: Your Honor, this is Nelson Richards.

3 I believe we're looking at paragraphs 55 and 56 of

4 Ms. Morales' third supplemental declaration?

5 THE COURT: Yes. Right. specifically, paragraph 56

6 says that 16 of the purchasers have been determined to be

7 eligible, not 10.

8 MS. MORALES: I apologize, Your Honor. Yes, that is

9 correct.

10 THE COURT: Okay. All right. So there's still almost

11 200 that have not yet been screened to determine whether they

12 were really prohibited persons or not, right? Almost 200. My

13 math is terrible. I'm going to guess that it's probably 180.

14 MS. MORALES: Correct.

15 THE COURT: Okay. All right. Now, getting to the

16 basic check.

17 AS I understand it, there were 19,753 applications

18 through the end of January.

19 MS. MORALES: Your Honor, can you repeat that, please?

20 THE COURT: Yes. 19,753.

21 MS. MORALES: Correct.

22 THE COURT: All right. And there were 342 rejections;

23 is that right?

24 MS. MORALES: I would have to tabulate that, Your

25 Honor, to confirm that.

1 MR. RICHARDS: This is Nelson Richards. 107 plus 235  
2 would be 342. Is that the number Your Honor is asking about?

3 THE COURT: Yes. All right.

4 Now, Mr. Richards, I have some questions that I think  
5 are probably more in your bailiwick than Ms. Morales.

6 So I was looking at Senate Bill 1235. And Senate Bill  
7 1235 provides -- it says the following: "This bill would, if  
8 the safety for All Act of 2016 as enacted by the voters of the  
9 November 8, 2016, statewide general election, amend the Act to  
10 instead allow ammunition to be sold only to a person whose  
11 information matches an entry in the Automated Firearms System  
12 and who is eligible to possess ammunition, to a person who has  
13 a current certificate of eligibility issued by the Department,  
14 or to a person who purchases or transfers the ammunition in a  
15 single ammunition transaction as specified."

16 I was trying to figure out what "as specified" means.  
17 What does -- where do I find what that means?

18 MR. RICHARDS: Your Honor, I apologize. I don't have  
19 the language of SB 1235 in front of me, and I don't know the  
20 answer to that off the top of my head.

21 I do know that SB 1235 prospectively amended various  
22 aspects of Proposition 63, but that reference could be to a  
23 single purchase referred to in a provision of Proposition 63.  
24 But sitting here right now, without those statutes -- the  
25 proposition initiative and the Senate Bill in front of me, I'm

1 afraid I don't know.

2 THE COURT: would you be able to provide that for me  
3 when you're providing the information regarding the appeal?

4 MR. RICHARDS: Yes, Your Honor.

5 THE COURT: Because I just have no idea what that  
6 means, "as specified".

7 MR. BRADY: Your Honor, this is Sean Brady on behalf  
8 of the plaintiffs.

9 Mr. Richards' inclination is correct. That is, in  
10 reference to my understanding, is that is in reference to the  
11 basic check.

12 The legislature, via that provision, tasked the  
13 Department of Justice -- the California Department of Justice  
14 with creating a system for a one-time ammunition purchase,  
15 which is the basic check, and DOJ -- California DOJ went ahead  
16 and created that system, which is what we are referring to as  
17 the basic check, so that's what that provision refers to.

18 THE COURT: But I was wondering about that language  
19 "as specified". Is there like -- so "as specified", meaning  
20 where -- where do I look in the statute to see what "as  
21 specified" means?

22 I understand what you're saying, Mr. Brady. In fact,  
23 I think that's probably what it was referring to, but I just  
24 don't see any language that amplifies what "as specified"  
25 means.



1 MR. BRADY: Your Honor, this is Sean Brady. It's  
2 specified in regulations, not in the statute.

3 So it basically said DOJ created this system, and DOJ  
4 did via regulations, which I could get you the section numbers  
5 for shortly, if you give me a minute.

6 THE COURT: All right. Well, why don't you look that  
7 up, and while you're looking that up, I'm going to ask  
8 Mr. Richards another question, which is kind of, again, more in  
9 his bailiwick.

10 But going on, the next sentence says, "If the Act is  
11 enacted by the voters, the bill would amend the Act to charge  
12 ammunition purchasers and transferees a per transaction fee not  
13 to exceed \$1."

14 And so I'm wondering, because -- and the reason why I  
15 ask Mr. Richards is this. Look. There are -- for some of us,  
16 \$18 may not be a lot of money, but for some people who enjoy,  
17 for example, target practicing, or they want to take their kids  
18 or grandkids out plinking, or maybe they want ammunition to  
19 protect themselves, you know, that \$18 could be a whole lot of  
20 money.

21 I mean, right now, with this coronavirus stuff going  
22 on, I suspect there are a lot of people who are hurting  
23 financially, and that \$18 can make a world of difference,  
24 particularly if you do more than one transaction.

25 So I'm wondering, if the statute says \$1, where does

1 that \$19 charge come from?

2 MR. RICHARDS: Your Honor, this is Nelson Richards.

3 Again, I'm going to have to apologize. Given the  
4 nature of today's hearing, we're -- I'm not in my office with  
5 all my materials, and I believe there's another provision in  
6 either Proposition 63 or somewhere in 1235 that specifies that  
7 \$19 is the amount that we charge for the single transaction.

8 And I'd have to double -- I'd have -- I might be  
9 wrong, but I'd have to look and figure out where the \$19 number  
10 comes from. I don't know if it's in the statute or if it's  
11 somewhere else, but I would have to doublecheck that.

12 THE COURT: That kind of gets me to an issue that I  
13 think is really interesting, so -- because I'll tell you. I've  
14 long been a believer that laws should be written and drafted so  
15 that the reasonable person can understand them, not someone who  
16 graduated summa cum laude from Harvard Law.

17 And obviously, I'm not in the latter category, as I'm  
18 sure you've probably already figured out.

19 But I'm trying to figure out, what really is the law,  
20 and I'm trying to figure out, where does this authority come  
21 from to preemptively amend a proposition that is submitted to  
22 the people for a vote?

23 So as I understand it, we have this proposition  
24 initiative process in the State of California in which restores  
25 or which provides the people the final say on what the law is,

1 subject to being interpreted, of course, by the courts and so  
2 on, but --

3 And so there was this proposition that was put on the  
4 ballot that the people voted on, and it was represented to them  
5 that this is what the law was on the subject. And apparently,  
6 the legislature has decided that it doesn't matter what the  
7 people voted for, we're going to preemptively amend the  
8 proposition enacted by the people.

9 There's something about that that strikes me as being  
10 totally and completely anti Democratic and antithetical to the  
11 whole proposition procedure.

12 So is there a case? Because we tried to find  
13 authority for the proposition that the State can preemptively  
14 amend or modify a proposition that has been submitted to the  
15 voters and represented to the voters as being the law on a  
16 subject. Couldn't find anything.

17 And I didn't see anything in your filings,  
18 Mr. Richards, that indicated that there is -- that the  
19 legislature has that power.

20 Can you find that for me and tell me where that comes  
21 from?

22 MR. RICHARDS: Yes, Your Honor. I can give you, I  
23 think, a broadbrush answer right now, and then if you'd like  
24 more after I provide that answer, I'd be happy to provide more  
25 detailed discussion.

1 THE COURT: Sure. Why don't you give me the  
2 broadbrush.

3 MR. RICHARDS: Sure. Article 2, Section 10(c) of the  
4 California Constitution is actually the controlling authority  
5 on the relationship between the legislature and the people with  
6 regard to the initiative process.

7 while I don't have that right in front of me, I'm  
8 fairly familiar with that section. It says something to the  
9 effect of, "Valid initiatives enacted by the people can only be  
10 amended by their terms, and then the legislature can amend  
11 those initiatives as permitted by the terms of the initiative."  
12 But that's the controlling standard.

13 And so the way this works out in practice, when you  
14 look at whether a legislative enactment is permissible, you  
15 engage in a two-step inquiry.

16 First, you look at Article II, Section 10(c) of the  
17 California Constitution, and then you conduct a two-step  
18 inquiry where you say, well, does this initiative -- or excuse  
19 me -- does the statute -- proposed statute or statute does it  
20 amend the initiative.

21 I think with regard to SB 1235, that would -- the  
22 answer would certainly be yes, as disputed in cases often, and  
23 I've litigated a few of those cases.

24 But then you get to the second step of the inquiry  
25 which is, is the legislature enactment permissible under the

1 terms of the initiative, and to answer that question, you go to  
2 the text of the initiative, and you look to see whether the  
3 initiative allowed for an amendment.

4 And I believe -- again, I don't have Proposition 63  
5 right in front of me, but I believe Prop 63 did contain that  
6 language and -- language allowing an amendment, and that is  
7 what the legislature was relying on when it enacted SB 1235.

8 Now, people do litigate whether amendments are  
9 permissible -- again, I've litigated a few of those cases in my  
10 day -- but that is a question of state law and not one that we  
11 understand the plaintiffs to have raised in this case, and not  
12 really at issue, which is why we did not explain this  
13 particular issue in our briefing.

14 THE COURT: well, let me tell you why I -- it may be a  
15 question of state law, not a question of federal law, but it  
16 becomes a question of federal law when I'm trying to figure out  
17 whether the burden imposed by the State on a constitutionally  
18 protected right is reasonable.

19 And so I've asked you questions about the basic and  
20 the standard background checks, and the reason why I've asked  
21 those questions is because one of the things I'm trying to  
22 determine, as I said to you earlier, Mr. Richards, certainly,  
23 the State can't say, well, you can buy ammunition, but you can  
24 buy it on February 29th. Only on February 29th.

25 So there's this broad spectrum, I suppose, of manner,

1 time, and place restrictions that might be able to be imposed,  
2 but in the end, someone has to make a determination as to  
3 whether or not the manner, whether the fit is reasonable or not  
4 reasonable.

5 And in doing that, I'm trying to figure out, for  
6 example, well, where does all this come from?

7 Because if I look at the proposition, Mr. Richards --  
8 and I think this is very interesting -- the proposition that  
9 was represented -- I mean, there was an affirmative  
10 representation made to the people of the State of California:  
11 If you pass this, this is what's going to happen. This will be  
12 your burden. In order to exercise your Second Amendment  
13 rights, this will be your burden.

14 And specifically, specifically, I'm referring to a  
15 couple of things. First of all, at Article 4, Section 30370,  
16 it talks about the State creating and maintaining internal  
17 centralized lists of all persons who are authorized to purchase  
18 ammunition. So it places the burden on the State to create  
19 this list or this database of people who are authorized to  
20 purchase ammunition.

21 And then, there's this other very interesting  
22 provision. Again, this just simply goes to whether or not the  
23 fit is a reasonable fit as currently imposed by the State where  
24 there's this provision in what was represented to the people  
25 would be the law, which is that you can apply for a certificate

1 to purchase ammunition, you pay 50 bucks, and that certificate  
2 is good for four years.

3 And, of course, the State maintains the centralized  
4 database, which means that if I have acquired this ammunition  
5 purchase certificate, which is good for four years, if I become  
6 an ineligible person, then the State can essentially revoke my  
7 certificate. You see?

8 Now, why is that important? Because, you see, it  
9 doesn't require that I tell the State, for example, what  
10 firearms I own, number one, as I would have to if I wanted to  
11 go through the AFS check.

12 Number two, I get my certificate, and I'm good to go.  
13 I'm basically where I was prior to July of 2019. I can walk in  
14 anytime, to any vendor, I can present them with my certificate,  
15 I walk out with my ammunition. That's a -- to me, that's a  
16 rather insignificant burden. I mean, it's not completely  
17 insignificant, but you see what I'm saying.

18 But otherwise, what I have to do is I have to go in,  
19 and I would do the basic or the standard background. And if I  
20 do the basic background check, we're looking at, as best as I  
21 can tell from Ms. Morales' declarations, we're looking at, you  
22 know, two days that I'd have to wait, and I have to pay \$18 --  
23 I'm sorry -- \$19 each time. So to me, it's important.

24 And now, okay. So now the people were told, this is  
25 what will be required of you if you want to buy ammunition.

1 And then somehow or another, the State preemptively -- and by  
2 the way, it's not mentioned anywhere in the proposition that  
3 there's this other law that the legislature has enacted that  
4 will essentially make some of what's in the proposition  
5 meaningless or not effective, which I think is -- you know, I  
6 don't know -- I think that's rather an odd way to deal with the  
7 people.

8 But so that's why, to me, it's important. I want to  
9 know, where does this authority come from to preemptively enact  
10 statutes that might either completely extinguish, or modify, or  
11 alter, or amend a proposition that is subsequently amended --  
12 I'm sorry -- subsequently passed by the people.

13 If we were talking about -- look. If we were talking  
14 about whether or not I have to have a GFI in my bathroom, when  
15 I had a bathroom, who cares. If -- maybe they're talking about  
16 what I have to do in order to get a driver's license or an  
17 identification card, who cares.

18 But here, we're talking about some pretty important  
19 stuff. I mean, this is in the Bill of Rights. This is in --  
20 and so, to me, it seems like, first of all, the people should  
21 be told honestly what it is that they're voting for and what  
22 effect it's going to have, and secondly, if the State's going  
23 to tamper with what the people have voted for, that they should  
24 be told ahead of time that, you know, whatever it is you vote  
25 on, guess what, it doesn't mean anything because we, the



1 legislature, are going to change it.

2 So I'm not saying that it's not the law, but if it is  
3 the law, I'd sure like to see some support for it, because I  
4 did not see it in any of the filings.

5 So Mr. Richards, I would appreciate it if you could  
6 get me authority that says that, in fact, the State can  
7 preemptively modify, or amend, or extinguish a proposition that  
8 is subsequently adopted by the voters of the State of  
9 California. So now --

10 And now that gets me to another issue. Again, to me,  
11 this goes to the burden that's being placed on the citizens'  
12 right to exercise their Second Amendment right.

13 I'm wondering. There's this database -- and I know,  
14 Mr. Richards, you and I talked about this once before, but I  
15 was left with considerable questions about how this works --  
16 but the AFS, or standard background check, assumes that, at  
17 some point in time, I have told the State of California that I  
18 own a certain weapon.

19 So as I understand Ms. Morales' declaration, if I have  
20 a record, an AFS record, I can walk into an ammunition vendor,  
21 I can give them my Real ID or my passport, and they can almost  
22 instantaneously, within minutes, tell me whether or not I can  
23 buy that ammunition.

24 Is that a fair understanding of Ms. Morales'  
25 declaration?

1 MS. MORALES: Your Honor, this is Maya.

2 Yes, that is correct.

3 THE COURT: Okay. Now, other than the fact that the  
4 state knows that I own a firearm, because either I have told  
5 them, having been rejected once -- okay? -- and now I did what  
6 I needed to do in order to create an AFS record, or the fact  
7 that sometime back I purchased a firearm -- what happens now is  
8 that there's this database that is accessed somehow when I go  
9 into that vendor, there's this database that's accessed that is  
10 called the Armed Prohibited Persons Database. And that Armed  
11 Prohibited Persons Database is a database that was created by  
12 and maintained by the State of California, right?

13 MR. RICHARDS: Yes, that's correct.

14 This is Nelson Richards.

15 THE COURT: Okay. Now, I'm wondering. Where does the  
16 information for the Armed Prohibited Persons System Database,  
17 where does that information come from? What databases does  
18 that database look to such that it makes it, essentially,  
19 instantaneous for someone who applies for a standard background  
20 check to be able to almost instantaneously know whether he or  
21 she can buy ammunition?

22 MS. MORALES: Your Honor, are you asking -- I want to  
23 make sure I understand your question.

24 THE COURT: Okay.

25 MS. MORALES: You're asking where will you -- when you

1 conduct the standard ammunition eligibility test, and after I  
2 have checked the Automated Firearms System to see if you have a  
3 record, and then after that it checks APPS, where APPS gets  
4 this information from?

5 THE COURT: Yes. Yes. Precisely.

6 MS. MORALES: So generally speaking, from what I  
7 understand, or what I'm -- based on my experience, I believe  
8 APPS gets the information from -- from the dealer record of  
9 sales and --

10 THE COURT: I'm sorry. I'm sorry. Say that again.

11 MS. MORALES: -- the dealer record of sale  
12 application.

13 And I believe our IT team can better speak to that.  
14 But they get the info -- when an individual purchases a  
15 firearm, that information not only goes into the AFS, but it  
16 also populates the Armed Prohibited Persons System.

17 THE COURT: Yes. Okay.

18 But if you use my hypothetical where I didn't actually  
19 purchase the firearm, the purchase is -- that the firearm was  
20 given to me, I inherited it, or I bought it in a private sale  
21 in some state that doesn't require registration, and so on -- I  
22 was walking down the street and I found it, you know, I mean,  
23 whatever, whatever the reason is, I know that there's a vehicle  
24 by which I can go to the AFS system and say, hey, I have this  
25 firearm, and I'm essentially -- I'm now creating a record in

1 the AFS system, right?

2 MS. MORALES: Your Honor, if you had -- this is  
3 Mayra -- if you had a firearm that you wanted to report under  
4 your name, you would submit your application, it could be a  
5 firearm ownership report to the Department of Justice, you  
6 could submit that manually, or you could submit that  
7 electronically through the California Firearms Application  
8 Reporting System, and then we would process your application.  
9 Once it was processed and approved, after conducting a  
10 background, that info -- your -- your firearm record would be  
11 in the Automated Firearms System.

12 THE COURT: Right. I got that. Okay. So I follow  
13 that.

14 So I submitted my application. I said, look, I've got  
15 this firearm. I was walking down the street, I found it. You  
16 know. I don't have any criminal history. Whatever I have to  
17 do in order to get into the AFS system, I got into the AFS  
18 system, however I got into the AFS system.

19 Now, perhaps a better example, because it's probably a  
20 more realistic example. I'll bet there are a lot of people,  
21 lot of people that purchased firearms -- long guns, for  
22 example, rifles, shotguns -- before 2014, so they would not be  
23 in the AFS system, right?

24 MS. MORALES: That is correct, unless they reported  
25 the firearm after the fact.

1 THE COURT: Right. So let's take the hypothetical  
2 system. Jill Doe bought a shotgun in 1995. She's not in the  
3 AFS system. So she goes in and asks for a standard background  
4 check to buy ammunition. She's rejected. She goes to -- she  
5 gets her 15-digit number, she goes to the database -- or to the  
6 website, she does whatever she has to do, whatever she has to  
7 do in order to create the record that she owns this firearm.

8 Now, what the standard background check does is it  
9 goes and looks at the Armed Prohibited Persons Database, right?

10 MS. MORALES: Correct, after it checks the Automated  
11 Firearms System.

12 THE COURT: But all the Automated Firearms System  
13 tells them is that this person owns this firearm, right?

14 MS. MORALES: It has a record of the firearm  
15 transaction, yes.

16 THE COURT: Okay. All right. So the next thing that  
17 happens is that somehow, somehow or another, however this  
18 happens mechanically, the next thing that happens is that it  
19 checks the Armed Prohibited Persons Database, and it looks to  
20 see if this person has, for example, a domestic violence  
21 restraining order against him or her, right?

22 MS. MORALES: It checks to make sure there are no  
23 prohibiting -- well, yes.

24 THE COURT: Okay. My question was essentially geared  
25 to this: where does the Armed Prohibited Persons System get

1 its information? What databases does it look to in order to  
2 populate its database?

3 MR. RICHARDS: Your Honor, this is Nelson Richards.

4 If Ms. Morales knows, she can answer. I don't know  
5 whether she does or not. But I just wanted to, again, offer,  
6 to the extent she's unable to answer, that that's additional  
7 information that we can provide to the Court, if the Court is  
8 interested in that specific question.

9 MS. MORALES: Your Honor, it's Mayra.

10 I believe -- and I can confirm this -- but it checks  
11 the Automated Criminal History System, the Wanted Persons  
12 System, the California --

13 THE COURT: Restraining and Protective Order System?

14 MS. MORALES: -- Restraining and Protective Order  
15 System, and the Mental Health Firearms Prohibition System.

16 THE COURT: Okay. So -- so --

17 MS. MORALES: And, Your Honor --

18 THE COURT: Yes.

19 MS. MORALES: Excuse me. This is Mayra.

20 THE COURT: Yes.

21 MS. MORALES: That is very -- that is a process -- the  
22 Armed Armed Prohibited Persons System and the way it works is a  
23 process all in itself, and I just wanted to let you know, it's  
24 more -- that is me just generally speaking.

25 THE COURT: I'm sorry. I missed what you said. Can

1 you repeat what you said?

2 MS. MORALES: Yes. I have said that the Armed  
3 Prohibited Persons System and the way it works, is obviously a  
4 process that is very involved, and what I provided is  
5 information generally speaking.

6 THE COURT: Okay. I'm trying to be more specific,  
7 though, because I'm trying to find out -- here's what -- here's  
8 what's kind of troubling me.

9 Again, getting back to what the initiative said as far  
10 as the cost of getting an ammunition purchase certificate, and  
11 the fact that there are people who cannot afford an extra \$18  
12 every time that they go purchase ammunition.

13 So what is it that makes the standard background check  
14 so quick and so cheap as compared to, for example, the basic  
15 background check?

16 MS. MORALES: Your Honor, this is Mayra.

17 The standard ammunition eligibility check is a  
18 systematic check, whereas the basic ammunition eligibility  
19 check would require someone, potentially an analyst, to review  
20 the crim -- the information or the background check, the hit on  
21 an individual.

22 THE COURT: Well, what -- what does the -- what does  
23 the basic background check check that is not in the Armed  
24 Prohibited Persons System?

25 MS. MORALES: Your Honor, I don't understand your

1 question. I apologize. Can you repeat that?

2 THE COURT: Okay. So you tell me that it's an  
3 automated check. So that means -- automated means that the  
4 state of California has created this automation system. This  
5 automation system that then goes and looks at this other system  
6 called the Armed Prohibited Persons System, which then goes and  
7 looks at five databases. This system that has been created by  
8 the state is apparently very quick and very cheap.

9 what I'm trying to do is I'm trying to draw the  
10 distinction between the standard and the basic check. What is  
11 it that the basic check looks to or looks at that is not in the  
12 Armed Prohibited Persons check?

13 MS. MORALES: Your Honor, I'm going to do my best.  
14 Again, this is Mayra.

15 So once again, the standard check checks the Automated  
16 Firearms System first and then the Armed Prohibited Persons  
17 System.

18 Within the Armed Prohibited Persons System, an  
19 individual is identified as either prohibited or not  
20 prohibited.

21 So if an individual is not prohibited in the Armed  
22 Prohibited Persons System, it's based on that status they will  
23 be approved. If they are prohibited, they will be rejected.

24 THE COURT: Right. I gotcha.

25 But what --



1 MS. MORALES: So, if they're --

2 THE COURT: Go ahead. Go ahead.

3 MS. MORALES: So going --

4 THE COURT: Let me -- let me -- so the basic check.

5 So I decide that I want to go through this expensive,  
6 time-consuming process, for whatever reason. Maybe because I  
7 know I don't have an AFS record. Okay? So I decide I want to  
8 go through that. Okay.

9 So what happens next? The vendors somehow or another  
10 does something that causes someone to do something that then  
11 eventually is going to result in either my being approved or  
12 disapproved. What I'm trying to find out is what those  
13 somethings are.

14 MS. MORALES: For the basic ammunition eligibility  
15 check, the individual would submit the information to the  
16 Department of Justice. An analyst within our department -- or  
17 the way it would work is the system would check the DMV to make  
18 sure that the individual's information matches the record in  
19 the DMV.

20 If it matches the record in the DMV, what then happens  
21 is that a hit is generated for that individual based on their  
22 identifying information. And what happens is that the -- it  
23 checks against the Automated Criminal History System, the  
24 Mental Health Firearms Prohibition System --

25 THE COURT: You're going too fast. You're going to

1 fast.

2 So it goes and looks at what now?

3 MS. MORALES: Automated Criminal History System, the  
4 Wanted Persons System, the Mental Health Firearms Prohibition  
5 System, and the California Restraining and Protective Order  
6 System.

7 So it generates, in a sense, what we call a base -- a  
8 basic ammunition eligibility check, which is a compilation of  
9 the information from those systems for that individual, and an  
10 analyst reviews that information to determine if the individual  
11 is eligible to own or possess ammunition. So it takes a person  
12 actually looking at that information.

13 Now, in some instances, an individual could  
14 potentially be automatically approved if there are no hits in  
15 the system.

16 THE COURT: what does that mean, there are no hits?

17 MS. MORALES: That no record came back on ACHS, CRPOS,  
18 Wanted Persons System, or Mental Health Firearm Prohibition  
19 System, there's no record of them in those systems.

20 THE COURT: So if I understand you correctly,  
21 Ms. Morales, what happens is that there is a body --

22 MS. MORALES: Correct.

23 THE COURT: -- that then goes and, assuming that the  
24 DMV identification and information matches, that there is a  
25 body that looks at four of the five databases that the AFS

1 database looks to, right?

2 MS. MORALES: He has to check those four databases,  
3 including the DMV.

4 THE COURT: Okay. Now, just out of curiosity, in  
5 order to even run a background check, you have to have a Real  
6 ID, and/or a passport, and/or a certified birth certificate,  
7 right? You have to have all of this when you go through the  
8 standard or the basic, right? In other words --

9 MS. MORALES: Correct.

10 THE COURT: -- you can't get your AFS background  
11 checks unless you have one of those documents, one of which is  
12 the driver's license, right?

13 MS. MORALES: Yes. You must have a Real ID, or if you  
14 do not have a Real ID, if you have Federal Limits Apply ID, you  
15 must have substantiating documentation showing that you are  
16 legally present in the United States.

17 THE COURT: Okay. So really, the only difference, the  
18 only differences that I can see between the standard and the  
19 basic background checks are this:

20 Number one, for the standard, you have to have already  
21 a record of a firearm. In other words, you have to have told  
22 the State that you own a firearm. You don't have to do that if  
23 you go through a basic background check, right?

24 MS. MORALES: Your Honor, it's Mayra.

25 You do not have to have a firearm record in AFS for

1 the basic check. That is correct.

2 THE COURT: So let's just see. Again, I kind of  
3 warranted these things looking at possible hypotheticals.

4 So let's assume that I'm a gang member of the East  
5 Side Gang. I have no prior criminal history, no prior criminal  
6 record. I can go down and I can buy a firearm. And if I buy  
7 that firearm, I can then go and buy all the ammunition I want  
8 by going through an AFS standard background check. So long as  
9 I do not become an armed prohibited person, I can be a member  
10 of this gang, and I can buy all the ammo I want. Is that --  
11 does that make sense?

12 MR. RICHARDS: Your Honor, this is Nelson Richards.

13 To the extent that we're using a hypothetical, I think  
14 it's probably better that I answer the questions.

15 THE COURT: Sure. Go ahead.

16 MR. RICHARDS: But I think that -- I think, as you set  
17 forth that hypothetical, in other words, as I understand it,  
18 someone who happens to be a member of a street gang that has no  
19 criminal history or other event that would prohibit them from  
20 possessing a firearm under state or federal law, that person  
21 can go in, purchase the firearm, and have an AFS entry created  
22 that would then, in turn, allow that person to use standard  
23 checks -- a standard ammunition eligibility check to purchase  
24 ammunition in the future.

25 THE COURT: That's right.

1 MR. RICHARDS: Yes, that is correct.

2 THE COURT: Okay. All right. But let's forget the  
3 gang member for just a minute. Let's go back to my being the  
4 person who bought a shotgun back in 1995.

5 I've now created my AFS record. The only difference  
6 between the standard and the basic background checks is that,  
7 for the standard, you have a firearm record. So you told the  
8 State that you own a firearm. You don't do that with the  
9 basic, you do it with the standard.

10 with the basic, there's an automated system set up by  
11 the State of California called the Armed Prohibited Persons  
12 System that looks at you because you are in the AFS system, in  
13 other words, that person that bought the 1995 shotgun is now in  
14 the AFS system. John Doe, Jane Doe, it's in the system.

15 And now, the APPS system goes out and it looks at  
16 those five databases, and it is able to, essentially, almost  
17 instantaneously tell you whether you're approved or not  
18 approved, right?

19 MS. MORALES: Your Honor, this is Mayra.

20 I'd like to clarify. For the Armed Prohibited Persons  
21 System, an individual is either prohibited or not prohibited in  
22 the system. The system does not, once again, go out and check  
23 those databases. You're already in the system either a  
24 prohibited or not prohibited. That check has already been  
25 done.

1 THE COURT: Okay. But that's also done through a  
2 database. So the Armed Prohibited Persons System accesses  
3 those five databases that you told me about. That then is  
4 imported into the APPS system, and the APPS system is then used  
5 by the standard background check to determine whether or not  
6 you are eligible to buy ammunition, right?

7 MR. RICHARDS: Your Honor, this is Nelson Richards.

8 I want to clarify exactly where the APPS system pulls  
9 the information from, as Ms. Morales did earlier.

10 I believe it -- those databases, it's a much more  
11 complicated process. As I understand things, and as  
12 Ms. Morales is just saying, when you end up in the Armed  
13 Prohibited Persons System, there's essentially a determination  
14 that's been made that you are a prohibited person. This forms  
15 the basis, not just for ammunition background check purposes --  
16 ammunition background check, it also -- in fact, its primary  
17 purpose is to disarm people who should not have firearms. The  
18 Department of Justice and the Bureau of Firearms is actively  
19 involved in taking away firearms from prohibited people.

20 THE COURT: Sure. I've read lots of reports.

21 Mr. Richards, believe it or not, I actually have  
22 looked at various California publicly available records and  
23 reports, and so on, and so yes, I understand all of that.

24 But I'm trying to find -- you see, what I'm trying to  
25 do is I'm trying to find the mechanics how this all happens.

1           So the fact is that when you go to the AFS system, the  
2 AFS looks to see that there's a record of you in the system.  
3 So it's going to find your name. John Doe. Jill Doe.

4           And then it's going to check the Armed Prohibited  
5 Persons System to see if you're a prohibited person or not a  
6 prohibited person.

7           If it says -- finds that you're a prohibited person,  
8 then it rejects you, and you would be turned down by the  
9 vendor, and you could not buy any ammunition.

10           On the other hand, if you were not a prohibited  
11 person, your purchase of the ammunition is almost  
12 instantaneous, you pay your buck, you walk out with your box of  
13 25 12-gauge shotgun shells, you're done, right?

14           MR. RICHARDS: Yes.

15           THE COURT: Okay. And the way the Armed Prohibited  
16 Persons System gets its information is because it accesses, not  
17 necessarily at that moment, but at some other point in time, it  
18 has already accessed -- it's able to access these five  
19 databases that Ms. Morales has told me about, right?

20           MR. RICHARDS: I'm not sure that that's the only thing  
21 at work there. And the reason why I say that is because one of  
22 the reasons why the basic ammunition eligibility check takes  
23 longer is because you can end up with partial hits in one of  
24 those databases, for example, which is what would prompt a  
25 manual review of a basic ammunition eligibility check.

1 THE COURT: I'm sorry. Either I didn't hear you or  
2 you got cut out a little bit. So go back. Do that one more  
3 time.

4 MR. RICHARDS: Yes, Your Honor. This is Nelson  
5 Richards.

6 So as I was saying, the -- those -- the four -- the  
7 databases -- the Domestic Violence Database, for example,  
8 those -- someone may have a partial hit in one of those  
9 databases that may require a manual review for the basic  
10 ammunition eligibility check. This is some -- there may be  
11 some connection to say that someone's name comes up, or, for  
12 example, there's a record of a criminal arrest that has no  
13 final disposition, so someone is arrested for a felony but  
14 there's no final disposition of whether they were convicted or  
15 acquitted, for example.

16 For the basic check, an analyst needs to run that  
17 determination down, and it is a much more labor -- can be a  
18 much more labor-intensive process that accounts for the  
19 extended time that the manually processed, basic ammunition  
20 eligibility checks that are outlined in Table 1.3 of  
21 Ms. Morales' declaration -- most recent declaration, that's the  
22 distinction between the automatically processed and manually  
23 processed. Manually processed requires an analyst to go out  
24 and conduct some investigation.

25 what I think -- what I understand you to be asking is,



1 well, isn't there some similar process with regard to APPS? I  
2 don't believe that's come up before, and I -- sitting here  
3 today, I don't know the answer, but that is another area where  
4 we can provide you with some additional information, if you  
5 would like, about what goes into someone entering APPS.  
6 Because once they're -- my understanding is, once they're in  
7 APPS, they are a prohibited person. Again, as I mentioned  
8 earlier, it forms the basis for --

9 THE COURT: But they're not, really. I'm sorry. Let  
10 me interrupt you for just a minute.

11 But they're not really, and the reason why they're not  
12 really is because the same thing happens. If I go in and I ask  
13 for a standard background check, and it comes up with a  
14 rejection because it says that I am a prohibited person, now --  
15 and I disagree with that, then someone is going to have to go  
16 through and look at the information -- say, for example, it was  
17 the Restraining Order Database that generated a hit on the APPS  
18 database that resulted in my being rejected.

19 So in that case, the very same thing is going to  
20 happen, and that is that some individual is going to have to  
21 walk back the hit at the Restraining Order Database in order to  
22 determine whether or not I really am a prohibited person.

23 That's why I was so interested in the appeal process  
24 at the very beginning, because it seems to me that the standard  
25 and the basic background checks -- which, I'll go back, is not

1 in the initiative that was approved by the voters -- that  
2 those -- I'm not saying that the State couldn't possibly -- in  
3 fact, I would hope they could enact procedures that would be  
4 even better than, but not to the exclusion of, that which the  
5 voters approved in the initiative.

6 But if there's a hit in one of those four databases,  
7 it's going to show up in the approved -- I'm sorry -- in the  
8 Armed Prohibited Persons Database, which is going to wind up in  
9 a rejection when the person goes to apply to purchase the  
10 ammunition.

11 That person is going to say, well, wait a minute. I  
12 don't know why I was rejected, and so they're going to do  
13 whatever they need to do in order to get that corrected, which  
14 is going to result in an individual walking back to check and  
15 see whether or not that was accurate information, just as the  
16 analyst would in the case of a basic background check.

17 so what happens is that the analyst is going to do the  
18 background check, is going to check these four databases, and  
19 if there is a hit, then they're going to reject the  
20 application. But if there are no hits, then it's going to be  
21 approved.

22 And the only difference, really, is -- besides the  
23 fact that the standard background check checks one more  
24 database -- well, actually, it's the same number of  
25 databases -- but it's going to be the same thing. They're

1 going to be looking at the very same information. The only  
2 difference being that one is automated, and the other one is  
3 not; am I right?

4 MR. RICHARDS: I don't believe so, Your Honor.

5 THE COURT: Okay. You have to tell me why not.

6 MR. RICHARDS: And I think this gets to how the APPS  
7 system works, which is not something that we provided  
8 information on, and not something that I'm familiar enough  
9 to -- with sitting here right now, to make representations to  
10 the Court about.

11 And so, again, we could provide clarification on how  
12 APPS works, to talk about how it's different from the -- both  
13 the -- the automatic and the manual standard ammunition  
14 eligibility check. But --

15 THE COURT: I could spend so much -- Mr. Richards, I  
16 could spend so much time, because I am somewhat meticulously  
17 trying to figure out the differences and how they affect the  
18 buyer who is trying to buy ammunition.

19 And I thought that Ms. Morales did a really good  
20 job -- which, by the way, I think I basically, probably already  
21 knew, but I was trying to confirm it, because I didn't want to  
22 put my big foot in my mouth by saying something that wasn't  
23 true -- but Ms. Morales has pretty much confirmed exactly what  
24 I just said, which is, if you have a record -- if your name is  
25 in the AFS system, what it's going to do is it's going to check

1 the APPS system to see if you're a prohibited person or not.  
2 And the way it's going to determine whether you're a prohibited  
3 person or not is by checking the databases that she told me  
4 about.

5 If you apply for a basic background check, what's  
6 going to happen is that someone is going to manually check  
7 those databases, and if there is a hit, they're going to try  
8 and sort out why there's a hit. That's what I understood  
9 Ms. Morales to say.

10 Now, maybe you're telling me that Ms. Morales, you  
11 know, has provided me with information that I misunderstood,  
12 but that's -- I mean, I stand to be corrected. I'm here. I'm  
13 asking these questions because I want to learn because I think  
14 it's important. I think this is an important issue for the  
15 citizens of the State of California. I'm taking my time  
16 because I want to know.

17 So I don't know who I have to ask. I don't know who I  
18 have to bring in the court, if necessary, to get the  
19 information from. But I think it's important that we all know.

20 And if Morales -- Ms. Morales -- if she doesn't know,  
21 then she should tell me that she doesn't know.

22 MS. MORALES: Your Honor, it's Mayra.

23 THE COURT: Yes.

24 MS. MORALES: So you requested information on the  
25 standard ammunition eligibility check and the process, and so I

1 did outline that it checks the Automated Firearms System, and  
2 then it checks APPS.

3 It checks APPS to see if an individual is prohibited  
4 in the system or if they're not prohibited. If they're not  
5 prohibited, they're approved. If they're prohibited, they're  
6 denied.

7 APPS, and how the individual gets in APPS, is separate  
8 from the standard ammunition eligibility test. Individuals go  
9 into APPS -- when an individual purchases a firearm, after the  
10 purchase has been approved, those individuals get populated  
11 into the Armed Prohibited Persons as not prohibited.

12 Subsequent to that, if they become prohibited at -- or  
13 if something happens and it changes their record, the APPS  
14 staff will then -- that is, that individual then falls into a  
15 queue for an analyst to work.

16 This is -- again, this is separate from the standard  
17 ammunition eligibility check process. Okay?

18 So going back, you end up in the Armed Prohibited  
19 Persons System after you purchase the firearm, and you're in  
20 there as not prohibited.

21 THE COURT: Right.

22 MS. MORALES: If for some reason something happens  
23 with you, for example you get arrested, the system, on a -- I  
24 want to say on a daily basis -- I believe it is on a daily  
25 basis, but I am not sure -- the system checks the people who

1 are within the automated -- or in the Armed Prohibited Persons  
2 System against the databases, which I believe are ACHS, Wanted  
3 Person, Mental Health Firearm Prohibition System, and also  
4 CRPOS.

5 So during that process, if an individual who is not  
6 prohibited hits against any of those things, it drops into a  
7 queue, and then an individual on the APPS team will review  
8 that -- that queue for that individual, or that transaction,  
9 and determine if that individual is, in fact, prohibited based  
10 on the information that they see.

11 THE COURT: Yes. Got it. Makes sense.

12 MS. MORALES: So it's a completely different process  
13 than the -- than the standard check.

14 The standard check utilizes that system to check if  
15 they're prohibited or not prohibited. But at that time that  
16 the system is checked, it's not, once again, doing -- or it's  
17 not requiring an individual to go back and review that  
18 information for this individual all over again, that  
19 determination has already been done.

20 THE COURT: Yes. Agreed.

21 But the determination has been made --

22 MS. MORALES: Correct.

23 THE COURT: -- on the basis of the fact that APPS is  
24 constantly checking these databases, correct?

25 MS. MORALES: Correct.

1 THE COURT: All right. And it is checking those  
2 databases on the basis of somebody's name, John Doe, Jill Doe,  
3 and whatever other information, I don't know, whether it be  
4 date of birth or --

5 MS. MORALES: Age, date of birth, ID, I believe, yes.  
6 There's other criteria.

7 THE COURT: Okay. And those are the same criteria  
8 that an ammunition purchaser has to give to the vendor in order  
9 to have the vendor run the basic check, right?

10 MS. MORALES: For the most part, yes.

11 THE COURT: Okay. And so getting back to my point.

12 My point is that the real difference between the two,  
13 the standard and the basic, is that, because the State has not  
14 automated the basic background check, it has to send an  
15 individual to go check the databases. That's it. That's the  
16 sum total difference between the two systems.

17 MS. MORALES: Your Honor, this is Mayra.

18 The different system -- the basic ammunition  
19 eligibility check, the individual at the point that submits the  
20 application has to undergo that complete background check. So  
21 an analyst has to review it.

22 whereas, for the standard -- at that point -- or at  
23 that time, which would take -- could take up to two days, three  
24 days on average, again, with the caveat -- the caveat that  
25 there are some that are automatically approved, and there is no

1 intervention by an actual person.

2 so the difference is, at that point, they're going  
3 through the background check, whereas, with the standard  
4 ammunition eligibility check, they have already gone through  
5 that because they purchased the firearm in the past.

6 THE COURT: Okay. All right. Now, I'm trying to make  
7 sure, because I don't want to -- I don't want to miss anything.

8 so what you're saying to me is that when someone goes  
9 and applies for a standard background check, the APPS system,  
10 by checking these other databases, has already determined  
11 whether or not that person is a prohibited person or not.

12 If that person is not a prohibited person, that  
13 person's purchase of the ammunition will be approved, they pay  
14 \$1, and they get their box of ammunition, and they walk out the  
15 door, right?

16 MS. MORALES: If they are not prohibited in APPS and  
17 have no criminal record, yes, they would be approved.

18 THE COURT: Okay. On the other hand, they do not have  
19 an AFS record, but they do have a name, they have a date of  
20 birth, they have a social security number, they go into the  
21 vendor, they say I want to buy a box of shells, they don't have  
22 an AFS record. Because the State does not have an automated  
23 system, what happens is that now, an individual goes and checks  
24 these databases. If they don't find a hit, they then get back  
25 to the vendor and say the sale is approved. If there is a hit,



1 then someone will go and check and try to figure out why  
2 there's a hit when it shouldn't be; am I right?

3 MS. MORALES: For the basic ammunition eligibility  
4 check, it checks the DMV. And then, if there is -- if -- I  
5 check the DMV record -- or the DMV to make sure that there is a  
6 record for that individual. It then proceeds to conduct the  
7 check against those four databases. If there is no hits, then  
8 they would be automatically approved. If there is a hit, then  
9 yes, an analyst would then review that information to determine  
10 eligibility.

11 THE COURT: And if we were doing a standard background  
12 check, and there was a hit, then the APPS system would show the  
13 person as being an armed prohibited person, and the sale would  
14 not be approved, right?

15 MS. MORALES: Your Honor, for the standard ammunition  
16 eligibility check, it would check AFS, check APPS -- check APPS  
17 to see if the individual was marked as prohibited or not  
18 prohibited. If they're not prohibited, they would be approved.

19 THE COURT: But the reason why they would be  
20 prohibited is because, when APPS went and looked at the  
21 databases, somewhere in one of those databases there would be a  
22 hit, right?

23 MS. MORALES: At some point in the past, yes, an  
24 individual would have been in the Armed Prohibited Persons  
25 system as not prohibited, something probably happened that

1 could have prohibited them, an analyst or -- requiring an  
2 analyst to review the information. The information would be  
3 reviewed by the analyst, and then at that point, the individual  
4 would make a determination as to whether -- if they're  
5 prohibited or not prohibited, and that would be reported in  
6 APPS at that point.

7 THE COURT: And if, in fact, the person who was  
8 attempting to buy the ammunition disagreed with the fact that  
9 that person had been labeled a prohibited person, there would  
10 be some due process provided to that individual that that  
11 individual could use in order to have his or her good name  
12 restored and be deemed to be a not prohibited person, right?

13 MR. RICHARDS: Your Honor, this is Nelson Richards.

14 I believe that's the question that you asked near the  
15 outset of the hearing.

16 THE COURT: Yes, I know.

17 MR. RICHARDS: Yes.

18 THE COURT: Yes, it is. But I'm trying to walk my way  
19 through this, Mr. Richards, and I'm just trying to make sure  
20 that I haven't missed something. So I just wanted to make sure  
21 that that was accurate and correct.

22 Okay, listen. I mean, let me check my notes. I think  
23 I am pretty well done in more ways than one, if you know what I  
24 mean. Just a minute.

25 (Pause in the proceedings)

1 THE COURT: All right. So let me ask, does plaintiff  
2 have any comments or anything that I should consider or hear?

3 MR. BRADY: This is Sean Brady, Your Honor, for the  
4 plaintiffs.

5 We've covered a lot of material, and I just want to  
6 point out, you know, rather than make points on each thing we  
7 went over, because we've been here for a while and I don't want  
8 to take up everybody's time, unless Your Honor wants my  
9 additional thoughts on specifics, but I think that a couple of  
10 key points that have been made here, that the fact that the  
11 Court has this many questions about this system that operates  
12 as a gatekeeper to a fundamental right, I think, is, in and of  
13 itself, evidence that this system should not be able to stand  
14 as is.

15 It is either a dying storage system, or it's the best  
16 the State can do, and in either case, it should not be allowed  
17 to operate as a fundamental right -- or as the gatekeeper to a  
18 fundamental right.

19 And I understand Your Honor wanting to, and I  
20 appreciate Your Honor wanting to get everything squared away,  
21 get all the facts right, but I think, based on just the fact  
22 that the State can't answer some of the Court's legitimate  
23 questions because the system is so confusing, and that there is  
24 no -- there is no guidance for individuals, admittedly, I  
25 believe. I don't want to put words in Ms. Morales' mouth, but

1 essentially, those who are rejected are left to their own  
2 devices to determine how best to chart their course to getting  
3 their ammunition.

4 And the numbers that we have not gone over, that are  
5 extremely telling, is that the majority of people who are  
6 rejected -- not denied, because -- as being prohibited, but  
7 rejected because they have some trivial issue with their  
8 records that the DOJ keeps, the majority of those people have  
9 not gone back to acquire ammunition.

10 That means there is an over 50 percent -- and this is  
11 since July. This is a six-month -- it's just from July to  
12 January -- over a six-month period, there are still over a  
13 50 percent attrition rate of those people who are trying to  
14 exercise their fundamental right.

15 (Talking over each other)

16 THE COURT: I'm sorry. Let me interrupt you.

17 How did you arrive at that 50 percent number?

18 MR. BRADY: If you look at Ms. Morales' most recent  
19 declaration -- let me pull it up here. I just had it. Oh,  
20 okay.

21 So if you go to page -- it's way at the bottom. Okay.  
22 So it's page 21 of Ms. Morales' most recent declaration.

23 It says, "Purchasers who were rejected on an AFS check  
24 and subsequently purchased ammunition on or before January 1st,  
25 2020." If you look in the July column, 9 -- over 9,000 people

1 that were rejected --

2 THE COURT: Okay. I got you.

3 MR. BRADY: And just to be clear here. These are  
4 people who are, by definition, not prohibited people.  
5 Otherwise, they would have been denied, not rejected. These  
6 are people who are entitled to exercise their fundamental right  
7 and are being denied merely because of some trivial issue that  
8 this system, the current system, does not specify to them how  
9 to remedy.

10 It says you either don't have a record or there's an  
11 issue with your record. You go figure out -- go to our website  
12 and see what may be your issue.

13 And just so we're clear on that specifically, it is my  
14 understanding -- I could be wrong, but I'm 95 percent sure  
15 about this -- that when you go to -- you're able to remedy any  
16 discrepancies in your AFS record online by yourself --  
17 right? -- if you go onto the DOJ's website, type in the number  
18 they gave you, you are able to, by yourself, fix an AFS record.

19 Let's say, for example, you -- you changed addresses,  
20 and you knew that that was the problem. You could then just  
21 type in your new address, and the AFS record will be fixed.

22 That said, it is my understanding that the complete  
23 back record, to make the change, the individual would need to  
24 have their -- their AFS record as currently shown identical to  
25 how it's -- to how it's shown. They have to know exactly what

1 their current AFS record says, and they have to plug that in,  
2 and then they have to plug in the new updated information that  
3 they want changed.

4           So if the person does not have their -- access to  
5 their current AFS record, then they are unable to change their  
6 AFS record without getting that, so they then would have to  
7 request a copy of their AFS record from the California  
8 Department of Justice. I believe we have a declaration in  
9 our -- to our supplemental brief, plaintiffs do, from a  
10 plaintiff who waited over four months for a response from the  
11 DOJ as to what his AFS records contained.

12           I just -- I'm so -- while I appreciate the Court's  
13 desire to get all the facts straight and lay this whole thing  
14 out, I think just at -- at a superficial level and looking at  
15 this case, six months out we are on the data, and we're now,  
16 you know, nine months out from when it's been implemented, or  
17 nine or ten, those facts alone, that there is no -- that  
18 there's still over 10 percent of people being rejected for  
19 trivial reasons, and even if that was acceptable, that they are  
20 getting zero guidance by the State in the system to be able  
21 to -- to remedy their situation.

22           And that is demonstrated by the over 50 percent of  
23 people who end up just giving up on their fundamental right.  
24 That, I think, says enough that this system, as currently  
25 constituted, needs to be enjoined now, respectfully.

1           And while the Court -- while the State can go and  
2 answer the Court's questions about alternative ways to do this  
3 that are less burdensome or -- or explain how somebody could  
4 remedy their records and make -- change their system, they --  
5 the State can then come back and petition the Court to lift  
6 this injunction if this has that -- that information and can  
7 make its case for that -- you know, to do that.

8           But as we sit right now, this is a broken system. It  
9 hasn't been fixed thus far. It's not going to be fixed. And I  
10 don't -- the State should not be entitled to more time without  
11 this being enjoined, especially in this environment right now  
12 when municipalities are closing gun stores around the State  
13 because of the COVID-19 situation. People are unable to get  
14 ammunition.

15           And so the State, on one hand, is saying don't go  
16 outside. Don't stand in line. Don't go in groups. But, oh,  
17 you have to go to a store and sit in line and do a background  
18 check.

19           And that also goes for the restriction on shipping  
20 ammunition. I think that that has now become an even more  
21 severe -- because of what's going on with the COVID-19 epidemic  
22 and people being homebound, and municipalities shutting down  
23 gun stores, the injury caused by the shipping ban has become  
24 more severe, and the need to enjoin it and, you know, join the  
25 rest of the country's economy at this time, when we need

1 continuity in the economy and commerce, is even more crucial.

2 So I apologize if I went off on a rant, I just wanted  
3 to make a few main points because I think they are critical in  
4 understanding that plaintiffs are of the position that, even  
5 with all these other questions that the Court legitimately has,  
6 just the fact that more than 50 percent of people have given up  
7 on their right six months out, it should be enough to condemn  
8 this system as unconstitutional. So with that, I'll answer any  
9 of the Court's questions.

10 THE COURT: Yes. Go ahead, Mr. Richards.

11 MR. RICHARDS: Yeah. I think there was a lot there,  
12 and I'd definitely like an opportunity to respond to it.  
13 However, if you have something, I would defer to you.

14 THE COURT: No, no. Go ahead.

15 Make it quick, though, because I think, as Mr. Brady  
16 pointed out, we've been at this for quite a while. I'm sure my  
17 reporter probably needs a break. So --

18 MR. RICHARDS: I will -- I will endeavor to speak  
19 slowly and do it efficiently here.

20 THE COURT: Okay, Mr. Richards.

21 MR. RICHARDS: Again, this is Nelson Richards. Thank  
22 you, Your Honor.

23 You know, I think Mr. Brady correctly identified what  
24 he just went on, which was a rant. There is a lot of  
25 unsubstantiated information there about the affects of the



1 COVID outbreak, there's no evidence in the record, plaintiffs  
2 have submitted nothing about that, about people not being able  
3 to get ammunition because of the outbreak. There's just an  
4 attorney testifying, so I strongly object --

5 THE COURT: Yes. Just a second. Let me interrupt you  
6 for just a second.

7 Just -- but don't you think that -- don't you think  
8 that the Court could take judicial notice of the fact that --  
9 since we are being told to shelter in place, for example? The  
10 Governor -- I think the Governor himself has requested social  
11 distancing. That's no secret. You would agree the Governor  
12 has done that, right? You're not going to dispute that.

13 MR. RICHARDS: Yes, I agree.

14 THE COURT: You agree -- so you would agree that it  
15 really does make sense if -- and I know, I've seen reports out  
16 there. In fact, I think the Sheriff of Los Angeles decided  
17 that gun stores were not essential businesses because people  
18 were showing up in gun shops and lining up outside the gun  
19 shops to buy guns.

20 Now, people that have never owned guns before, I  
21 think, Mr. Richards, I think the State would not be -- I think  
22 it would be disingenuous for the State to argue that, at this  
23 point in time, there are many, many people out there who feel  
24 unsecure and unsafe, which is what's prompting them to go out  
25 and buy guns, form lines outside gun stores, and to buy

1 ammunition. I mean, you're not really going to argue with  
2 that, are you?

3 MR. RICHARDS: Your Honor, I would agree, the Court  
4 can take judicial notice of the Governor's Executive Orders and  
5 any special actions taken by government officials at any level  
6 of the State.

7 Now, with regard to anything beyond that, I do think  
8 that's well beyond the Court's ability to take judicial notice  
9 under the rules of evidence. So --

10 THE COURT: well, let's --

11 MR. RICHARDS: -- with respect to (inaudible).

12 THE COURT: But so, you know, I always tell,  
13 particularly young lawyers, you know, there are things that are  
14 worth fighting over and things that are not worth fighting  
15 over.

16 So the State's not really going to fight with me about  
17 the fact that, for example, the Sheriff in Los Angeles County  
18 decided that gun shops were not essential businesses and had to  
19 close down, and you're not going to fight with me about whether  
20 or not people have been, in fact, lining up outside gun stores  
21 to buy guns, are you, Mr. Richards?

22 MR. RICHARDS: Your Honor, this is Nelson Richards.

23 With regard to the first question about the actions of  
24 the Sheriff, no, I would not. That would fall under the type  
25 of thing I think this Court could reasonably take judicial

1 notice of.

2 whether they're lined up by the gun stores or not, you  
3 know, I personally -- I maybe have seen a news article where  
4 that's happened. I have no way of knowing how prevalent that  
5 is, how common that is, whether that was a one-off experience,  
6 so I personally don't know, and as a result, I can't sit here  
7 and say that it's fine for the Court to take judicial notice to  
8 consider that fact without some sort of showing.

9 And so I definitely -- yeah, I would -- this --  
10 especially to the extent that that may impact the way that the  
11 ammunition law works or the ammunition law's constitutionality.

12 we're very far afield from the challenge the  
13 plaintiffs have alleged in their complaint and have pursued in  
14 their motion for preliminary injunction.

15 And so we're just so far afield that, in dealing with  
16 evidentiary issues and considerations and arguments that just  
17 haven't been briefed or raised, that that is a serious concern.

18 THE COURT: So what about this. What about --  
19 Mr. Richards, what about this.

20 So the Governor has ordered nonessential businesses to  
21 close, ordered people to engage in social distancing.

22 Certainly, as someone of -- you know, as an Officer of the  
23 Court, certainly, you would not disagree with the fact that  
24 people might be more inclined to buy ammunition online, given  
25 that situation, rather than actually showing up face-to-face at

1 a vendor, and providing them with their driver's license, and  
2 exchanging things that might possibly potentially carry with it  
3 the coronavirus. You're not going to disagree with that, are  
4 you, Mr. Richards?

5 MR. RICHARDS: I personally, as a -- you know, may not  
6 disagree with that, however, I would strongly object to that  
7 being a basis for issuing a preliminary injunction with regard  
8 to this law.

9 I mean, whether people feel that way or don't feel  
10 that way I don't think should --

11 THE COURT: No.

12 MR. RICHARDS: -- affect whether this Court issues an  
13 injunction.

14 THE COURT: Here's my problem with that -- and I'm  
15 just going to tell you, I'm going to do what I'm going to do.

16 But, you know, I read the initiative -- when I read  
17 the initiative, one of the preambles to the initiative is that  
18 we're going to enact, "common sense gun laws".

19 Now, "common sense gun laws" is a term that carries  
20 with it no evidentiary weight whatsoever. None. It's a fancy  
21 phrase that is used in order to justify doing whatever the  
22 State is asking to do. Whether or not that passes muster, I  
23 don't know.

24 But all I'm getting at is, so if somehow or another  
25 the State is able to use "common sense" to arrive at some of

1 the things that its legislates, explain to me why,  
2 Mr. Richards, it is not common sense for me to understand that  
3 if the Governor has told people to shelter in place, that gun  
4 stores should be closed, and that we have to maintain the  
5 social distance, and that in order for me to buy ammo, when I  
6 go into a store, in order to get my purchase approved, I have  
7 to hand a driver's license, or a passport, or something to the  
8 individual, who then has to handle it, who then has to do  
9 something with it, who then has to hand it back to me, and that  
10 there is a great potential for -- if one of us has the virus,  
11 for that to be transmitted, I don't understand why you would  
12 want to argue with that. I mean, it just seems like -- I mean,  
13 common sense is common sense.

14           Anyway, whatever. I appreciate it. Listen. Again, I  
15 thank you all for giving me your time.

16           And I would like to see authority, Mr. Richards, on  
17 the state being able to preemptively amend an initiative that  
18 has been passed, and approved, and represented to the people as  
19 containing certain things, and then what you give with one hand  
20 you take away with the other. I'd like to see -- I mean, maybe  
21 that is the law, I don't know, but I'd like to see some  
22 authority for that.

23           And I'd also like to see from Ms. Morales the appeal  
24 process if I apply for a standard background check and I'm  
25 rejected, and what the appeal process is if it says, for

1 example, that I am an armed prohibited person, but I'm not.

2 And I don't want to just yield to the State because it  
3 is the State, I want to exercise my rights, I want to know what  
4 that appeal process is, where do I find it, and I'd like for --  
5 Mr. Richards, for you to provide that information to me within  
6 the next seven days. Okay?

7 Again, I thank you all for giving me your time.

8 Ms. Morales, I really appreciate your declarations.  
9 They're very helpful in helping me get through some of these  
10 issues.

11 And with that, this hearing is concluded. Thank you.

12 MR. RICHARDS: Your Honor, this is Nelson Richards, if  
13 I may.

14 while I appreciate the Court giving us the opportunity  
15 to provide this additional information, given everything that's  
16 going on, seven days is going to be a very tight turnaround.

17 Ms. Morales might be the person that we rely on here,  
18 but we may need to consult with other staff who may or may not  
19 be essential, may or may not be in the office.

20 I personally am not working from the office. I'm on  
21 an altered schedule because of child care issues. It's going  
22 to make doing it in seven days very difficult.

23 So I'd respectfully ask for at least two weeks on that  
24 just because, you know, this is in addition to other work  
25 obligations, including a Fifth Circuit brief and a couple of

1 State court appellate briefs, as well.

2 THE COURT: We're going to split the difference. I'll  
3 give you ten days.

4 MR. RICHARDS: Thank you, Your Honor.

5 THE COURT: Ten days from now, 5:00 p.m.

6 All right? Great. Thank you.

7 All right. This hearing is concluded. Thank you.

8 (Proceedings conclude at 3:15 p.m.)

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C E R T I F I C A T I O N

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I hereby certify that I am a duly appointed, qualified and acting official Court Reporter for the United States District Court; that the foregoing is a true and correct transcript of the proceedings had in the aforementioned cause; that said transcript is a true and correct transcription of my stenographic notes; and that the format used herein complies with rules and requirements of the United States Judicial Conference.

Dated: April 6, 2020, at San Diego, California.

/s/ Ellen L. Simone

---

Ellen L. Simone, RMR, CRR  
Official Court Reporter



C.D. Michel – SBN 144258  
Sean A. Brady – SBN 262007  
Matthew D. Cubeiro – SBN 291519  
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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

KIM RHODE, et al.,  
Plaintiffs,

v.

XAVIER BECERRA, in his official  
capacity as Attorney General of the State  
of California,

Defendant.

Case No.: 3:18-cv-00802-BEN-JLB

**DECLARATION OF NANDU  
IONESCU IN SUPPORT OF  
PLAINTIFFS' SUPPLEMENTAL  
BRIEF IN SUPPORT OF MOTION  
FOR PRELIMINARY INJUNCTION**

Judge: Hon. Roger T. Benitez  
Courtroom: 5A

**DECLARATION OF NANDU IONESCU**

1  
2 1. I, Nandu Ionescu, make this declaration of my own personal knowledge and,  
3 if called as a witness, I could and would testify competently to the truth of the matters set  
4 forth herein.

5 2. I am a resident of Los Angeles County, California. I am a citizen of the  
6 United States who is not prohibited from owning or possessing firearms or ammunition  
7 under state or federal law. I am also a member of the California Rifle & Pistol  
8 Association, Incorporated, who is a plaintiff in this action.

9 3. On October 9, 2019, I attempted to purchase ammunition from Turner’s  
10 Outdoorsman in Norwalk, California using the “Standard Ammunition Eligibility Check”  
11 (“AFS Match)” option. My attempted purchase was rejected.

12 4. Following the rejection of my attempted purchase, I entered my transaction  
13 information into the California Department of Justice’s (“DOJ”) CFARS website that  
14 same day to learn the reason for my rejection. DOJ’s CFARS website stated the  
15 following:

16 **Rejected:**  
17 *Pursuant to Penal Code section 30370, subdivision (b), your name, date of*  
18 *birth, current address, and government issued or military identification must*  
19 *match an entry in the Department of Justice, Bureau of Firearms’*  
20 *Automated Firearms System (AFS) (state-wide firearm ownership*  
21 *repository). You have been rejected for one of the following reasons: 1) you*  
22 *do not have an AFS record or 2) the information you provided to the*  
*ammunition vendor does not match the AFS record that is on file.*  
*Information on what establishes an AFS record or how to update an existing*  
*AFS record can be found at CFARS Home.*

23 5. After reviewing this information, I attempted to update my existing AFS  
24 records with DOJ by submitting an Automated Firearms System (AFS) Personal  
25 Information Update application through DOJ’s CFARS website that same day.

26 6. On October 11, 2019, I attempted to purchase ammunition from Turner’s  
27 Outdoorsman in Norwalk, California using the “Standard Ammunition Eligibility Check  
28 (AFS Match)” option. My attempted purchase was rejected.

1 7. Following the rejection of my second attempted purchase, I entered my  
2 transaction information into DOJ's CFARS website to learn the reason for my rejection.  
3 DOJ's CFARS website stated the identical reason for my rejection as the previous time.

4 8. On October 15, 2019, I again attempted to purchase ammunition from  
5 Turner's Outdoorsman in Norwalk, California using the "Standard Ammunition  
6 Eligibility Check (AFS Match)" option. My attempted purchase was again rejected.

7 9. Following the rejection of my third attempted purchase, I entered my  
8 transaction information into DOJ's CFARS website to learn the reason for my rejection.  
9 DOJ's CFARS website stated the identical reason for my rejection as the previous two  
10 times.

11 10. On October 17, 2019, nine days after I submitted it, I received electronic  
12 notification from DOJ that my Automated Firearms System (AFS) Personal Information  
13 Update application had been approved. Attached to this notification was a letter from  
14 DOJ stating:

*The California Department of Justice has received and processed your  
15 electronic submission of the Automated Firearms System Personal  
16 Information Update Application. Your personal information has been  
17 updated with the personal information provided on your submission.*

18 11. On October 18, 2019, I attempted to purchase ammunition from Bass Pro  
19 Shops in Rancho Cucamonga, California using the "Standard Ammunition Eligibility  
20 Check (AFS Match)" option. My attempted purchase was approved.

21  
22 I declare under penalty of perjury that the foregoing is true and correct. Executed  
23 within the United States on October 23, 2019.

24  
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26  
27   
28 \_\_\_\_\_  
Nandu Ionescu  
Declarant

**CERTIFICATE OF SERVICE**  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Case Name: *Rhode, et al. v. Becerra*  
Case No.: 3:18-cv-00802-JM-JMA

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, declare under penalty of perjury that I am a citizen of the United States over 18 years of age. My business address is 180 East Ocean Boulevard, Suite 200 Long Beach, CA 90802. I am not a party to the above-entitled action.

I have caused service of the following documents, described as:

**DECLARATION OF NANDU IONESCU IN SUPPORT OF  
PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF  
MOTION FOR PRELIMINARY INJUNCTION**

on the following parties by electronically filing the foregoing on October 29, 2019, with the Clerk of the District Court using its ECF System, which electronically notifies them.

Nelson R. Richards  
Deputy Attorney General  
nelson.richards@doj.ca.gov  
2550 Mariposa Mall, Room 5090  
Fresno, CA 93721  
*Attorneys for Defendant Attorney  
General Xavier Becerra*

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 29, 2019, at Long Beach, CA.

s/ Laura Palmerin  
Laura Palmerin

C.D. Michel – SBN 144258  
Sean A. Brady – SBN 262007  
Matthew D. Cubeiro – SBN 291519  
MICHEL & ASSOCIATES, P.C.  
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Email: cmichel@michellawyers.com

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

KIM RHODE, et al.,  
Plaintiffs,

v.

XAVIER BECERRA, in his official  
capacity as Attorney General of the State  
of California,

Defendant.

Case No.: 3:18-cv-00802-BEN-JLB

**DECLARATION OF WILLIAM D.  
SHEPARD IN SUPPORT OF  
PLAINTIFFS' SUPPLEMENTAL  
BRIEF IN SUPPORT OF MOTION  
FOR PRELIMINARY INJUNCTION**

Judge: Hon. Roger T. Benitez  
Courtroom: 5A

**DECLARATION OF WILLIAM D. SHEPARD**

1  
2 1. I, William D. Shepard, make this declaration of my own personal knowledge  
3 and, if called as a witness, I could and would testify competently to the truth of the  
4 matters set forth herein.

5 2. I am a resident of Contra Costa County, California. I am a citizen of the  
6 United States who is not prohibited from owning or possessing firearms or ammunition  
7 under state or federal law. I am also a member of the California Rifle & Pistol  
8 Association, Incorporated.

9 3. On September 11, 2019, I submitted a Firearm Ownership Report for a  
10 shotgun to the California Department of Justice (“DOJ”) using the CFARS website for  
11 the purpose of creating a record in the Automated Firearms System (“AFS”) so that I  
12 would qualify for an AFS background check to purchase ammunition.

13 4. On September 13, 2019, I received an email from DOJ in response to my  
14 submission stating that DOJ had received my Firearm Ownership Report form, but it  
15 could not be processed because, as stated in this email:

16 *Please provide the model of the firearm. Provide the requested information*  
17 *within 30 days. Failure to do so will result in your transaction being*  
18 *rejected and your firearm(s) not being recorded in your name. Please note:*  
*Your fee will not be refunded if your application is rejected.*

19 5. That same day, I responded to DOJ’s email by stating that I had indeed  
20 provided the model of the firearm on my Firearm Ownership Report form. In fact, the  
21 “model” field of the Firearm Ownership Report form was comprised of a drop-down list  
22 provided by DOJ’s CFARS website. One of the options in this drop-down list included  
23 “SHOTGUN,” which is what I had selected. I also stated in my response to DOJ that I  
24 did not understand their question and asked for more information. DOJ later responded  
25 by stating:

26 *Please log into your CFARS account and provide the model name (or model*  
27 *number) of your . . . shotgun on your existing INCOMPLETE transaction. If*  
28 *your firearm does not have a model name or number stamped on the lower*

1 receiver or barrel, please leave a comment in the transaction that indicates  
2 that. Thank you.

3 6. In addition to the above, I received a second email from DOJ on September  
4 13, 2019. This email also stated that my submission could not be processed for the  
5 following reasons:

6 *Please verify and provide the model of the firearm. Effective 07/01/2019, a*  
7 *copy of your CA driver license or ID is required. In addition, if “FEDERAL*  
8 *LIMITS APPLY” appears on your CA DL/ID, you need to submit additional*  
9 *documentation (Cal. Code Reg., tit. 11, sec. 4045.1 subd. (b-c)). For more*  
10 *info, refer to the Bureau’s website at <https://oag.ca.gov/firearms>. Please*  
*provide the requested information within 30 days. Failure to do so will*  
*result in your transaction being rejected.*

11 7. In response to this email, I again stated that I had provided the make and  
12 model of my shotgun. I also asked how to provide a copy of my driver’s license (which  
13 does not state “FEDERAL LIMITS APPLY”) to DOJ. I did not receive a response to this  
14 request for additional information.

15 8. Receiving no response, I submitted a second Firearm Ownership Report for  
16 a different shotgun to the California Department of Justice (“DOJ”) using the CFARS  
17 website for the purpose of creating a record in the Automated Firearms System (“AFS”)  
18 so that I would qualify for an AFS background check to purchase ammunition.

19 9. On September 17, 2019, I received an email from DOJ stating that one of  
20 my Firearm Ownership Report submissions had been received and that DOJ would begin  
21 processing my submission. The email also stated that I would be notified of the results  
22 via U.S. Mail, and instructed me to use the “Report an Issue” feature on the CFARS  
23 website if I had any questions.

24 10. On September 19, 2019, I received another email from DOJ stating that my  
25 other Firearm Ownership Report submission had been received and that DOJ would  
26 begin processing my submission. This email was identical to the previous email on  
27 September 17, 2019, in all respects.

28 ///

1 11. On September 22, 2019, I tried to buy ammunition and got rejected. I sent an  
2 email to DOJ requesting a status update regarding my Firearm Ownership Report  
3 submissions. DOJ responded the following day and stated:

4 *The Department of Justice makes every effort to process applications within*  
5 *a timely manner. If applications are not submitted with all the required*  
6 *information, they will be returned to request the missing information which*  
7 *will cause delays in the process. The associated background check may also*  
8 *be delayed by circumstances beyond the control of the department. Due to*  
9 *the high volume of calls, status checks for applications that are not older*  
10 *than 90 days cannot be provided. If you submitted your application, and it is*  
11 *over the 90 day period, please reply with your name, address, date of birth,*  
*driver's license number, type of application(s), and the date of the*  
*application(s) so that we can review the information and provide you with*  
*an update.*

12 A true and correct copy of this email, with redactions of my personal  
13 information, is attached to this declaration.

14 12. The following week, I received a letter in the mail, dated September 25,  
15 2019, stating that one of my Firearm Ownership Report submissions had been received  
16 and processed. Following the receipt of this letter, I attempted to purchase ammunition on  
17 September 27, 2019, using the Standard Ammunition Eligibility Check (AFS Match)  
18 process and was approved.

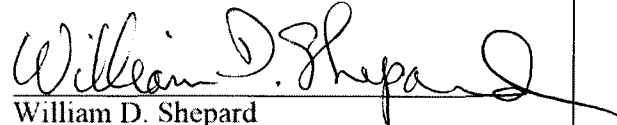
19 13. On October 1, 2019, I logged into DOJ's CFARS website to review my  
20 transaction history. According to DOJ's CFARS website, my Firearm Ownership Report  
21 submissions are still listed as "In Progress." Despite that indicated status, I have been  
22 able to successfully pass an AFS Check and purchase ammunition.

23 14. On October 24, 2019, I checked my transaction history and it still has my  
24 registration application as "In Progress."

25 ///  
26 ///  
27 ///  
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1 I declare under penalty of perjury that the foregoing is true and correct. Executed  
2 within the United States on October 24, 2019.

3  
4   
5 William D. Shepard  
6 Declarant  
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DECLARATION OF WILLIAM D. SHEPARD

18cv802

# **ATTACHMENT**

**SER81**

From: Firearms Bureau <[Firearms.Bureau@doj.ca.gov](mailto:Firearms.Bureau@doj.ca.gov)>  
Sent: Monday, September 23, 2019 11:08 AM  
To: Shepard, William D  
Subject: RE:

Thank you for your recent inquiry regarding your submitted application(s) for processing. The Department of Justice makes every effort to process applications within a timely manner. If applications are not submitted with all the required information, they will be returned to request the missing information which will cause delays in the process. The associated background check may also be delayed by circumstances beyond the control of the department. Due to the high volume of calls, status checks for applications that are not older than 90 days cannot be provided. If you submitted your application, and it is over the 90 day period, please reply with your name, address, date of birth, driver's license number, type of application(s), and the date of the application(s) so that we can review the information and provide you with an update.

-----Original Message-----

From: Shepard, William D [REDACTED]  
Sent: Sunday, September 22, 2019 12:35 PM  
To: Firearms Bureau <[Firearms.Bureau@doj.ca.gov](mailto:Firearms.Bureau@doj.ca.gov)>  
Subject:

To whom it may concern -

How can I find out if my application to register my shotgun has been approved? The CRIS number is [REDACTED]. Is the system impacted now from so many attempts to register a firearm? I teach hunter education classes. What should I tell my students about how the system works? Please respond to my email.

Sincerely yours,

Bill

Bill Shepard  
[REDACTED]  
[REDACTED]  
[REDACTED]

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

**CERTIFICATE OF SERVICE**  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Case Name: *Rhode, et al. v. Becerra*  
Case No.: 3:18-cv-00802-JM-JMA

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, declare under penalty of perjury that I am a citizen of the United States over 18 years of age. My business address is 180 East Ocean Boulevard, Suite 200 Long Beach, CA 90802. I am not a party to the above-entitled action.

I have caused service of the following documents, described as:

**DECLARATION OF WILLIAM D. SHEPARD IN SUPPORT OF  
PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF  
MOTION FOR PRELIMINARY INJUNCTION**

on the following parties by electronically filing the foregoing on October 29, 2019, with the Clerk of the District Court using its ECF System, which electronically notifies them.

Nelson R. Richards  
Deputy Attorney General  
nelson.richards@doj.ca.gov  
2550 Mariposa Mall, Room 5090  
Fresno, CA 93721

*Attorneys for Defendant Attorney General  
Xavier Becerra*

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 29, 2019, at Long Beach, CA.

*s/ Laura Palmerin*  
Laura Palmerin

C.D. Michel – SBN 144258  
Sean A. Brady – SBN 262007  
Matthew D. Cubeiro – SBN 291519  
MICHEL & ASSOCIATES, P.C.  
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Long Beach, CA 90802  
Telephone: (562) 216-4444  
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Email: cmichel@michellawyers.com

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

KIM RHODE, et al.,  
  
Plaintiffs,  
  
v.  
  
XAVIER BECERRA, in his official  
capacity as Attorney General of the State  
of California,  
  
Defendant.

Case No.: 3:18-cv-00802-BEN-JLB

**EXHIBITS 11-34 TO REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR  
PRELIMINARY INJUNCTION**

Hearing Date: August 19, 2019  
Hearing Time: 10:30 a.m.  
Courtroom: 5A  
Judge: Hon. Roger T. Benitez

[Filed concurrently with Notice of Motion  
and Motion for Preliminary Injunction,  
Memorandum of Points and Authorities,  
Declarations of Sean A. Brady, Richard  
Travis, James Gilhousen, Dan Wolgin,  
Denise Welvang, Scott Lindemuth, Bill  
Ortiz, David Burwell, Chris Puehse,  
Travis Morgan, Ethan Bartel, Myra  
Lowder, Daniel Gray, Christina McNab,  
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# **EXHIBIT 12**

**FINAL STATEMENT OF REASONS**  
**California Code of Regulations**  
**Title 11, Division 5**  
**Chapter 11: Ammunition Purchases or Transfers**

UPDATE OF INITIAL STATEMENT OF REASONS

The Department modified the initially proposed text of the regulations such that the numbering of the subdivisions has changed. This Final Statement of Reasons refers to the subdivision numbers as they appear in the final proposed text of the regulations.

**§ 4300. Title and Scope**

The Department amended the authority and reference sections to delete unnecessary commas. These are non-substantial changes because they clarify the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

**§ 4301. Definition of Key Terms**

The Department deleted the definition of “AFS record,” because that term does not appear in the regulations and therefore was not necessary to define.

The Department added the term “ammunition vendor,” as those persons or entities licensed pursuant to Penal Code section 30385. This is necessary because only those vendors are required by Penal Code sections 30352 and 30370, which these regulations implement, to follow the procedure enacted by these proposed regulations.

The Department added the term “Automated Firearms System” and its definition. The proposed definition explains the term by referencing the Penal Code section that authorizes the establishment and maintenance of that system. This was necessary because sections 4301(b) and 4302(a) refer to the Automated Firearms System, and the Department determined that a definition of the term would clarify the regulations by providing a simple description of the system and providing a citation that allows for further reference.

The Department amended the definition of “Basic Ammunition Eligibility Check” to mirror the language used in Penal Code section 30370, subdivision (c), which authorizes the process that the Department has named the “Basic Ammunition Eligibility Check.” Using the same language in the regulations as in statute will provide greater clarity on the definition of the “Basic Ammunition Eligibility Check.”

The Department amended the definition of “Certificate of Eligibility or COE” to directly refer to the statute that authorizes a COE, and to delete the additional references that describe what is checked before a COE may be granted and why a COE may be granted. The Department

determined that the deleted information reduced the clarity of the definition by presenting too much information. The regulation is made clearer by providing a simple description of the certificate and providing a citation that allows for further reference.

The Department further amended the definition to add punctuation that clearly indicate that the terms “Certificate of Eligibility” and “COE” are separate, yet interchangeable, terms. These are non-substantial changes because they clarify the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department amended the definition of “Dealer Record of Sale Entry System” or “DES” to add punctuation that clearly indicate that the terms “Dealer Record of Sale Entry System” and “DES” are separate, yet interchangeable, terms. The Department further amended the definition to delete the parentheses surrounding the web address. The parentheses were not necessary to demarcate the web address, and may have led to confusion as to how to type the web address. These are non-substantial changes because they clarify the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department amended the definition of “Firearms eligibility check” to make a grammatical change. The “check,” as a process, is a noun, and the sentence requires a verb (“conducted”). This is a non-substantial change because it clarifies the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department deleted the definition of “One-Time Ammunition Transaction” because that term is no longer the title of section 4303. The term also differed from the statutory language (“single ammunition transaction or purchase”) in Penal Code section 30370, subdivision (c), and the Department determined that it was both confusing and not necessary.

The Department added the term “Prohibited Armed Persons File” and its definition. This term is used in section 4302(a) and in the statute that that proposed regulation implements, Penal Code section 30370, subdivision (b). The proposed definition explains the term by reference to the Penal Code section that authorizes the establishment and maintenance of the File.

The Department amended subdivision (o) of this section to correct a grammatical error. The word “subdivision” should be singular, not plural. This is a non-substantial change because it clarifies the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department amended the definition of the term “Sworn federal law enforcement officer” to delete a citation to the California Penal Code. The Department determined that it is not necessary to cite the Penal Code, because although federal law enforcement officers are discussed by that Code (e.g. section 830.8), they are not defined therein.

The Department amended the authority and reference sections to delete unnecessary commas. These are non-substantial changes because they clarify the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department amended the reference section to include Penal Code sections 11106 and 30385, which are newly referenced in the definitions of “Automated Firearms System” and “ammunition vendor,” respectively. This is a non-substantial change because it clarifies the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

### **§ 4302. Standard Ammunition Eligibility Check (AFS Match).**

The Department has amended the title of this section from “Standard Ammunition Eligibility Check” to “Standard Ammunition Eligibility Check (AFS Match)”. This is necessary to provide greater clarity, as the title will now immediately inform the public that the Standard Ammunition Eligibility Check is the ammunition eligibility check that implements Penal Code section 30370, subdivisions (a)(1) and (b), the defining feature of which is that the purchaser or transferee’s information “matches an entry in the Automated Firearms System (AFS)”.

The Department has added subdivision (a), which introduces the section by interpreting Penal Code section 30370, subdivisions (a), (a)(1) and (b). This is necessary to introduce the purpose of section 4302 and to provide clarity regarding that section of Penal Code.

The Department has added subdivision (a)(1) to further interpret Penal Code section 30370 and to provide a name for the eligibility check authorized by that section. Because a purchase or transfer is initiated by a purchaser or transferee, the Department has clarified that it is the purchaser or transferee who initiates the Standard Ammunition Eligibility Check. Because Penal Code section 30370, subdivision (d) prohibits an ammunition vendor from selling or transferring ammunition without the Department’s approval, and section 30352, subdivision (d) mandates ammunition vendors to verify with the Department that a person is authorized to purchase ammunition, the Department has clarified that the purchaser or transferee is to request the Standard Ammunition Eligibility Check through an ammunition vendor. In conjunction with section 4302, subdivisions (c) and (d), subdivision (a)(1) makes clear the roles of the Department, the ammunition vendor, and the purchaser or transferee.

The Department has amended subdivision (d) to clarify when the Department will instruct the ammunition vendor to approve or reject the purchase or transfer, and the manner by which the Department will communicate its determination. This change is necessary to specify how the ammunition vendor will be able to comply with Penal Code section 30370, subdivision (d), which prohibits an ammunition vendor from selling or transferring ammunition without the Department’s approval, and section 30352, subdivision (d), which mandates ammunition vendors to verify with the Department that a person is authorized to purchase ammunition. This amendment also aligns the Standard Ammunition Eligibility Check process with the Basic

Ammunition Eligibility Check process, as described by section 4303(e) and the amended COE Verification process, as implemented in section 4305(d).

The Department has amended subdivision (e) to specify that the ATN can be used by accessing the Department's CFARS website. Prior to this change, it was unclear how, specifically, the attempted purchaser or transferee would use the ATN. This change also aligns the Standard Ammunition Eligibility Check process with the Basic Ammunition Eligibility Check process, as implemented in section 4303(d).

The Department further amended this section to make nonsubstantial changes to punctuation and grammar. For example, although the California Department of Motor Vehicles refers to a "driver license," the statutes that are implemented by this regulation refer to that document as a "driver's license." The Department has amended the regulation to follow the statutory language. This, and the other punctuation and grammatical changes are non-substantial changes because they clarify the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department amended the authority section to include Penal Code section 30352. That section provides partial authority for the requirement in subdivision (c) for the Standard Ammunition Eligibility Check to require that the purchaser or transferee provide a telephone number.

The Department amended the reference section to delete an unnecessary comma. This is a non-substantial change because it clarifies the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

### **§ 4303. Basic Ammunition Eligibility Check (Single Transaction or Purchase).**

The Department amended the title of this section from "One-Time Ammunition Transactions" to "Basic Ammunition Eligibility Check (Single Transaction or Purchase)," to provide greater clarity. Title now introduces the name of the eligibility check, and aligns with the titles of the other sections that provide methods of verifying authorization to purchase or transfer ammunition. The parenthetical phrase mirrors language used in Penal Code section 30370, subdivisions (a)(3) and (c), and will immediately inform the public that the Basic Ammunition Eligibility Check is the ammunition eligibility check that implements those provisions. Although each ammunition transaction must be approved by the Department prior to purchase or transfer, regardless of the method of obtaining authorization, per Penal Code section 30370, or exemption from the requirement to obtain authorization, per Penal Code 30352, the Department determined that the intent of the legislature in using "single transaction or purchase" to repeatedly describe the eligibility check that the Department has named the "Basic Ammunition Eligibility Check" was because the defining feature of the subdivisions implemented by the Basic Ammunition Eligibility Check is that the purchaser or transferee has neither an entry in the AFS nor a Certificate of Eligibility, nor belongs to one of those classes of persons exempt from needing to obtain authorization, and so the purchase of ammunition is presumed to be a rare, or

singular event. This comports with the Department's estimate that fewer than 2% of eligibility checks will be conducted by means of a Basic Ammunition Eligibility Check.

The Department has added subdivision (a), which introduces the section by interpreting Penal Code section 30370, subdivisions (a), (a)(3) and (c). This is necessary to introduce the purpose of section 4303 and to provide clarity regarding that section of Penal Code. Any person who is not prohibited, broadly speaking, may be authorized in any number of ways. Conversely, any person who is prohibited will not be authorized, as the prohibiting event will be revealed during the manual Basic Ammunition Eligibility Check; the prohibiting event will result in an entry into the Prohibited Armed Persons File and so lead to a denial of a Standard Ammunition Eligibility Check; and the prohibiting event will result in the termination of a Certificate of Eligibility and so lead to a denial of a COE Verification. Of these three, the Basic Ammunition Eligibility Check is potentially applicable to the greatest number of people — per Penal Code section 30370, subdivision (c), this includes any person who is not prohibited. By contrast, as stated in the ISOR Addendum, there are 22,000 COE holders who would be authorized subsequent to a COE verification, and 4.5 million people with distinct entries in the Automated Firearms System (still, the Department estimates that 98% of eligibility checks will be requested by such persons, who possess or are otherwise involved in activities related to firearms, and who thus would be authorized to purchase ammunition subsequent to a Standard Ammunition Eligibility Check or COE verification). Subdivision (a)(2) will provide greater clarity as to which method of obtaining authorization may best apply to a purchaser or transferee who may qualify for the more narrowly-defined paths to authorization (or exemption from authorization).

The Department has added subdivision (a)(1) to further interpret Penal Code section 30370 and to provide a name for the eligibility check authorized by that section. Because a purchase or transfer is initiated by a purchaser or transferee, the Department has clarified that it is the purchaser or transferee who initiates the Basic Ammunition Eligibility Check. Because Penal Code section 30370, subdivision (d) prohibits an ammunition vendor from selling or transferring ammunition without the Department's approval, and section 30352, subdivision (d) mandates ammunition vendors to verify with the Department that a person is authorized to purchase ammunition, the Department has clarified that the purchaser or transferee is to request the Basic Ammunition Eligibility Check through an ammunition vendor. In conjunction with section 4303, subdivisions (c), (d) and (e), subdivision (a)(1) makes clear the roles of the Department, the ammunition vendor, and the purchaser or transferee.

The Department has added subdivision (a)(2) to further clarify the interpretation in subdivision (a) that persons are authorized to purchase ammunition if they are not prohibited, subsequent to affirmation by the Department. In light of the fact that the Department does not have the authority to mandate which procedure a purchaser or transferee uses to seek authorization to purchase ammunition, the Department determined that the most effective way of clarifying the multiple ways of gaining authorization, as provided by statute, is to clearly present each process and its attendant requirements. Persons who are not prohibited may request a determination pursuant to (a)(1), but those persons may also seek authorization by following the alternative procedures, as applicable.

The Department has amended subdivision (c) to include a hyphen between the capital letter “I” and the number “94.” This is a non-substantial change because it clarifies the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department amended subdivision (c) to include the word “and” at the end of the list of information that must be collected for a Basic Ammunition Eligibility Check. This is a non-substantial change because it clarifies the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department has amended subdivision (e) to delete the requirement that the ammunition vendor only deliver the ammunition if the status of the Basic Ammunition Eligibility Check is “approved.” The Department determined that it was not necessary to include here because the same requirement is already provided in section 4308(b), and duplicating that provision made the regulation less clear.

The Department further amended this section to make nonsubstantial changes to punctuation and grammar. For example, although the California Department of Motor Vehicles refers to a “driver license,” the statutes that are implemented by this regulation refer to that document as a “driver’s license.” The Department has amended the regulation to follow the statutory language. This, and the other punctuation and grammatical changes are non-substantial changes because they clarify the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department amended the authority section to include Penal Code section 30352. That section provides partial authority for the interpretation of the statute in subdivision (a), and it provides the authority for the requirement in subdivision (c) for the Basic Ammunition Eligibility Check to require that the purchaser or transferee provide a telephone number.

The Department further amended the authority section to delete an unnecessary comma at the end of the sentence. This is a non-substantial change because it clarifies the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department amended the reference section to include Section 922, Title 18 of the United States Code, because that section provides information regarding federal prohibitions on ammunition that are relevant to understanding why the Department requires the information collected in subdivision (c).

The Department further amended the reference section to delete a comma, to add a semicolon, and to capitalize the words “Section” and “Title.” These are non-substantial changes because they clarify the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

**§4304. Firearms Eligibility Check.**

The Department amended subdivision (a) to add a number to what had been the prefatory text, as originally noticed. This change allows for subdivision (a) to be easily referenced. This is a non-substantial change because it clarifies the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department amended subdivision (a) to include the relevant provision of Penal Code section 30352(c) under the condition provided by (c)(2) – specifically, that the *ammunition* shall not be delivered without proper authorization. This is necessary to provide clarity to the regulations and to accurately interpret that section of Penal Code.

The Department amended subdivision (c) to make clear that a person who wishes to take possession of ammunition prior to the completion of a firearms eligibility check must conduct a separate transaction following one of the alternative procedures of obtaining authorization, or qualifying for an exemption, as applicable. Any one of the alternatives is available to the purchaser or transferee, not just the Standard Ammunition Eligibility Check or the Basic Ammunition Eligibility Check, as might have been interpreted from the text as initially proposed. This change is necessary to provide clarity to the regulation.

The Department amended the reference section to delete a comma and to add the word “and” between the final two citations. These are non-substantial changes because they clarify the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

**§ 4305. COE Verification Process.**

The Department deleted the prefatory text, as this text is no longer necessary.

The Department has added subdivision (a), which introduces the section by interpreting Penal Code section 30370, subdivision (a)(2). This is necessary to introduce the purpose of section 4305 and to implement and provide clarity regarding that section of Penal Code.

The Department has added subdivision (a)(1) to further interpret Penal Code section 30370 and to provide a name for the verification process that is authorized by that section. Because a purchase or transfer is initiated by a purchaser or transferee, the Department has clarified that it is the purchaser or transferee who initiates the COE Verification. Because Penal Code section 30370, subdivision (d) prohibits an ammunition vendor from selling or transferring ammunition without the Department’s approval, and section 30352, subdivision (d) mandates ammunition vendors to verify with the Department that a person is authorized to purchase ammunition, the Department has clarified that the purchaser or transferee is to request the COE Verification through an ammunition vendor. In conjunction with section 4305, subdivisions (c) and (d), subdivision (a)(1) makes clear the roles of the Department, the ammunition vendor, and the purchaser or transferee.



The Department amended subdivision (b) to correct the citation of the authority for the regulation. The correct citation is to Penal Code section 30370, subdivision (e), not subdivision (c), as originally noticed. This is a non-substantial change because it clarifies the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department amended subdivision (c) to require that the purchaser or transferee provide a telephone number. The purchaser or transferee's telephone number is required by Penal Code section 30352, subdivision (a)(6), at the time of the delivery of the ammunition. Rather than request personal information from the purchaser or transferee at two separate times, the Department determined that it would be most efficient to request all of the purchaser or transferee's personal information required to complete an ammunition purchase or transfer at this stage of the process, so that no new personal information will need to be requested at a second stage of the process. This will streamline the delivery of ammunition as soon as it is approved. The Department has also determined that gathering the purchaser or transferee's phone number at the time of the eligibility check will allow the Department to verify the purchaser's identity, if necessary, and to communicate with the purchaser or transferee, if necessary.

The Department has amended subdivision (d) to clarify when the Department will instruct the ammunition vendor to approve or reject the purchase or transfer, and the manner by which the Department will communicate its determination. Because Penal Code section 30370, subdivision (d) prohibits an ammunition vendor from selling or transferring ammunition without the Department's approval, and section 30352, subdivision (d) mandates ammunition vendors to verify with the Department that a person is authorized to purchase ammunition, the Department has clarified that the purchaser or transferee is to request the COE Verification through an ammunition vendor, and aligns the COE Verification process with the Basic Ammunition Eligibility Check process, as implemented in section 4303(e), and the amended Standard Ammunition Eligibility Check process, as implemented in section 4302(d).

The Department further amended this section to make nonsubstantial changes to punctuation and grammar. For example, although the California Department of Motor Vehicles refers to a "driver license," the statutes that are implemented by this regulation refer to that document as a "driver's license." The Department has amended the regulation to follow the statutory language. This, and the other punctuation and grammatical changes are non-substantial changes because they clarify the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department amended the authority section to include Penal Code section 30352. That section provides partial authority for the requirement in subdivision (c) for the COE Verification to require that the purchaser or transferee provide a telephone number.

The Department amended the reference section to include Penal Code sections 26710 and 28180. Section 26710 pertains to Certificates of Eligibility. Section 28180 pertains to the method of obtaining information as implemented by section 4305(c). The Department further amended the reference section to pluralize the word "Sections," because more than one section is referenced.

These are non-substantial changes because they clarify the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

**§ 4306. Ammunition Purchases or Transfers for Exempted Individuals.**

The Department has amended subdivision (a) to indicate that the types of identification documents that follow are deemed “proper” documents for the purpose of identifying persons who are exempt from Department approval to purchase or transfer ammunition, pursuant to Penal Code section 30352, subdivision (e). This is necessary to provide clarity as to the purpose of subdivisions (a)(1) through (a)(10), which implement the requirement in Penal Code section 30352, subdivision (e) that exempted individuals only qualify for the exemption “if properly identified.” Without the specification provided by subdivisions (a)(1) through (a)(10), ammunition vendors would lack clear guidance as to how to properly identify an exempted individual.

The Department has deleted subdivisions (a)(1) through (a)(5) as initially proposed. The Department determined, in response to public comments, that those subdivisions were unclear and so did not effectively specify the identification requirements necessary to implement Penal Code section 30352, subdivision (e)(1) through (8). In their place, the Department has added the following sufficiently-related specifications.

The Department has added subdivision (a)(1) to specify the type of identification document that will “properly” identify an ammunition vendor, which is a class of persons exempted by Penal Code section 30352, subdivision (e)(1), from certain requirements of the ammunition authorization program. The Department determined that a valid Ammunition Vendor License issued pursuant to Penal Code section 30385 is the best document to properly identify an ammunition vendor for the purpose of the exemption provided by Penal Code section 30352, subdivision (e). There is no other identification document that specifically identifies an ammunition vendor.

The Department has added subdivision (a)(2) to specify the type of identification document that will “properly” identify a person on the centralized list of exempted federal firearms licensees maintained by the Department, which is a class of persons exempted by Penal Code section 30352, subdivision (e)(2), from certain requirements of the ammunition purchasing program. The Department determined that a Department-issued Listing Acknowledgement Letter indicating the individual is currently on the centralized list of exempted federal firearms licensees is the best document to properly identify an ammunition vendor for the purpose of the exemption provided by Penal Code section 30352, subdivision (e). There is no other identification document that specifically identifies a person on the centralized list of exempted federal firearms licensees maintained by the Department.

The Department has added subdivision (a)(3) to specify the type of identification document that will “properly” identify a gunsmith, which is a class of persons exempted by Penal Code section 30352, subdivision (e)(4), from certain requirements of the ammunition authorization program.

The Department determined that a valid Type 01 FFL is the best document to properly identify a gunsmith for the purpose of the exemption provided by Penal Code section 30352, subdivision (e). A “gunsmith” is defined by Penal Code section 16630 as a person who is licensed as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, who is engaged primarily in the business of repairing firearms, or making or fitting special barrels, stocks, or trigger mechanisms to firearms, or the agent or employee of that person. Pursuant to that United States Code and the regulations issued pursuant thereto, to provide the services of a gunsmith, a person must apply for and be granted a Type 01 FFL. There is no other identification document that identifies a gunsmith. However, a Type 01 FFL does not exclusively identify gunsmiths—a Type 01 FFL may also be granted to other types of persons licensed to deal in firearms. The Department determined that this ambiguity does not pose a problem because, pursuant to Penal Code section 30385, subdivision (d), most firearms dealers are also authorized ammunition vendors. Therefore, any person presenting a Type 01 FFL would be exempt pursuant to either Penal Code section 30352, subdivision (e)(1) or subdivision (e)(4). Because there is no other identification document that identifies a gunsmith, and because allowing a Type 01 FFL to identify a gunsmith would not frustrate the purpose of the ammunition authorization program, the Department determined that it is the best document to properly identify a gunsmith.

The Department has added subdivision (a)(4) to specify the type of identification document that will “properly” identify a wholesaler of firearms, which is a class of persons exempted by Penal Code section 30352, subdivision (e)(5), from certain requirements of the ammunition authorization program. The Department determined that a valid Type 01 Federal Firearms License is the best document to properly identify a wholesaler for the purpose of the exemption provided by Penal Code section 30352, subdivision (e). A “wholesaler” is defined by Penal Code section 17340 as a person who is licensed as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, who sells, transfers, or assigns firearms, or parts of firearms, to persons who are licensed as manufacturers, importers, or gunsmiths pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, or persons licensed pursuant to Sections 26700 to 26915, inclusive, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms in furtherance of that purpose. Pursuant to that United States Code and the regulations issued pursuant thereto, to be licensed as a dealer, a person must apply for and be granted a Type 01 (FFL). There is no other identification document that identifies a wholesaler. However, a Type 01 FFL does not exclusively identify wholesaler—a Type 01 FFL may also be granted to other types of persons licensed to deal in firearms. The Department determined that this ambiguity does not pose a problem because, pursuant to Penal Code section 30385, subdivision (d), most non-wholesaler firearms dealers are also authorized ammunition vendors. Therefore, any person presenting a Type 01 FFL would be exempt pursuant to either Penal Code section 30352, subdivision (e)(1) or subdivision (e)(5). Because there is no other identification document that identifies a wholesaler of firearms, and because allowing a Type 01 FFL to identify a wholesaler would not frustrate the purpose of the ammunition authorization program, the Department determined that it is the best document to properly identify a wholesaler.

The Department has added subdivision (a)(5) to specify the type of identification document that will “properly” identify a manufacturer of firearms, which is a class of persons exempted by Penal Code section 30352, subdivision (e)(6), from certain requirements of the ammunition authorization program. The Department determined that a valid Type 07 FFL is the best document to properly identify a manufacturer of firearms for the purpose of the exemption provided by Penal Code section 30352, subdivision (e). The type of “manufacturer of firearms” that would qualify for the exemption provided by Penal Code section 30352, subdivision (e) and therefore would need to be “properly identified” as proposed by section 4306(a), is specified by Penal Code section 30352, subdivision (e)(6) as “a manufacturer [...] of firearms or ammunition licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and the regulations issued pursuant thereto.” Pursuant to that United States Code and the regulations issued pursuant thereto, to be licensed as a manufacturer of firearms, a person must apply for and be granted a Type 07 FFL. Since Penal Code section 30352(e)(6) specifies that the manufacturer is defined by its federal licensure, the Department has adopted the federal license as the appropriate identifying document.

The Department has added subdivision (a)(6) to specify the type of identification document that will “properly” identify an importer of firearms or ammunition, which is a class of persons exempted by Penal Code section 30352, subdivision (e)(6), from certain requirements of the ammunition authorization program. The Department determined that a valid Type 08 FFL is the best document to properly identify an importer of firearms or ammunition for the purpose of the exemption provided by Penal Code section 30352, subdivision (e). The type of “importer of firearms or ammunition” that would qualify for the exemption provided by Penal Code section 30352, subdivision (e) and therefore would need to be “properly identified” as proposed by section 4306(a), is specified by Penal Code section 30352, subdivision (e)(6) as an “[...] importer of firearms or ammunition licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and the regulations issued pursuant thereto.” Pursuant to that United States Code and the regulations issued pursuant thereto, to be licensed as an importer of firearms or ammunition, a person must apply for and be granted a Type 08 FFL. Since Penal Code section 30352(e)(6) specifies that the importer is defined by its federal licensure, the Department has adopted the federal license as the appropriate identifying document.

The Department has added subdivision (a)(7) to specify the type of identification document that will “properly” identify a manufacturer of ammunition, which is a class of persons exempted by Penal Code section 30352, subdivision (e)(6), from certain requirements of the ammunition authorization program. The Department determined that a valid Type 06 FFL is the best document to properly identify a manufacturer of ammunition for the purpose of the exemption provided by Penal Code section 30352, subdivision (e). The type of manufacturer of ammunition that would qualify for the exemption provided by Penal Code section 30352, subdivision (e) and therefore would need to be “properly identified” as proposed by section 4306(a), is specified by Penal Code section 30352, subdivision (e)(6) as a “manufacturer [...] of [...] ammunition licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and the regulations issued pursuant thereto.” Pursuant to that United States Code and the regulations issued pursuant thereto, to be licensed as an manufacturer of ammunition, a person must apply for and be granted a Type 06 FFL. Since Penal Code section

30352(e)(6) specifies that the manufacturer of ammunition is defined by its federal licensure, the Department has adopted the federal license as the appropriate identifying document.

The Department has added subdivision (a)(8) to specify the type of identification document that will “properly” identify an authorized law enforcement representative of a city, county, city and county, or state or federal government, which, as specified, is a class of persons exempted by Penal Code section 30352, subdivision (e)(7), from certain requirements of the ammunition authorization program. The Department determined that a written authorization from the head of the agency authorizing the ammunition purchase or transfer, as described by Penal Code section 30352, subdivision (e)(7), is the best document to properly identify an authorized law enforcement representative for the purpose of the exemption provided by Penal Code section 30352, subdivision (e). That section of Penal Code specifies the document that is to be used to provide “proper written authorization.” Since Penal Code section 30352(e)(7) specifies that the law enforcement representative is authorized by means of this written authorization, the Department has adopted the written authorization as the appropriate identifying document. The Department determined that no further interpretation is necessary to implement that statute. The requirement is being duplicated here to provide clarity to the regulations by presenting all documents that will “properly” identify all persons exempted from certain ammunition authorization program requirements by Penal Code section 30352, subdivision (e).

The Department has added subdivision (a)(9), including (a)(9)(A) and (B) to specify the type of identification documents that will “properly” identify a sworn peace officer, which, as specified, is a class of persons exempted by Penal Code section 30352, subdivision (e)(8), from certain requirements of the ammunition authorization program. The Department determined that the sworn officer’s credential, along with a written certification from the head of the agency authorizing the ammunition purchase or transfer, as described by Penal Code section 30352, subdivision (e)(8)(B)(i), are the best documents to properly identify a sworn peace officer for the purpose of the exemption provided by Penal Code section 30352, subdivision (e). The Department determined that a written certification from the head of the agency authorizing the ammunition purchase or transfer, as described by Penal Code section 30352, subdivision (e)(8)(B)(i), is one such document to properly identify an authorized law enforcement representative. That section of Penal Code specifies the document that is to be used to provide “proper written authorization.” Since Penal Code section 30352(e)(8) specifies that the sworn peace officer is authorized by means of this written certification, the Department has adopted the written certification as one of the appropriate identifying documents. Unlike section 4306(a)(8), which concerns a representative of a government who is purchasing or transferring ammunition for the exclusive use by the government agency, 4306(a)(9) concerns the use of ammunition by a particular individual – the sworn peace officer. As such, the Department determined that “proper” identification requires identifying the individual officer. A “sworn state or local peace officer’s credential” is defined in section 4301(q) as identification indicating an individual is a sworn state or local peace officer pursuant to Part 2, Chapter 4.5 of the Penal Code. Because such identification can take many forms, depending on the jurisdiction, the Department determined that this definition provides the most effective manner in carrying out the purpose for which the regulation is proposed. The officer’s credential, together with the written certification from the head of the agency, will “properly” identify a sworn peace officer, as defined, who are

exempted from certain ammunition authorization program requirements by Penal Code section 30352, subdivision (e)(8).

Additionally, the Department added to section 4306(a)(9)(B) a provision that had been provided in subdivision (b) of the text as originally noticed, that limits the time for which the written certification is valid. The Department determined that the certification should only be valid for 30 days after issuance, to ensure that the officer's head of agency is aware of and authorizes all ammunition purchases, and to ensure that the officer is still a full-time paid peace officer at the time of the purchase or transfer of ammunition.

The Department has added subdivision (a)(10), including (a)(10)(A) and (B), to specify the type of identification document that will "properly" identify a federal law enforcement officer, which, as specified, is a class of persons exempted by Penal Code section 30352, subdivision (e)(8), from certain requirements of the ammunition authorization program. The Department determined that the federal law enforcement officer's credential, along with a written certification from the head of the agency authorizing the ammunition purchase or transfer, as described by Penal Code section 30352, subdivision (e)(8)(B)(i), are the best documents to properly identify a federal law enforcement officer for the purpose of the exemption provided by Penal Code section 30352, subdivision (e). The Department determined that a written certification from the head of the agency authorizing the ammunition purchase or transfer, as described by Penal Code section 30352, subdivision (e)(8)(B)(i), is one such document to properly identify a federal law enforcement officer. That section of Penal Code specifies the document that is to be used to provide "proper written authorization." Since Penal Code section 30352(e)(8)(B)(i) specifies that the federal law enforcement officer is authorized by means of this written certification, the Department has adopted the written certification as one of the appropriate identifying documents. Unlike section 4306(a)(8), which concerns a representative of a government who is purchasing or transferring ammunition for the exclusive use by the government agency, 4306(a)(9) concerns the use of ammunition by a particular individual – the federal law enforcement officer. As such, the Department determined that "proper" identification requires identifying the individual officer. A "sworn federal law enforcement officer's credential" is defined in section 4301(p) as identification indicating an individual is a sworn federal law enforcement officer. Because such identification can take many forms, depending on the jurisdiction, the Department determined that this definition provides the most effective manner in carrying out the purpose for which the regulation is proposed. The officer's credential, together with the written certification from the head of the agency, will "properly" identify a sworn peace officer, as defined, who are exempted from certain ammunition authorization program requirements by Penal Code section 30352, subdivision (e)(8).

Additionally, the Department added a provision to section 4306(a)(10)(B) that had been provided in subdivision (b) of the text as originally noticed, that limits the time for which the written certification is valid. The Department determined that the certification should only be valid for a 30 days after issuance, to ensure that the officer's head of agency is aware of and authorizes all ammunition purchases, and to ensure that the officer is still a full-time paid peace officer at the time of the purchase or transfer of ammunition.

The Department added subdivision (b) to specify certain record keeping requirements for ammunition vendors. Penal Code section 30352, subdivision (e)(8)(B)(iii) requires the ammunition vendor to keep, with the record of sale, the verifiable written certification from the head of agency, and to submit that certification to the Department. The Department interprets the purpose of this requirement as allowing the Department to verify that the ammunition vendor has complied with Penal Code section 30352, subdivision (e)(8). However, the certification, by itself, would not verify compliance. The Department determined that it would also need to be able to inspect the related identifying documents, as specified in section 4306, subdivisions (a)(9) or (a)(10), and (c), to determine whether the person who purchased or received the transfer of ammunition was a credentialed officer, and was the person identified in the written certification.

The Department added subdivision (b)(1) to provide the ammunition vendor with an alternative method of recordkeeping that will allow the Department to verify compliance with Penal Code section 30352, subdivision (e)(8), in the event that the law enforcement agency does not allow photocopies to be made of the officer's credential. The Department is aware that certain statutes, regulations and policies of federal, state, or local law enforcement agencies prohibit the photocopying of official identification cards (e.g. Title 18, US Code Part I, Chapter 33, Section 701). In such a circumstance, the Department determined that the interest in being able to verify that the person who purchased or received the transfer of ammunition was the person identified in the written certification would best be accomplished by requiring the ammunition vendor to retain another document that would be commonly available to a sworn peace officer or sworn federal law enforcement officer. The Department determined that a business card meets this requirement, so long as the ammunition vendor also personally views the credential.

The Department added subdivision (c) to specify a step that must be conducted at the time of delivery. Subdivision (c) implements Penal Code section 30352, subdivision (c), which requires that an ammunition vendor shall require "bona fide evidence of identity" from the purchaser or transferee, to verify that the person who is receiving delivery of the ammunition is exempted from the requirement to provide authorization. The persons exempted from certain requirements of the ammunition authorization program by Penal Code section 30352, subdivision (e), which is implemented by this section, must still comply with the requirement of Penal Code section 30352, subdivision (c). The term "bona fide evidence of identity" is defined by Penal Code section 16300, a reference to which is provided here for ease of reference. The requirement to provide this evidence of identity is being duplicated here to provide clarity to the regulations by presenting, in this section, all of the requirements for completing a purchase or transfer that is exempt from Penal Code section 30352, subdivisions (a) and (d).

The Department has determined that the person who verifies the bona fide evidence of identity does not have to be the ammunition vendor COE holder, but may also be an authorized associate or salesperson. This mirrors language in section 4308(c), for consistency, as well as proposed changes to title 11, section 4210(a) in a separate rulemaking (see OAL File No. Z-2018-1127-05, currently under review at the California Office of Administrative Law). Currently, section 4210 refers to firearms dealers and "their employees." The Department is replacing the term "employee" with "authorized associate or salesperson." As noted in the Initial Statement of Reasons for that rulemaking, "This change is necessary, as a dealer may not have employees. A

dealer may only have independent contractors who perform DROS transactions on its behalf, and anyone who works for a dealer, in any capacity, and will be using the DES needs to have his or her own account for accurate tracking and accountability.” Conforming language has been used in this rulemaking, and for the same reasons.

The Department further amended this section to make nonsubstantial changes to punctuation and grammar. These are non-substantial changes because they clarify the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

#### **§ 4307. Telephonic Access for Ammunition Vendors.**

The Department amended subdivision (a) to add a number to what had been the prefatory text, as originally noticed. This change allows for subdivision (a) to be easily referenced. The remainder of the section has been renumbered accordingly, including the cross-reference to subdivision (b) in subdivision (c). These are non-substantial changes because they clarify the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department further amended subdivision (a) to make nonsubstantial changes to punctuation and grammar. For example, the Department replaced the phrase “not being able to provide” with “inability to provide,” which is more clear. These are non-substantial changes because they clarify the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department amended subdivision (c) to add the zip code to the address to which an ammunition vendor shall mail an “Ammunition Vendor (Non-Firearms Dealer) Application for Telephonic Approval,” form BOF 1020, as applicable. The zip code had been inadvertently omitted in the text originally made available to the public. This is a non-substantial change because it clarifies the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department further amended subdivision (c) to make nonsubstantial changes to punctuation, and to refer to the cross-reference as a “subdivision” and not a “paragraph.” These are non-substantial changes because they clarify the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

#### **§4308. Delivery of Ammunition Following DES Submission.**

The Department amended subdivision (a) to specify that the DES transaction record will change for transactions conducted pursuant to sections 4302, 4303 or 4305. This amendment removes sections 4304, 4306 and 4307 from the sections affected by 4308(a). Section 4304(a) already



provides for when the purchaser or transferee may take possession of the ammunition under the stated condition. An ammunition transaction conducted pursuant to section 4306 does not require approval, and so will not have a DES transaction record that could change from “Pending” to “Approved.” Section 4307 describes a condition where DES, an electronic system accessed via an internet connection, is not accessible to an ammunition vendor, and therefore will not have a DES transaction record that could change from “Pending” to “Approved.”

The Department amended subdivision (c) to specify additional steps that must be conducted at the time of delivery. Subdivision (c)(1) implements Penal Code section 30352, subdivision (c), which requires that an ammunition vendor shall require bona fide evidence of identity from the purchaser or transferee, to verify that the person who is receiving delivery of the ammunition is authorized to do so. The term “bona fide evidence of identity” is defined by Penal Code section 16300, a reference to which is provided here for ease of reference.

Subdivision (c)(2) implements Penal Code section 30352, subdivision (a), which requires an ammunition vendor to record, at the time of delivery, certain specified information. That section of Penal Code provides that the information shall be recorded “on a form to be prescribed by the Department of Justice.” The DES website is the established portal through which ammunition vendors communicate purchasers’ or transferees’ personal information to the Department for the purpose of the ammunition eligibility checks and the COE verification process. It would be unduly burdensome for ammunition vendors, and unnecessarily expensive for the Department to develop and require use of a separate method of communicating purchasers’ or transferees’ personal information to the Department for the specific purpose of complying with Penal Code section 30352, subdivision (a). The Department has deleted the portion of the text as initially proposed that indicated that the purpose of the submission was “to record the time and date the ammunition is delivered.” The information required by Penal Code section 30352, subdivision (a) includes the date of the sale or transfer, but does not include the time of delivery. By amending the text to refer directly to the information required by Penal Code section 30352, subdivision (a), the regulation now directly implements that section. Both 4308(c)(1) and (c)(2) provide clarity to the public as to what information is required by statute upon delivery of ammunition. The statutory requirements are being duplicated here to provide clarity to the regulations by presenting, in this section, all of the requirements for completing a purchase or transfer conducted pursuant to sections 4302, 4303 or 4305.

The Department amended the authority section to include Penal Code section 30352. That section provides authority for the requirements in subdivision (c).

#### **§ 4309. Billing, Payment, and Suspension for Non-Payment.**

The Department amended subdivision (b) to remove a hyphen from between the number “30” and the word “day.” This change is solely grammatical in nature. This is a non-substantial change because it clarifies the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department also amended subdivision (b) to remove a parenthetical clause that was intended to clarify the regulation by reiterating the day of the month, as provided in subdivision (a), but instead provided potential for confusion. This is a non-substantial change because it clarifies the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department amended subdivision (c) to make clear that the parenthetical identifies persons who are included in the suspension of access to DES, as specified. This meaning was already indicated by the parenthetical, but adding the word “including” makes the meaning more straightforward. This is a non-substantial change because it clarifies the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department amended subdivision (d) to make a grammatical change. The Department has replaced the definite article “the” with the possessive “their,” to clarify that the ammunition vendor possesses the “status.” This is a non-substantial change because it clarifies the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

The Department amended the reference section to remove an unnecessary comma. This is a non-substantial change because it clarifies the regulation without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code of Regs., tit. 1, § 40.)

All other information provided in the Initial Statement of Reasons (inclusive of the addendum) is accurate and current.

(Note: subsequent to submission of the rulemaking file to the Office of Administrative Law for review, the Department made changes to this Final Statement of Reasons, and non-substantial changes to the regulation text, such as changes to grammar and punctuation, as identified herein.)

#### DOCUMENTS INCORPORATED BY REFERENCE

Proposed section 4308 incorporates by reference form BOF 1020, “Ammunition Vendor (Non-Firearms Dealer) Application for Telephonic Approval (Orig. 05/2018).” It would be cumbersome, unduly expensive, or otherwise impractical to publish this entire form in the California Code of Regulations. As indicated in the Notice of Proposed Action, the document was available upon request directly from the agency, and was reasonably available to the affected public on the Department’s rulemaking website. No change has been made to this document subsequent to the notice.

## LOCAL MANDATE DETERMINATION

The Department determined that this regulatory action will not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. The Department has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from this regulatory action. The Department determined that costs associated with implementation of the requirement in Penal Code section 30352, subdivisions (e)(7) and (8) that authorized law enforcement representatives and local law enforcement officers must deliver a verifiable written certification from the head of the agency in order to qualify for the exemption, as provided, do not constitute nondiscretionary costs. It should be noted that authorized law enforcement representatives and local law enforcement officers are expressly exempt, pursuant to Penal Code section 30312, subdivisions (c)(1) and (2), from the requirement that a sale of ammunition shall be conducted by or processed through an ammunition vendor.

## SUMMARY AND RESPONSE TO COMMENTS

During the 45-day public comment period (December 14, 2018 through January 31, 2019), the Department received 219 different comments from 566 persons. In addition to receiving written comments, the Department held two public hearings to receive oral testimony on the proposed regulations. During the first hearing, held in Los Angeles on January 29, 2019, the Department heard testimony from four people. Eleven people gave testimony in the second hearing in Sacramento on January 31, 2019.

In order to properly manage the volume of public comment, the Department developed a system consisting of a Comment/Response spreadsheet and Comment Identification Key to assist with public comment organization. During the interpretive analysis of the public comments, a distinct number was assigned to the summaries of each comment, recommendation and objection (aggregated like-comment summaries were assigned the same number), and entered into the Comment/Response spreadsheet. Attachment A (96 pages) is a summary of all comments (written and oral) submitted during the 45-day comment period and the Department's responses. Attachment B is an alphabetical list (24 pages) of the commenters and identifies (by number) the comment(s) made by each person.

The Department noticed the public on April 18, 2019 of modifications to the text of the proposed regulations; an addendum to the Initial Statement of Reasons; and revisions to the Economic and Fiscal Impact Statement. The notice inadvertently provided an email address that was unable to accept incoming mail until April 22, 2019. Upon discovering this error, the Department sent a revised notice on April 23, 2019 that included two functional email addresses, and extended the comment period to May 8, 2019.

During the 15-Day comment period, the Department received 32 different comments from 139 persons. Attachment C (24 pages) is a summary of all comments submitted during the 15-day comment period and the Department's responses. Attachment D is an alphabetical list (6 pages) of the commenters and identifies (by number) the comment(s) made by each person.

Per the Administrative Procedures Act, for the purpose of these regulations, a comment is “irrelevant” if it is not specifically directed at the agency’s proposed action or to the procedures followed by the agency in proposing or adopting the action.

NONDUPLICATION STATEMENT

The proposed regulations partially duplicate or overlap a state statute or regulation which is cited as “authority” and “reference” for the proposed regulations. The duplication or overlap is necessary to satisfy the “clarity” standard of Government Code section 11349.1(a)(3).

ALTERNATIVES DETERMINATION

The Department determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective as and less burdensome to affected private persons than the adopted regulation, 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’s reasons for rejecting any proposed alternatives are set forth in the responses to comments.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

The Department determined that no proposed alternative would be more cost effective to affected small businesses and equally effective in implementing the statutory policy or other provision of law. The Department’s reasons for rejecting any proposed alternatives are set forth in the responses to comments.

## PUBLIC COMMENTS AND DEPARTMENT OF JUSTICE RESPONSES

#	Summarized Comment	DOJ Response
1.	<p>General opposition:</p> <p>a. General opposition to the Ammunition Purchases or Transfers regulations.</p> <p>b. General opposition to Proposition 63 and SB 1235, and their implementation.</p>	<p>a. The Department received a number of non-specific, generalized comments in opposition to the ammunition purchases or transfers regulations. No change has been made in response to these comments. The Department is adopting the regulations for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>b. The Department also received a number of non-specific, generalized comments in opposition to Proposition 63 and SB 1235, which are partially implemented by these regulations. No change has been made in response to these comments because the Department determines that these comments object to the underlying statute and is not specifically directed at the Department’s proposed action.</p>
2.	<p>Opposition on the basis of the regulations’ alleged effect(s) on criminals:</p> <p>a. Criminals do not follow the laws, and will still be able to access ammunition.</p> <p>b. Criminals will still access ammunition by transporting it into California from out of state.</p> <p>c. Criminals will steal ammunition if they can’t buy it legitimately.</p> <p>d. This will create a black market for ammunition.</p>	<p>No change has been made in response to this comment because this is a generalized comment in opposition to the proposed regulation and to the underlying statute, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>Specifically:</p> <p>b. These regulations, which implement Penal Code sections 30352 and 30370, govern the procedure for in-state purchases. With certain specified exemptions, Penal Code section 30314 makes it illegal for a California resident to bring in ammunition from out of state.</p>

#	Summarized Comment	DOJ Response
3.	<p>Opposition on the basis of the regulations’ alleged uselessness:</p> <ul style="list-style-type: none"> <li>a. These regulations will not do anything.</li> <li>b. The proposed regulations will not reduce violence.</li> <li>c. This new law will not protect me from crime.</li> <li>d. Because there are no benefits, this is simply a waste of time and money.</li> </ul>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>
4.	<p>Opposition on the basis of the regulations’ alleged negative effect on “good people”:</p> <ul style="list-style-type: none"> <li>a. These new laws will only affect law-abiding citizens.</li> <li>b. These regulations will turn good people into criminals.</li> <li>c. These laws only punish, harass or inconvenience law-abiding citizens (including those who shoot for sport, or at tournaments).</li> <li>d. This is just another way to treat gun owners as potential felons.</li> </ul>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The proposed regulations will apply to everyone equally.</p>

#	Summarized Comment	DOJ Response
5.	<p>Opposition on the basis of the regulations’ alleged incompatibility with the Second Amendment to the United States Constitution:</p> <p>a. The Ammunition Purchases and Transfers regulations infringe on Second Amendment and/or other unspecified Constitutional rights.</p> <p>b. Ammunition is just as protected under the Second Amendment as firearms.</p> <p>c. The Second Amendment is uniquely ignored, relative to other enumerated rights.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to any implementation of the underlying statute. The Department has no authority to not implement the underlying statute. Per Article 3, Section 3.5 of the Constitution of California:</p> <p>An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:</p> <p>(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;</p> <p>(b) To declare a statute unconstitutional;</p> <p>(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.</p>

#	Summarized Comment	DOJ Response
6.	<p>Opposition on the basis of the Department’s alleged totalitarianism:</p> <p>a. You are a communist.</p> <p>b. You are like Hitler/Nazi Germany.</p> <p>c. You are tyrannical.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Alternatively, this comment may be interpreted as general opposition to the ammunition purchases or transfers regulations. The Department is adopting the regulations for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>Alternatively, this comment may be interpreted as a procedural objection. The underlying statutes were amended according to procedures set forth by the Constitution of the State of California. This regulation is being promulgated in full compliance with the requirements of the Administrative Procedure Act.</p>
7.	<p>The amount of privately held ammunition in California is so large, there is no need to regulate the sale of ammunition.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>



#	Summarized Comment	DOJ Response
8.	<p>Opposition on the basis of the regulations’ alleged diminishment of one’s ability to act in self-defense:</p> <p>a. I feel safe knowing that people have weapons and can protect me.</p> <p>b. Firearms laws restrict people’s ability to defend themselves, their homes and their property.</p> <p>c. Firearms laws take weapons away from good people, making them vulnerable to criminal activity, to invasion by foreign powers, and to domestic tyranny.</p> <p>d. Firearms laws increase violent crime. When there are fewer firearms laws, the rate of violent crime decreases. This is because widespread access to firearms deters criminal behavior.</p> <p>e. Politicians and others have armed guards, which implies that firearms are useful for defense.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>
9.	<p>Opposition on the basis of over-regulation:</p> <p>a. There are too many firearms laws and regulations already.</p> <p>b. There are too many laws and regulations generally.</p>	<p>No change has been made in response to this comment because this is a generalized comment in opposition to the regulation and to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>

#	Summarized Comment	DOJ Response
10.	<p>Opposition to this approach to public safety.</p> <p>a. You should enforce current laws.</p> <p>b. Focus on the criminals.</p> <p>c. California’s Public Safety Realignment has made the public vulnerable.</p> <p>d. Harsher sentences for current laws would be more effective in guaranteeing public safety.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department has determined that the proposed regulation is necessary and is adopting the proposed regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>Specifically:</p> <p>a. The proposed regulation will implement Penal Code sections 30352 and 30370. The proposed regulation will therefore directly support the enforcement of current law.</p>
11.	<p>Opposition based on the alleged ineffectiveness of firearms laws.</p> <p>a. Background checks on firearms do not work, and legislators are adding new policies to address failed policies.</p> <p>b. Firearms laws, in California or elsewhere, do not work.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>
12.	<p>Opposition to the focus on ammunition as an object to be regulated:</p> <p>a. Firearms and ammunition are inanimate objects. Laws should focus on the people who use the objects.</p> <p>b. Any object can be used to commit a crime. That possibility does not justify legal restrictions on that object.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>

#	Summarized Comment	DOJ Response
13.	Background checks for ammunition purchases are inconvenient and costly. I do not want to wait, fill out paperwork, or to pay any more for ammunition.	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).
14.	<p>Opposition alleging misplaced priorities:</p> <p>a. New laws and regulations should focus on other issues.</p> <p>b. The government of the State of California should focus on other issues.</p> <p>c. The Department of Justice should focus on other issues instead of implementing the statutory requirements of Penal Code sections 30352 and 30370.</p>	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).
15.	<p>Opposition to any increase in the cost of ammunition:</p> <p>a. A fee for an ammunition background check will make ammunition cost more. This will make legitimate activities, like hunting, cost-prohibitive.</p> <p>b. Because there is a cost associated with background checks for ammunition, these regulations will disproportionately affect lower income people who cannot afford that cost.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>Penal Code section 30370(c) and (e) require the Department to charge ammunition purchasers a per transaction fee to pay for reasonable regulatory and enforcement costs, within explicit statutory limits.</p>

#	Summarized Comment	DOJ Response
16.	Restricting ammunition purchases to lawful gun owners is like restricting gas sales to drivers, or matches to campers.	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Additionally, the Department disagrees that ammunition purchases will be restricted to gun owners. Anyone who is not prohibited from purchasing or possessing ammunition may do so by following the appropriate procedure, as implemented by these regulations, regardless of firearm ownership.</p>
17.	Another overreach of regulation on honest gun owners.	<p>No change has been made in response to this comment because this is a generalized comment in opposition to the regulation. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>Alternatively, the comment may be interpreted as a claim that the proposed regulations overextend the allowable scope set by statute. The Department disagrees that it lacks authority to promulgate these regulations, and contends that each regulation is specifically necessary, as explained in the Initial Statement of Reasons (inclusive of the addendum).</p>
18.	<p>Opposition based on alleged onerousness:</p> <p>a. These regulations will be overly burdensome to the public.</p> <p>b. These regulations are draconian.</p>	<p>No change has been made in response to this comment because this is a generalized comment in opposition to the regulation. To the extent that this comment relates to the requirement for eligibility checks for ammunition, the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Alternatively, the comment may be interpreted as a generalized objection that the proposed regulations do not represent the best possible manner to implement the underlying statute. No other reasonable alternative was considered by the Department that would have been more effective, or as effective and less burdensome.</p>

#	Summarized Comment	DOJ Response
19.	The writers of the regulations have a lack of knowledge about the subject matter and do not know what they are talking about.	No change has been made in response to this comment because this is a generalized comment in opposition to the regulation and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).
20.	<p>Opposition based on an alleged lack of necessity, generally:</p> <p>a. The proposed regulations, in general, seem to be unnecessary.</p> <p>b. The new laws are unnecessary.</p> <p>c. Background checks for the purchase of ammunition are unnecessary generally.</p>	<p>No change has been made in response to this comment.</p> <p>Specifically:</p> <p>a. No change has been made in response to this comment because this is a generalized comment in opposition to the regulation and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>b. &amp; c. No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>
21.	Holders of a permit to carry a concealed weapon (CCW) should be exempt due to the fact that they have already passed a background check and renew every two years.	No change has been made in response to this comment. Penal Code section 30352, subdivision (e) provides an exhaustive list of categories of individuals who are exempt from the requirement to obtain approval from the Department prior to the sale or transfer of ammunition. The Department lacks the authority to expand upon these statutory exemptions.

#	Summarized Comment	DOJ Response
22.	<p>I suggest that you modify the Firearms Safety Certificate (FSC) program to allow an FSC holder to purchase ammunition without additional cost or inconvenience. For those people who have already undergone a background check, a DOJ certificate and photo ID should suffice.</p>	<p>No change has been made in response to this comment. Penal Code section 30352, subdivision (e) provides an exhaustive list of categories of individuals who are exempt from the requirement to obtain approval from the Department prior to the sale or transfer of ammunition. The Department lacks the authority to expand upon these statutory exemptions.</p>
23.	<p>Opposition to the requirement in proposed section 4306(b) that vendors keep certain specified records:</p> <p>a. I see no reason for burdensome record keeping on the part of the vender.</p> <p>b. Specifically, the additional information required by proposed section 4306(b), which is not required by statute.</p>	<p>No change has been made in response to this comment. Specifically:</p> <p>a. Penal Code section 30352(e)(8)(B) requires a properly identified sworn peace officer to provide both (1) verifiable written certification, and (2) bona fide evidence of identity, in order to qualify for the exemption provided by subdivision (e). Both documents are required in order to verify that the person who is receiving delivery of the ammunition qualifies for the exemption. The only reasonable interpretation of statute that would allow the Department to enforce the statutory requirement that both documents are provided is for the vendor to keep a copy of both documents, and then provide them to the Department upon request. The Department therefore has both implied authority to require the vendor to keep copies of both documents, and express authority to implement the provisions of Penal Code section 30352, as granted by subdivision (f) of that section.</p> <p>b. Penal Code section 30352(e)(8)(B)(ii) requires bona fide evidence of identity from the purchaser, to verify that he or she is the person authorized in the certification defined by 30352(e)(8)(B)(i). The term “bona fide evidence of identity” is defined in Penal Code section 16300 as a document issued by a federal, state, county or municipal government that bears the name, date of birth, description and picture of the person. The Department decided that the requirement that a person qualifying for the peace officer exemption in Penal Code section 30352(e)(8) provide bona fide evidence of identity is most effectively implemented by specifying, as allowable identification, those forms of government-issued identification that are particular to, and common to sworn peace officers, as specified in proposed section 4306(b).</p>

#	Summarized Comment	DOJ Response
24.	<p>Opposition regarding limits to ammunition sales:</p> <p>a. These regulations impose limits on the amount of ammunition that may be purchased. I oppose any such limit.</p> <p>b. A limit on the amount of ammunition should exempt people who shoot often or in large quantities (e.g., at competitions).</p> <p>c. How are limits on ammunition sales going to be enforced, if someone can attempt to purchase ammunition at multiple stores on the same day?</p>	<p>No change has been made in response to this comment. There is no current or proposed limit on the amount of ammunition that may be purchased. Therefore these comments are neither specifically directed at the Department's proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p>
25.	<p>Opposition to increased governmental work/bureaucracy:</p> <p>a. This will create an incredible workload on the Department of Justice, or other law enforcement personnel, even if computerized.</p> <p>b. The Department of Justice is barely able to complete its current workload regarding background checks for firearms, which are less frequent than ammunition purchases.</p> <p>c. This will increase government bureaucracy, which is cumbersome and bad.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department's proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Alternatively, the comment may be interpreted as a claim that the proposed regulations do not represent the best possible manner to implement the underlying statute. No other reasonable alternative was considered by the Department that would have been more effective in carrying out the purpose for which the action is proposed, or as effective and less burdensome.</p>

#	Summarized Comment	DOJ Response
26.	<p>Opposition to alleged hardships placed on ammunition vendors:</p> <p>a. Very difficult and time consuming for Dealers, which means a waste of business resources that could be applied to improving customer service in other areas.</p> <p>b. Ammunition dealers will close because they will sell less ammunition. This will lead to job loss.</p> <p>c. Ammunition dealers will close because of the time, paperwork and expense of complying with these regulations.</p> <p>d. Stores that sell other products will stop selling ammunition because of the added time and expense that are being imposed by these regulations.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Alternatively, the comment may be interpreted as a claim that the proposed regulations do not represent the best possible manner to implement the underlying statute. No other reasonable alternative was considered by the Department that would have been more effective, or as effective and less burdensome.</p>
27.	<p>The State of California tried something exactly like this several years ago, where you had to sign a sales record every time you purchased ammo. This program was cancelled because it didn’t work, cost a substantial portion of taxpayer funds to operate, and required a large amount of paperwork that was hard to keep track of, so I really don’t understand why the State would try and implement a similar program that probably won’t work either.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p>



<p>28.</p>	<p>My question regards the new ammo regulations being proposed and the difference between section 30370(b) and section 30370(c), i.e. the standard ammo check and the one-time ammo check. The former has a fee of \$1 and the latter a fee of \$19. Are these cumulative? It appears to say the standard check with the one dollar fee is necessary to determine eligibility and the one-time check with the nineteen dollar fee is necessary to actually make the purchase. Is this correct? It will cost \$20 to purchase ammo regardless of the amount?</p>	<p>No change has been made in response to this comment.</p> <p>Penal Code section 30370(c) specifies that the Department shall “recover the cost of processing and regulatory and enforcement activities” related to that section by charging the ammunition transaction of purchase applicant a fee not to exceed the fee charged for the Dealers’ Record of Sale (DROS) process, which is currently \$19 (see 11 CCR 4001) for each ammunition transaction or purchase undertaken as specified.</p> <p>Penal Code section 30370(e), specifies a per transaction fee of up to \$1 to “recover the reasonable cost of regulatory and enforcement activities related to this article.” The Department has interpreted this subdivision to mean that a fee of up to \$1 could be recovered for any activity where another fee has not otherwise been specified (i.e., an eligibility check conducted pursuant to 30370(c)). The two fees are not cumulative.</p> <p>Per Penal Code section 30370(a), there are three categories of persons authorized to purchase ammunition:</p> <ul style="list-style-type: none"> <li>• A person with an up to date entry in the Automated Firearms System, and who is eligible to purchase ammunition, per Penal Code section 30370(a)(1) and (b); and</li> <li>• A person with a current Certificate of Eligibility, per Penal Code section 30370(a)(2).</li> <li>• A person who undergoes the Basic Ammunition Eligibility Check, per Penal Code section 30370(a)(3) and (c).</li> </ul> <p>The \$1 fee would apply to the first and second categories of purchasers or transferees.</p> <p>The \$19 fee would apply to the third category of purchasers or transferees.</p> <p>The Department disagrees that the proposed regulation does not meet the “clarity” standard with respect to the cost distinction between the types of eligibility check and COE verification. The proposed regulations add three distinct sections, 4302, 4303 and 4305, with different titles, different operative conditions, and with clearly specified dollar amounts for each type of eligibility check or verification.</p>
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#	Summarized Comment	DOJ Response
29.	<p>Is there no exception or adjustment for rental guns at ranges? Currently, a gun can be rented for a hour but ammo must be purchased at the range. Usually this amounts to a 20 or 30 round box. In the case of .22 ammo, the cost is relatively inexpensive at about \$3 or \$4 for a small box. Am I to understand that if I rent a .22 gun and buy a small box of ammo I would have to pay \$20 for permission to buy the ammo costing only \$3 or \$4 dollars?</p>	<p>No change has been made in response to this comment. Penal Code section 30352, subdivision (e)(3) provides that vendors may sell or transfer ammunition to individuals without prior approval by the Department if the person “purchases or receives ammunition at a target facility holding a business or other regulatory license, provided that the ammunition is at all times kept within the facility’s premises.” Since an ammunition vendor would not need approval from the Department prior to selling the ammunition, there would be no eligibility check, and no fee.</p> <p>The Department disagrees that the proposed regulation does not meet the “clarity” standard with respect to this statutory exemption. It is not necessary for the Department to list every possible exemption listed in statute, in order to implement the eligibility check that is mandated by statute.</p>
30.	<p>I have to mention the short time allowed for comments. Why was the publication of the proposed regulations delayed, so that it had to be submitted as an emergency?</p>	<p>No change has been made in response to this comment. The Department interprets this comment as confusing the current rulemaking with the “Emergency Regulations Regarding Firearms: Identifying Info” (OAL Emergency Number 2018-1218-01E), which were noticed to the public on December 11, 2018.</p> <p>The current rulemaking, regarding Ammunition Purchases and Transfers, was noticed to the public on December 14, 2018. The public comment period closed at 5 p.m. on January 31, a period of 48 days. The Administrative Procedures Act requires a minimum 45-day comment period.</p>
31.	<p>The estimates of costs and revenue are actually guesses. We have no idea how much ammunition is actually bought and sold in California, or for that matter, how many rounds are in the average box.</p>	<p>No change has been made in response to this comment. As stated in the Economic Impact Assessment in the Initial Statement of Reasons, the Department has used the most reasonable estimates derived from extensive research into sales of ammunition.</p>

#	Summarized Comment	DOJ Response
32.	<p>Opposition to transfer restrictions:</p> <p>a. We can no longer buy ammunition for family and friends.</p> <p>b. We should be able to share our ammunition with others.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Specifically:</p> <p>a. Per Penal Code section 30312, subdivision (c)(10), a person is exempted from transfer requirements who purchases or receives ammunition from a spouse, registered domestic partner, or immediate family member as defined in Section 16720.</p>
33.	<p>The regulations are confusing and incomplete. The regulations mention a COE, but not how to get one, what is the cost, the term, or how having a COE affects the cost of a purchase.</p>	<p>In response to this comment, the Department has changed the definition of “Certificate of Eligibility or COE” in proposed section 4301, to directly refer to the statute that created the COE program. Additional specifications regarding Certificates of Eligibility are stipulated under California Code of Regulations, title 11, sections 4036-4041, which the Department has decided not to duplicate in these proposed regulations.</p> <p>The Department disagrees that the proposed regulation does not meet the “clarity” standard with respect to how having a COE affects the cost of the purchase. The cost of the purchase for those individuals with a COE is outlined in section 4305 of the proposed regulations.</p>

#	Summarized Comment	DOJ Response
34.	<p>Ah yes, Dem's want to limit ammo sales for...what's the excuse this time?...PUBLIC SAFETY!</p> <p>Of course, requiring helmets for all vehicle drivers would save 1000's (10,000+?) more lives each year, so why don't CA Dem's do it?</p> <p>Easy, most voters don't want the inconvenience. Same with other easy fixes for public safety, like grab bars in bathtubs to stop slip &amp; fall deaths, which kill over 25,000/year, mostly old women.</p> <p><a href="https://listosaur.com/miscellaneous/top-5-causes-of-accidental-death-in-the-united-states/">https://listosaur.com/miscellaneous/top-5-causes-of-accidental-death-in-the-united-states/</a></p> <p>So why bother with ammo? Also easy, Most Dem's are too frightened &amp; weak to provide for their own safety, so they want private firearms severely limited, if not banned. They also deeply fear their fellow citizens that own guns, &amp; want them disarmed. To most Dem's, guns are evil &amp; gun-owners are sinners. Ask them, they'll tell you.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department's proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>

#	Summarized Comment	DOJ Response
35.	<p>Opposition to an anticipated cost that will be incurred by the state because of the regulations:</p> <p>a. Background checks on ammunition purchases will cost the state too much money to implement/enforce.</p> <p>b. This will lead to an increase in taxes, which I oppose.</p> <p>c. This will result in litigation, the cost of which will be borne by taxpayers.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Alternatively, the comments may be interpreted as a claim that the proposed regulations do not represent the best possible manner to implement the underlying statute. No other reasonable alternative was considered by the Department that would have been more effective, or as effective and less burdensome.</p> <p>Specifically:</p> <p>a. Per Penal Code section 30370, subdivisions (c) and (e), the Department is required to recover the cost of activities related to the ammunition authorization program by charging ammunition purchasers and transferees a per transaction fee, and not through a tax.</p>
36.	<p>I have attempted to read the PDF released by your department on the proposed regulations but the file conveniently fails to load. How can you expect the general public to comment on regulations you do not make accessible to them?</p>	<p>The Department interprets this comment as a procedural objection regarding Government Code section 11346.4, subdivision (a)(6). No other commenter expressed any difficulty accessing the information noticed by the Department and made available on the Department’s website. Commenters may also request copies of documents by contacting the Department at the email address or telephone number listed in the Notice of Proposed Rulemaking.</p>

#	Summarized Comment	DOJ Response
37.	<p>Instead of the proposed regulations, I would like to see those who are convicted of violent crime who used a firearm have to pay into a restitution fund, databases in use to keep track of prohibited persons, and safe handling classes for the general public.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Alternatively, the comment may be interpreted as a claim that the proposed regulations do not represent the best possible manner to implement the underlying statute. The alternative presented here would not implement Penal Code sections 30352 or 30370, and therefore is not more effective, or as effective and less burdensome than the regulations as proposed by the Department.</p>
38.	<p>There must be an exemption for gun clubs and shooting sports associations that purchase ammunition in bulk and then provide it to members to train with or shoot at a competition.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the regulation.</p> <p>Penal Code section 30352, subdivision (e) provides an exhaustive list of categories of individuals who are exempt from the requirement to obtain approval from the Department prior to the sale or transfer of ammunition. The Department lacks the authority to expand upon these statutory exemptions.</p>
39.	<p>Objections to an alleged hardship on those who purchase large quantities of ammunition at a time:</p> <p>a. These regulations will unjustly affect individuals who purchase large quantities of ammunition at a time.</p> <p>b. These regulations will unjustly affect individuals who use large quantities of ammunition at a time.</p>	<p>No change has been made in response to this comment. The Department disagrees with this comment. The fee for the background check is charged per transaction, regardless of the amount of ammunition purchased in that transaction.</p>

#	Summarized Comment	DOJ Response
40.	Limiting the ability to engage in internet ammunition purchases and/or to bring in ammunition from out-of-state infringes upon interstate commerce.	No change has been made in response to this comment because the Department determines that this comment objects to Penal Code sections 30314 and 30312, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the regulation.
41.	People will leave California because they do not want to comply with the background check requirement for ammunition. This will result in an economic impact that has not been considered.	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.
42.	Background checks for ammunition will result in a logjam.	<p>No change has been made in response to this comment. The Department determines that a “logjam” refers to a potential backlog or slowdown of the process of purchasing ammunition. The Department determines that this comment objects to the underlying statutory ammunition authorization program rather than to the way the agency proposes to interpret it.</p> <p>Alternatively, the comment may be interpreted as a claim that the proposed regulations do not represent the best possible manner to implement the underlying statute. As stated in the Initial Statement of Reasons (inclusive of the addendum), the Department estimates that 98 percent of eligibility checks will take approximately two minutes to process. No other reasonable alternative was considered by the Department that would have been more effective, or as effective and less burdensome.</p>
43.	<p>Opposition to the perceived inability of people from out of state to buy or transfer ammunition:</p> <p>a. This law prohibits out of state shooters from legally buying their ammunition. This will disincentivize them from visiting California, thereby negatively impacting the economy.</p> <p>b. Shooting competitions will no longer be able to include people from out of state.</p>	No change has been made in response to this comment. See the Department’s response to comment #67(b), below.

#	Summarized Comment	DOJ Response
44.	Background checks for ammunition will lead to distrust of government.	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.
45.	<p>Objections regarding either alleged secret plans/laws, or alleged future plans/laws:</p> <p>a. Background checks for ammunition are part of a secret plan to track, outlaw and/or confiscate all firearms.</p> <p>b. This is part of a secret plan to register firearms, either currently or in the future. Registration of firearms is illegal.</p> <p>c. These requirements will lead to further laws restricting firearms or ammunition.</p>	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).
46.	A background check is already required to purchase a firearm. It is therefore unnecessary for firearm owners to pass an additional background check to purchase ammunition.	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.
47.	A better way to decrease crime would be to deport individuals who are in the country unlawfully.	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.



#	Summarized Comment	DOJ Response
48.	<p>These regulations negatively affect an individual who buys ammunition for firearms that they do not possess, such as a friend's firearms, which they may borrow.</p>	<p>No change has been made in response to this comment because it is not clear what relationship the commenter believes to exist between purchased ammunition and a borrowed firearm.</p> <p>The comment may be interpreted as opposing a perceived restriction on ammunition purchases to only those types of ammunition that would be used in a firearm owned by the purchaser. The proposed regulations in no way restrict the types of ammunition that may be purchased.</p> <p>Alternatively, the comment may be interpreted as opposing a perceived restriction on ammunition purchases to only people who own or possess firearms. The Department disagrees that ammunition purchases will be restricted only to people who own or possess a firearm. Anyone who is not prohibited from purchasing or possessing ammunition may do so, by following the appropriate procedure, as implemented by these regulations, regardless of current firearm possession or ownership.</p>
49.	<p>The regulations do not exempt retired law enforcement officers, who may still be able to carry concealed weapons.</p>	<p>No change has been made in response to this comment. Penal Code section 30352, subdivision (e) provides an exhaustive list of categories of people who are exempt from the requirement to obtain approval from the Department prior to the sale or transfer of ammunition. The Department lacks the authority to expand upon these statutory exemptions.</p>
50.	<p>Opposition to requirements placed on law enforcement:</p> <p>a. Active officers at the state and federal level -- it is requiring that the agency head give them a special letter authorizing them to buy ammunition to practice.</p> <p>b. Requiring active duty law enforcement officers to provide a letter from their agency head to purchase ammunition is idiotic.</p>	<p>No change has been made in response to this comment. Specifically:</p> <p>a. No objection was made, nor was any recommendation proposed. Alternatively, this is a generalized comment in opposition to the regulation.</p> <p>b. The Department determines that this comment objects to the underlying statute rather than to the way the agency proposes to interpret it. Penal Code section 30352, subdivision (e)(8)(B)(i) requires law enforcement officers to provide verifiable written certification from the head of the agency by which the purchaser or transferee is employed.</p>

#	Summarized Comment	DOJ Response
51.	A Californian who wants to use a firearm in another state will have to purchase ammunition in that state, and not in California.	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>For the purpose of clarity: the changes made to statute due to Proposition 63 and Senate Bill 1235, which these regulations implement in part, do not prohibit export of ammunition out of California. It is currently legal to buy ammunition in California and take it out of state for lawful use.</p>
52.	These regulations may be, or are certainly, unenforceable.	<p>No change has been made in response to this comment because this is a generalized comment in opposition to the regulation and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Alternatively, the comment may be interpreted as a claim that the proposed regulations do not represent the best possible manner to implement the underlying statute. No other reasonable alternative was considered by the Department that would have been more effective in carrying out the purpose for which the action is proposed, or as effective and less burdensome.</p>

#	Summarized Comment	DOJ Response
53.	<p>Certain local jurisdictions already require an ammunition purchaser to provide identifying information, making these regulations superfluous.</p>	<p>No change has been made in response to this comment because this is a generalized comment in opposition to the regulation. The Department has determined that the proposed regulation is necessary and is adopting the proposed regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>Alternatively, the comment may be interpreted as a claim that the proposed regulations do not represent the best possible manner to implement the underlying statute. No other reasonable alternative was considered by the Department that would have been more effective in carrying out the purpose for which the action is proposed, or as effective and less burdensome.</p> <p>Alternatively, the comment may be interpreted as objecting to the underlying statute, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p>
54.	<p>This new law will not prevent someone from giving ammunition to someone else.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p>
55.	<p>The Department of Justice does not currently have a system to regulate ammunition purchases.</p>	<p>No change has been made in response to this comment. This rulemaking is one part of a larger effort by the Department to create a system to regulate ammunition purchases. Among other preparatory activities, the Department is in the process of enhancing the Dealer Record of Sale Entry System (DES) to authorize ammunition purchases in compliance with Penal Code sections 30352 and 30370. The Department will be able to implement those sections by July 1, 2019, when the requirement for approval prior to an ammunition purchase goes into effect.</p>

#	Summarized Comment	DOJ Response
56.	<p>Opposition based on an alleged illegitimate acquisitiveness by the government:</p> <p>a. This law is solely or primarily a means to increase state revenue.</p> <p>b. Specifically, money is being raised by targeting a politically-disfavored group of citizens.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. As explained in the Initial Statement of Reasons (inclusive of the addendum), all fees collected pursuant to these regulations will be used to recover the cost of processing and regulatory and enforcement activities related to the ammunition authorization program.</p>
57.	<p>Law enforcement in California does not want background checks for ammunition.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p>
58.	<p>The Department of Justice should concentrate its efforts on identifying criminals and the mentally unstable.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Alternatively, the comment may be interpreted as a claim that the proposed regulations do not represent the best possible manner to implement the underlying statute. No other reasonable alternative was considered by the Department that would have been more effective in carrying out the purpose for which the action is proposed, or as effective and less burdensome.</p>
59.	<p>I support background checks for ammunition purchases but not limits.</p>	<p>No change has been made in response to this comment because the comment is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. There is no current or proposed limit on the amount of ammunition that may be purchased.</p>

#	Summarized Comment	DOJ Response
60.	“They will be bad law and quite the insult if enforced.”	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.
61.	<p>Opposition to a perceived \$50 fee:</p> <p>a. My understanding is that it will cost \$50 for a background check to buy ammunition. If a DROS background check is \$25, why does it cost twice as much?</p> <p>b. There will be a \$50 fee every two years.</p>	<p>No change has been made in response to this comment because the Department determines that this comment is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>The comment appears to be referring to a provision of Proposition 63 which did not become operative. That provision would have allowed the Department to charge a fee not to exceed \$50 for an ammunition purchase authorization (see Proposition 63, Penal Code section 30370). That provisions was superseded by the ammunition authorization program required by Senate Bill 1235, which these regulations implement.</p>
62.	If I have a California hunting license, which AB 711 is supposed to provide FREE (lead-free) ammunition for, why should I incur an additional ammo expense as a disabled veteran?	<p>No change has been made in response to this comment. The purpose of AB 711 is to promote the use of lead-free ammunition. The purpose of Proposition 63 and SB 1235 is to ensure that prohibited persons do not purchase ammunition. These two legislative purposes are not in conflict. The proposed regulations will not prevent the acquisition of lead-free ammunition. However they are acquired, the fee to recover the cost of processing and regulatory and enforcement activities related to Penal Code section 30370 would still apply.</p> <p>To the extent this comment requests an exemption for disabled veterans, Penal Code section 30352, subdivision (e) provides an exhaustive list of categories of individuals who are exempt from the requirement to obtain approval from the Department prior to the sale or transfer of ammunition. The Department lacks the authority to expand upon these statutory exemptions.</p>

<p>63. As a threshold matter, DOJ’s proposed regulations are incomplete.</p> <p>a. Key aspects of the proposal are missing, such as how licensed ammunition vendors are to determine which proposed background check process to use for a particular customer due to the varying options.</p> <p>b. Both our clients and our office have been informed by multiple DOJ representatives that DOJ intends to propose additional regulations regarding the sale or transfer of ammunition beyond this proposal. Presumably, those regulations will address the many gaps in this current proposal.</p> <p>Under the APA, the clarity of a proposed regulation may be considered in the context of related regulations already in existence. Following that same logic, the clarity of a proposed regulation may be considered in the context of related regulations that have yet to be proposed. Without the anticipated additional regulations that have yet to be proposed, the meaning of the regulations cannot be said to be easily understood by those persons directly affected by them.</p> <p>As a result, DOJ’s proposal as currently written fails to satisfy the clarity requirement of the APA. The public is entitled to see the entire regulatory package together, not in this piecemeal fashion. DOJ should amend the proposal to include any and all additional regulations to ensure the proposal satisfies the clarity requirement of the APA as well as providing members of the public a meaningful opportunity to comment.</p>	<p>The Department has amended the proposed regulations in response to this comment.</p> <p>Specifically:</p> <p>a. Sections 4301, 4302, 4303, and 4305 have been amended to provide additional clarity as to how an eligibility check may be requested, as well as the statutory criteria which a purchaser or transferee may use to decide which eligibility check to request. The regulations, in conjunction with Penal Code section 30370, subdivision (a), make plain each option and when each is appropriate.</p> <p>The Department does not have the authority to mandate which procedure a purchaser or transferee uses to seek authorization to purchase ammunition. If an individual’s information does not match an entry in the AFS system, and the individual does not hold a current Certificate of Eligibility, the individual may only be eligible for a Basic Ammunition Eligibility Check. However, by statute, certain persons may gain authorization in multiple ways. If an individual’s personal information matches an entry in the AFS (e.g., from a previous firearm transaction), the individual is eligible for both a Basic Ammunition Eligibility Check and a Standard Ammunition Eligibility Check. If an individual holds a current Certificate of Eligibility, the individual is eligible for both a Basic Ammunition Eligibility Check and the COE Verification process. An individual could hold a current Certificate of Eligibility, and have personal information that matches an entry in AFS, and also qualify for the authorization provided by the Basic Ammunition Eligibility Check. Instead of mandating which ammunition eligibility process a person shall request, the Department determined that the most effective way of clarifying the multiple methods of gaining authorization, as provided by statute, is to clearly present each process and its attendant requirements. The proposed regulations satisfy this goal. Ammunition vendors are free to inquire of the potential purchaser or transferee about their potential eligibility, before requesting one of the three types of eligibility checks.</p> <p>b. No change has been made in response to this comment. This rulemaking encompasses regulatory changes specifically necessary to implement the</p>
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#	Summarized Comment	DOJ Response
		<p>ammunition authorization program pursuant to Penal Code sections 30352 and 30370. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>The Department rejects the contention that every other rulemaking that may affect ammunition purchases would need to be combined into one single rulemaking. For example, the Department is currently in the process of proposing regulations regarding the Automated Firearms System (AFS), a system that was established in 1900 (see OAL Notice File Number Z-2018-0910-02). The proposed changes to those regulations will, in part, allow an individual to access and update his or her AFS records. This ability may prove useful for individuals who seek authorization to purchase ammunition pursuant to proposed section 4302 of these regulations, but the ability to update an AFS record is in no way specific to ammunition purchases. All rulemakings are being promulgated in full compliance with the notice-and-comment requirements of the Administrative Procedure Act.</p>

<p>64. <b>PROPOSED SECTION 4301.</b> There is a fundamental flaw in DOJ’s proposed definition—AFS records do <i>not</i> identify an individual as an owner of a firearm. Indeed, the former head of DOJ’s Bureau of Firearms Division, Stephen Lindley, recently testified as an expert witness to that effect. In his report, Mr. Lindley stated that “no local law enforcement agency should rely upon AFS as the sole basis for establishing ownership of a firearm or rejecting a claim of ownership” because “AFS merely serves as a database of transaction records related to a firearm.”</p> <p>Mr. Lindley’s testimony echoes a prior information bulletin authored by DOJ’s Division of Law Enforcement submitted to all California Sheriffs and Chiefs of Police. As noted by DOJ in this bulletin, it is likely that many long guns are not recorded in AFS for various reasons. And because not all handguns were required to be sold through a California licensed firearms dealer prior to 1991, there are a great number of lawfully owned handguns that were not subject to any requirement that the transaction be recorded in AFS. As a result, DOJ’s bulletin emphasizes that:</p> <p><i>[An] AFS transaction record simply means that on the date of transaction (DOT), the individual was eligible to own/possess firearms. It does not indicate ownership of the firearm.</i></p> <p>DOJ’s Initial Statement of Reasons (“ISOR”) claims the proposed definitions “will help to eliminate any misunderstandings between the Department and the public.” Given DOJ’s clear, prior interpretations (at least one of which was expressed to all California law enforcement professionals), DOJ should ensure consistency to help eliminate any misunderstanding. To that end, we suggest the definition for “AFS Record” instead read:</p> <p><i>[A] firearm record on file with the Department that indicates on the date of the transaction, the individual was eligible to own and possess firearms. An AFS record has been established with the Department when an individual has either purchased or transferred a rifle or shotgun through a</i></p>	<p>The Department has amended the proposed regulations in response to this comment. Section 4301 has been amended to provide a clearer definition of the Automated Firearm System, and now cites the Penal Code section that established that system, to allow for further reference.</p> <p>The Department is currently in the process of proposing regulations regarding the Automated Firearms System (see OAL Notice File Number Z-2018-0910-02). The Department has determined that that rulemaking is a more appropriate place to provide a nuanced definition of the Automated Firearms System.</p>
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#	Summarized Comment	DOJ Response
	<i>California licensed firearms dealer on or after January 1, 2014, or an individual has purchased or transferred a handgun through a California licensed firearms dealer at any time. An AFS record may also be established after the Department processes an individual's assault weapon registration or an individual's report of firearm ownership.</i>	

#	Summarized Comment	DOJ Response
65.	<p><b>PROPOSED SECTION 4302.</b> Proposed section 4302 concerns what DOJ refers to as the “Standard Ammunition Eligibility Check.” As stated in proposed subsection (a), “the fee for a Standard Ammunition Eligibility Check is \$1.00.” In addition to citing subdivision (e) of Penal Code section 30370 for authority, DOJ states in their ISOR that subdivision (a) is necessary to specify the fee assessed and to recover the total cost of implementation.</p> <p>Section (e) of Penal Code section 30370 states that DOJ “shall recover the reasonable cost of regulatory and enforcement activities related to this article by charging ammunition purchasers and transferees a per transaction fee not to exceed one dollar (\$1)” and “not to exceed the reasonable regulatory and enforcement costs.” In its ISOR, DOJ states that the fees collected pursuant to this subsection “will be used to repay the loan for start up costs” as well as “salaries of the 73 permanent employees.” DOJ has not specified, however, if the fee will be reduced once the initial loan for start up costs is paid in full. What’s more, DOJ has not specified how the 73 employees will be used, if at all, when processing what is presumably a fully automated check of the AFS system.</p> <p>As a result, the proposed \$1 fee exceeds DOJ’s regulatory authority as it is not consistent with the authorizing statute.</p> <p>DOJ’s authority to impose a fee is also generally limited by subsection (b)(1) of Government Code section 11010, which states that no state agency “shall levy or collect any fee or charge in an amount that exceeds the estimated actual or reasonable cost of providing the service, inspection, or audit for which the fee or charge is levied or collected.”</p>	<p>No change has been made in response to this comment. The Department disagrees that the fee exceeds its reasonable cost of regulatory and enforcement activities related to ammunition purchases. The Department is adopting the regulation, including the establishment of the \$1 fee for a Standard Ammunition Eligibility Check, for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>

#	Summarized Comment	DOJ Response
66.	<p>The proposed regulations lack crucial information as to when or how a licensed ammunition vendor must use the Standard Ammunition Eligibility Check process. Potential ammunition purchasers may also undergo a “One-Time Ammunition Transaction” involving a more comprehensive “Basic Ammunition Eligibility Check,” or a “COE Verification Process” in addition to the Standard Ammunition Eligibility Check when attempting to purchase ammunition. What is the purpose of three different procedures? The proposed regulations are silent as to how a licensed ammunition vendor is to determine what procedure to use.</p> <p>As a result, both licensed ammunition vendors and their customers are incapable of easily understanding the effects of the proposed regulations as currently drafted. DOJ should amend its proposal to address these lack of clarity concerns before moving forward.</p>	<p>The Department has amended the proposed regulations in response to this comment. Sections 4301, 4302, 4303, and 4305 have been amended to provide additional clarity as to how an eligibility check may be requested, as well as the statutory criteria that a purchaser or transferee may rely upon to decide which eligibility check to request. The regulations, in conjunction with Penal Code section 30370, subdivision (a), make plain each option and when each is appropriate.</p> <p>The Department does not have the authority to mandate which procedure a purchaser or transferee uses to seek authorization to purchase ammunition. If an individual’s information does not match an entry in the AFS system, and the individual does not hold a current Certificate of Eligibility, the individual may only be eligible for a Basic Ammunition Eligibility Check. However, by statute, certain persons may gain authorization in multiple ways. If an individual’s personal information matches an entry in the AFS (e.g., from a previous firearm transaction), the individual is eligible for both a Basic Ammunition Eligibility Check and a Standard Ammunition Eligibility Check. If an individual holds a current Certificate of Eligibility, the individual is eligible for both a Basic Ammunition Eligibility Check and the COE Verification process. An individual could hold a current Certificate of Eligibility, and have personal information that matches an entry in AFS, and also qualify for the authorization provided by the Basic Ammunition Eligibility Check. Instead of mandating which ammunition eligibility process a person shall request, the Department determined that the most effective way of clarifying the multiple methods of gaining authorization, as provided by statute, is to clearly present each process and its attendant requirements. The proposed regulations satisfy this goal.</p>

<p>67. In connection with the proposed regulation requiring additional purchaser information, purchasers will be required to provide their driver license or other government identification number “in the manner described in Penal Code section 28180.” Penal Code section 28180 requires purchasers to provide this information electronically from the magnetic strip on the purchaser’s driver’s license or identification. The only exceptions to this requirement are for military IDs or when the magnetic strip reader is unable to obtain the required information.</p> <p>a. The proposed regulation lacks crucial information as to how exactly licensed ammunition vendors are to process ammunition transactions for out-of-state residents and individuals providing government ID that may not be compatible with DOJ’s electronic system. For example, the current firearm background check system in California will generate a “DMV Reject Notice” when the driver’s license or identification card used is not valid, or when the information provided is in conflict with the files maintained by the California Department of Motor Vehicles (“DMV”). Because DOJ has stated the ammunition background check process will be “essentially the same” as a firearms eligibility check, it can only be assumed individuals with out-of-state or other identification not compatible will result in similar “DMV Reject Notices.” What’s more, nothing in either the Penal Code or DOJ’s proposed regulations require licensed ammunition vendors who are not otherwise California licensed <i>firearms</i> dealers to possess a magnetic strip reader.</p> <p>b. DOJ’s proposed regulations need to clarify how licensed ammunition vendors are to process transactions involving individuals from out of state who may not have a government identification compatible with DOJ’s electronic system, and how DOJ intends to conduct a background check on individuals with out-of-state identification to ensure they are not automatically rejected as would occur under DOJ’s current system. Otherwise, this regulation is void for lack of clarity.</p>	<p>No change has been made in response to this comment. Specifically:</p> <p>a. Penal Code section 30370, subdivision (b), requires the Department to cross-reference specified information “as described in Section 28180,” with the information maintained in the AFS. That section of Penal Code requires information to be obtained via a magnetic strip reader. The Department has determined that section 30370, subdivision (b) therefore requires ammunition vendors to possess a magnetic strip reader. Additionally, pursuant to Penal Code section 30385, subdivision (d), many firearms dealers are also authorized ammunition vendors. These firearms dealers are already required by Penal Code section 28180 to collect purchaser information in that manner, for the purpose of firearm eligibility checks. It would be unduly burdensome for ammunition vendors, and unnecessarily expensive for the Department to develop and require use of a separate method to accurately collect and communicate purchasers’ or transferees’ personal information to the Department for the specific purpose of ammunition eligibility checks. No other reasonable alternative was considered by the Department that would have been more effective, or as effective and less burdensome in carrying out the purpose for which the action is proposed.</p> <p>Pursuant to Penal Code section 28180, if, due to technical limitations, the magnetic strip reader is unable to obtain the required information from the purchaser’s identification, the information may be obtained by an alternative method (e.g. manually entering the information into DES) so long as a photocopy of the identification is obtained as proof of compliance.</p> <p>The current firearm background check system only generates a “DMV Reject Notice” when (1) the purchaser provides a California driver license or identification card, (2) the Department attempts to validate the identification through the California Department of Motor Vehicles, and (3) the DMV is unable to validate the identification. A “DMV Reject Notice” would <i>not</i> be generated during an ammunition eligibility check if a purchaser presented an out-of-state ID, as those forms of ID are not validated through the DMV. The dealer must still follow the requirements of Penal Code section 28180.</p>
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	<p>b. The ability of a person from out of state to purchase or transfer ammunition depends on the method by which they attempt to do so.</p> <p>1. The Department has determined that, pursuant to statute, an individual from out of state would not be able to be granted authorization to purchase ammunition using a Standard Ammunition Eligibility Check. Penal Code section 30370, subdivision (b) requires the Department to cross-reference the purchaser's or transferee's current address with the information maintained in the AFS. However, pursuant to Penal Code section 26815, no firearm shall be delivered unless the purchaser, transferee, or person being loaned the firearm provides evidence of their California residency pursuant to Penal Code section 16400. Penal Code section 16400 provides that the identification must be a valid California driver license or identification card issued by the Department of Motor Vehicles, both of which require proof of residency in California. In addition, section 922, title 18 of the United States Code also prohibits the sale of any firearm to a person the transferor knows or has reasonable cause to believe does not reside in the state in which the transferor resides. The Automated Firearms System is a repository of firearm records maintained by the Department, as established by Penal Code section 11106. The AFS is populated by way of firearm purchases or transfers at a California licensed firearm dealer, registration of assault weapons by a California resident, a California resident's report of firearm ownership to the Department, California Carry Concealed Weapons Permit records, or records entered by California law enforcement agencies. Entries into the AFS would therefore not "match," for the purposes of satisfying the Standard Ammunition Eligibility Check, the "current address" of an out of state purchaser or transferee, since that current address, by definition, would be an out of state address.</p> <p>2. The Department has determined that, pursuant to statute, an individual from out of state would not be able to be granted authorization to purchase ammunition using a Basic Ammunition Eligibility Check. Penal Code section 30370, subdivision (c), requires the Department to develop a procedure in which "a person who is not prohibited from purchasing or possessing ammunition may be approved [...]" to do so. The Department has determined that it would be counter to the legislative intent under SB 1235 for the Department to approve purchases of</p>
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ammunition by individuals who may be prohibited from doing so because that person has been convicted of a relevant crime under the laws of the United States, the State of California, or any other state, government, or country (see, for example, Penal Code section 29800). The Department is not permitted to use the federal National Instant Criminal Background Check System (NICS) for the purpose of ammunition eligibility checks, and there is no reasonable alternative method to affirm that a person from out of state is not prohibited from purchasing or possessing ammunition. Therefore, the Department has determined that it will not affirm that an individual from out of state is authorized to purchase ammunition using a Basic Ammunition Eligibility Check.

3. The Department has determined that an individual from out of state would be able to be granted authorization to purchase ammunition using a COE Verification. The qualifications to be granted a Certificate of Eligibility are provided in title 11, section 4032 of the California Code of Regulations, as authorized by Penal Code section 26710. Persons who are not California residents are not prohibited from qualifying for a COE. Consequently, the Department has determined that persons from out of state who hold a current COE would be authorized to purchase ammunition subsequent to a COE Verification. Upon presentation of an out-of-state ID, the information required by proposed section 4305(c) could be obtained by an alternative method, should there be technical limitations, in accordance with Penal Code section 28180.

4. Additionally, a person from out of state may legally purchase ammunition if they qualify for the exemptions provided in Penal Code section 30312, subdivision (c), or section 30352, subdivision (e), or by the provisions of another relevant statute. For example, the prohibition on transporting ammunition into the state, per Penal Code section 30314, only applies to residents of California.

The Department rejects the assertion that the regulations lack clarity. The underlying statute and the proposed regulations are clear that information required to conduct an ammunition eligibility check or COE verification shall be gathered in the manner described by Penal Code section 28180. Pursuant to Penal Code section 30385, subdivision (d), many firearms

#	Summarized Comment	DOJ Response
		dealers are also authorized ammunition vendors, and are familiar with this process.
68.	<p>PROPOSED SECTION 4303. For unknown reasons, DOJ has chosen to label proposed section 4303 as “One-Time Ammunition Transactions.” But DOJ’s chosen label is likely to create unnecessary confusion. This is because Standard Ammunition Eligibility Checks, as described and labeled in proposed section 4302, are also “one-time” transactions which are used for purposes of conducting a single transaction. As a result, DOJ should instead label this section “Basic Ammunition Eligibility Check” to be consistent with section 4302, and otherwise remove the unnecessary “One-Time Ammunition Transaction” definition and other uses of the term throughout the proposal.</p>	<p>The Department has amended the proposed regulations in response to this comment. The Department has removed the definition of “One-Time Ammunition Transaction” from section 4301, and changed the title of section 4303 to “Basic Ammunition Eligibility Check (Single Transaction or Purchase).” The title now uses language parallel to the title of the other ammunition background check, section 4302. The parenthetical “(Single Transaction or Purchase)” has been included in the title of section 4303 because this language mirrors Penal Code section 30370, subdivision (c), which section 4303 implements. This also further differentiates the Basic Ammunition Eligibility Check from the more usual Standard Ammunition Eligibility Check, which the Department estimates will comprise 98 percent of ammunition eligibility checks (see Initial Statement of Reasons).</p>
69.	<p>The proposed regulation concerning One-Time Ammunition Transactions also suffers from the same flaws as the Standard Ammunition Eligibility Check in that it lacks crucial procedural information. This includes when and how licensed ammunition vendors are to utilize the One-Time Ammunition Transaction process and how to handle out-of-state identification. Without this crucial information, both licensed ammunition vendors and their customers are incapable of easily understanding the effects of the proposed regulations as currently drafted, making Section 4303 void for lack of clarity.</p>	<p>The Department has responded to this comment in its responses to comments #66 and #67, above.</p>

#	Summarized Comment	DOJ Response
70.	<p>At the outset, the proposed regulation conflicts with federal law and regulations. Under federal law, access to federal databases for purposes of conducting a background check is strictly limited to firearm transactions. Accessing these databases “for any other purpose,” including ammunition transactions, is “strictly prohibited.”</p> <p>Because California is a “Point-of-Contact” state, California has agreed to implement and maintain its own background check system and conduct the required background checks by accessing federal databases on behalf of California licensed firearm dealers. But California is prohibited from accessing these federal databases for purposes other than conducting a background check in connection with a firearm transaction.</p> <p>Additionally, this would put an unnecessary burden on federal systems.</p>	<p>No change has been made in response to this comment. The Department has determined that neither Senate Bill 1235 nor Proposition 63 meet the requirements of the federal Public Law 92-544, which would have been necessary to allow the Department to utilize specified federal databases. Therefore, the Department does not propose to access those federal databases.</p>



#	Summarized Comment	DOJ Response
71.	<p>Proposed subdivision (a) of section 4303 would establish a \$19 fee for a Basic Ammunition Eligibility Check. DOJ states in their ISOR that this check “is essentially the same background check as a firearms eligibility check” and that the proposed fee “is consistent with the fee paid for a firearms eligibility check.” DOJ also cites to subdivision (c) of Penal Code section 30370 for authorization, which reads in part:</p> <p>“The department shall recover the cost of processing and regulatory and enforcement activities related to this section by charging the ammunition transaction or purchase applicant a fee not to exceed the fee charged for the department’s Dealers’ Record of Sale (DROS) process, as described in Section 28225 and not to exceed the department’s reasonable costs.”</p> <p>In 2017, the Sacramento County Superior Court issued a decision affirming DOJ’s ministerial duty under Penal Code section 28225 to perform a reassessment of the Dealers’ Record of Sale (“DROS”) fee. That fee, which is currently set at \$19 per DOJ’s regulations, has remained unchanged for over 15 years since 2004. During litigation, DOJ failed to identify any internal process that would trigger the mandatory review of the current fee, and failed to produce any documentation to substantiate its claim that it performs “regular monitoring” of the DROS fee as required by law. What’s more, DOJ’s DROS account “amassed a surplus of over \$35 million, primarily consisting of DROS Fee revenues at the time the case was originally filed.”</p> <p>The fact that the current DROS fee is generating such a substantial surplus is clear evidence that DOJ’s proposed \$19 fee exceeds DOJ’s regulatory authority for two important reasons. First, it is wholly improper for DOJ to propose a fee based on that which a court has ordered DOJ to reassess. To do so otherwise demonstrates a clear disregard for the Court’s ruling.</p>	<p>No change has been made in response to this comment. The Department is adopting the regulation, including the establishment of the \$19 fee for a Basic Ammunition Eligibility Check, for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>This comment was submitted before a final resolution of the litigation to which it apparently refers. In its final ruling issued on March 4, 2019, the Court found as follows: “Defendants have adequately demonstrated that the funds generated by the DROS Fee are a reasonable approximation of the costs of the government-provided regulatory service/activity.” (<i>Gentry v. Becerra</i>, (Mar. 4, 2019, No. 34-2013-80001667) Sacramento Sup. Ct.) The Court elsewhere stated that “Defendants have sufficiently established that the funds generated by the DROS Fee are a reasonable approximation of the section 28225 costs.” (<i>Ibid.</i>) Therefore, the Court found that “there is no longer a necessity” to issue a writ of mandate directing DOJ to perform a reassessment of the DROS Fee. (<i>Ibid.</i>)</p> <p>Additionally, the DROS fund “surplus” mentioned in the comment is an apparent reference to the condition of the Dealers’ Record of Sale Account many years ago. There is no DROS “surplus” at this time. In fact, the January 10, 2019 Governor’s Budget proposed certain program changes to allow the Dealers’ Record of Sale Account “to maintain solvency to continue additional Bureau of Firearms workload.”</p>

#	Summarized Comment	DOJ Response
72.	<p>Notwithstanding that ruling, the proposed \$19 fee far exceeds DOJ’s reasonable costs for the proposed Basic Ammunition Eligibility Check. As DOJ has expressly stated, the process is “essentially the same” as a firearms eligibility check. And because the fee for a firearms eligibility check has consistently generated a surplus, it cannot be said the proposed fee does not exceed DOJ’s “reasonable costs.” Indeed, if the process is so substantially similar, the proposed fee will generate a similar surplus.</p> <p>To date, DOJ has yet to perform the required reassessment of the DROS fee as ordered by the Court. But the fact remains that the proposed \$19 fee clearly exceeds DOJ’s reasonable costs, and for that reason exceeds DOJ’s regulatory authority under the APA.</p>	<p>No change has been made in response to this comment. The Department is adopting the regulation, including the establishment of the \$19 fee for a Basic Ammunition Eligibility Check, for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum). (See DOJ Response to Comment No. 71.)</p>

#	Summarized Comment	DOJ Response
73.	<p>Subdivision (b) of proposed section 4303 concerns the required information a licensed ammunition vendor must collect from the purchaser when processing an ammunition transaction. Penal Code section 30352 expressly states what information is to be collected.</p> <p>The information required under Penal Code section 30352 is exclusive and does not allow for the collection of additional information to be collected by the licensed ammunition vendor. Any information collected in addition to this information, therefore, would be in violation of Penal Code section 30352. This is due to the doctrine of statutory construction <i>expressio unius est exclusio alterius</i> (the expression of one thing is the exclusion of the other). Because the legislature has specifically listed what information must be collected, without providing for any additional information to be collected by the licensed ammunition vendor, it is presumed the legislature intended only this information to be collected.</p> <p>Yet DOJ’s proposed regulation requires the following information to be collected in addition to the above: Gender; Hair color; Eye color; Height; Weight; United States citizenship status; Federal Alien Registration Number or I-94 (if applicable); Place of birth; Alias name(s); and Race.</p> <p>Given the exclusive nature of Penal Code section 30352, the proposed regulation as written exceeds DOJ’s statutory authority and is otherwise inconsistent with the statute it purports to implement. And because DOJ has expressly stated the process is “essentially the same” as a firearms eligibility check, it can only be assumed the reason for collecting a purchaser’s citizenship status, federal alien registration number, and place of birth are for purposes of accessing these federal databases. As explained above, to do so for purposes of conducting an ammunition background check would violate federal law.</p>	<p>No change has been made in response to this comment. The commenter cites Penal Code section 30352 as the Department’s sole source of the authority to gather information. However, as indicated in the “Authority and Reference” for section 4303, that section does not solely implement Penal Code section 30352, but also implements Penal Code section 30370. Specifically, section 4303, subdivision (b) implements the eligibility check required by Penal Code section 30370, subdivision (c).</p> <p>As stated in the Initial Statement of Reasons Addendum, the Department has determined that it requires the information listed in proposed section 4303, subdivision (b), in order to accurately identify the potential purchaser or transferee and to thereby determine, subsequent to a check of the records available to the Department, if the potential purchaser or transferee is “prohibited from purchasing or possessing ammunition,” per Penal Code section 30370, subdivision (c).</p>

#	Summarized Comment	DOJ Response
74.	<p>DOJ’s proposed requirement for citizenship information also violates recently enacted state laws pertaining to immigration enforcement. In 2017, the California Legislature enacted Senate Bill No. 54 (“SB 54”), prohibiting state agencies from using funds or personnel to “investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes,” including “[i]nquiring into an individual’s immigration status.” None of the exceptions to this restriction allow DOJ to inquire into an individual’s citizenship status for purposes of conducting an ammunition background check. As a result, the proposed regulation requiring additional information regarding a person’s immigration status is in direct violation of existing state law, thereby exceeding DOJ’s regulatory authority.</p>	<p>No change has been made in response to this comment. The statute referred to, Government Code section 7284.6, subdivision (a), prohibits law enforcement agencies from using “moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes...” The clause “for immigration enforcement purposes” provides the condition necessary to trigger the prohibition – law enforcement agencies are otherwise allowed to use moneys and personnel to investigate, interrogate, detain, detect, or arrest persons. Subdivision (a)(1)(A) specifically provides that “[i]nquiring into an individual’s immigration status” is one type of activity, among others, that is prohibited <i>if it is done for immigration enforcement purposes</i>. Government Code section 7284.4, subdivision (f) defines “immigration enforcement” as efforts to investigate or enforce any federal civil or criminal immigration law. The collection of information for the purpose of conducting a Basic Ammunition Background Check is not an activity being undertaken to investigate or enforce any federal civil or criminal immigration law. Rather, as stated in the Initial Statement of Reasons (inclusive of the addendum), this information must be collected because the Department has determined it will not affirm that an individual is authorized to purchase ammunition if the individual is prohibited under federal firearms laws.</p>

#	Summarized Comment	DOJ Response
75.	<p>Subdivision (c) of proposed section 4303 directly conflicts with the Penal Code it purports to implement. Specifically, subdivision (a) of Penal Code section 30370 requires DOJ to “electronically approve the purchase or transfer of ammunition through a vendor” but that “[t]his approval <i>shall occur at the time of purchase or transfer.</i>” In other words, the decision on whether to approve or deny a particular transaction must be made at the time of transfer, thereby precluding DOJ from enacting any system that would delay a transaction beyond the time of purchase or transfer.</p> <p>As a result, DOJ’s proposed regulation issuing an ATN to a prospective purchaser for no other purpose than to monitor the status of the Basic Ammunition Eligibility Check is in direct conflict with the Penal Code section it seeks to implement and otherwise exceeds DOJ’s regulatory authority.</p>	<p>The Department has amended the proposed regulations in response to this comment. The Department has added Penal Code section 30352 to the “Authority and Reference” for section 4303. Pursuant to Penal Code section 30352, subdivision (d), an ammunition vendor shall verify with the department that a prospective purchaser or transferee is authorized to purchase ammunition. If the prospective purchaser or transferee is not authorized, the vendor shall deny the sale.</p> <p>No further change has been made in response to this comment.</p> <p>A purchaser or transferee who requests authorization to purchase ammunition in a single transaction or purchase pursuant to Penal Code section 30370, subdivision (a)(3), must make the transaction or purchase “pursuant to the procedure developed pursuant to subdivision (c).” Without completing the procedure developed pursuant to subdivision (c), that purchaser or transferee would not be authorized to purchase or receive a transfer of ammunition and, per Penal Code section 30352, subdivision (d), the vendor would not be able to lawfully sell or transfer ammunition to that person.</p> <p>The Basic Ammunition Eligibility Check is the procedure developed pursuant to Penal Code section 30370, subdivision (c). Per section 4303(e) of the proposed regulations, upon completion of the Basic Ammunition Eligibility Check, the Department will update the purchaser’s or transferee’s record. Per section 4308(a) of the proposed regulations, if the Department approves the purchase or transfer, the DES transaction record will change to “Approved.” Per section 4308(b), ammunition may be delivered at a time after the status of the DES transaction record is “Approved.” There is no lawful “time of purchase or transfer” until after approval has been granted as specified.</p> <p>The Department has determined that providing an ATN to the prospective purchaser or transferee is the most effective method of communicating the status of the Basic Ammunition Eligibility Check, thereby ensuring that a single ammunition transaction of purchase may be made without delay.</p>

#	Summarized Comment	DOJ Response
76.	<p>Proposed section 4304 concerns the purchase of ammunition in connection with the purchase of a firearm, which as noted is already subject to an eligibility check. Subdivision (b) of proposed section 4304, however, is poorly worded in that it assumes an individual with an AFS record or Certificate of Eligibility (“COE”) will automatically be approved upon paying a \$1 fee for the Standard Ammunition Eligibility Check. To that end, the proposed regulation should instead simply read that if a person wants to take possession of the ammunition before the Department completes the firearms eligibility check, a Standard Ammunition Eligibility Check, Basic Ammunition Eligibility Check, or COE Verification Process must be conducted prior to the transfer of the ammunition.</p> <p>But DOJ needs to clarify how licensed ammunition vendors are to determine which procedure to follow for a customer.</p>	<p>The Department has amended the proposed regulations in response to this comment. Section 4304(b) has been amended to clarify that, if a purchaser or transferee who is purchasing or transferring a firearm and ammunition in the same transaction wants to take possession of the ammunition before the Department completes the firearms eligibility check, the purchaser or transferee must instead conduct a separate transaction to purchase the ammunition, following the appropriate ammunition eligibility check or exemption, as appropriate, and pay any associated fee, prior to taking possession of the ammunition.</p> <p>If an individual’s information does not match an entry in the AFS system, and the individual does not hold a current Certificate of Eligibility, the individual may only be eligible for a Basic Ammunition Eligibility Check. However, by statute, certain persons may gain authorization in multiple ways. If an individual’s personal information matches an entry in the AFS (e.g., from a previous firearm transaction), the individual is eligible for both a Basic Ammunition Eligibility Check and a Standard Ammunition Eligibility Check. If an individual holds a current Certificate of Eligibility, the individual is eligible for both a Basic Ammunition Eligibility Check and the COE Verification process. An individual could hold a current Certificate of Eligibility, and have personal information that matches an entry in AFS, and also qualify for the authorization provided by the Basic Ammunition Eligibility Check. Instead of mandating which ammunition eligibility process a person shall request, the Department determined that the most effective way of clarifying the multiple methods of gaining authorization, as provided by statute, is to clearly present each process and its attendant requirements. The proposed regulations satisfy this goal. Ammunition vendors are free to inquire of the potential purchaser or transferee about their potential eligibility, before requesting one of the three types of eligibility checks.</p>

#	Summarized Comment	DOJ Response
77.	<p>Nothing in proposed section 4304 specifies how a licensed ammunition vendor is supposed to collect the required information regarding the transfer of ammunition as called for under Penal Code section 30352. As a result, DOJ needs to amend this proposed regulation to ensure consistency and clarity with existing law as required by the APA.</p>	<p>The Department has amended the proposed regulations in response to this comment. Section 4308(c)(2) has been amended to specifically require the ammunition vendor to access the Dealer Record of Sale Entry System (DES) transaction record and submit through that system the ammunition sale information required by Penal Code section 30352, subdivision (a) at the time of delivery of ammunition. A transaction conducted pursuant to section 4304(a) involves the transfer of a firearm, and most of the information required by Penal Code section 30352, subdivision (a) is already inputted into the Dealer Record of Sale Entry System (DES) as part of the process of purchasing a firearm.</p>
78.	<p>Proposed section 4305 (b) fails to include the required information as called for in the Penal Code. Specifically, subdivision (a) of Penal Code section 30352 requires licensed ammunition vendors to collect the information in addition to what DOJ has proposed.</p> <p>Because Penal Code section 30352 requires this information to be collected at the time of delivery “on a form to be prescribed the Department of Justice,” DOJ needs to amend its regulation to clarify that the above information needs to be collected when transferring ammunition pursuant to the proposed COE Verification Process. Doing so will ensure consistency and clarity with existing law as required by the APA.</p>	<p>The Department has amended the proposed regulations in response to this comment. Section 4308(c)(2) has been amended to specifically require the ammunition vendor to access the Dealer Record of Sale Entry System (DES) transaction record and submit through that system the ammunition sale information required by Penal Code section 30352, subdivision (a) at the time of delivery of ammunition.</p>

#	Summarized Comment	DOJ Response
79.	<p>In proposed section 4305(a), DOJ has again chosen a fee amount of \$1, stating in their ISOR that this “will contribute toward start up costs and ongoing system maintenance, including employee salaries.” But that is not the appropriate standard in which to select the fee. As clearly stated in subdivision (e) of Penal Code section 30370, the fee selected by DOJ must not “exceed the reasonable regulatory and enforcement costs.”</p> <p>What’s more, DOJ has demonstrated in other respects that it can verify a person’s COE without cost. (For example, employees of California licensed firearm dealers must generally possess a valid COE as a condition of employment. DOJ recently proposed regulations modifying the DROS Entry System (“DES”) which includes a procedure for verifying a prospective employee’s COE, yet there is no cost associated with this procedure.)</p> <p>As a result, DOJ needs to clarify how the proposed \$1 fee does not exceed the reasonable regulatory and enforcement costs in processing COE verifications as required under the Penal Code.</p>	<p>No change has been made in response to this comment.</p> <p>Penal Code section 30370, subdivision (e) requires the department to recover the reasonable cost of regulatory and enforcement activities related to the article in which that section appears, including activities related to COE verifications made for the express purpose of authorizing ammunition purchases and transfers, by charging ammunition purchasers or transferees a per transaction fee. The Department has determined that the per transaction fee for a COE verification must be \$1 for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum). Start up costs and ongoing system maintenance, including employee salaries, comprise reasonable costs for regulatory and enforcement activities related to the article.</p> <p>The fact that the Department has not charged a fee to verify a COE in other contexts does not relieve the Department of its responsibility to do so under Penal Code section 30370, subdivision (e), nor does it mean that there is no cost to the Department to verify a COE.</p>
80.	<p>DOJ cites Penal Code section 30352 as authority for proposed section 4306. But the proposed list fails to include both licensed ammunition vendors and persons who purchase or receive ammunition at a target facility as expressly listed in Penal Code section 30352.</p> <p>As a result, DOJ should amend its proposed regulation to include these individuals, and what procedures a licensed ammunition vendor should follow when transferring ammunition to them in order to satisfy the consistency and clarity requirements of the APA.</p>	<p>The Department has amended the proposed regulations in response to this comment. Proposed section 4306(a) interprets the requirement in Penal Code section 30352, subdivision (e), that exempted individuals must be “properly identified.” This regulation provides a list of types of identification that meet that purpose, to which has been added the type of identification that will properly identify an ammunition vendor.</p> <p>The Department has not amended the proposed regulation to include a proper type of identification for persons who purchase or receive ammunition at a target facility, because a person does not need to be “properly identified” in order to qualify for the exemption provided by Penal Code section 30352, subdivision (e)(3).</p>



#	Summarized Comment	DOJ Response
81.	<p>Proposed section 4307 addresses the required telephonic access for ammunition vendors without accessibility to an internet connection due to their location not allowing for internet service. Our primary concern with the proposed regulation, however, is the hours of operation of DOJ’s telephonic system. Presumably, retail businesses such as ammunition vendors will be open outside of a typical 9-5 workday and otherwise open 7 days a week. DOJ’s proposed regulation does not specify if the telephonic access system will be available during such times. For this reason, DOJ needs to clarify when the system will be operational to ensure clarity for existing ammunition retail businesses.</p>	<p>No change has been made in response to this comment. Section 4307 of the proposed regulations indicate the “Telephonic access to the Department will be available during the Department’s Customer Support Center Business hours.” Due to the fact that business hours may change, the Department chose not to include specific hours within the regulations. Currently, Customer Support Center hours of operation are from 8:00 a.m. to 9:00 p.m., seven days a week.</p>
82.	<p>DOJ has made several inaccurate and/or misleading claims and statements in its ISOR warranting attention. First, DOJ estimates there will be approximately 13 million ammunition purchases or transfers conducted each year pursuant to a Standard Ammunition Eligibility Check. This estimation appears to have been calculated based on 931,037 background checks conducted in California in 2014 for firearm transactions. But the basis for this estimation is fundamentally flawed, as DOJ is referencing background checks—not actual gun sales. A single background check could incorporate more than one firearm. And using background check numbers for a single year fails to account for firearms already owned by California residents.</p>	<p>No change has been made in response to this comment. As stated in the Economic Impact Assessment in the Initial Statement of Reasons, the Department has used the most reasonable estimates derived from extensive research into sales of ammunition. The Department has sourced a reliable estimate of the amount of ammunition sold in the United States each year, and used that estimate to derive an estimate of the amount of ammunition sold in California each year.</p> <p>The Department used the number of background checks each year to provide an approximation of the number of ammunition purchases each year. The Department has determined that it is reasonable to assume that the residents of any particular state purchase an amount of ammunition each year proportionate to that state’s share of the number or background checks for firearms purchases each year. Since 4.44 percent of background checks in the United States are for firearms purchased in California, it is reasonable to assume that that same percentage of ammunition sold in the United States will be ammunition sold in California. The absolute number of firearms sold is not relevant to this calculation, nor is the number of firearms already owned by California residents.</p>

#	Summarized Comment	DOJ Response
83.	DOJ also fails to describe how it selected 40 rounds as the number of rounds in each box of ammunition. A simple web search of available ammunition yields wildly varying numbers of rounds per box, with the most common quantities either 50 or 20 rounds per box.	No change has been made in response to this comment. As the commenter notes, the most common quantities of ammunition are sold in boxes of either 50 or 20 rounds. Some ammunition boxes may contain many more rounds, and others may contain fewer. According to the commenter’s own estimate, the average number of rounds in a box would be 35. Accounting for sales of ammunition of <i>over</i> 50 rounds results in an average of approximately 40 rounds per box.
84.	DOJ claims “there is no evidence that these regulations will deter ammunition sales or be a significant burden to ammunition purchases.” Yet DOJ’s own statements directly contradict this point. It states that “ammunition purchases are considered a leisurely activity, and oftentimes done while out shopping for other items or browsing for future purchases, which is beneficial to both parties.” What’s more, DOJ also states that costs are “minimal because although it takes time for the Department to process an ammunition eligibility check, ammunition purchasers will be shopping for other products in the store, allowing the ammunition vendor to sell more items to the public.” Notwithstanding the fact that DOJ is obligated to process transactions in real-time and without any delay (contrary to DOJ’s assertions), such statements make it clear that there is indeed a significant burden.	No change has been made in response to this comment. There is no data that the proposed regulations will impose a significant burden on ammunition purchases. At this point, the Department can only use its best estimates as to the impact on ammunition sales. As stated in the Economic Impact Assessment in the Initial Statement of Reasons, the Department has used the most reasonable estimates derived from extensive research into sales of ammunition.
85.	DOJ’s analysis also ignores attempts by other states at implementing similar legislation. In 2013, New York enacted identical ammunition background check requirements. But before the law could be implemented, New York’s Governor issued a memorandum of understanding suspending enforcement of the ammunition background check requirements. That memorandum cited “the lack of adequate technology” while also stating that the database “cannot be established and/or function in the manner originally intended at this time.” New York’s Governor has also issued a statement that “the ammunition sales database <b><i>will not be prematurely introduced until the technology is ready and it does not create an undue burden for business owners.</i></b> ” To date, New York has yet to implement the ammunition sales database.	No change has been made in response to this comment. Besides superficial similarities, the laws and the technological systems in New York are not analogous to the laws and technological systems in California. There is no indication by the commenter how the issues raised in New York are equivalent to the proposed regulations. Therefore, the Department determines that this is a generalized comment in opposition to the proposed regulation and to the underlying statute, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).

#	Summarized Comment	DOJ Response
86.	Background checks for ammunition purchases will discourage firearm enthusiasts from practicing. This may decrease safety.	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.
87.	Background checks for ammunition purchases will lead to less enjoyment of one’s chosen form of recreation.	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.
88.	These regulations will lead to fewer ammunition sales, and due to scarcity, the price of ammunition will increase. This has not been adequately accounted for.	<p>No change has been made in response to this comment. Scarcity is unlikely to increase the price of ammunition, since there is no obvious reason why the supply of ammunition would change. Retail and wholesale ammunition vendors remain able to order unlimited quantities of ammunition either from in-state manufacturers or from out of state, and to offer that ammunition for sale within California.</p> <p>Alternatively, this comment may be interpreted as suggesting that decreased demand will lead to higher prices. The Department disagrees that these regulations will lead to fewer ammunition sales. As stated in the Initial Statement of Reasons, the Department estimates that over 98 percent of authorizations will be conducted using either a Standard Ammunition Eligibility check or COE verification, and neither the \$1 fee, nor the approximated 2 minute process will deter firearm enthusiasts from purchasing ammunition. As for the Basic Ammunition Eligibility Check, the Department determines that it is most likely that firearm enthusiasts will purchase the same quantity of ammunition, but in fewer transactions.</p>
89.	Due to these regulations, I will not be able to purchase ammunition the way I do now. That is not fair.	No change has been made in response to this comment because this is a generalized comment in opposition to the regulation, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.

#	Summarized Comment	DOJ Response
90.	<p>Opposition based on natural law or religious objections:</p> <p>a. Because my right to own a firearm was granted by God, it cannot be infringed in any way.</p> <p>b. Because all living things have a natural right to self-defense, it cannot be infringed in any way.</p>	<p>No change has been made in response to this comment because the Department determines that this is a generalized comment objecting to the regulations and to the underlying statute, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p>
91.	<p>Opposition based on a desire to transport ammunition into California from out of state:</p> <p>a. This will force me and/or “good people” to import ammunition from out of state, or to otherwise evade the law.</p> <p>b. An exemption should be made for people who cross state lines often.</p>	<p>No change has been made in response to this comment because the Department determines that this is a generalized comment objecting to the regulations and to the underlying statute, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. These regulations, which implement Penal Code sections 30352 and 30370, govern the procedure for in-state purchases.</p> <p>Specifically:</p> <p>a) Penal Code section 30314 makes it illegal for California residents to bring in ammunition from out of state.</p> <p>b) Penal Code section 30352, subdivision (e) provides an exhaustive list of categories of individuals who are exempt from the requirement to obtain approval from the Department prior to the sale or transfer of ammunition. The Department lacks the authority to expand upon these statutory exemptions.</p>
92.	<p>The various methods of evading the law will deny California tax revenue that would otherwise be collected if ammunition sales were not regulated.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>

#	Summarized Comment	DOJ Response
93.	<p>Opposition based on alleged due process violations:</p> <p>a. Being forced to undergo a background check prior to purchasing ammunition deprives me of life, liberty or property without due process of law.</p> <p>b. There is no process to appeal a denial. This violates my due process rights. Will I be allowed to challenge a denial, if the reason for the denial is incorrect?</p>	<p>No change has been made in response to this comment. Specifically:</p> <p>a. This is a generalized comment in opposition to the regulation and to the underlying statute, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>b. The Department did not propose a separate administrative process to appeal a denial. Per Penal Code section 30370, the only reason why a person can be denied is if they are expressly prohibited by law. Proposed sections 4302(e) and 4303(d)(2) provide methods by which the Department will explain to the attempted purchaser the reason for a denial, for the purposes of transparency and to facilitate a challenge if the determination was made in error. The potential purchaser or transferee may seek review of the records upon which the denial was based pursuant to Penal Code section 11121 and may seek to have those records changed pursuant to Penal Code section 11126. If an individual is not approved, they will have the opportunity to challenge both the Department’s determination and the accuracy of their criminal history record by contacting the Department, updating their entry in AFS, or pursuing a writ of mandate in a court of law. Any member of the public can contact the Customer Service Center from 8:00 a.m. to 9:00 p.m., seven days a week.</p>

#	Summarized Comment	DOJ Response
94.	Background checks for ammunition deny me equal protection under the law.	<p>No change has been made in response to this comment. The proposed regulations will apply to everyone equally.</p> <p>Alternatively, this comment may be interpreted as an objection to any implementation of the underlying statute, in which case it is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department has no authority to not implement the underlying statute. Per Article 3, Section 3.5 of the Constitution of California:</p> <p>An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:</p> <p>(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;</p> <p>(b) To declare a statute unconstitutional;</p> <p>(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.</p>

#	Summarized Comment	DOJ Response
95.	<p>Opposition based on an anticipation that the regulations will result in a decrease in tax revenue:</p> <p>a. Background checks for ammunition purchases will lead to decreased sales of ammunition, which will result in less tax revenue for California. This economic impact has not been adequately accounted for.</p> <p>b. Decreased sales of ammunition will decrease other, related activities (e.g., hunting), which will result in less tax revenue for California. This related economic impact has not been adequately accounted for.</p>	<p>No change has been made in response to this comment. The Department disagrees that these regulations will lead to fewer ammunition sales. As stated in the Initial Statement of Reasons, the Department estimates that over 98 percent of authorizations will be conducted using either a Standard Ammunition Eligibility check or COE verification, and neither the \$1 fee, nor the approximated 2 minute process will deter firearm enthusiasts (e.g., hunters) from purchasing ammunition. As for the Basic Ammunition Eligibility Check, the Department determines that it is most likely that firearm enthusiasts will purchase the same quantity of ammunition, but in fewer transactions.</p> <p>See also the Department’s response to comment #88.</p>
96.	<p>Background checks for ammunition purchases will lead to decreased sales of ammunition, which will result in less tax revenue for the federal government under the Pittman-Robertson Act. These monies are then distributed by the federal Department of the Interior to the states to pay for wildlife conservation. The impact of the likely decrease in federal funds has not been adequately accounted for.</p>	<p>No change has been made in response to this comment. The Department disagrees that these regulations will lead to fewer ammunition sales. As stated in the Initial Statement of Reasons, the Department estimates that over 98 percent of authorizations will be conducted using either a Standard Ammunition Eligibility check or COE verification, and neither the \$1 fee, nor the approximated 2 minute process will deter firearm enthusiasts from purchasing ammunition. As for the Basic Ammunition Eligibility Check, the Department determines that it is most likely that firearm enthusiasts will purchase the same quantity of ammunition, but in fewer transactions. Thus, there will be no impact on revenue collected and distributed pursuant to the Pittman-Robertson Act.</p>
97.	<p>These regulations do not affect the good people of California.</p>	<p>No change has been made in response to this comment. The proposed regulations will apply to everyone equally.</p> <p>Alternatively, the comment may be suggesting that the regulations are not necessary for “good” people, because “good” people will not purchase ammunition when they are prohibited from doing so, and/or will not commit crimes involving ammunition. No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute rather than to the way the agency proposes to interpret it.</p>

#	Summarized Comment	DOJ Response
98.	Background checks for ammunition purchases is ridiculous because people can just make their own ammunition.	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.
99.	<p>Opposition based on a concerns about privacy:</p> <p>a. Background checks for ammunition purchases amount to an invasion of privacy.</p> <p>b. You do not have the right to gather this information.</p> <p>c. The personal information collected due to the implementation of Penal Code sections 303520 and 30370 will be susceptible to theft and misuse.</p> <p>d. I oppose the recording of any information unnecessary to the explicit purpose of conducting a background check for ammunition.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Specifically:</p> <p>b. Penal Code sections 30370 and 30352 expressly require the Department to gather the information required to conduct an eligibility check, and to collect specified information regarding ammunition purchases at the time of delivery.</p> <p>c. The Department follows all applicable laws and regulations to ensure the security and confidentiality of the records it maintains. Specifically, Penal Code section 30352, subdivision (b) expressly directs that information related to the purchase or transfer of ammunition, collected at the time of delivery, as specified by subdivision (a), “shall remain confidential.”</p> <p>d. The information gathered is either expressly required by statute, or is necessary to conduct an eligibility check, as explained in the Initial Statement of Reasons (inclusive of the addendum).</p>
100.	Though there may be a benefit to background checks for the purchase of ammunition, that benefit does not out weigh the cost.	No change has been made in response to these comments because the Department determines that these comments object to the underlying statute and is neither specifically directed at the agency’s proposed action nor to the procedures followed by the agency in proposing or adopting the action.



#	Summarized Comment	DOJ Response
101.	These regulations are complicated.	No change has been made in response to this comment because this is a generalized comment regarding the clarity of the regulations and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).
102.	Implementing Penal Code sections 30352 and 30370 makes the Department of Justice and its employees complicit in illegal, unconstitutional, immoral and/or unjust activities.	<p>No change has been made in response to this comment because this is a generalized comment in opposition to the proposed regulation and to the underlying statute, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>The Department has followed all of the requirements of the Administrative Procedures Act in promulgating these regulations. Additionally, the Department has no authority to not implement the underlying statute. Per Article 3, Section 3.5 of the Constitution of California:</p> <p>An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:</p> <p>(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;</p> <p>(b) To declare a statute unconstitutional;</p> <p>(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.</p>

#	Summarized Comment	DOJ Response
103.	Exemptions should be made for different types of ammunition. For example, types that are rarely used during the commission of crimes, or small caliber ammunition.	No change has been made in response to this comment. Statute does not provide exemptions on the basis of ammunition type. The Department lacks the authority to create exemptions based on ammunition type.
104.	The enactment of these regulations should be suspended until it can be proven that a restriction on ammunition purchases will have a positive effect on the real gun problem in California, if there is one.	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.
105.	Any cost to implement Penal Code sections 30352 and 30370 should not be borne by consumers. Instead, the money required should come from the DROS fund or the state’s General Fund.	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Penal Code section 30370 mandates that the Department shall recover costs of activities related to the ammunition authorization program “by charging ammunition purchasers and transferees a per transaction fee.”</p>
106.	Why is the approval for a Basic Ammunition Eligibility Check only good for 30 days?	<p>No change has been made in response to this comment because the Department determines that this comment is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>As stated in the Initial Statement of Reasons (inclusive of the addendum), during the Basic Ammunition Eligibility Check the Department conducts a review of its records to determine if an individual is eligible to own or possess ammunition. The review is based on information retrieved at that point in time. To ensure the Department bases its determinations on the most current information, eligibility checks are only valid for 30 days. After 30 days, a new eligibility check must be conducted to ensure that nothing has transpired that would prohibit an individual from owning or possessing ammunition.</p>

#	Summarized Comment	DOJ Response
107.	<p>Confusion regarding how many times an approval by the Department may be used to purchase ammunition:</p> <p>a. Every 30 days I will need to spend another \$19 for the Basic Eligibility Check. This amounts to \$228 per year, which is expensive.</p> <p>b. Will I have to pay a fee multiple times a month?</p>	<p>No change has been made in response to this comment because the Department disagrees that the language of the proposed regulation does not meet the “clarity” standard. Penal Code section 30370, subdivision (a), requires the Department to electronically approve each purchase or transfer of ammunition through a vendor, at the time of purchase or transfer, as specified. The language of sections 4302, 4303, 4304 and 4305 use singular terms for the ammunition authorization process, and section 4308, subdivision (a), which discusses delivery of ammunition, uses singular terms when referring to Departmental approval of “an ammunition purchase or transfer.”</p> <p>Penal Code section 30370, subdivision (c), specifies that a Basic Ammunition Eligibility Check (BAEC) is “for a single ammunition transaction or purchase.” Since 30370 subdivision (a) makes clear that an approval shall occur for <i>each</i> purchase or transfer, as necessary, the Department has interpreted the explicit specification of the singularity of the BAEC as an indication that such an individual, who does not qualify for the Standard Ammunition Eligibility Check (SAEC), must not have an up-to-date AFS record, and likely does not purchase ammunition regularly. Section 4303, subdivision (c)(1) mirrors this construction by explicitly providing that an approved Basic Ammunition Eligibility Check “can only be used for one ammunition purchase or transfer.” Therefore a subsequent purchase will require another \$19 fee, for another Basic Ammunition Eligibility Check, just as another purchase made subsequent to a prior SAEC or COE Verification would require another \$1 fee.</p> <p>There is not a maximum fee that can be collected per month, and if someone makes multiple purchases each month, there will be a fee for each transaction, as appropriate.</p>

#	Summarized Comment	DOJ Response
108.	<p>Opposition on the basis of the possible consequences for purchasing large quantities of ammunition.</p> <p>a. In order to save on fees, people will purchase more ammunition at a time. Law enforcement will then be alerted that the person is stockpiling ammunition.</p> <p>b. Will multiple purchases or large purchases trigger some kind of investigation?</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department knows of no statute or regulation that prohibits the purchase of large quantities of ammunition.</p>
109.	<p>These regulations will lead to an ammunition shortage in the state. In order to avoid the background check, all of the available ammunition in the state will be purchased prior to the implementation date of July 1, 2019.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p>

#	Summarized Comment	DOJ Response
110.	<p>Opposition to the exhaustive nature of the list of exemptions in Penal Code section 30352:</p> <p>a. There should be more categories of people exempted from having to undergo a background check prior to purchasing ammunition.</p> <p>b. People who have proven that they are trustworthy, such as military veterans or airline pilots, should be exempted.</p> <p>c. Citizens with a guard card should be exempted.</p> <p>d. Only convicted felons should have to undergo background checks for ammunition purchases.</p> <p>e. The following persons should be exempt from undergoing background checks for ammunition purchases: all those who are known to the state of California to have legally acquired a firearm in CA; all persons in possession of a hunting license; all persons who have 832 p.c. certification; all members of a viable firearms training organization, all holders of a concealed firearms permit, (California or any other state or territory), and any other persons who the state would already know are not prohibited persons.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. Penal Code section 30352, subdivision (e) provides an exhaustive list of categories of individuals who are exempt from the requirement to obtain approval from the Department prior to the sale or transfer of ammunition. The Department lacks the authority to expand upon these statutory exemptions.</p>
111.	<p>Anyone who has registered a firearm with the state should be exempt from the requirement to undergo a background check for ammunition, and the associated fee.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. Penal Code section 30352, subdivision (e) provides an exhaustive list of categories of individuals who are exempt from the requirement to obtain approval from the Department prior to the sale or transfer of ammunition. The Department lacks the authority to expand upon these statutory exemptions.</p>

#	Summarized Comment	DOJ Response
112.	<p>The Department should alternatively implement the ammunition authorization program by issuing an identification card to persons who pass an ammunition eligibility check:</p> <p>a. The Department should issue an identification card to anyone who has passed a background check, allowing them to bypass any future background check for ammunition.</p> <p>b. I am willing to settle with a “ammunition background card”. If the background is covered by the taxpayer, there is no excessive delays for the issue of the background cards, no intrusive records are kept of the ammunition purchases, and the ammunition can be delivered to the residences of the purchasers.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute. Penal Code section 30370, subdivision (a), requires the Department to electronically approve the purchase or transfer of ammunition through a vendor, at the time of each purchase or transfer, as specified. Subdivision (c) further specifies that an approval subsequent to a Basic Ammunition Eligibility Check is “for a single ammunition transaction or purchase.”</p> <p>The issuance of an identification card that could be used for multiple ammunition transactions would allow for the possibility that someone could use the card more than once, and could become prohibited by statute after issuance of the card.</p> <p>Therefore the Department has determined that this alternative would not be more effective in carrying out the purpose for which the action is proposed. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>
113.	<p>Anyone who has a “firearms permit” or “gun permit” should be exempt from the requirement to undergo a background check for ammunition, and the associated fee.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. Penal Code section 30352, subdivision (e) provides an exhaustive list of categories of individuals who are exempt from the requirement to obtain approval from the Department prior to the sale or transfer of ammunition. The Department lacks the authority to expand upon these statutory exemptions.</p> <p>See also the Department’s response to comment #112.</p>

#	Summarized Comment	DOJ Response
114	<p>Opposition to perceived unfair exemptions:</p> <p>b. The liberal politicians of this state exempted themselves from this law.</p> <p>b. The government is exempted from this law.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Penal Code section 30352, subdivision (e) provides an exhaustive list of categories of individuals who are exempt from the requirement to obtain approval from the Department prior to the sale or transfer of ammunition. The Department lacks the authority to change these statutory exemptions.</p>
115.	<p>California authorities, inclusive of the DOJ, are biased and will not authorize ammunition purchases fairly.</p>	<p>No change has been made in response to this comment because this is a generalized comment in opposition to the proposed regulation, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p>
116.	<p>The fee should not be more than \$10.</p>	<p>No change has been made in response to this comment. The Department is adopting the regulation, including the setting of fees, for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>
117.	<p>These regulations are unnecessary because ammunition is only harmful in conjunction with a firearm, and firearms are already well regulated.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>
118.	<p>These regulations are unnecessary because felons are already prohibited from purchasing ammunition.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>

#	Summarized Comment	DOJ Response
119.	Background checks should only be used to prevent the mentally ill from obtaining ammunition.	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. Penal Code section 30305 prohibits any person from owning or possessing ammunition if that person is prohibited from owning or possessing a firearm, as specified. Those specifications include but are not limited to prohibitions related to the potential purchaser or transferee’s mental health status. The Department has no authority to limit which statutory prohibitions apply to ammunition sales.
120.	What exactly has been the cause or reasoning for such a new regulation to exist?	No change has been made in response to this comment. The Department is adopting the regulations for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).
121.	Could the information gathered pursuant to Penal Code sections 30352 and 30370 and these proposed regulations be used for future law enforcement activities not specifically related to the background check being conducted for the purpose of purchasing ammunition? (E.g., to find people who are purchasing ammunition for a firearm, the ownership of which they should have but did not previously report to the Department.)	<p>No change has been made in response to this comment because the Department determines that this comment is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>Penal Code section 30352, subdivision (b) allows for the information collected pursuant to subdivision (a), to be used by the Department and those entities specified in, and pursuant to, subdivision (b) or (c) of Penal Code section 11105, through the California Law Enforcement Telecommunications System, only for law enforcement purposes.</p>



#	Summarized Comment	DOJ Response
122.	<p>Opposition based on perceived lack of clarity regarding the process for purchasing ammunition:</p> <p>a. These regulations are incomplete because they do not adequately, or with specificity, explain the process for both consumers and ammunition vendors to follow in order to purchase ammunition.</p> <p>b. The Department of Justice should create and disseminate explicit guidelines for how ammunition vendors should conduct background checks for ammunition purchases and transfers.</p>	<p>The Department has amended the proposed regulations in response to this comment. Sections 4301, 4302, 4303, and 4305 have been amended to provide additional clarity as to how an eligibility check may be requested, as well as the statutory criteria that a purchaser or transferee may rely upon to decide which eligibility check to request. The regulations, in conjunction with Penal Code section 30370, subdivision (a), make plain each option and when each is appropriate.</p> <p>The Department does not have the authority to mandate which procedure a purchaser or transferee uses to seek authorization to purchase ammunition. If an individual’s information does not match an entry in the AFS system, and the individual does not hold a current Certificate of Eligibility, the individual may only be eligible for a Basic Ammunition Eligibility Check. However, by statute, certain persons may gain authorization in multiple ways. If an individual’s personal information matches an entry in the AFS (e.g., from a previous firearm transaction), the individual is eligible for both a Basic Ammunition Eligibility Check and a Standard Ammunition Eligibility Check. If an individual holds a current Certificate of Eligibility, the individual is eligible for both a Basic Ammunition Eligibility Check and the COE Verification process. An individual could hold a current Certificate of Eligibility, and have personal information that matches an entry in AFS, and also qualify for the authorization provided by the Basic Ammunition Eligibility Check. Instead of mandating which ammunition eligibility process a person shall request, the Department determined that the most effective way of clarifying the multiple methods of gaining authorization, as provided by statute, is to clearly present each process and its attendant requirements. The proposed regulations satisfy this goal. Ammunition vendors are free to inquire of the potential purchaser or transferee about their potential eligibility, before requesting one of the three types of eligibility checks.</p> <p>Additionally: ammunition vendors do not conduct background checks. The regulations make clear that ammunition vendors shall collect the required information and submit that information to the Department, which will then conduct the eligibility check.</p>

#	Summarized Comment	DOJ Response
123.	There is no justification as to why the Department has set the fees to the maximum allowed by Penal Code section 30370. How did DOJ determine they would charge \$1 and \$19 for Standard Firearms Eligibility Checks and One-Time Ammunition Transactions, respectively?	<p>No change has been made in response to this comment. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>See also the Department’s response to comments #65, 71, 72 and 79.</p>
124.	The only purpose of these regulations is to show citizens that they are subjected to government power and control. Firearms policies are carried out inefficiently and ineffectively, either intentionally or unintentionally – distinguishing which does not matter because either way the purpose is to demonstrate government control.	<p>No change has been made in response to this comment because this is a generalized comment in opposition to the proposed regulation and to the underlying statute, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>
125.	Background checks are just a way to determine whether the purchaser is prohibited from ownership of ammunition.	<p>No change has been made in response to this comment because the Department determines that this comment is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. Per Proposition 63 and Senate Bill 1235, ammunition eligibility checks are intended to accomplish that purpose.</p> <p>Alternatively, this comment may be interpreted as objecting to the various statutory prohibitions on ammunition ownership. A background check would reveal if a purchaser falls into a prohibited category, potentially leading to the disapproval of the sale of ammunition, which the commenter may be interpreted as opposing. No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>

#	Summarized Comment	DOJ Response
126.	How long will I have to wait for the approval/denial from the Department?	<p>No change has been made in response to this comment because the Department determines that this comment is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Wait time will vary based on the eligibility check that is requested. As stated in the Initial Statement of Reasons (inclusive of the addendum), the Department estimates that a Standard Ammunition Eligibility Check and a COE Verification will be completed in approximately two minutes. The Basic Ammunition Eligibility Check will take longer to complete, because that process requires a manual review of Department records by an analyst to determine eligibility.</p>
127.	Why can’t the background checks be completed instantly? The proposed regulations do not represent the best possible manner to implement the underlying statute.	<p>No change has been made in response to this comment. The Department has implemented the best possible solution for electronically conducting the eligibility checks pursuant to Penal Code section 30370. As stated in the Initial Statement of Reasons (inclusive of the addendum), the Department estimates that a Standard Ammunition Eligibility Check and a COE Verification will be completed in approximately two minutes. It is not possible to provide an instant response for a Basic Ammunition Eligibility Check because that process requires a manual review of Department records by an analyst to determine eligibility.</p>
128.	There are instances where the instant background check process did not prevent prohibited persons from purchasing firearms. The public therefore bears the burden of these regulations while given a false sense of security.	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>Alternatively, the comment may be interpreted as a claim that the proposed regulations do not represent the best possible manner to implement the underlying statute. As stated in the Initial Statement of Reasons, no other reasonable alternative was considered by the Department that would have been more effective, or as effective and less burdensome.</p>

#	Summarized Comment	DOJ Response
129.	Although I do not support background checks for ammunition purchases, I agree that Proposition 63 was passed according to legitimate procedures, and as such should be implemented. Specifically, the exemption for Certificate of Eligibility holders (Penal Code section 30370, subdivision (a)(2)) is sound public policy.	No change has been made in response to this comment because the Department determines that this comment is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.
130.	The Act requires the purchaser to be matched in the Automated Firearms System, to be eligible with a COE, or buy a firearm at the same time as purchasing ammunition? How many documented incidences have been cited showing that criminals legally purchased a firearm from a Federal firearms licensed dealer, purchased ammunition at the same time of taking delivery of that weapon and then committed a criminal act? This does not happen.	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).
131.	If the electronic system for requesting a background check fails (e.g. due to a power outage), will nobody in the state be approved to purchase ammunition? Will there be an alternative method?	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. Penal Code section 30370, subdivision (a) expressly directs the Department to electronically approve the purchase or transfer of ammunition through a vendor, with the exception provided in subdivision (d). Pursuant to Penal Code section 30352, subdivision (d), an ammunition vendor shall deny a sale or transfer if the vendor is unable to verify with the Department, in the manner specified, that the potential purchaser or transferee is authorized to do so.
132.	Fee for Certificate of Eligibility (COE) Verification process exceeds statutory authority. While Penal Code § 30370 provides for the recovery of a per-transaction fee of up to \$1.00, this is being misapplied as to COE holders. Firearms dealers have never before had to verify that a COE is still valid; therefore, doing so for ammunition purchases is unnecessary. Even if it is necessary to verify a COE, why is there a \$1 fee for COE verification? The cost of performing a check of personal data against the AFS is hardly the same as the more simple process of verifying a COE, yet they both cost the same amount.	No change has been made in response to this comment. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).  See also the Department’s response to comment #79.

<p>133. § 4302 Fails to Specify Criteria for Approval or Rejection. The proposed regulation at § 4302 fails to set forth any criteria at all, much less any objective measure, by which DOJ is to determine whether a purchaser or transferee “matches” an AFS entry under Penal Code § 30370. Nowhere is “match” defined in the proposed regulations. Of concern especially are at least four issues:</p> <p>(a) Will a mismatched address be a disqualifier? This would not be fair since individuals sometimes move frequently, and there is no requirement to update information with DOJ for firearm registration.</p> <p>(b) Will a mismatched telephone be a disqualifier? Again, telephone numbers change frequently, in many cases probably more often than addresses.</p> <p>(c) Will a change in name result in a denial? If so, this would have a discriminatory impact on women who change their names as a result of marriage, or dissolution of marriage.</p> <p>(d) If one mismatched category not enough to deny the transaction, will the presence of multiple factors result in a denial?</p>	<p>No change has been made in response to this comment. Penal Code section 30370, subdivision (b) provides the criteria for denial of an ammunition transaction, subsequent to a Standard Ammunition Eligibility Check. The Department has determined that no further interpretation is necessary to effectuate that statute.</p> <p>Specifically:</p> <p>a. Pursuant to Penal Code section 30370, subdivision (b), if the purchaser’s or transferee’s personal information, including “current address,” does not match an AFS entry, the transaction shall be denied. The Department determines that the commenter objects to the underlying statute and this comment is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is proposing regulations that will allow an individual to update his or her address in AFS. (See OAL Notice File Number Z-2018-0910-02.)</p> <p>b. It is necessary to collect the purchaser’s or transferee’s telephone number for reasons stated in the Initial Statement of Reasons (inclusive of the addendum). The purchaser’s or transferee’s telephone number is not one of the pieces of information identified by Penal Code section 30370, subdivision (b), as needing to be cross-referenced with the information maintained in the AFS, and therefore the lack of a match would not result in a denial.</p> <p>c. Pursuant to Penal Code section 30370, subdivision (b), if the purchaser’s or transferee’s personal information, including “name,” does not match an AFS entry, the transaction shall be denied. No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is proposing regulations that will allow an individual to update his or her name in AFS. (See OAL Notice File Number Z-2018-0910-02.)</p> <p>d. Pursuant to Penal Code section 30370, subdivision (b), if the purchaser’s or transferee’s personal information does not match an AFS entry, the</p>
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#	Summarized Comment	DOJ Response
		<p>transaction shall be denied. The Department has determined that no further interpretation of that statute is necessary to effectuate that law. The Department is proposing regulations that will allow an individual to update his or her AFS record. (See OAL Notice File Number Z-2018-0910-02.)</p>
134.	<p>Will the department be analyzing the particular caliber of ammunition being purchased against firearms registered in AFS? As noted above, there are several scenarios where a legal firearms would not appear in the registry, including millions of rifles and shotguns acquired in California prior to 2014. Individuals should not be precluded from purchasing ammunition for legally owned firearms by virtue of a requirement that did not exist at the time of purchase, nor does their exist any mandate to register such unregistered firearms. Nothing in the proposed regulation would prevent this type of abuse by DOJ.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. There is no statutory or regulatory prohibition on the purchase of ammunition for a firearm not recorded in AFS, and the Department will not be “analyzing” the particular caliber of ammunition being purchased against firearms registered in the Automated Firearms System (AFS). Sections 4303, 4305, and 4306 of the proposed regulations expressly provide for ammunition transactions by individuals who may not have an entry in AFS.</p> <p>Penal Code section 30352, subdivision (b) requires the Department to retain information submitted to it pursuant to subdivision (a); that information may only be used in the manner specified.</p>
135.	<p>If the personal information required for a background check does not directly correspond with the criteria by which a denial would result, then it should not be necessary for ammunition vendors to collect this information. Name, date of birth, and government identification number should be sufficient.</p>	<p>No change has been made in response to this comment. As stated in the Initial Statement of Reasons (inclusive of the addendum), the Department has determined that the personal information required to conduct the Standard Ammunition Eligibility Check, the Basic Ammunition Eligibility Check and the COE Verification is necessary to accurately identify persons who request approval to purchase ammunition, and to match those persons with the records available to the Department.</p>

#	Summarized Comment	DOJ Response
136.	<p>Requiring a background check for ammunition purchases violates the Commerce Clause of the US Constitution.</p> <p>(See Article 1, Section 8 of the US Constitution, <i>Edwards v California</i> (1941), and consolidated cases of <i>Granholm v Heald</i> and <i>Swedenburg v Kelly</i> [in which U.S. Supreme Court, on a 5-4 vote, found state laws that prohibited out-of-state wineries from selling wine over the Internet directly to consumers violated the Commerce Clause]).</p> <p>“This Court has long held that, in all but the narrowest circumstances, state laws violate the Commerce Clause if they mandate “differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.” (<i>Granholm v. Heald</i> (2005)), (<i>Swedenburg v. Kelly</i> (2005))</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to any implementation of the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department has no authority to not implement the underlying statute. Per Article 3, Section 3.5 of the Constitution of California:</p> <p>An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:</p> <p>(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;</p> <p>(b) To declare a statute unconstitutional;</p> <p>(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.</p>

#	Summarized Comment	DOJ Response
137.	<p>According to the US Supreme Court it is unconstitutional to charge a fee for the exercising of a right (Harper v Virginia Board of Elections 1966), which these proposed regulations would implement.</p> <p>See also <i>Murdock v. Pennsylvania</i>, 319 U.S. 105 (1943)</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to any implementation of the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department has no authority to not implement the underlying statute. Per Article 3, Section 3.5 of the Constitution of California:</p> <p>An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:</p> <p>(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;</p> <p>(b) To declare a statute unconstitutional;</p> <p>(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.</p>



#	Summarized Comment	DOJ Response
138.	<p>According to the US Supreme Court it is unconstitutional to register (record in a government database) the exercising of a right. (Thomas v Collins 1945, Lamont v Postmaster General 1965, Haynes v US 1968), which these proposed regulations would implement.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to any implementation of the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department has no authority to not implement the underlying statute. Per Article 3, Section 3.5 of the Constitution of California:</p> <p>An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:</p> <p>(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;</p> <p>(b) To declare a statute unconstitutional;</p> <p>(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.</p>

#	Summarized Comment	DOJ Response
139.	<p>According to the US Supreme Court it is unconstitutional to require a precondition on the exercising of a right. (Guinn v US 1915, Lane v Wilson 1939); (ATF FORM 4473, CCW, licenses, "Cooling-off"/"waiting" period, smart gun requirements..)</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to any implementation of the underlying statute and is neither specifically directed at the Department's proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department has no authority to not implement the underlying statute. Per Article 3, Section 3.5 of the Constitution of California:</p> <p>An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:</p> <p>(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;</p> <p>(b) To declare a statute unconstitutional;</p> <p>(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.</p>

#	Summarized Comment	DOJ Response
140.	<p>According to the US Supreme Court it is unconstitutional to require a license (government permission) to exercise a right. (Murdock v PA 1943, Lowell v City of Griffin 1939, Freedman v MD 1965, Near v MN 1931, Miranda v AZ 1966); (CCW, licenses..)</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to any implementation of the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department has no authority to not implement the underlying statute. Per Article 3, Section 3.5 of the Constitution of California:</p> <p>An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:</p> <p>(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;</p> <p>(b) To declare a statute unconstitutional;</p> <p>(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.</p>

#	Summarized Comment	DOJ Response
141.	<p>According to the US Supreme Court it is unconstitutional to delay the exercising of a right. (Org. for a Better Austin v Keefe 1971); (ATF FORM 4473, CCW, licenses, "Cooling-off"/"waiting" period...)</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to any implementation of the underlying statute. The Department has no authority to not implement the underlying statute and is neither specifically directed at the Department's proposed action nor to the procedures followed by the Department in proposing or adopting the action. Per Article 3, Section 3.5 of the Constitution of California:</p> <p>An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:</p> <p>(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;</p> <p>(b) To declare a statute unconstitutional;</p> <p>(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.</p>
142.	<p>These regulations do not clearly stipulate what additional fees an ammunition vendor can charge for each ammunition transaction. The regulations should include a statement concerning the fees allowed to be collected by an ammunition vendor. Specifically, the fee should be left to the discretion of the vendor, and not capped at \$10 per transaction.</p>	<p>No change has been made in response to this comment. The comment appears to be referring to a provision of SB 1235 which did not become operative due to the passage of Proposition 63. That provision, which would have adopted Penal Code section 30364, would have set a limit on the fees that an ammunition vendor could charge for each ammunition purchase authorization at \$10. These regulations do not implement that proposed section. Rather, the Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>

#	Summarized Comment	DOJ Response
143.	I object to the government knowing how much ammunition I purchase.	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>Penal Code section 30352, subdivision (a)(3) requires the ammunition vendor to record the amount of ammunition sold or otherwise transferred. Penal Code section 30352, subdivision (b) requires the ammunition vendor to submit that information to the Department.</p>
144.	I object to the government knowing what types of ammunition I purchase.	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>Penal Code section 30352, subdivision (a)(3) requires the ammunition vendor to record the types of ammunition sold or otherwise transferred. Penal Code section 30352, subdivision (b) requires the ammunition vendor to submit that information to the Department.</p>
145.	<p>Opposition on the basis of a perceived lack of clarity regarding how to obtain an ammunition purchase authorization certificate or identification card:</p> <p>a. The regulations are vague as to how a CA resident obtains a certificate to purchase ammunition in CA, what the cost of the certificate is, how long it is good for, and what, if any, is the waiting period once an individual has a certificate to pick up the ammunition.</p> <p>b. The process to obtain an ammunition purchase authorization, and its related limitations, is overly burdensome.</p>	<p>No change has been made in response to these comments. The comments appear to be referring to a provision of Proposition 63 which did not become operative. That provision would have allowed individuals to apply for a 4-year ammunition purchase authorization, sometimes referred to as a “certificate” to purchase ammunition (see Proposition 63, Penal Code section 30370). These regulations do not implement that proposed provision. Rather, the Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>

#	Summarized Comment	DOJ Response
146.	Why is the COE Verification Process in proposed section 4305 different than the process in proposed section 4306 for a Federal Firearms License holder?	No change has been made in response to this comment. The COE Verification process in section 4305 implements Penal Code section 30370, subdivision (a)(2). The process in section 4306 makes specific the requirement that individuals who are exempted from the ammunition authorization program per Penal Code section 30352, subdivision (e) are “properly identified.” The proposed regulations are clear as to this distinction. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).
147.	I have tried to contact you by telephone several times but your system fails to record a message.	The Department interprets this comment as a procedural objection regarding Government Code section 11346.5, subdivision (a)(14). Several other commenters were able to successfully contact the Department at the telephone number provided, and no other commenter expressed difficulty contacting the Department at the number provided on the Notice of Proposed Rulemaking, or leaving a message in the voicemail box for that telephone number.
148.	The California government is trying to disincentivize firearms usage by adding barriers to obtaining the required supplies.	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).

#	Summarized Comment	DOJ Response
149.	<p>The proposed regulations are confusing and vague. If someone pays the \$19 fee for a Basic Ammunition Eligibility Check and is approved for that single transaction, do they have to go through the same process, and pay the same fee, the next time they wish to purchase ammunition? Or are they then “in the system” and only have to undergo the Standard Ammunition Eligibility Check in the future?</p>	<p>No change has been made in response to this comment. See the Department’s response to comment #107.</p> <p>If an individual’s personal information matches an entry in the AFS (e.g., from a previous firearm transaction), the individual is eligible for both a Basic Ammunition Eligibility Check and a Standard Ammunition Eligibility Check. If an individual’s information does not match an entry in the AFS system, and the individual does not hold a current Certificate of Eligibility, the individual may only be eligible for a Basic Ammunition Eligibility Check. There is no statute, nor any proposed regulation, whereby approval of a single ammunition transaction subsequent to a Basic Ammunition Eligibility Check would make an individual eligible for a Standard Ammunition Eligibility Check in the future.</p> <p>The Basic Ammunition Eligibility Check is the procedure developed pursuant to Penal Code section 30370, subdivision (c), by which persons who are not prohibited from purchasing or possessing ammunition may be approved for a single ammunition transaction or purchase. The Department has changed the title of proposed section 4303 to “Basic Ammunition Eligibility Check (Single Transaction or Purchase).” The parenthetical “(Single Transaction or Purchase)” has been included in the title of section 4303 because this language mirrors Penal Code section 30370, subdivision (c), which section 4303 implements. Both the regulation and the statute make clear that the Basic Ammunition Eligibility Check provides a determination for a single transaction or purchase.</p>
150.	<p>I have little faith the system will work within a minute, so the time lag values and costs to both retailers and customers is highly suspect.</p>	<p>No change has been made in response to this comment. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>
151.	<p>The estimated number of ammunition purchases and transactions is inflated. I suspect that it has been inflated for purpose of generating additional income to DOJ, to cover the start-up and ongoing costs of the system.</p>	<p>No change has been made in response to this comment. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum). The Department has provided the best possible estimate given there is no current data that tracks California ammunition sales.</p>

#	Summarized Comment	DOJ Response
152.	There is no timeframe provided in proposed section 4303 for when purchasers will be notified of the reason for the rejection.	<p>No change has been made in response to this comment. The Department is unable to provide a specific time frame for when a Basic Ammunition Eligibility Check will be completed, because that process requires a manual review of Department records by an analyst to determine eligibility.</p> <p>See also the Department’s response to comments #126 and 127.</p>
153.	I see no penalty whatsoever if a felon tries to buy ammunition and gets caught. If there is no real enforcement of the purported targets of background checks (i.e., to prevent prohibited persons from purchasing ammunition), there is no need to unnecessarily burden everyone else.	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>
154.	This process is cumbersome. Every time I want to purchase ammunition I will have to provide the same information over and over again. Isn’t there a better way to minimize this redundancy?	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>Alternatively, this comment may be interpreted as a claim that the proposed regulations do not represent the most effective manner in carrying out the purpose for which the regulation is proposed. As stated in the Initial Statement of Reasons, no other reasonable alternative was considered by the Department that would have been more effective, or as effective and less burdensome to affected private persons than the proposed regulations.</p> <p>See also the Department’s response to comment #107.</p>



#	Summarized Comment	DOJ Response
155.	<p>If the transaction is approved, why must dealers waste more time to record the date and time the ammunition was delivered? Why is it not the case that the ammunition can be delivered anytime within an X number of days window following an approval? If the purpose is to check eligibility, then why is the state wanting to record a delivery? Is it not sufficient to just verify the eligibility?</p>	<p>The Department has amended the proposed regulations in response to this comment. Section 4308, subdivision (c)(2) has been amended to remove the requirement that the vendor record the time and date the ammunition is delivered, and instead to require that the vendor submit the ammunition sale information required by Penal Code section 30352, subdivision (a). Per Penal Code section 30352, subdivisions (a) and (b), ammunition vendors must, at the time of delivery, record specified information and electronically submit that information to the Department. This requirement has been duplicated in the regulation for the purpose of clarity.</p>
156.	<p>Section 4303. How does an ammunition purchaser transition from Basic to Standard Eligibility Check, in order to not have to pay the \$19 fee every time?</p>	<p>No change has been made in response to this comment because the Department determines that this comment is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>A purchaser does not “transition” from one type of eligibility check to another; authorization is granted pursuant to the requirements of Penal Code section 30370 as implemented by sections 4302 and 4303. If an individual’s information does not match an entry in the AFS system, and the individual does not hold a current Certificate of Eligibility, the individual may only be eligible for a Basic Ammunition Eligibility Check. If an individual’s personal information matches an entry in the AFS, the individual is eligible for both a Basic Ammunition Eligibility Check and a Standard Ammunition Eligibility Check.</p>
157.	<p>Sections 4305. Are purchasers of ammunition also required to obtain a Certificate of Eligibility?</p>	<p>No change has been made in response to this comment because the Department determines that this comment is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Per Penal Code section 30370, subdivision (a)(2), a person who holds a current Certificate of Eligibility, as verified by the Department, is authorized to purchase ammunition, but a purchaser of ammunition is not required to obtain a Certificate of Eligibility.</p>

#	Summarized Comment	DOJ Response
158.	Section 4306. A valid Federal Firearms License is listed as acceptable identification to prove the individual is exempt from Departmental approval. Does this include a Type 03 (Curio & Relic) FFL?	<p>The Department has amended the proposed regulations in response to this comment. Section 4306 has been amended to clarify what types of Federal Firearms Licenses will provide proper identification for the exemption types listed in Penal Code section 30352, subdivision (e).</p> <p>The Department has determined that, by itself, a Type 03 (Curio and Relic) FFL would not properly identify any of the persons listed by Penal Code section 30352, subdivision (e).</p>
159.	Section 4307. An internet/telephone service provider cannot be mandated to provide documentation of their inability to provide service to an ammunition vendor. This creates a hardship for the ammunition vendor without service, and creates an unfair advantage in the marketplace.	<p>No change has been made in response to this comment. Penal Code section 30370, subdivision (d) provides that, for a vendor that cannot electronically verify a person’s eligibility via internet connection, the Department must provide a telephone line to verify eligibility. That option is made available “to ammunition vendors who can demonstrate legitimate geographical and telecommunications limitations in submitting the information electronically and are approved by the Department to use the telephone line verification.” The Department has determined that proposed section 4307 provides the best interpretation of what it would mean for a vendor to “demonstrate legitimate geographical and telecommunications limitations.” The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>
160.	Because some individuals are exempted, the law creates first and second class citizens.	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>

#	Summarized Comment	DOJ Response
161.	<p>Most local enforcement agencies issue new ammunition to current employees on a yearly basis. Peace officers are often bound by their agencies to carry particular types of ammunition. If a peace officer cannot purchase the same type of ammunition on their own, they will be forced to carry unauthorized ammunition as reserve ammunition. This presents a liability. They will also be forced to practice with the unauthorized “range” ammunition, which is inadequate. I urge you to amend this law to allow active duty and retired law enforcement personnel to purchase ammunition online, and not just through their agencies.</p>	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute (Penal Code section 30352, subdivision (e)(7)), and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>
162.	<p>The regulations are too vague. On what basis would a background check result in a denial? There are no guidelines.</p>	<p>No change has been made in response to this comment. Penal Code section 30370 provides the criteria for denial of an ammunition transaction, subsequent to a Standard Ammunition Eligibility Check or Basic Ammunition Eligibility Check. Federal law and California Penal Code section 30305 stipulate who is prohibited from owning, possessing or having in their custody ammunition. The Department has determined that no further interpretation is necessary to effectuate those statutes.</p> <p>See also the response to comment #133.</p>
163.	<p>How would the proposed regulations benefit the State of California if individuals that are already prohibited to possess ammunition be unable to obtain Department approval to purchase ammunition?</p>	<p>No change has been made in response to this comment because this is a generalized comment in opposition to the proposed regulation and to the underlying statute, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum). Currently there is no mechanism to stop a prohibited person from purchasing ammunition at the point-of-sale.</p>

#	Summarized Comment	DOJ Response
164.	How can a vendor absolutely ensure the ammunition purchaser or transferee is not prohibited? Could the vendor be legally and morally liable if a purchase or transfer was made to a prohibited individual that uses the ammunition to commit a crime if the eligibility check was conducted and approved by the Department?	No change has been made in response to this comment. Per Penal Code section 30370, subdivision (d), a vendor is prohibited from providing a purchaser or transferee ammunition without Department approval. Proposed section 4308, subdivision (a) explains how Department approval will be communicated to the vendor, and 4308, subdivision (b) explains that, once approval has been communicated, ammunition may be delivered. Questions regarding any potential future liability are outside the scope of these regulations.
165.	Does the proposed regulation rely on existing regulations or eligibility-check processes to keep prohibited individuals from purchasing ammunition?	<p>No change has been made in response to this comment because the Department determines that this comment is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>The proposed regulations implement new laws recently passed by the Legislature and the voters of California, as stated in the Initial Statement of Reasons.</p>
166.	Are there any flaws in the existing regulations or eligibility-check processes if a prohibited individual is in possession of ammunition now?	<p>No change has been made in response to this comment because the Department determines that this comment is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. There are no existing regulations that regulate the purchase of ammunition in California.</p> <p>Alternatively, this comment may be interpreted as a claim that the proposed regulations do not represent the most effective manner in carrying out the purpose for which the regulation is proposed. As stated in the Initial Statement of Reasons, no other reasonable alternative was considered by the Department that would have been more effective, or as effective and less burdensome to affected private persons than the proposed regulations.</p>

#	Summarized Comment	DOJ Response
167.	If prohibited individuals already possess ammunition, how can the process of the proposed regulation benefit public safety?	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>The Department is unable to identify prohibited individuals who are currently in possession of ammunition. The regulations, by implementing Penal Code sections 30352 and 30370, will help prevent prohibited individuals from acquiring ammunition in the future.</p>
168.	Does the Department consider public safety solely based on ammunition possession by prohibited individuals? What factors does the Department consider affects public safety? I believe there are many other factors that affect public safety and the proposed regulation to prevent prohibited individuals from possessing ammunition, when those individuals are already prohibited, is redundant in its redundancy.	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>The Department disagrees that requiring eligibility checks for ammunition transactions is redundant of a law prohibiting certain individuals from possessing ammunition. The eligibility checks implemented by these regulations will help enforce the prohibition.</p> <p>The Initial Statement of Reasons states, “These regulations will benefit public safety by various means, including regulating the sale of ammunition to prevent the acquisition by convicted felons, the dangerously mentally ill and other persons who are prohibited from possessing firearms and ammunition.”</p>
169.	How can the proposed regulations not have direct impact on businesses if the fee for ammunition eligibility checks must be collected by the business and transferred to the Department by the businesses? Management and accounting efforts must be employed by the business.	<p>No change has been made in response to this comment. As stated in the Initial Statement of Reasons, the Department estimates that there will be a direct cost for ammunition vendors to process these transactions.</p>

#	Summarized Comment	DOJ Response
170.	California businesses will have a disadvantage compared to out-of-state businesses.	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).
171.	Obtaining a Certificate of Eligibility (COE) is a fairly extensive process including fingerprinting. It would appear that alone should be sufficient for individuals that have one to use to establish the ability to purchase ammunition for the duration of the COE. Why can’t a COE by itself be used to establish one’s ability to purchase ammunition? Why does there need to be an additional background check?	<p>No change has been made in response to this comment. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>Proposed section 4305 provides the process by which a Certificate of Eligibility may be verified as being “current,” per Penal Code section 30370, subdivision (a)(2). The regulations provide for three types of eligibility checks—Basic Ammunition Eligibility Check, Standard Ammunition Eligibility Check and COE Verification. An individual who holds a current Certificate of Eligibility is eligible for COE Verification and is not required to undergo any other background check.</p>
172.	How long are the ammunition sales records kept?	<p>No change has been made in response to this comment because the Department determines that this comment is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Pursuant to Penal Code section 30355, all records required by Article 3, relating to Ammunition Vendors, shall be maintained on the premises of the vendor for a period of not less than five years from the date of the recorded transfer.</p> <p>Pursuant to Penal Code section 30352, subdivision (b), the Department “shall retain” the information submitted to it pursuant to subdivision (a).</p>

#	Summarized Comment	DOJ Response
173.	How is the records information going to be used? Because ammunition is a non-durable good, what use is there in keeping historical records?	<p>No change has been made in response to this comment because the Department determines that this comment is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Pursuant to Penal Code section 30352, subdivision (b), the information submitted to it pursuant to subdivision (a) may be used by the Department and those entities specified in, and pursuant to, subdivision (b) or (c) of Section 11105, through the California Law Enforcement Telecommunications System, only for law enforcement purposes.</p>
174.	Ammunition sales records could be used by law enforcement to harass law abiding citizens engaged in lawful activities. What safeguards are being utilized to prevent harassment?	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>
175.	Ammunition Sales At Shooting Ranges are apparently exempt from the regulations as long as the ammunition does not leave the facility. How is this going to be policed? Will the ranges have to search each customer’s bags, etc. before they leave for compliance? Will DOJ personnel perform spot checks? What happens if they purchase 100 rounds to shoot and only shoot 99? Is that one round significant? Couldn’t someone ineligible to purchase ammunition simply go to a range, purchase ammunition and leave? Who would be able to stop them? Are you putting the range personnel into a police function?	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. These regulations implement the ammunition authorization program as enacted by Penal Code sections 30352 and 30370.</p> <p>Penal Code section 30352, subdivision (e)(3) exempts ammunition vendors from the requirements of subdivisions (a) and (d), as specified. The Department has determined that it is the responsibility of the target facility to ensure that the exemption provided by subdivision (e)(3) is satisfied—including the final disposition of any ammunition sold or transferred—because the Department is not involved in these purchases or transfers.</p>

#	Summarized Comment	DOJ Response
176.	I only own one firearm. Will these regulations preclude me from purchasing ammunition in a caliber other than for the firearm I personally own?	<p>No change has been made in response to this comment because the Department determines that this comment is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>There is nothing in Penal Code sections 30352 or 30370, or these regulations, that would prohibit someone from purchasing a particular type of ammunition.</p>
177.	I only own one firearm. If I were to sell the firearm or transfer the firearm ownership to my daughter, would I then be precluded from purchasing ammunition without having to go through the One Time Purchase process and pay the \$19.00, or would my previous ownership allow me to only pay the One Dollar Fee?	<p>No change has been made in response to this comment. Pursuant to Penal Code section 30370, subdivision (b), if the purchaser’s or transferee’s information does not match an entry in the Automated Firearm System, the transaction shall be denied. The Automated Firearms System (AFS) is a repository of firearm records, populated by way of firearm purchases or transfers at a California licensed firearm dealer, registration of assault weapons, an individual’s report of firearm ownership to the Department, Carry Concealed Weapons Permit records, or records entered by law enforcement agencies. If, due to a sale or transfer, the entry in the AFS is updated so that the person is no longer associated with that entry, then that person’s information would not match an entry in the AFS, and that person would then not be authorized to purchase or transfer ammunition subsequent to a Standard Ammunition Eligibility Check.</p>
178.	The One Time Purchase process appears to be discriminatory to otherwise law abiding California residents simply because they have not purchased a firearm. Why are law abiding Californians treated differently than firearm owners?	<p>No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>



#	Summarized Comment	DOJ Response
179.	Section 4303: Why isn't the fact that someone is not on some Prohibited Persons List sufficient for purchase?	No change has been made in response to this comment. This comment may be interpreted as a claim that the proposed regulations do not represent the most effective manner in carrying out the purpose for which the regulation is proposed. The Basic Ammunition Eligibility Check requires a manual review of Department records by an analyst to determine eligibility. This is because there is no extant list of all persons who are prohibited from owning, possessing, or having under their custody or control ammunition pursuant to Penal Code section 30305 or federal law. In addition to lacking the authority to create such a list, doing so, and keeping it up to date, would be prohibitively expensive.
180.	Why is the Background Check Letter only good for one purchase? It should, as a minimum, be good to purchase ammunition for the full 30 days. Vendors can easily make a copy of the letter for their records.	No change has been made in response to this comment. The certification (letter) is only valid for one purchase during the 30 day period to ensure the head of agency is aware of and authorizes all ammunition purchases.
181.	How is the \$19.00 Standard Ammunition Eligibility Check conducted? Is this initiated at/or by the Ammunition Vendor? Would the fee be submitted through the Ammunition Vendor? If so, would the letter be sent directly to the customer?	<p>No change has been made in response to this comment.</p> <p>The fee for a Standard Ammunition Eligibility Check is \$1, not \$19.</p> <p>Section 4302 explains the process by which a Standard Ammunition Eligibility Check is initiated.</p> <p>Section 4309 explains the process by which the vendor shall make payments for the previous month's ammunition eligibility check and COE Verification activity.</p> <p>Sections 4302, subdivision (d) and 4308, subdivision (a) explain that an approved eligibility check or COE verification will result in a status update to the DES transaction record. A letter would only be sent to the customer pursuant to section 4303, subdivision (d)(2), when a Basic Ammunition Eligibility Check is denied.</p>

#	Summarized Comment	DOJ Response
182.	Does this Check need to be submitted to DOJ by the purchaser directly? If so, is it by Mail? Website? Will credit cards be acceptable? Will there be a form on the DOJ website to submit? Will it need to be mailed in? Can it be submitted on line?	No change has been made in response to this comment. Section 4309, subdivision (a) is clear that monthly billing statements for the previous month's ammunition eligibility check and COE verification activity will be delivered to the ammunition vendor's account. Section 4309 is clear that payment shall be made using a credit card or debit card.
183.	How long is this check anticipated to take?	No change has been made in response to this comment. See the Department's response to comments #126, 127 and 152.
184.	After reviewing your economic analysis of the proposed regulations, I find that your analysis is flawed. It is either erringly simplistic, exceedingly optimistic or deliberately misleading. I believe your contention that these regulations have no economic impact to businesses, especially small businesses, is wrong.	No change has been made in response to this comment because this is a generalized comment in opposition to the proposed regulation and to the underlying statute, and is neither specifically directed at the Department's proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum), specifically the section "Economic Impact Analysis." The Department provided the best possible estimate given there is no current data that tracks California ammunition sales.
185.	Without any actual data to determine the sales, I would actually suspect that sales may go down due to the increase in obtrusive regulations. Was any thought given to the probability that sales would go down, especially for casual shooters?	No change has been made in response to this comment. The Department disagrees that these regulations will lead to fewer ammunition sales. As stated in the Initial Statement of Reasons, the Department estimates that over 98 percent of authorizations will be conducted using either a Standard Ammunition Eligibility Check or COE verification, and neither the \$1 fee nor, the approximated 2 minute process will deter firearm enthusiasts from purchasing ammunition. As for the Basic Ammunition Eligibility Check, the Department determines that it is most likely that firearm enthusiasts will purchase the same quantity of ammunition, but in fewer transactions. The Department's ammunition purchase estimate methodology is presented in the Initial Statement of Reasons.

#	Summarized Comment	DOJ Response
186.	<p>The two minute additional time is unrealistic, as is your assumption that people will continue to shop during those two minutes. Is the two minute estimate based on the assumption of time for the actual clearance inquiry only?</p>	<p>No change has been made in response to this comment. The Standard Ammunition Eligibility Check (SAEC) and the COE verification process, which the Department estimates will comprise over 98 percent of authorization requests, are automated checks of records contained in the Department’s computer systems. The two minute estimate is based on the time it takes the ammunition vendor to enter the data and for the Department’s computer system to complete the check. The majority of the data for the SAEC and the COE verification processes are automatically collected via a magnetic strip reader, as described by Penal Code section 28180. The date of sale and the salesperson’s name will be collected automatically through the Dealers Record of Sale Entry System (DES) account.</p>
187.	<p>The amount of time to conduct a sale of ammunition will include all the data input and records- name, address, Driver’s License number, date of sale, detailed input of each box of ammo purchased and input of salesperson name. This is a significant impact on the business. Were these factors included in your time analysis? Or were they not considered as part of the regulations impact?</p>	<p>No change has been made in response to this comment. The Standard Ammunition Eligibility Check (SAEC) and the COE verification process, which the Department estimates will comprise over 98 percent of authorization requests, are automated checks of records contained in the Department’s computer systems. The two minute estimate is based on the time it takes the ammunition vendor to enter the data and for the Department’s computer system to complete the check. The majority of the data being collected for the SAEC and the COE verification processes are automatically collected via a magnetic strip reader, as described by Penal Code section 28180. The date of sale and the salesperson’s name will be collected automatically through the Dealers Record of Sale Entry System (DES) account.</p>

#	Summarized Comment	DOJ Response
188.	<p>Your assumption that people will continue to shop during the clearance inquiry is unlikely. State law requires the sale of ammunition to be conducted in a face-to-face sale. Sales personnel are required to obtain the ammunition personally to the customer. This takes a lot of time. No customer is going to leave the counter to shop at this point, especially if the only reason they came into the store was to purchase ammunition. So there would be no economic advantage to the business. I would propose it would be the exact opposite, they would tend to lose some business from the overall situation of purchasing ammunition.</p> <p>How was this assumption of continued purchasing arrived at? What data or information was used in this assumption? Was there any factual information used in arrival of this conclusion?</p>	<p>No change has been made in response to this comment. As stated in the Initial Statement of Reasons (inclusive of the addendum), the Department estimates that 98 percent of eligibility checks will take approximately two minutes to process. Two additional minutes in the store provides two additional minutes for the purchaser or transferee to purchase additional items. Many stores provide merchandise for sale at or near the register.</p> <p>There is no data that the proposed regulations will impose a significant burden on ammunition purchases. At this point, the Department can only use its best estimates as to the impact on ammunition sales. As stated in the Economic Impact Assessment in the Initial Statement of Reasons, the Department has used the most reasonable estimates derived from extensive research into sales of ammunition.</p>
189.	<p>Your assessment included that the fee cost would not deter any purchases. This is incorrect.</p>	<p>No change has been made in response to this comment. The Department disagrees that these regulations will lead to fewer ammunition sales. As stated in the Initial Statement of Reasons, the Department estimates that over 98 percent of authorizations will be conducted using either a Standard Ammunition Eligibility Check or COE verification, the Department has determined that the \$1 fee will not deter firearm enthusiasts from purchasing ammunition. As for the Basic Ammunition Eligibility Check, the Department determines that it is most likely that firearm enthusiasts will purchase the same quantity of ammunition, but in fewer transactions. The Department's ammunition purchase estimate methodology is presented in the Initial Statement of Reasons.</p>

#	Summarized Comment	DOJ Response
190.	Is the One Dollar Fee (\$1.00) per transaction or per box of ammunition?	<p>No change has been made in response to this comment. Penal Code section 30370, subdivision (e) requires the Department to recover the reasonable cost of activities related to the ammunition authorization program by charging a per transaction fee.</p> <p>The proposed \$1 fee to conduct a Standard Ammunition Eligibility Check, or to verify a Certificate of Eligibility, is collected per ammunition purchase or transfer, without limit or reference to the amount of ammunition being purchased or transferred. The Department disagrees that this is unclear in the proposed regulations, which refer in the singular to “the purchase or transfer” (section 4302(c)) and “the ammunition purchase or transfer” (section 4305 (c)).</p>
191.	Your statement that ammunition vendors would be able to handle multiple transactions at a time is unrealistic. Do you really expect that customers would be open to having someone handle multiple transactions while they are waiting on their sale or that businesses would be willing to do that?	<p>No change has been made in response to this comment. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>
192.	The only increase in jobs is apparently the DOJ. These job costs appear to be assumed to be covered by inquiry fees. Do fees also cover the associated job costs, including health insurance, retirement benefits, etc.?	<p>No change has been made in response to this comment because the Department determines that this comment is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>As stated in the Initial Statement of Reasons (inclusive of the addendum), the fees are used to recover the reasonable cost of regulatory and enforcement activities related to the ammunition authorization program. This includes associated job costs.</p>

#	Summarized Comment	DOJ Response
193.	<p>Proposed Title 11 section 4306 (b) – For this proposed section, Penal Code Section 30352 is referenced as the statutory authority for its provisions. However, PC 30352 deals only with the recording of ammunition purchaser information as specified in subdivision (a) and exemptions thereto.</p> <p>Sworn peace officers are exempted under PC 30352 (e)(8) and are statutorily required only to provide ammunition vendors with “...verifiable written certification from the head of the agency...” This does not specifically include a “... photocopy of the front and back of the sworn state or local peace officer’s credential and California Driver License, or a photocopy of the front and back of a sworn federal officer’s business card and driver license...” as proposed.</p>	<p>The Department has amended the proposed regulations in response to this comment. Section 4306 has been amended to clarify the documentation required to meet the requirement in Penal Code section 30352, subdivision (e) that an exempted person be “properly identified.” The explanation of this change is provided in the Final Statement of Reasons.</p> <p>Penal Code section 30352 is referenced as the statutory authority because subdivision (e) of that section provides the exemption that is implemented by section 4306. Specifically, ammunition vendors are exempt from the requirements of Penal Code section 30352, subdivision (a), which involves the recording of information, and from subdivision (d), which requires the vendor to verify with the Department that a purchaser or transferee is authorized to purchase ammunition prior to completing a sale or transfer, if the person to whom the ammunition is being sold or transferred belongs to a class described in subdivision (e).</p> <p>Penal Code section 30352, subdivision (f) authorizes the Department to adopt regulations to implement the provisions of that section. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>
194.	<p>The cited authorizing statute does not specify that the required certification from the head of the agency shall expire 30 days after issuance or at any other future length of time. Yet, the proposed Title 11 regulations would impose a 30-day expiration date not specifically authorized by law.</p> <p>The proposed 30-day limitation on a head of agency’s authorization for a sworn peace officer to purchase ammunition would be unnecessary and unduly burdensome for both the head of an agency and the agency’s sworn peace officers. It would generally prove to be impractical and unworkable under the realities of law enforcement agency operations.</p>	<p>No change has been made in response to this comment. Penal Code section 30352, subdivision (f) authorizes the Department to adopt regulations to implement the provisions of that section. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum). As stated in the Initial Statement of Reasons, no other reasonable alternative was considered by the Department that would have been more effective, or as effective and less burdensome to affected private persons than the proposed regulations. The certification (letter) is only valid for one purchase during the 30-day period to ensure the head of agency is aware of and authorizes all ammunition purchases.</p>

#	Summarized Comment	DOJ Response
195.	<p>The proposed regulations to implement Penal Code Section 30352(e)(8) would adversely impact the suppliers of ammunition to law enforcement making the conduct of business unduly difficult and costlier with no significant benefit to the objective of keeping ammunition out of the wrong hands.</p> <p>Accordingly, law enforcement ammunition vendors are asking that the above described additional record keeping and 30-day ammunition purchase certification expiration for sworn peace officers be deleted from the proposed regulations.</p>	<p>No change has been made in response to this comment. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum). As stated in the Initial Statement of Reasons, no other reasonable alternative was considered by the Department that would have been more effective, or as effective and less burdensome to affected private persons than the proposed regulations.</p>
196.	<p>We request clarification relative to what types of documentation would be required or suggested to determine whether an individual meets the requirements for exemption under proposed section 4306(a)(1) and (3).</p>	<p>The Department has amended the proposed regulations in response to this comment. Section 4306 has been amended to clarify the documentation required to meet the requirement in Penal Code section 30352, subdivision (e) that an exempted person be “properly identified.” The explanation of this change is provided in the Final Statement of Reasons.</p>
197.	<p>Proposed Title 11 section 4306 (a) does not include Department of Justice (DOJ) licensed ammunition vendors. Not all DOJ Licensed Ammunition Vendors have a Federal Firearms License (FFL) as they do not also sell firearms and therefore have no need for an FFL. However, they are licensed by DOJ and should be listed in section 4306 (a) as well.</p>	<p>The Department has amended the proposed regulations in response to this comment. Section 4306 has been amended to include licensed Ammunition Vendors. Further explanation of this change is provided in the Final Statement of Reasons.</p>
198.	<p>In regards to the 30-day limit in proposed section 4306, does that apply to all exemptions for ammunition purchases or transfers?</p>	<p>No change has been made in response to this comment. As originally written in section 4306, subdivision (b), “the verifiable written certification from the head of the agency expires 30 days after issuance.” The same provision is written in the amended text, although the format has been changed, to provide additional clarity. As written, both originally and as amended, the 30-day limit can not reasonably be understood as applying to any other exemption.</p>
199.	<p>Ammunition vendors are not listed as exempt in section 4306; however, they are listed as an exempt party in Penal Code.</p>	<p>The Department has amended the proposed regulations in response to this comment. Section 4306 has been amended to include licensed Ammunition Vendors. Further explanation of this change is provided in the Final Statement of Reasons.</p>

#	Summarized Comment	DOJ Response
200.	Why should someone have to wait 30 days for the background check?	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. As stated in the Initial Statement of Reasons (inclusive of the addendum), the Department estimates that 98 percent of eligibility checks will take approximately two minutes to process. The Basic Ammunition Eligibility Check will take longer to complete, because that process requires a manual review of Department records by an analyst to determine eligibility. As stated in the Initial Statement of Reasons, no other reasonable alternative was considered by the Department that would have been more effective, or as effective and less burdensome to affected private persons than the proposed regulations.
201.	Those who don’t possess firearms are of no danger to the public if they choose to simply buy ammunition. Maybe it’s a family member buying a gift. Maybe it’s a spouse making a purchase before their partner goes to a big shooting competition. Maybe it’s simply someone going on a last minute shooting trip with friends for the first time. Only the firearm is dangerous, and there is already a background check process for each firearms purchase. The ammunition by itself is not dangerous, and thus there should be no background check for ammunition purchases and transfers.	No change has been made in response to this comment because the Department determines that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).
202.	<p>Concerns regarding the distinction between California residents and non-residents:</p> <p>a. This law is biased against residents of California. As I understand it, anyone from another state can bring unlimited ammunition into California, but a California resident cannot bring any amount of ammunition back into the state, despite legally owning it.</p> <p>b. Can non-residents of California bring in ammunition from out of state?</p>	<p>No change has been made in response to this comment. Specifically:</p> <p>a. The Department determines that this comment objects to the underlying statute and is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>b. The Department determines that this comment is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. See the Department’s response to comments #43 and 67.</p>



#	Summarized Comment	DOJ Response
203.	Can ammunition be “lent” to non-residents of California (since they might not be allowed to purchase it in California)?	<p>No change has been made in response to this comment because the Department determines that this comment is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>This comment is outside the scope of the proposed regulations. The purpose of Penal Code sections 30352 and 30370 is to limit the availability of ammunition to prohibited persons by preventing them from purchasing ammunition from licensed ammunition vendors subsequent to an eligibility check. Lending ammunition to another individual may violate other laws that are not the subject of these regulations.</p>
204.	During the sale and background check, is the secondary information supposed to be kept in a hardbound book for the vendor to maintain?	<p>No change has been made in response to this comment because the Department determines that this comment is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Pursuant to Penal Code section 30355, all records required by Article 3, relating to Ammunition Vendors, shall be maintained on the premises of the vendor for a period of not less than five years from the date of the recorded transfer.</p>

#	Summarized Comment	DOJ Response
205.	I only do my sales on weekends, and I personally don't have a computer or smartphone. I need to know how to do communications with the California DOJ and do the background check.	<p>No change has been made in response to this comment. Penal Code section 30370 stipulates the department shall electronically approve the purchase or transfer of ammunition through a vendor. As such, an ammunition vendor must acquire the electronic devices necessary (computer, iPad, etc.) to meet the requirement.</p> <p>If a vendor cannot electronically verify a person's eligibility via an internet connection, the department may provide a phone line to verify eligibility. However, pursuant to Penal Code section 30370, subdivision (d), this option is only available to an ammunition vendor who can demonstrate legitimate geographical and telecommunication limitations and who is approved by the Department to use the telephone line verification. Requirements for this authorization are outlined in section 4307 of the proposed regulations.</p> <p>The Dealer Record of Sale Entry System and the Customer Support Center are available 7 days a week.</p>
206.	Is there a minimum number of rounds before a background check is necessary? E.g., are the cartridge collectors, who would only be purchasing one round of peculiar or antique rounds of ammunition, also have to undergo the background check?	<p>No change has been made in response to this comment because the Department determines that this comment is neither an objection nor a recommendation regarding the Department's proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Neither Penal Code section 30352 nor 30370 provide a minimum number of rounds before an eligibility check is necessary.</p>
207.	What is the method to verify the Certificate of Eligibility or vendor's license or any exemption?	<p>The Department has amended the proposed regulations in response to this comment. Section 4305 has been amended to provide additional clarity as to how the Certificate of Eligibility verification may be requested.</p> <p>Section 4306 has been amended to provide additional clarity as to how to verify whether a person is exempt per Penal Code section 30352, subdivision (e).</p>

#	Summarized Comment	DOJ Response
208.	<p>Will everyone have to undergo the Basic Ammunition Eligibility Check the first time they purchase ammunition after July 1, 2019? Or, if they are already in the system, will they be able to undergo the Standard Ammunition Background Check?</p>	<p>No change has been made in response to this comment because the Department determines that this comment is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. Sections 4301, 4302, 4303, and 4305 have been amended to provide additional clarity as to how an eligibility check may be requested, as well as the statutory criteria which a purchaser or transferee may use to decide which eligibility check to request.</p> <p>Authorization is granted pursuant to the requirements of Penal Code sections 30352 and 30370, as implemented by these regulations. If an individual’s personal information matches an entry in the AFS, the individual is eligible for both a Basic Ammunition Eligibility Check and a Standard Ammunition Eligibility Check. If an individual’s information does not match an entry in the AFS system, and the individual does not hold a current Certificate of Eligibility, the individual may only be eligible for a Basic Ammunition Eligibility Check.</p>
209.	<p>If the ammunition vendor does not have a computer, how will the vendor be billed at the end of each month for the collection of the fees for sales transactions?</p>	<p>No change has been made in response to this comment. Penal Code section 30370 stipulates the department shall electronically approve the purchase or transfer of ammunition through a vendor. As such, an ammunition vendor must acquire the electronic devices necessary (computer, iPad, etc.) to meet the requirement.</p> <p>If a vendor cannot electronically verify a person’s eligibility via an internet connection, the department may provide a phone line to verify eligibility. However, pursuant to Penal Code section 30370, subdivision (d), this option is only available to an ammunition vendor who can demonstrate legitimate geographical and telecommunication limitations and who is approved by the Department to use the telephone line verification. Requirements for this authorization are outlined in section 4307 of the proposed regulations. If a vendor is approved to utilize the telephone line verification process, an invoice will be generated to collect the fees for sales transactions and mailed to their place of business.</p>

#	Summarized Comment	DOJ Response
210.	Will someone provide computers to ammunition vendors who do not have one?	<p>No change has been made in response to this comment. Penal Code section 30370 stipulates the department shall electronically approve the purchase or transfer of ammunition through a vendor. As such, an ammunition vendor must acquire the electronic devices necessary (computer, iPad, etc.) to meet the requirement.</p> <p>If a vendor cannot electronically verify a person’s eligibility via an internet connection, the department may provide a phone line to verify eligibility. However, pursuant to Penal Code section 30370, subdivision (d), this option is only available to an ammunition vendor who can demonstrate legitimate geographical and telecommunication limitations and who is approved by the Department to use the telephone line verification. Requirements for this authorization are outlined in section 4307 of the proposed regulations.</p>
211.	How will ammunition sales be processed during weekends? We have heard that the DOJ does not work on weekends.	<p>No change has been made in response to this comment. The Dealer Record of Sale Entry System and the Customer Support Center are available 7 days a week.</p>
212.	If I purchase ammunition in another state, but do not use it all while I am out of state, can I bring the remainder back into California?	<p>No change has been made in response to this comment because the Department determines that this comment is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Penal Code section 30314 stipulates California Residents may not transport ammunition into California without first having the ammunition delivered to an ammunition vendor for delivery pursuant to the procedures set forth in section 30312.</p>
213.	How is “ammunition” defined? Does it include all possible types of ammunition (centerfire, rimfire, curios & relics, etc)?	<p>No change has been made in response to this comment because the Department determines that this comment is neither an objection nor a recommendation regarding the specific proposed rulemaking.</p> <p>“Ammunition” is defined in Penal Code section 16150. The term “ammunition” is a commonly-understood term in the industry, and the Department determined that there was no need to define it further.</p>

#	Summarized Comment	DOJ Response
214.	The Department has a history of releasing regulations in a manner that subverts the ability of the public to participate in the regulatory process, and/or to implement the regulations adequately.	No change has been made in response to this comment because this is a generalized comment in opposition to the proposed regulation, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum). This regulation is being promulgated in full compliance with the requirements of the Administrative Procedure Act.
215.	The Department should suspend implementation of these regulations until the entire process for conducting an ammunition background check is finalized.	No change has been made in response to this comment. These regulations implement Penal Code sections 30352 and 30370 which, by their own provisions, become effective July 1, 2019. The process for conducting ammunition eligibility checks will be finalized before that date.
216.	If the Department is unable to implement the statutory mandate of a background check for ammunition purchases or transfers, or if it concludes that it lacks the authority to implement the statute, it should communicate that to the legislature, instead of promulgating bad regulations.	No change has been made in response to this comment because this is a generalized comment in opposition to the proposed regulation and to the underlying statute, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).

#	Summarized Comment	DOJ Response
217.	<p>Objections related to peace officer exemptions:</p> <p>a. Since there are already mechanisms in place to validate a peace officer’s exemption status, the requirements of proposed section 4306 are unnecessary.</p> <p>b. So we ask that you take a look and give clarification on section 4306(a)(1) and (3).</p>	<p>No change has been made in response to this comment. Specifically:</p> <p>a. The Department disagrees that there are already mechanisms in place to validate a peace officer’s exemption status per Penal Code section 30352, subdivision (e). The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum). As stated in the Initial Statement of Reasons, no other reasonable alternative was considered by the Department that would have been more effective, or as effective and less burdensome to affected private persons than the proposed regulations.</p> <p>b. Since the rest of the comment is entirely directed toward law enforcement exemptions, the Department interprets the provided references as inadvertent errors. The relevant subdivisions dealing with peace officer exemptions are sections 4306, subdivision (a)(2) and (4). The Department has amended the proposed regulations to provide greater clarity regarding the identification required to qualify for the exemptions provided by Penal Code section 30352, subdivision (e). Further explanation of the changes are provided in the Final Statement of Reasons.</p>
218.	<p>The procedure for law enforcement to interact with ammunition vendors is unnecessarily complicated. Ultimately, this is a burden on taxpayers, since public law enforcement is funded through taxes.</p>	<p>No change has been made in response to this comment because this is a generalized comment in opposition to the proposed regulation and to the underlying statute, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>Penal Code section 30352, subdivision (e)(7) and (8) provide that a law enforcement representative or sworn peace officer, respectively, must provide verifiable written certification from the head of agency, along with bona fide evidence of identity. The Department has determined that the proposed regulations represent the most effective manner in carrying out the purpose for which the regulation is proposed.</p>

#	Summarized Comment	DOJ Response
219.	<p>A lot of state agencies will be impacted by the extra record keeping and extra staff and accommodation of hours of delivery and access to the ammunition.</p>	<p>No change has been made in response to this comment because this is a generalized comment in opposition to the proposed regulation and to the underlying statute, and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p> <p>Penal Code section 30352, subdivision (e)(7) and (8) provide that a law enforcement representative or sworn peace officer, respectively, must provide verifiable written certification from the head of agency, along with bona fide evidence of identity. The Department has determined that the proposed regulations represent the most effective manner in carrying out the purpose for which the regulation is proposed.</p>

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Wasr	Mark	1,3,4,5,11	<a href="mailto:wasr.mark@gmail.com">wasr.mark@gmail.com</a>	Email
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Weiss	Dennis	1, 24, 38, 122, 145		Public Hearing
Weiss	Hal	Irrelevant	<a href="mailto:hpw3043@gmail.com">hpw3043@gmail.com</a>	Email
Wells	Hugh	1,9	<a href="mailto:w6wtu@newsrelay.net">w6wtu@newsrelay.net</a>	Email
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Wilson	Peter	1,2,3,4,35	<a href="mailto:peterw77@hotmail.com">peterw77@hotmail.com</a>	Email
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		1		Phone

Last Name	First Name	Comments	Contact (email or address)	Delivery Method

## PUBLIC COMMENTS AND DEPARTMENT OF JUSTICE RESPONSES

#	Summarized Comment	DOJ Response
1.	<p>What technique is being used to identify the specific changes vs the original issue of the document? Why are they not clearly identified?</p>	<p>No change has been made in response to this comment. The Department provided the following statement at the top of the proposed text, as noticed and made available to the public for 15 days: “The original proposed text is in single underline and single strikeout. Changes are illustrated by double underline for proposed additions and double strikeout for proposed deletions.” Changes to the proposed text were illustrated in that manner.</p>
2.	<p>Due to the fact that it does not include all FFL holders and people with a COE. All FFL and COE holders have gone through background checks and should still be except from having to continue to go through more background checks to buy ammo.</p> <p>I oppose removing a Type 03 FFL from the text [as an exemption type].</p>	<p>No change has been made in response to this comment. Penal Code section 30352, subdivision (e) provides an exhaustive list of categories of individuals who are exempt from the requirement to obtain approval from the Department prior to the sale or transfer of ammunition. The Department lacks the authority to expand upon these statutory exemptions.</p> <p>Additionally, the Department notes that a Type 03 FFL was not ever specified in the proposed regulations. Section 4306(a)(1) of the regulations as originally noticed provided that “a valid Federal Firearms License” would identify an individual who is exempt from Department approval to purchase or transfer ammunition. The Department determined this statement was too general, and amended the text to specify which types of FFL would apply to particular classes of persons identified as being exempt by Penal Code section 30352, subdivision (e).</p>
3.	<p>You don’t have any authority to create any gun laws or regulations.</p>	<p>No change has been made in response to this comment. The Department is authorized to promulgate these regulations pursuant to Penal Code sections 30352 subdivision (f), and 30370 subdivision (g).</p>



#	Summarized Comment	DOJ Response
4.	<p>[P]roposed subdivision (c) of section 4306 is unclear on this point as it uses the term “authorized associate” that does not appear in the authorizing statute cited in the proposed regulations (pc 30352) or defined in proposed regulatory section 4301.</p> <p>As stated above, though, proposed section 4306(c) lacks clarity on this point and clarification is therefore requested.</p> <p>Also, since the term “authorized associate” as used in proposed subdivision (c) is not defined, ammunition vendors are provided with no information relative to who is an authorized associate, or who would designate a person as an authorized associate, for purposes of the proposed regulations.</p> <p>b. Furthermore, the lack of clarity in subdivision (c) could potentially put it in conflict with subdivision (d) which clearly applies to an <u>individual</u> purchaser, not to the law enforcement and the exempt business entities described above to whom ammunition orders are lawfully shipped.</p>	<p>No change has been made in response to this comment. An “associate” is a commonly-used term in business to describe someone who works for the business. Both 4306(c) and 4308(c) refer to “the ammunition vendor COE holder, authorized associate, or salesperson”; in context, an “associate” is an employee. The term “authorized” refers to the ammunition vendor’s authorization of the associate as an agent to act on its behalf.</p> <p>The Department determined that the provision of Penal Code section 30352, subdivision (c), that “an ammunition vendor shall require bona fide evidence of identity” does not refer exclusively to the person or entity named on the ammunition vendor license. Penal Code section 30347 implicitly provides that an “agent or employee” may act for the ammunition vendor. The Department’s language in 4306(c) and 4308(c) provide the Department’s interpretation that the COE holder, authorized associate or salesperson may complete the transaction, as specified. The Department disagrees that this is unclear.</p> <p>See the Final Statement of Reasons, Update of the Initial Statement of Reasons, section 4306(c), for additional information.</p> <p>b. Furthermore, the Department disagrees that subdivision (c) is in conflict with subdivision (d). Proposed section 4301(n) defines “purchaser or transferee” as “an individual,” as specified. Throughout Penal Code sections 30352 and 30370, and these regulations, the person who receives ammunition is identified as an individual person (e.g., purchaser, transferee, gunsmith, an authorized law enforcement representative, a sworn peace officer, etc). An ammunition vendor license may be granted to an entity other than a natural person, but the vendor must still identify a “responsible person,” per Penal Code section 30385, subdivision (c). The Department disagrees that this is unclear.</p>

<p>5. Opposition to the perceived inability of people from out of state to buy or transfer ammunition:</p> <p>a. DOJ has stated in its Initial Statement of Reasons (“ISOR”) Addendum that the information to be collected from a prospective purchaser “must be collected in the manner described in Penal Code section 28180.” Penal Code section 28180 requires firearm dealers to collect a purchaser’s name, date of birth, and driver’s license or identification number “from the magnetic strip on the purchaser’s driver’s license or identification and shall not be supplied by any other means, except as authorized.” But Penal Code section 28180 also states that if the magnetic strip reader is unable to obtain the required information, the firearms dealer “shall obtain a photocopy of the identification as proof of compliance.” And while it may be true that California’s new ammunition sales restrictions require ammunition vendors to collect a purchaser’s information “as described in Section 28180,” the law also makes clear that out-of-state identification may be used when purchasing ammunition. See Cal. Penal Code § 30370(b) (requiring information to be collected pursuant to Penal Code section 28180); Cal. Penal Code § 30352(a)(2) (requiring the purchaser’s driver’s license or other identification number “and the state in which it was issued” to be recorded upon delivery of the ammunition).</p> <p>b. Regardless, denying non-California-residents their right to acquire ammunition would run afoul of multiple constitutional guarantees. The Second Amendment “implies a corresponding right to obtain the bullets necessary to use them” and a “regulation eliminating a person’s ability to obtain or use ammunition could thereby make it impossible to use firearms for their core purpose” thus violating that right. <i>Jackson v. City &amp; Cty. of San Francisco</i>, 746 F.3d 953, 967-68 (9th Cir. 2014). The right to travel guarantees that “a citizen of one State who travels in other States, intending to return home at the end of his journey, is entitled to enjoy the ‘Privileges and Immunities of Citizens in the several States’ that he visits.” <i>Saenez v. Roe</i>, 502 U.S. 489, 501 (1999) (quoting U.S. Const. Art. IV, §2, cl. 1). Facially discriminatory</p>	<p>No change has been made in response to this comment. Specifically:</p> <p>a. The Department determined that this comment is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>b. The ability of a person from out of state to purchase or transfer ammunition depends on the method by which they attempt to do so.</p> <ol style="list-style-type: none"> <li>1. The Department has determined that, pursuant to statute, an individual from out of state would not be able to be granted authorization to purchase ammunition subsequent to a Standard Ammunition Eligibility Check. Penal Code section 30370, subdivision (b) requires the Department to cross-reference the purchaser’s or transferee’s current address with the information maintained in the AFS. However, pursuant to Penal Code section 26815, no firearm shall be delivered unless the purchaser, transferee, or person being loaned the firearm provides evidence of identity pursuant to Penal Code section 16400. Penal Code section 16400 provides that the identification must be a valid California driver license or identification card issued by the Department of Motor Vehicles, both of which require proof of residency in California. In addition, section 922, title 18 of the United States Code also prohibits the sale of any firearm to a person the transferor knows or has reasonable cause to believe does not reside in the state in which the transferor resides. The Automated Firearms System is a repository of firearm records maintained by the Department, as established by Penal Code section 11106. The AFS is populated by way of firearm purchases or transfers at a California licensed firearm dealer, registration of assault weapons by a California resident, a California resident’s report of firearm ownership to the Department, California Carry Concealed Weapons Permit records, or records entered by California law enforcement agencies. Entries into the AFS would therefore not “match,” for the purposes of satisfying the Standard Ammunition Eligibility Check, the “current address” of an out of state purchaser or transferee, since that current address, by definition, would be an out of state address.</li> <li>2. The Department has determined that, pursuant to statute, an individual from out of state would not be able to be granted authorization to</li> </ol>
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regulations violate the Commerce Clause, regardless of whether they have a discriminatory purpose. See *United Haulers Ass’n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338 (2007). And, finally, “where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which invade or restrain them must be closely scrutinized” and be necessary to serve a compelling government interest. *City of Cleburne, Tex., v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). For these reasons, DOJ needs to clarify whether out-of-state identification can be used to purchase ammunition under the proposed regulation. Failure to do so would, at minimum, constitute a lack of the clarity required of a regulation under the APA.

purchase ammunition subsequent to a Basic Ammunition Eligibility Check. Penal Code section 30370, subdivision (c), requires the Department to develop a procedure in which “a person who is not prohibited from purchasing or possessing ammunition may be approved [...]” to do so. The Department has determined that it would be counter to the legislative intent under SB 1235 for the Department to approve purchases of ammunition by individuals who may be prohibited from doing so because that person has been convicted of a relevant crime under the laws of the United States, the State of California, or any other state, government, or country (see, for example, Penal Code section 29800). The Department is not permitted to use the federal National Instant Criminal Background Check System (NICS) for the purpose of ammunition eligibility checks, and there is no reasonable alternative method to affirm that a person from out of state is not prohibited from purchasing or possessing ammunition. Therefore, the Department has determined that it will not affirm that an individual from out of state is authorized to purchase ammunition subsequent to a Basic Ammunition Eligibility Check.

3. The Department has determined that an individual from out of state would be able to be granted authorization to purchase ammunition subsequent to a COE Verification. The qualifications to be granted a Certificate of Eligibility are provided in title 11, section 4032 of the California Code of Regulations, as authorized by Penal Code section 26710. Persons who are not California residents are not prohibited from qualifying for a COE. Consequently, the Department has determined that persons from out of state who hold a current COE would be authorized to purchase ammunition subsequent to a COE Verification. Upon presentation of an out-of-state ID, the information required by proposed section 4305(c) could be obtained by an alternative method, should there be technical limitations, in accordance with Penal Code section 28180.

4. Additionally, a person from out of state may legally purchase ammunition if they qualify for the exemptions provided in Penal Code section 30312, subdivision (c), or section 30352, subdivision (e), or by the provisions of any other relevant statute. For example, the prohibition on transporting ammunition into the state, per Penal Code section 30314, only applies to residents of California.

#	Summarized Comment	DOJ Response
		<p>The qualifications for both the Standard Ammunition Eligibility Check and the Basic Ammunition Eligibility check are set by Penal Code section 30370. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>
6.	<p>DOJ has also failed to provide any clarifying information as to what constitutes a “match” for purposes of the Standard Ammunition Eligibility Check, despite this issue being raised in our prior comment letter. It is also unclear why DOJ has simply stated that it has “exercised no discretion” as to this requirement when it has shown itself to be more than capable of adopting regulations that help clarify requirements elsewhere. In sum, to the extent DOJ intends to implement the actions described in the above statements it must at least amend the proposal to include them as part of the proposed regulations.</p>	<p>No change has been made in response to this comment. The Department disagrees with this comment. In the revised text noticed to the public in the 15-day comment period, the title of section 4302 has been revised to indicate that the Standard Ammunition Eligibility Check involves an “AFS Match.” Subdivision (a) of that section clearly states, “A purchaser or transferee is authorized to purchase ammunition if their information matches an entry in the Automated Firearm System and does not match an entry in the Prohibited Armed Persons File.”</p> <p>Furthermore, in the ISOR Addendum, in the section discussing section 4302 subdivision (b), the Department states, “The purchaser or transferee’s name, date of birth, current address and driver license or other government identification number is required by Penal Code section 30370, subdivision (b), and must be collected so that the Department can conduct the procedure specified by that section. Penal Code section 30370, subdivision (b) requires the Department to match the purchaser’s or transferee’s “name, date of birth, current address and driver license or other government information” with “the information in the Automated Firearms System.” The Department has exercised no discretion in requiring this information from the purchaser or transferee.”</p> <p>As indicated, the Department has determined that no further interpretation is required regarding the statutory requirement that the purchaser or transferee’s personal information, as clearly delineated in statute, must match an entry in the Automated Firearm System.</p>

#	Summarized Comment	DOJ Response
7.	<p>In the ISOR Addendum, DOJ states that a purchaser’s citizenship status and federal Alien Registration Number or I-94 (if applicable) are required to conduct the Basic Ammunition Eligibility Check. DOJ’s basis for this assertion is that Penal Code section 30370, subdivision (c), requires DOJ to develop a procedure in which “a person who is not prohibited from purchasing or possessing ammunition may be approved.” In reaching this conclusion, DOJ states that it “has determined that it would be counter to the legislative intent . . . to approve purchases of ammunition by individuals who may be prohibited from doing so under either state or federal law.” DOJ nevertheless recognizes it is not permitted to use federal databases to ensure a person is not prohibited (as discussed in our prior comment letter).</p> <p>But DOJ is incorrect in its assumptions for several reasons. First, DOJ makes no mention in the ISOR Addendum regarding the prohibitions under existing state laws adopted pursuant to Senate Bill No. 54 (“SB 54”). These provisions, clearly reflect the California legislature’s intent, which has also been recognized by Attorney General Becerra himself, prohibit state agencies—including DOJ—from inquiring into an individual’s immigration status.</p> <p>b. What’s more, the California Legislature’s “intent” is irrelevant as applied to a voter approved initiative, which is what created the controlling law here.</p>	<p>No change has been made in response to this comment. Senate Bill 54 (statutes of 2017), which added Government Code section 7284.6, is clear in its focus on state and local participation <i>in federal immigration enforcement programs</i>. As stated in the Department’s response to comment #74 submitted during the 45-day comment period:</p> <p>The statute referred to, Government Code section 7284.6, subdivision (a), prohibits law enforcement agencies from using “moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes...” The clause “for immigration enforcement purposes” provides the condition necessary to trigger the prohibition – law enforcement agencies are otherwise allowed to use moneys and personnel to investigate, interrogate, detain, detect, or arrest persons. Subdivision (a)(1)(A) specifically provides that “[i]nquiring into an individual’s immigration status” is one type of activity, among others, that is prohibited <i>if it is done for immigration enforcement purposes</i>. Government Code section 7284.4, subdivision (f) defines “immigration enforcement” as efforts to investigate or enforce any federal civil or criminal immigration law. The collection of information for the purpose of conducting a Basic Ammunition Background Check is not an activity being undertaken to investigate or enforce any federal civil or criminal immigration law. Rather, as stated in the Initial Statement of Reasons (inclusive of the addendum), this information must be collected because the Department has determined it will not affirm that an individual is authorized to purchase ammunition if the individual is prohibited under federal firearms laws.</p> <p>b. No change has been made in response to this comment. The Department disagrees with this comment. Penal Code section 30370 was added by Section 15 of Senate Bill 1235 (Stats. 2016, Ch. 55). Section 16 of that bill repealed the prior version of Section 30370, which was added November 8, 2016, by Proposition 63.</p>

#	Summarized Comment	DOJ Response
8.	<p>DOJ also argues that both the Standard Ammunition Eligibility Check and the COE Verification methods involve a check of a person’s immigration status. But that is irrelevant because neither is specifically required for the purposes of lawfully acquiring ammunition in California. Individuals need only to have submitted immigration information in connection with their original COE application or firearm purchase. And DOJ already administers the Armed Prohibited Person System as a means to disarm individuals who later become prohibited and revoke any previously issued COE.</p>	<p>No change has been made in response to this comment. The Department’s invocation of the authorization qualifications provided by Penal Code section 30370, subdivisions (a)(1) and (2), was not intended as a claim that those qualifications were <i>currently</i> required for the purposes of lawfully acquiring ammunition.</p> <p>Rather, as the Department stated in the ISOR Addendum, section 4303(b), “The two other methods of obtaining authorization from the Department to purchase ammunition pursuant to Penal Code section 30370 [besides the Basic Ammunition Eligibility Check] both involve a check of federal prohibitors.” The commenter is correct that the Department administers the Armed Prohibited Person System, an automated system for tracking firearm owners who fall into a prohibited status; pursuant to Penal Code section 30370, subdivision (b), inclusion in the Prohibited Armed Persons File precludes a person from using the Standard Ammunition Eligibility Check to gain authorization to purchase ammunition. And the commenter is correct that the Department would revoke the COE of a person who became prohibited, precluding them from gaining authorization to purchase ammunition pursuant to Penal Code section 30370, subdivision (a)(2). This supports the Department’s interpretation of the statutory requirement in Penal Code section 30370, subdivision (c), that “The department shall develop a procedure in which a person who is not prohibited from purchasing or possessing ammunition may be approved...” as meaning persons not prohibited by state <i>or federal</i> law (e.g. 18 U.S.C. 922(g) and (h)). As stated in the ISOR Addendum, in this context, “The Department has determined it will not affirm that an individual is authorized to purchase ammunition if the individual is prohibited under federal law, and therefore that the Basic Ammunition Eligibility Check should likewise consider federal prohibitors on ammunition possession.”</p>

#	Summarized Comment	DOJ Response
9.	<p>In any event, DOJ prohibited from accessing federal databases for purposes of conducting ammunition background checks. It cannot simply add a layer to the background check process (i.e. referencing its Prohibited Armed Persons File) and access federal databases through other means as a way of circumventing this restriction. For these reasons, DOJ’s collection and use of a person’s citizenship information in connection with an ammunition background check is strictly prohibited by federal and state law and lacks the necessity, authority, and consistency required by the APA.</p>	<p>No change has been made in response to this comment. The Department will not be checking federal databases for the purpose of authorizing the purchase or transfer of ammunition. Proposed section 4303, authorized by Penal Code sections 30370 and 30352, implements the statutory requirement in Penal Code section 30370, subdivision (c), that “The department shall develop a procedure in which a person who is not prohibited from purchasing or possessing ammunition may be approved...” The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum). This regulation is being promulgated in full compliance with the requirements of the Administrative Procedure Act.</p>

#	Summarized Comment	DOJ Response
10.	<p>DOJ’s cost estimate for vendor staff processing time is based on California’s minimum wage (\$11/hour). This is an unreasonable assessment given that COEs are required for every vendor employee and the required training for such employees. Using minimum wage also ignores management level positions necessary to oversee employees and assumes a two-minute processing time for each transaction. Given the oversight necessary to ensure compliance with California law (which can result in license revocation and potential criminal penalties for any violation), it is wholly unreasonable for DOJ to assume costs based on California’s minimum wage and such a short time estimation for each transaction, not to mention the cost of legal counsel to guide vendors through compliance.</p> <p>This gross understatement is further illustrated when compared to DOJ’s salaries for the “59 new positions” that are responsible for processing ammunition transactions on DOJ’s end. These salaries total \$5,839,347 in the first year (an average of \$98,971 per employee), and \$4,515,371 for every year thereafter (an average of \$76,531 per employee). Even assuming the national standard of 2,087 hours per year, this amounts to approximately \$36 per hour at least per DOJ employee tasked with processing ammunition transactions—excluding any additional costs such as training. For DOJ to assume a minimum wage employee will be responsible for administering a vendor’s program, when DOJ’s own employees earn more than double that, raises serious questions as to its projected costs to businesses.</p>	<p>No change has been made in response to this comment. As stated in the Economic Impact Assessment in the Initial Statement of Reasons, the Department has used the most reasonable estimates derived from extensive research into sales of ammunition.</p> <p>The Department followed instructions from the Department of Finance to base its calculations on the state minimum wage. This wage is an economic certainty, which is more reliable in estimating salespersons’ salaries than a presumption of a higher wage. No commenter, including the current commenter, has provided anticipated costs for legal counsel in regards to these regulations, above and beyond the normal costs of doing business as an ammunition vendor.</p> <p>Salaries for the Department’s staff is set by the California Department of Human Resources, and is irrelevant to this rulemaking.</p>



#	Summarized Comment	DOJ Response
11.	<p>DOJ states that the proposed fees of \$1 for Standard Ammunition Background Checks and COE Verifications are “necessary to recover the reasonable costs of regulatory and enforcement activities.” Yet, DOJ also states that it intends to “build a reserve for economic uncertainties.” Not only is such a reserve contrary to both the express limitations of the Penal Code and the California Constitution, but DOJ provides no information as to how much of a reserve it intends to maintain.</p> <p>For the first year the system is scheduled to launch, DOJ has estimated it will incur \$12,844,697 in expenses while taking in \$14,104,000 in revenue. And in fiscal years thereafter, DOJ estimates an average of \$9,886,506 in expenses while taking in the same amount of revenue. The reasons for the initial costs in the first year “include personal services, operating expenses and equipment, system enhancements, infrastructure, and other costs.”</p> <p>As stated in Penal Code section 30370, DOJ is only authorized to “recover the reasonable cost of regulatory and enforcement activities,” and is only authorized to charge a fee that cannot exceed those costs. In other words, DOJ is not authorized to charge a fee that would allow it to “build a reserve” and then adjust the fee at a later date. But DOJ’s proposed fee does just that, and therefore violates the necessity, authority, and consistency requirements of the APA, as well as the California Constitution.</p>	<p>No change has been made in response to this comment. It is common practice for state funds to contain a reserve for economic uncertainties. The Department of Finance defines the term “reserve” as “An amount of a fund balance set aside to provide for expenditures from the unencumbered balance for continuing appropriations, economic uncertainties, future apportionments, pending salary or price increase appropriations, and appropriations for capital outlay projects.” It is not feasible for the Department to operate the ammunition authorization program on a day-to-day basis by using funds remitted to the Department each prior day. The reserve for economic uncertainties is therefore a necessary cost of regulatory and enforcement activities related to the ammunition authorization program.</p> <p>Additionally, as stated in the Economic and Fiscal Impact Statement (STD 399), Attachment A, the Department will use the reserve to pay back the \$25 million loan that was authorized to the Department by Penal Code section 30371 “for the start-up costs of implementing, operating and enforcing the provisions of the ammunition authorization program provided for in Sections 30352 and 30370.” According to the estimates provided by the Department in Attachment A, at no time in the next five years will the reserve for economic uncertainties be greater than the amount owed for the loan. Therefore, according to the most reasonable estimates, at no time in the next five years will the fees be in excess of the costs of regulatory and enforcement activities.</p>

<p>12.</p>	<p>DOJ has revised the list of individuals it considers exempt from DOJ approval to purchase or transfer ammunition. In the revised text, DOJ states that these individuals are exempt “pursuant to Penal Code section 30352, subdivision (e).” But there is a fundamental problem with this statement. Penal Code section 30352, subdivision (e) only exempts those listed individuals as applied to subdivisions (a) and (d) of Penal Code section 30352. It does not provide an exception to the requirements of Penal Code section 30370, a wholly separate Penal Code provision which ammunition vendors must abide by when processing ammunition transactions. While we recognize this as an oversight on the part of the author of the law, DOJ is nevertheless prohibited under the APA from expanding the exception to apply to both provisions absent further legislation.</p>	<p>No change has been made in response to this comment. This comment is irrelevant, as it does not regard a change to the regulations noticed to the public pursuant to Government Code section 11346.8, subdivision (c). Proposed section 4306(a) was changed from that which was originally made available to the public, to clarify that the types of identification that follow are those that “properly” identify an individual, as specified, and to include the Penal Code citation that provides the context for the reason why an ammunition vendor might require clarification as to what constitutes “proper” identification. Neither the clarifying word “proper” nor the citation of Penal Code section 30352 involve “the requirements of Penal Code section 30370” that ammunition vendors must abide by.</p> <p>In any event, the Department has determined that the relevant requirements of Penal Code section 30370 are satisfied if a person or entity meets the requirements of Penal Code section 30352, subdivision (e).</p> <p>Penal Code section 30352, subdivision (c) provides that, “only those persons listed in this subdivision, or those persons or entities listed in subdivision (e), shall be authorized to purchase ammunition.” The “persons listed in this subdivision,” enumerated in paragraphs (1) and (2), require the Department to intervene prior to authorization—either through the Standard Ammunition Eligibility Check, the COE verification process, the Basic Ammunition Eligibility Check, or when ammunition is transferred in the same transaction as a firearm, as implemented by proposed regulation sections 4302, 4305, 4303, and 4304, respectively. Conversely, those persons or entities listed in subdivision (e) do not require the Department to intervene prior to their authorization – the Department’s “approval” of those persons is immaterial, as statute does not allow for discretion to be exercised by the Department.</p> <p>Therefore, those persons or entities listed in Penal Code section 30352, subdivision (e) either meet, or do not need to meet the requirements of Penal Code section 30370 that ammunition vendors must abide by. Penal Code section 30370, subdivision (a) requires the Department to “electronically approve the purchase or transfer of ammunition through a vendor... except as otherwise specified.” The Department determined that the explicit statutory authorization to purchase or transfer ammunition without the Department’s approval, as provided to those persons or entities listed in Penal Code section 30352, subdivision (e), by Penal Code section 30352, subdivision (c),</p>
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#	Summarized Comment	DOJ Response
		<p>qualifies as such an exception.</p> <p>Likewise, the requirement in Penal Code section 30370, subdivision (d) that a vendor is prohibited from providing a purchaser or transferee with ammunition without the Department’s “approval” is, in practice, irrelevant if the purchaser or transferee is properly identified pursuant to Penal Code section 30352, subdivision (e). The Department’s “approval” can be presumed by the ammunition vendor, pursuant to proposed regulation section 4306(a) and (d), because such a person, properly identified, is already authorized by statute to purchase ammunition, without any action to be taken on the part of the Department.</p> <p>There are no other requirements of Penal Code section 30370 that ammunition vendors must abide by that are relevant to this comment.</p>

#	Summarized Comment	DOJ Response
13.	<p>DOJ states that it would be “unduly burdensome” and “unnecessarily expensive” to develop and use a system separate from California’s Dealer Record of Sale (“DROS”) Entry System (“DES”). Yet DOJ was given a loan of \$25 million from the California Legislature for this express purpose, which appears to have not even been utilized. Coupled with the serious issues concerning the required authority, clarity, and consistency under the APA, and the fact that DOJ has prematurely developed the system which these regulations are purportedly designed to implement, our clients respectfully request DOJ revise the proposal accordingly. Should DOJ refuse to do so, our clients are prepared to take any action available under the law to compel DOJ’s compliance, including litigation.</p> <p>Footnote to this comment: As noted in DOJ’s Revised Economic and Fiscal Impact Statement, DOJ estimates it will incur \$12,844,697 in expenses for the first fiscal and \$9,886,506 in expenses every year thereafter. The larger first year expenses are due to initial program costs which, presumably, include the creation of the new system. In other words, DOJ has only spent \$2,958,191 of the initial \$25 million start-up loan it received from the California legislature. What’s more, these costs are being incurred during the first fiscal year in which DOJ expects to earn revenue from the new system, raising a question as to why the initial loan was even necessary.</p>	<p>No change has been made in response to this comment. Penal Code section 30371 appropriated a \$25 million loan from the general fund “for the start-up costs of implementing, operating and enforcing the provisions of the ammunition authorization program provided for in Sections 30352 and 30370.” The Department determined that the most effective method of implementing, operating and enforcing the requirements of Penal Code sections 30352 and 30370 was to utilize the Dealer Record of Sale Entry System (DES) for authorizing ammunition purchases pursuant to Penal Code section 30370. As stated in the Initial Statement of Reasons (inclusive of the addendum), pursuant to Penal Code section 30385, subdivision (d), many firearms dealers are also authorized ammunition vendors. The DES website is already the established portal through which firearms dealers communicate purchasers’ or transferees’ personal information to the Department for the purpose of firearm eligibility checks. It would be unduly burdensome for ammunition vendors, and unnecessarily expensive for the Department to develop and require use of a separate method of communicating purchasers’ or transferees’ personal information to the Department for the specific purpose of ammunition eligibility checks. By updating the DES, the Department has efficiently utilized funds for the start-up costs of implementing the ammunition authorization program, in accordance with statute.</p> <p>The Department rejects the contention that it has spent less than \$3 million on initial program costs. The majority of the \$25 million General Fund loan has been spent on the start-up costs of implementing, operating and enforcing the provisions of the ammunition authorization program. The Department’s expenditures are a matter of the public record. The complaint that the \$25 million has not been completely expended is premature, as the implementation of the ammunition authorization program is ongoing. The Department will repay the \$25 million loan as stated in the Economic and Fiscal Impact Statement (and attachment).</p>

#	Summarized Comment	DOJ Response
14.	<p>The proposed regulations still lack clarity and are inadequate in providing direction to licensed ammunition vendors on how to conduct ammunition purchases and transfers. Under California’s Administrative Procedures Act, all proposed regulations must be authored in a way that is easily understood by those person’s directly affected by them. Unfortunately, these regulations are incomplete and would adversely affect manufacturers, distributors, firearms retailers, shooting ranges and sportsmen’s organizations.</p> <p>In our previous comments to DOJ, NSSF asserted the regulations omitted instructions or guidance on how a licensed ammunition vendor should proceed with an ammunition purchase or transfer. The modified regulations also omit clear instructions on how a vendor should proceed with an ammunition purchase or transfer. It is still unclear when an ammunition vendor should initiate the §4302 or §4303 process. Is that at the discretion of the potential buyer or is it the vendor? Under what circumstances should the vendor use a Standard Ammunition Eligibility Check and under what circumstances should they use the Basic Ammunition Eligibility Check? Does the purchaser have to ask for the Standard Ammunition Check first?</p>	<p>No change has been made in response to this comment. The Department disagrees that the proposed regulations lack clarity and are inadequate in providing direction. Sections 4302, 4303 and 4305 were revised to more clearly communicate how a purchaser or transferee may request, though an ammunition vendor, a determination from the Department regarding the purchaser or transferee’s authorization, and provides the methods for an ammunition vendor to process that request. The regulations, in conjunction with Penal Code section 30370, subdivision (a), make plain each option and when each is appropriate.</p> <p>The Department does not have the authority to mandate which procedure a purchaser or transferee uses to seek authorization to purchase ammunition. If an individual’s information does not match an entry in the AFS system, and the individual does not hold a current Certificate of Eligibility, the individual may only be eligible for a Basic Ammunition Eligibility Check. However, by statute, certain persons may gain authorization in multiple ways. If an individual’s personal information matches an entry in the AFS (e.g., from a previous firearm transaction), the individual is eligible for both a Basic Ammunition Eligibility Check and a Standard Ammunition Eligibility Check. If an individual holds a current Certificate of Eligibility, the individual is eligible for both a Basic Ammunition Eligibility Check and the COE Verification process. An individual could hold a current Certificate of Eligibility, and have personal information that matches an entry in AFS, and also qualify for the authorization provided by the Basic Ammunition Eligibility Check. Instead of mandating which ammunition eligibility process a person shall request, the Department determined that the most effective way of clarifying the multiple methods of gaining authorization, as provided by statute, is to clearly present each process and its attendant requirements. The proposed regulations satisfy this goal. Ammunition vendors are free to inquire of the potential purchaser or transferee about their potential eligibility, before requesting one of the three types of eligibility checks.</p>

#	Summarized Comment	DOJ Response
15.	<p>a. It is also unclear how the DOJ approves a Basic Ammunition Eligibility Check. Ammunition vendors are not provided criteria.</p> <p>b. How does the department “affirm” a purchaser or transferee of a “Single Transaction or Purchase” is authorized?</p>	<p>No change has been made in response to this comment.</p> <p>a. Penal Code section 30370, subdivisions (a)(3) and (c) provide that a person shall be authorized to purchase or receive a transfer of ammunition if that person “is not prohibited from purchasing or possessing ammunition.” As stated in the Initial Statement of Reasons, the Basic Ammunition Eligibility Check is essentially the same background check as a firearms eligibility check—i.e., the Department checks the records available to it to determine if a person is prohibited from purchasing or possessing ammunition. For example, pursuant to Penal Code section 29800, a person who has committed a felony is prohibited from possessing a firearm. Pursuant to Penal Code section 30305, such a person is also prohibited from possessing ammunition. The Department has determined that no further interpretation of statute is necessary to govern the procedure that leads to a determination as to whether a person is so prohibited.</p> <p>b. Proposed section 4303(e) states that upon the Department’s completion of a Basic Ammunition Eligibility Check, the Department shall update the purchaser’s or transferee’s DES record. Proposed section 4308(a) and (b) state that an approval will lead to the transaction record changing to “Approved,” and that if the status is approved, ammunition may be delivered to the purchaser or transferee. The Department disagrees that the proposed regulation does not meet the “clarity” standard with respect to how the Department will affirm authorization.</p>
16.	<p>The modifications still fail to address what process ammunition vendors will follow if a valid government ID is not compatible with the DOJ’s magnetic strip reader system. For instance, if an out of state ID is not compatible with the DOJ’s system, will someone be denied simply because the magnetic strip reader is unable to transmit the required information? If this happens, what is the process for the ammunition vendor?</p>	<p>No change has been made in response to this comment. Penal Code section 28180 provides instruction as to what is required if, “due to technical limitations, the magnetic strip reader is unable to obtain the required information from the purchaser’s identification.”</p>

#	Summarized Comment	DOJ Response
17.	<p>Under Penal Code section 30370 the department is authorized to charge “up to \$1 and \$19”, yet there still isn’t justification as to why the department has initially set fees to the maximum allowed by law. How did DOJ determine they would charge \$1 and \$19 for Standard Ammunition Eligibility Checks and Basic Ammunition Eligibility Checks (Single Transaction or Purchase) respectively? Without sufficient justification, DOJ lacks the authority to charge the maximum fee allowed by law.</p>	<p>No change has been made in response to this comment. The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>
18.	<p>Under PUBLIC LAW 103-159 (Brady Act) and 18 U.S.C. 922(t) access to the National Instant Criminal Background Check System (NICS) is limited to:</p> <p style="padding-left: 40px;"><i>(1) permits or licenses to possess, acquire, or transfer a firearm, or to carry a concealed firearm, or to import, manufacture, deal in, or purchase explosives;</i></p> <p>It is impermissible to access NICS for anything other than firearms and explosives. § 4303 is unclear on whether the department intends to access NICS for ammunition purchases and transfers. The proposed regulation states, “A purchaser or transferee is authorized to purchase ammunition if they are not prohibited from purchasing or possessing ammunition, subsequent to affirmation by the Department.” What criteria is the department using to determine whether or not someone is eligible? Again, will the department be contacting NICS for ammunition transfers and purchases?</p>	<p>No change has been made in response to this comment. The Department is not checking NICS for ammunition purchases or transfers.</p> <p>Penal Code section 30370, subdivisions (a)(3) and (c) provide that a person shall be authorized to purchase or receive a transfer of ammunition if that person “is not prohibited from purchasing or possessing ammunition.” As stated in the Initial Statement of Reasons, the Basic Ammunition Eligibility Check is essentially the same background check as a firearms eligibility check—i.e., the Department checks the records available to it to determine if a person is prohibited from purchasing or possessing ammunition. For example, pursuant to Penal Code section 29800, a person who has committed a felony is prohibited from possessing a firearm. Pursuant to Penal Code section 30305, such a person is also prohibited from possessing ammunition. The Department has determined that no further interpretation of statute is necessary to govern the procedure that leads to a determination as to whether a person is so prohibited.</p>

#	Summarized Comment	DOJ Response
19.	<p>Under § 4306 (8), Ammunition Purchases or Transfers for Exempted Individuals, “an authorized law enforcement representative of a city, county, city and county, or <b>state or federal government shall present written authorization from the head of the agency authorizing the ammunition purchase or transfer</b>, as described by Penal Code section 30352, subdivision (e)(7).” The requirement of having a cabinet level official (i.e. Secretary of Defense, Attorney General, Secretary of State) in the federal government sign off on every ammunition purchase or transfer instead of procurement representatives is overly burdensome.</p>	<p>No change has been made in response to this comment because the Department determined that this comment objects to the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Penal Code section 30352, subdivision (e)(7) requires, to qualify for the exemption provided by subdivision (e), that the authorized law enforcement representative provide “proper written authorization,” which is further defined as “verifiable written certification from the head of the agency [...]”</p>
20.	<p>The regulations are also troublesome for our range members. As an example, under California law it is permissible to purchase ammunition without a background check at a shooting range if the ammunition stays on the premises and does not leave the facility? The proposed regulations do not specify what happens if an individual takes ammunition from the premises in violation of the law.</p>	<p>No change has been made in response to this comment. This comment is irrelevant, as it does not regard a change to the regulations noticed to the public pursuant to Government Code section 11346.8, subdivision (c).</p> <p>Penal Code section 30370, subdivision (e)(3) exempts ammunition vendors from the requirements of subdivisions (a) and (d), as specified. The Department has determined that it is the responsibility of the target facility to ensure that the exemption provided by subdivision (e)(3) is satisfied—including the final disposition of any ammunition sold or transferred—because the Department is not involved in these purchases or transfers.</p>
21.	<p>Since most law enforcement agencies and other exempted customers are located at places remote to an ammunition vendor’s place of business, it is impossible for them to travel to the vendor’s business location to purchase ammunition in person. This fact necessitates that ammunition be shipped to them via licensed and regulated freight carriers.</p>	<p>No change has been made in response to this comment. Penal Code section 30348, subdivision (a) provides that “The sale of ammunition by a licensed vendor shall be conducted at the location specified in the license.” In addition, Penal Code 30352, subdivision (c) requires that the ammunition vendor “verify that the person who is receiving delivery of the ammunition” is a person or entity listed in subdivisions (c)(1), (c)(2), or (e).</p> <p>The Department is adopting the regulation in presumption that ammunition vendors will conduct sales at the location specified in the license, and will verify that the person receiving delivery is authorized to do so, per section 4306(c). The Department has determined that there is no further need to interpret the relevant statutes in these respects.</p>



#	Summarized Comment	DOJ Response
22.	<p>Will the CA DOJ be creating an avenue in CFARS for people to update their driver's license information with the information the DOJ has on file in the AFS system? We already have many customers who have changed addresses since DROS-ing a firearm, and would like to update this information so that they are approved with the Standard eligibility check.</p>	<p>No change has been made in response to this comment. This comment is irrelevant, as it does not regard a change to the regulations noticed to the public pursuant to Government Code section 11346.8, subdivision (c).</p> <p>The Department is currently engaged in rulemakings to allow persons to update information in the AFS system (see OAL notice file numbers Z-2018-01910-02 and Z-2018-0925-03). These rulemakings are anticipated to be effective July 1, 2019. This commenter is on the Department's mailing list of interested parties and has been sent copies of these regulations.</p> <p>Additionally, these rulemakings are available on our public website, <a href="https://oag.ca.gov/firearms">https://oag.ca.gov/firearms</a>.</p>
23.	<p>Article 7. Delivery of Ammunition &amp; Billing, 4308 Delivery of Ammunition Following DES Submission. Section (c) By authority of Section 30352: I am no longer seeing reference to the ammunition purchase registration requirement. Has this been removed? If so: thank you. Ammunition is a disposable commodity that many of our customers purchase and then shoot at a local range before they even get home. This requirement seemed unnecessary, burdensome and costly (to maintain in a database) for CA DOJ.</p>	<p>No change has been made in response to this comment. As explained in the Final Statement of Reasons, Update of the Initial Statement of Reasons, section 4308(c), the Department removed the phrase "to record the time and date the ammunition is delivered." Instead, the Department amended the text to refer directly to the information required by Penal Code section 30352, subdivision (a). The statutory requirements are being duplicated here to provide clarity to the regulations by presenting, in this section, all of the requirements for completing a purchase or transfer conducted pursuant to sections 4302, 4303 or 4305. Even if these statutory requirements had not been duplicated in the regulations for the purpose of clarity, their omission in these regulations would not have relieved ammunition vendors of the requirements.</p>
24.	<p>Section B, Item 1 of the Fiscal Impact Statement projects additional expenditures of \$12,844,697, but no explanation is provided as to how the shortfall will be addressed. This is not an insignificant amount. No answer is provided on whether the costs will be absorbed in the existing budget, or that the budget will be increased.</p>	<p>No change has been made in response to this comment. As stated in the attachment to the Economic and Fiscal Impact Statement (STD. 399), "Attachment A," the Department received a \$25 million General Fund loan for the initial costs of implementing the ammunition authorization program.</p>

#	Summarized Comment	DOJ Response
25.	<p>The logic of Attachment A, supplementing Economic Impact Statement, Section B, Question 1, is flawed with respect to the estimated business costs. No basis is provided for the assumption that performing the eligibility check will only take two minutes.</p>	<p>No change has been made in response to this comment. The Standard Ammunition Eligibility Check (SAEC) and the COE verification process, which the Department estimates will comprise over 98 percent of authorization requests, are automated checks of records contained in the Department’s computer systems. The two minute estimate is based on the time it takes the ammunition vendor to enter the data and for the Department’s computer system to complete the check. The majority of the data for the SAEC and the COE verification processes are automatically collected via a magnetic strip reader, as described by Penal Code section 28180. The date of sale and the salesperson’s name will be collected automatically through the Dealers Record of Sale Entry System (DES) account.</p>
26.	<p>State Government Costs: The projected revenue from verification fees does not account for a likely decrease in applications induced by demand reduction or other newly incentivized [sic] market adjustments such as group buys, bulk buys, self-manufacture, or illegal importation. It is highly probable that revenue will decline and jeopardize the loan repayment. This analysis makes no plan for projected loan payoff time nor any contingency plans in case of default, which is irresponsible to taxpayers.</p>	<p>No change has been made in response to this comment. As stated in the Economic Impact Assessment in the Initial Statement of Reasons, the Department has used the most reasonable estimates derived from extensive research into sales of ammunition.</p> <p>The Department disagrees that these regulations will lead to fewer ammunition sales. As stated in the Initial Statement of Reasons, the Department estimates that over 98 percent of authorizations will be conducted using either a Standard Ammunition Eligibility check or COE verification, and neither the \$1 fee, nor the approximated 2 minute process will deter firearm enthusiasts from purchasing ammunition. As for the Basic Ammunition Eligibility Check, the Department determined that it is most likely that firearm enthusiasts will purchase the same quantity of ammunition, but in fewer transactions.</p>

#	Summarized Comment	DOJ Response
27.	<p>Hunting guides, who specialize in non-resident hunters as well as organizations that run shooting competitions, including the bid for LA hosting upcoming Olympics. Since there is NO legal way for non-residents to import or acquire ammo for either legal hunting or competitive sports shooting. As well charities that auction hunting tags for big bucks, who will no longer be able to tap non-resident hunters as potential buyers.</p>	<p>No change has been made in response to this comment. The Department disagrees that there is “no legal way for non-residents to import or acquire” ammunition. Penal Code section 30314, subdivision (a) states, “a resident of this state shall not bring or transport into this state any ammunition that he or she purchased or otherwise obtained from outside of this state unless he or she first has that ammunition delivered to a licensed ammunition vendor for delivery to that resident pursuant to the procedures set forth in Section 30312.” These restrictions do not apply to non-residents. Additionally, a person from out of state may legally purchase ammunition if they qualify for the exemptions provided in Penal Code section 30312, subdivision (c), or section 30352, subdivision (e), or by the provisions of any other relevant statute.</p> <p>See also the Department’s response to comment #5.</p>
28.	<p>The current Initial Statement of Reasons Addendum does not reasonably clarify the need to have two separate background checks to obtain the same information that a telephonic or electronic check of the AFS can obtain instantaneously. The AFS check will reveal if the purchaser has already successfully passed a background check for the purchase of a firearm.</p>	<p>No change has been made in response to this comment. The Department interprets this comment as disputing the necessity of having both the Standard Ammunition Eligibility Check and the Basic Ammunition Eligibility Check. This comment is irrelevant, as it does not regard a change to the regulations noticed to the public pursuant to Government Code section 11346.8, subdivision (c). The Department is adopting the regulation for the reasons stated in the Initial Statement of Reasons (inclusive of the addendum).</p>

#	Summarized Comment	DOJ Response
29.	<p>There is a ten day waiting period for the delivery of a handgun yet there is no such limit for the approval of an ammunition purchase. Without this waiting period it could takes weeks and or months to approve eligibility. This would pose an unreasonable safety issue for the purchaser.</p>	<p>No change has been made in response to this comment. As stated in the Initial Statement of Reasons (inclusive of the addendum), the Department estimates that a Standard Ammunition Eligibility Check and a COE Verification will be completed in approximately two minutes. The Department estimates that over 98 percent of authorizations will be conducted using either a Standard Ammunition Eligibility check or COE verification.</p> <p>The Basic Ammunition Eligibility Check will take longer to complete, because satisfying the requirements of Penal Code section 30370, subdivision (c), requires a manual review of Department records by an analyst, to determine eligibility. Statute does not provide a maximum time for the Department to complete this review. Therefore the Department has determined that the alternative proposed, to institute a time limit on the eligibility check, would not be more effective in carrying out the purpose for which the action is proposed.</p>

#	Summarized Comment	DOJ Response
30.	<p>Furthermore, Section 4306 “Ammunition Purchases or Transfers for Exempted Individuals” would violate the California Constitution, Article I (“Declaration of Rights”) Section 7(b), which states “A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens.” By making some individuals exempted from the process, they are granted privileges or immunities not granted to all citizens.</p>	<p>No change has been made in response to this comment because the Department determined that this comment objects to any implementation of the underlying statute and is neither specifically directed at the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action. Penal Code section 30352, subdivision (e) provides exemptions from Department approval to purchase or transfer ammunition. The Department has no authority to not implement the underlying statute. Per Article 3, Section 3.5 of the Constitution of California:</p> <p>An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:</p> <p>(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;</p> <p>(b) To declare a statute unconstitutional;</p> <p>(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.</p>

#	Summarized Comment	DOJ Response
31.	<p>Can we run a Standard Ammunition eligibility check on a customer <i>before</i> we assist them in gathering ammunition for purchase, and then once a customer has been approved, we then take them to the register to complete their transaction, and log back into the DES system to register their purchase? Or will we have to run the check in DES at the same time of purchase? If the later, this will cause a considerable burden on our employees, having to re-stock ammunition if a customer is denied during the Standard eligibility check.</p>	<p>No change has been made in response to this comment. This comment is irrelevant, as it does not regard a change to the regulations noticed to the public pursuant to Government Code section 11346.8, subdivision (c).</p> <p>Penal Code section 30370, subdivision (a) provides that Departmental approval “shall occur ... prior to the purchaser or transferee taking possession of the ammunition.” Penal Code section 30352, subdivision (c) requires ammunition vendors, “prior to delivering any ammunition” to verify that the person receiving delivery is a person authorized to do so, including authorization pursuant to a Standard Ammunition Eligibility Check. The Department has determined that no further interpretation of these provisions are necessary to implement the ammunition authorization program.</p> <p>There is nothing in these proposed regulations that would prohibit a purchaser or transferee from requesting, through an ammunition vendor, a Standard Ammunition Eligibility Check be conducted <i>before</i> the ammunition vendor assists the purchaser or transferee in the manner indicated by the commenter. As stated in the Initial Statement of Reasons, Economic Impact Assessment, “An ammunition vendor can initiate a Standard Ammunition Eligibility Check, and even when the Department is processing the transaction, the ammunition vendor can still initiate additional ammunition transactions while ammunition purchasers continue to shop and likely purchase other items.”</p>
32.	<p>Article 5. Exempted Individuals. Section (b). How long will an ammunition vendor be required to maintain copies of documents for exempted individuals? 2 years? 5 years? 7 years? Can an ammunition vendor mail copies of these documents to CA DOJ every 30 days to remove the burden of maintaining these documents?</p>	<p>No change has been made in response to this comment because the Department determined that this comment is neither an objection nor a recommendation regarding the Department’s proposed action nor to the procedures followed by the Department in proposing or adopting the action.</p> <p>Pursuant to Penal Code section 30355, records are required to be maintained on the premises of the vendor for a period of not less than five years from the date of the transfer of ammunition.</p>

## ALPHABETICAL LIST OF COMMENTERS (Attachment D)

Last Name	First Name	Comments	Contact (email or address)	Delivery Method
Andersen	Jeff	Irrelevant to 15-day comment	<a href="mailto:jjieffandersen@icloud.com">jjieffandersen@icloud.com</a>	e-mail
Anderson	Bill	Irrelevant to 15-day comment	<a href="mailto:bill.anderson@jetairtech.com">bill.anderson@jetairtech.com</a>	e-mail
Anderson	Jon	Irrelevant to 15-day comment	<a href="mailto:hoochiecoochieman21@yahoo.com">hoochiecoochieman21@yahoo.com</a>	e-mail
Arevalo	Michael	Irrelevant to 15-day comment	<a href="mailto:megaman010391@gmail.com">megaman010391@gmail.com</a>	e-mail
Arjil	Anthony	28, 29	<a href="mailto:tdogsc@gmail.com">tdogsc@gmail.com</a>	e-mail
Barreto	Daniel	Irrelevant to 15-day comment	<a href="mailto:daniel_ppdc@icloud.com">daniel_ppdc@icloud.com</a>	e-mail
Barron	Andrew	Irrelevant to 15-day comment	<a href="mailto:andrewbarron86@icloud.com">andrewbarron86@icloud.com</a>	e-mail
Becker	David	Irrelevant to 15-day comment	<a href="mailto:senseidavidbecker@gmail.com">senseidavidbecker@gmail.com</a>	e-mail
Becker	Grand Master	Irrelevant to 15-day comment	23234 Raymond St. Chatsworth, CA 91311	U.S. Mail
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# **EXHIBIT 22**

## IMPORTANT NOTICE

### **Regarding Availability of Instructional User Guides Related to Upcoming Ammunition Sale Requirements**

The purpose of this bulletin is to notify firearm dealers and ammunition vendors of the availability of instructional user guides that have been created or updated to reflect enhancements to the Dealer Record of Sale (DROS) Entry System (DES) that allow for the submission of eligibility checks and ammunition purchases. These user guides will be available to access through the Bureau of Firearms website at <https://oag.ca.gov/firearms/forms> listed under “Publications” and subsequently through the DES application.

**Firearm Dealers:** The DES User Guide was updated to include instructions for ammunition eligibility checks and sales.

**Ammunition Vendors:** The Ammunition User Guide provides instructions on using DES including submitting ammunition transactions.

The Quick Reference Guide is an instructional document on how to submit an ammunition eligibility check and ammunition purchase and can be found attached to this bulletin.

In preparation for the upcoming changing requirements for the sale of ammunition through DES, it is recommended that all employees of firearm dealers and ammunition vendors review these instructional guides thoroughly.

**The ammunition functionality will be available within DES at 7:00 am on Monday July 1, 2019, and the Customer Support Center will be available at this time for any assistance with the system.**

**Effective July 2, 2019, the DES hours of operation will be 4:00 am to 1:00 am and the Customer Support Center hours will be Monday through Sunday 8:00 am to 9:00 pm unless otherwise notified.**

Furthermore, new content has been added to the Bureau of Firearms website under the Ammunition Purchase Authorization Program at [oag.ca.gov/firearms/apap](http://oag.ca.gov/firearms/apap). You will find information about the requirements used to determine whether an individual is eligible to purchase ammunition in addition to establishing and updating a record in the Automated Firearms System.

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](mailto:bofdes@doj.ca.gov).



# DROS Entry System Submit Ammunition Transaction Quick Reference Guide

## SUBMITTING AN ELIGIBILITY CHECK

To get started you will need:

### Information

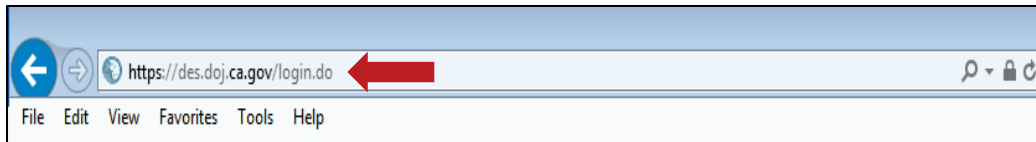
- Purchasers California Driver License or California Identification Card

### Equipment

- Internet Service Provider
- Computer or laptop with internet capabilities
- Printer
- Adobe Acrobat Reader (software)
- Magnetic card swipe reader that meets California Department of Motor Vehicle specifications (based on AAMVA standards-card design 2009) which read 3-tracks of magnetic stripe data, and 2D barcode data.

## STEP 1

Go to your internet browser and access the DROS Entry System (DES) by typing the following URL into your URL address bar: <https://des.doj.ca.gov>.



## STEP 2

Enter your User Name and Password.

### DROS Entry System Log On

**Not yet a DES user?**  
If you are not a DES user [request a DES account](#).

**Current DES users** [\[View User Name and Password information\]](#)

<b>*User Name</b> <span style="color: red;">←</span>	<b>*Password</b> <span style="color: red;">←</span>
<input type="text"/>	<input type="password"/>
<a href="#">Forgot User Name?</a>	<a href="#">Forgot Password?</a>
<a href="#">Forgot User Name and Password?</a>	

Please click buttons only once. Multiple clicks will delay processing.

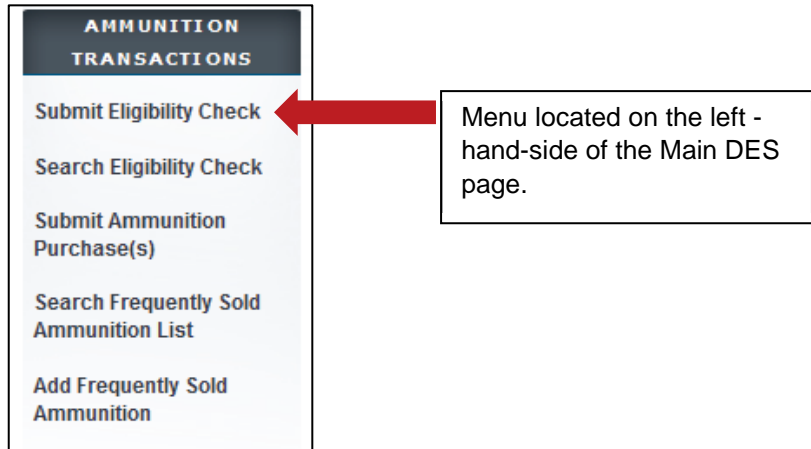
CONFIDENTIAL and/or PROPRIETARY: Contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use, or disclosure is prohibited without the prior consent of the California Department of Justice



# DROS Entry System Submit Ammunition Transaction Quick Reference Guide

## STEP 3

Select **Submit Eligibility Check** from the Ammunition Transaction section.



**AMMUNITION TRANSACTIONS**

- Submit Eligibility Check
- Search Eligibility Check
- Submit Ammunition Purchase(s)
- Search Frequently Sold Ammunition List
- Add Frequently Sold Ammunition

Menu located on the left - hand-side of the Main DES page.

## STEP 4

Select the appropriate Ammunition Eligibility Check for the purchaser.

- Standard Ammunition Eligibility Check (SAEC) **Fee: \$1.00**
- Basic Ammunition Eligibility Check (BAEC) **Fee: \$19.00**
- Certificate of Eligibility (COE) Verification **Fee: \$1.00**

### Select Eligibility Check

#### Purchaser Eligibility Check

- Standard Ammunition Eligibility Check
- Basic Ammunition Eligibility Check
- Certificate of Eligibility Verification

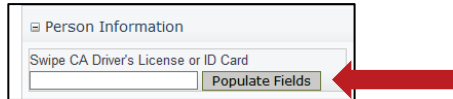




# DROS Entry System Submit Ammunition Transaction Quick Reference Guide

## STEP 5

Swipe the CA driver license or identification card through the magnetic card swipe reader. You must click on the **Populate Fields** button in order for the personal information to be entered into the personal information fields.



**Standard Ammunition Eligibility Check**

**Person Information**

Swipe CA Driver's License or ID Card

\*First Name  Middle Name  \*Last Name  Suffix

\*Street Address  \*Zip Code  \*City  State

Gender  Hair Color  Eye Color  Height (feet/inches)  ft  in  Weight  \*Date of Birth

\*ID Type  \*ID Number  \*Race  \*U. S. Citizen

\*Place of Birth  \*Telephone Number

Alias First Name  Alias Middle Name  Alias Last Name  Alias Suffix

Please click buttons only once. Multiple clicks will delay processing.

Confirm the information populated matches the driver license or identification card and that all required fields have been entered and then click **Preview**.

**PLEASE NOTE:** When processing an Eligibility Check for a COE holder the COE number must be entered.

**COE Check**

**Person Information**

Swipe CA Driver's License or ID Card

\*COE Number



# DROS Entry System

## Submit Ammunition Transaction

### Quick Reference Guide

### STEP 6

After clicking preview, you will be redirected to preview the eligibility check. Review the personal information entered. If everything is correct, select the checkbox "I understand that upon submission of this DROS transaction I will be billed and agree to pay a non-refundable fee of \$1.00 to the Department of Justice" and click **Submit Final**.

State of California  
Department of Justice  
Bureau of Firearms

**Standard Ammunition Eligibility Check**

DROS NUMBER: XXXXXXXXXXXXXXXX STATUS: PREVIEW

PERSON INFORMATION	
FIRST NAME	MIDDLE NAME
TEST	
ALIAS FIRST NAME	ALIAS MIDDLE NAME
TEST	
STREET ADDRESS	CITY
TEST STREET	PAVING CORDOVA
ID TYPE	ID NUMBER
CALIFORNIA DL	D1234567
DATE OF BIRTH	PLACE OF BIRTH
01/01/1989	ALASKA
STATE	ZIP
CA	95970
TELEPHONE	
629-402-4324	
HAIR COLOR	WEIGHT
BLACK	180
EYE COLOR	HEIGHT
BLACK	5 FT 03 IN
RACE	U.S. CITIZEN
AMERICAN INDIAN	YES

TRANSACTION INFORMATION	
TRANSACTION TYPE	STANDARD AMMUNITION ELIGIBILITY CHECK
I have read the list of prohibited offenses, and nothing would preclude me from possessing a firearm. By signing this document, I hereby certify under penalty of perjury that the information provided is true and correct.	
Purchaser's Signature	
DEALER:	ADDRESS:
SAMPLE	202 TEST, ORINDA, CA, 94563
DROS ENTERED BY	Salesperson's Signature
USER: SAMPLE	
By signing this document, I hereby certify under penalty of perjury that the information provided is true and correct.	
DEALERSHIP TELEPHONE	
(925) 931-2121	
ORDER	
00003890	

FALSIFICATION OF INFORMATION ON THIS FORM IS A CRIME, PUNISHABLE BY UP TO 18 MONTHS IN STATE PRISON (PENAL CODE 26250)

\*I understand that upon submission of this DROS transaction I will be billed and agree to pay a non-refundable fee of \$ 1.00 to the Department of Justice  (checking the box to accept the fee you will be able to submit this DROS or print this preview)

**PLEASE NOTE:** The fee will vary depending on the type of eligibility check you are submitting.

You must check this box to see the Submit Final option.

\*I understand that upon submission of this DROS transaction I will be billed and agree to pay a non-refundable fee of \$ 1.00 to the Department of Justice.  (a

After you click Submit Final, the system displays the final DROS transaction with its unique DROS number. The status of the submitted eligibility check will indicate "In Progress."

Transaction has been successfully submitted.

What would you like to do next?

- [Print this DROS](#) (you will remain on this page and still be able to select from the options below)
- [Go to the Main Menu](#)
- [Go to Background Check Menu](#)

**Standard Ammunition Eligibility Check**

DROS NUMBER: XXXXXXXXXXXXXXXXXX STATUS: INPROG

TRANSACTION DATE/TIME: 03/27/2019 03:33:30 PM

**RECOMMENDATION:** Write down or copy the generated DROS number that has been provided. It can be used to search for the eligibility check once a determination is made by the Department.

If a Basic Ammunition Eligibility check is submitted, please provide the DROS number to the individual and advise them to check the status of their eligibility check on the Department's California Firearms Application Reporting System (CFARS). The Department may take several days to make an eligibility determination for a Basic Ammunition Eligibility Check.

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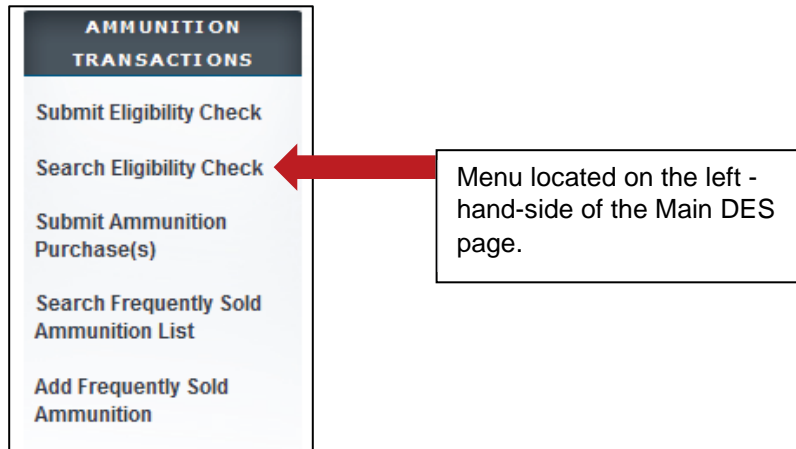


# DROS Entry System Submit Ammunition Transaction Quick Reference Guide

## SEARCH AMMUNITION ELIGIBILITY CHECK

### STEP 1

Once you have submitted an Ammunition Eligibility Check to the Department, you will need to wait for an approved status before the purchaser can purchase ammunition. From the DES Main Page select **Search Eligibility Check** from the Ammunition Transaction section.



### STEP 2

The "Ammunition Eligibility Check Results" page will populate. From this page you can search by the purchaser's last name, first name, DROS number, ID number or by decision. Enter the information that you want to search by and then click **Search**. The results will populate in the "Search Results" section.

**Ammunition Eligibility Check Results**

Last Name:  First Name:  DROS Number:  ID Number:

Decision:

Please click buttons only once.

**Search Results**

DROS Number	Name of Purchaser (First Middle Last)	ID Number	Decision	Type	Expiration Date
	TEST PURCHASER	I1111111	DENY/REJECT	Standard Ammunition Eligibility Check	

Displaying records 1 to 1 of 1 total records.

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# DROS Entry System Submit Ammunition Transaction Quick Reference Guide

## STEP 3

Click on the DROS number of the Ammunition Eligibility Check to display the DROS. The DROS will display with its status indicating whether or not the purchaser is eligible to purchase or possess ammunition.

The Ammunition Eligibility Check status' are:

- **APPROVED** – The Department has determined the individual is eligible to purchase or possess ammunition.
- **DENY/REJECT** – The Department has determined the individual is not eligible to purchase or possess ammunition. The person cannot continue with an ammunition purchase.
- **IN PROGRESS** – Ammunition eligibility check is currently being processed by the Department.
- **USED** – Individual has purchased and received ammunition in association with the eligibility check.
- **EXPIRED** – The eligibility check was approved, but can no longer be used to complete a purchase of ammunition.

If the eligibility check has an APPROVED status, the "Purchase Ammunition" link will be available at the top of the screen. Clicking the "Purchase Ammunition" link will take you to the "Select Ammunition Purchase Type" page to submit ammunition purchase(s).

**What would you like to do next?**  
[Print this DROS \(you will remain on this page and still be able to select from the options below\)](#)  
[Back to Search Result List](#)  
[Purchase Ammunition](#) ← ➔  
[Go to the Main Menu](#)

State of California  
Department of Justice  
Bureau of Firearms

**COE Check**

**DROS NUMBER:** [REDACTED] **STATUS: APPROVED** ➔

**TRANSACTION DATE/TIME:** 03/28/2019 11:18:31 AM **EXPIRY DATE/TIME:** 03/28/2019 04:18:31 AM  
**DECISION DATE/TIME:** 03/28/2019 11:18:31 AM

PERSON INFORMATION

<b>COE NUMBER</b> 9970		<b>MIDDLE NAME</b>		<b>LAST NAME</b> COE/CHECK		<b>SUFFIX</b>	
<b>FIRST NAME</b> EST		<b>ALIAS MIDDLE NAME</b>		<b>ALIAS LAST NAME</b>		<b>ALIAS SUFFIX</b>	
<b>STREET ADDRESS</b>							
ESTING							
<b>ID TYPE</b>	<b>ID NUMBER</b>	<b>CITY</b>	<b>RACE</b>	<b>STATE</b>	<b>ZIP</b>	<b>TELEPHONE</b>	
CALIFORNIA DL	D1234567	RANCHO CORDOVA	AMERICAN INDIAN	CA	95670	(956) 875-6789	
<b>DATE OF BIRTH</b>		<b>GENDER</b>	<b>EYE COLOR</b>	<b>HAIR COLOR</b>	<b>HEIGHT</b>	<b>WEIGHT</b>	
11/11/1989		MALE	BLACK	BLACK	6 FT. 03 IN	180	
<b>PLACE OF BIRTH</b>		<b>U.S. CITIZEN</b>					
ALASKA		YES					

TRANSACTION INFORMATION

<b>TRANSACTION TYPE</b>		
COE CHECK		
I have read the list of prohibited offenses, and nothing would preclude me from possessing a firearm by signing this document, I hereby certify under penalty of perjury that the information provided is true and correct.		<b>Purchaser's Signature</b>
<b>DEALER:</b> SAMPLE	<b>ADDRESS:</b> 232 TEST, ORINDA, CA, 94563	
<b>DROS ENTERED BY:</b> USER, SAMPLE		<b>Salesperson's Signature</b>
By signing this document, I hereby certify under penalty of perjury that the information provided is true and correct.		<b>DEALERSHIP TELEPHONE:</b> 1320 131-1212
		<b>COE#</b> 00000000

If the eligibility check has a Deny/Reject status, provide the individual with the DROS number and advise them to go to the Department's CFARS for information on their denial/rejection.

## SUBMIT AMMUNITION PURCHASE(S)

All ammunition eligibility checks require an APPROVED status to submit an ammunition purchase. There is no limit on the amount of ammunition that can be purchased during a transaction, using an APPROVED eligibility check. The eligibility check status will change to USED once the final delivery of ammunition is submitted.

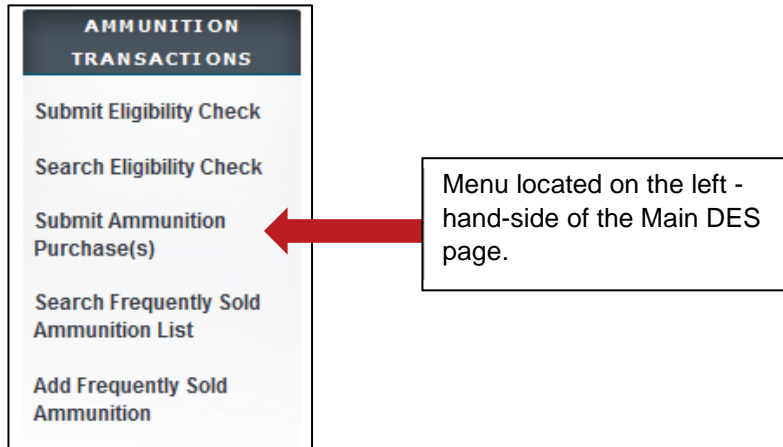
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# DROS Entry System Submit Ammunition Transaction Quick Reference Guide

## STEP 1

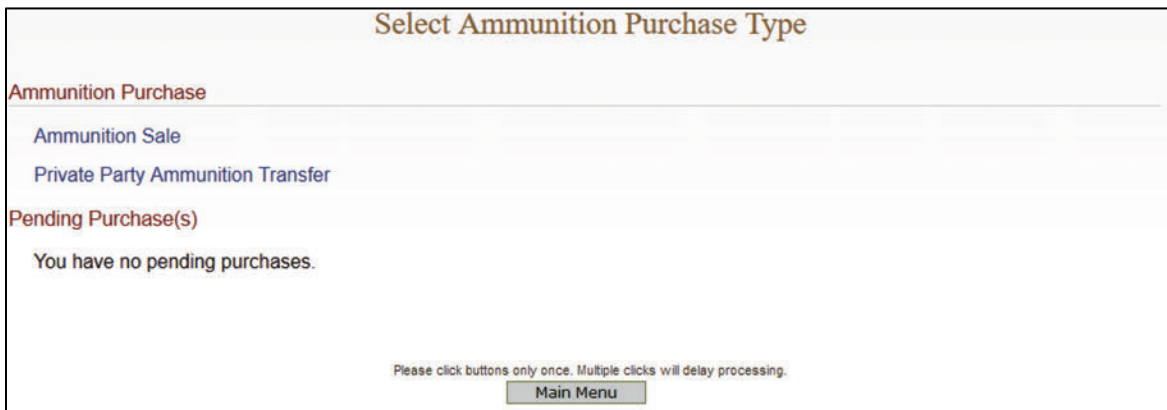
Select **Submit Ammunition Purchase(s)** from the DES Main Page.



## STEP 2

The "Select Ammunition Purchase Type" page will display. Select the appropriate transaction type.

- a. **Ammunition Sale** – The purchase of ammunition from a licensed California Ammunition Vendor.
- b. **Private Party Ammunition Transfer** – Ammunition transferred from one non-vendor to another non-vendor.





# DROS Entry System Submit Ammunition Transaction Quick Reference Guide

## STEP 3

After clicking “Ammunition Sale”, you must verify the purchaser information by entering the fifteen digit Eligibility Check DROS number in the “Enter Eligibility Check DROS #” field. Click **Verify** and the purchaser’s information will populate based on the information entered while submitting the Eligibility Check.

The screenshot shows the 'Submit Ammunition' form. A callout box with a red arrow points to the 'Enter Eligibility Check DROS #' field, containing the text: 'Enter the fifteen digit Eligibility Check DROS Number.' The form is divided into two main sections: 'Purchaser Information' and 'Transaction and Ammunition Information'. The 'Purchaser Information' section includes fields for name, address, gender, height, weight, date of birth, ID type, ID number, race, U.S. citizen status, place of birth, telephone number, and alias. The 'Transaction and Ammunition Information' section includes dropdown menus for Inventory Code, Manufacturer, Condition, Bullet Type, Usage Type, Casing, Caliber, and text input fields for Bullet Weight, Muzzle Velocity, Muzzle Energy, and Cost/Round. At the bottom, there are 'Back', 'Preview', and 'Clear' buttons, along with a warning: 'Please click buttons only once. Multiple clicks will delay processing.'

## STEP 4

Enter the “Transaction and Ammunition Information.”

This is a close-up of the 'Transaction and Ammunition Information' section of the form. It features several dropdown menus: 'Inventory Code' (with 'Select' highlighted), '\*Manufacturer', '\*Condition', 'Bullet Type', 'Usage Type', 'Casing', and '\*Caliber' (with 'Select Caliber' highlighted). There are also text input fields for 'Bullet Weight', 'Muzzle Velocity', 'Muzzle Energy', and 'Cost/Round'. At the bottom, there are 'Back', 'Preview', and 'Clear' buttons, and the same warning: 'Please click buttons only once. Multiple clicks will delay processing.'

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# DROS Entry System

## Submit Ammunition Transaction

### Quick Reference Guide

### STEP 5

Confirm the information entered is correct and click **Preview**. After clicking preview, you will be redirected to a page to preview the Dealer Record of Sale of Ammunition. If everything is correct, select the checkbox "I understand that upon submission of this DROS transaction I will be billed and agree to pay a non-refundable fee of \$0 to the Department of Justice". Click **Add Transaction** to be taken to the "Pending Purchase(s)" page.

Dealer's Record of Sale of Ammunition STATUS: PREVIEW

DROS NUMBER: XXXXXXXXXXXXXXXX

PURCHASER INFORMATION

BACKGROUND CHECK DROS NUMBER		MIDDLE NAME		LAST NAME		SUFFIX	
FIRST NAME		ALIAS MIDDLE NAME		ALIAS LAST NAME		ALIAS SUFFIX	
STREET ADDRESS		CITY		STATE		ZIP	
ID TYPE		GENDER		RACE		EYE COLOR	
ID NUMBER		HAIR COLOR		WEIGHT		WEIGHT	
DATE OF BIRTH		PLACE OF BIRTH		U.S. CITIZEN		YES	

AMMUNITION INFORMATION

MANUFACTURER		CONDITION		BULLET TYPE		BULLET WEIGHT		USAGE TYPE	
CASING		CALIBER		QUANTITY (ROUNDS)		PRIMER TYPE			
MUZZLE VELOCITY		MUZZLE ENERGY		COST/ROUND					

TRANSACTION INFORMATION

TRANSACTION TYPE: AMMUNITION SALE

I have read the list of prohibited offenses, and nothing would preclude me from possessing a firearm. By signing this document, I hereby certify under penalty of perjury that the information provided is true and correct. Purchaser's Signature

DEALER: SAMPLE  
 ADDRESS: 202 TEST, ORINDA CA 94963

DROS ENTERED BY: USER, SAMPLE Salesperson's Signature

By signing this document, I hereby certify under penalty of perjury that the information provided is true and correct. DEALERSHIP TELEPHONE

FALSEIFICATION OF INFORMATION ON THIS FORM IS A CRIME, PUNISHABLE BY UP TO 18 MONTHS IN STATE PRISON (PENAL CODE 26280). 000038690

\*I understand that upon submission of this DROS transaction I will be billed and agree to pay a non-refundable fee of \$0 to the Department of Justice.  (For checking this box to accept the fee you will be able to submit this DROS or print this preview)

You must check this box to see "Add Transaction."

\*I understand that upon submission of this DROS transaction I will be billed and agree to pay a non-refundable fee of \$0 to the Department of Justice.

After clicking "Add Transaction," you will be taken to the "Pending Purchase(s)" page where you can "Add Ammunition" or "Deliver" the ammunition.

Transaction has been successfully uploaded to your pending purchase(s). Click Deliver to submit transaction.

### Pending Purchase(s)

**Pending Purchase(s)**

Name: [REDACTED] DOB: [REDACTED] ID: [REDACTED]

Manufacturer	Caliber	Condition	Quantity (Rounds)
AMMO	204 RUGER, REMINGTON, SAVAGE	NEW	10

Please click buttons only once. Multiple clicks will delay processing.

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# DROS Entry System

## Submit Ammunition Transaction

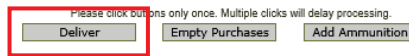
### Quick Reference Guide

#### STEP 6

If the purchaser would like to add additional ammunition to their purchase, simply click **Add Ammunition** and repeat steps 2-5.



If the purchaser does not want to add additional ammunition to their transaction, simply click **Deliver**.



After Clicking on “Deliver,” a dialog box will open. Press “OK” to continue, or “Cancel” to stay on the page.

**PLEASE NOTE:** If you click “OK”, the Ammunition Eligibility Check will be used and the purchase of ammunition will be submitted to the Department. The transaction is complete. Please confirm the purchaser does not want to add additional ammunition prior to clicking “OK.” If the purchaser decides they want to purchase more ammunition after you have clicked “OK”, they will have to pay for another eligibility check.

Transaction has been successfully uploaded to your pending purchase(s). Click Deliver to submit transaction.

### Pending Purchase(s)

Pending Purchase(s)				Total Items: 1
Name: <input type="text"/>		DOB: <input type="text"/>	ID: <input type="text"/>	
Manufacturer	Caliber	Condition	Quantity (Rounds)	
TESTER	12-GAUGE SHOTGUN	NEW	100	

Please click buttons only once. Multiple clicks will delay processing.

Clicking 'Deliver' will submit the transaction.  
 Press 'OK' to continue, or Cancel to stay on this page. ATTENTION: If you proceed with the submission of this transaction, please remember to select 'Print DROS' on the next screen (upper left hand corner) as that will be your only opportunity to generate a printed DROS Ammunition copy for customer signature.





# DROS Entry System

## Submit Ammunition Transaction

### Quick Reference Guide

### STEP 7

After clicking "OK", you will be taken to the final Dealer's Record of Sale of Ammunition. Click the ***Print this DROS*** link in the upper left hand corner of the page.

**PLEASE NOTE: You must select the Print this DROS link (upper left hand corner) as that will be the only opportunity to generate a printed DROS Ammunition copy for customer signature.**

Your transaction is complete.

**What would you like to do next?**

- [Print this DROS](#) (you will remain on this page and still be able to select from the options below)
- [Go to the Main Menu](#)

Dealer's Record of Sale of Ammunition

Collect the purchaser and salesperson's signature on the Dealer's Record of Sale of Ammunition printout. Records must be maintained and available for inspection for five (5) years (Pen. Code § 30355).

AMMUNITION INFORMATION				
MANUFACTURER TESTER	CONDITION NEW	BULLET TYPE BUCKSHOT	BULLET WEIGHT	USAGE TYPE HUNTING
CASING BRASS/PLASTIC	CALIBER 12-GAUGE SHOTGUN		QUANTITY (ROUNDS) 100	PRIMER TYPE CENTERFIRE
MUZZLE VELOCITY	MUZZLE ENERGY	COST/ROUND		
TRANSACTION INFORMATION				
TRANSACTION TYPE AMMUNITION SALE				
I have read the list of prohibited offenses, and nothing would preclude me from possessing a firearm. By signing this document, I hereby certify under penalty of perjury that the information provided is true and correct.		<i>Purchaser's Signature</i>		
DEALER: 123 MAIN STREET ROHNERT PARK, CA 94928				
DROS ENTERED BY FRENCHM, BOSS		<i>Salesperson's Signature</i>		
By signing this document, I hereby certify under penalty of perjury that the information provided is true and correct.		DEALERSHIP TELEPHONE 707 955-1111		
FALSIFICATION OF INFORMATION ON THIS FORM IS A CRIME, PUNISHABLE BY UP TO 18 MONTHS IN STATE PRISON (PENAL CODE 26500)		COEF		
<small>Firearm purchasers/transferees may request a copy of their firearm ownership records from the Department of Justice by completing and submitting an Automated Firearms System Request for Firearm Records Form (AOF 565). Additionally, purchasers/transferees are entitled to report the acquisition, disposition, or ownership of firearms to the department pursuant to Penal Code section 26200. For more information on California firearms laws or to obtain firearms reporting forms, please visit the Attorney General's website at <a href="http://ag.ca.gov/firearms">ag.ca.gov/firearms</a>.</small>				

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# DROS Entry System Submit Ammunition Transaction Quick Reference Guide

## FREQUENTLY ASKED QUESTIONS

### 1. What does an ammunition transaction consist of?

An ammunition transaction consists of two general steps: 1) submitting an eligibility check to the Department, and 2) if the Department determines the individual is eligible to own or possess ammunition, submitting the ammunition purchase to the Department.

### 2. What if the eligibility check determination (status) comes back as a “Deny/Reject?”

If the Department determines the individual is not eligible to own or possess ammunition, provide the individual with their Ammunition Transaction Number (also known as a DROS number) and advise them to log on to the Department’s California Firearms Application Reporting System (<https://cfars.doj.ca.gov/login.do>) for more information regarding the determination.

### 3. How do I know what type of eligibility check to submit for the individual?

The requirements for each eligibility check are as follows:

1. **Certificate of Eligibility Verification:** You may use this eligibility check if the individual has a current Certificate of Eligibility issued by the Department.
2. **Standard Ammunition Eligibility Check:** You may use this type of eligibility check if the person’s information matches an entry in the Automated Firearms System (name, date of birth, current address, and driver license or other government identification) and does not fall within a class of persons who are prohibited from owning or possessing ammunition.

Individuals may have a record in the Automated Firearms System if they have purchased or transferred a firearm through a California licensed firearm dealer, if they have registered an assault weapon during one of the registration periods, or if they have submitted a voluntary report of ownership to the Department. Please note: the individual must still be the owner of the firearm.

If the last long gun purchase was prior to January 1, 2014, there is a possibility they may not have a record in the Automated Firearms System despite having purchased or transferred their firearm through a firearms dealer. The Department was statutorily prohibited from retaining information regarding sales of rifles or shotguns prior to January 1, 2014. As a result, records of rifles and shotguns prior to January 1, 2014, in the Automated Firearms System are limited to assault weapon registrations (Pen. Code, § 30500, et seq.), voluntary reports of ownership, and other records entered by the Department and California law enforcement agencies.

3. **Basic Ammunition Eligibility Check:** You may use this eligibility check if the individual does not have a current entry in the Automated Firearms System or if they do not have a current Certificate of Eligibility. The Department will determine the individual’s eligibility based on a comprehensive review of its records (similar to a firearm eligibility check).

### 4. How do I process a private party transfer (PPT) of ammunition?

When transferring ammunition from one non-vendor to another non-vendor you must obtain an APPROVED eligibility check for the purchaser and then select a **Private Party Ammunition Transfer** to submit the sale of ammunition.

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## DROS Entry System Submit Ammunition Transaction Quick Reference Guide

Seller's information is not required when processing a transfer for ammunition. If the purchaser receives a DENY or REJECT, the vendor shall forthwith return the ammunition to the seller.

### 5. How long does it take to get a determination from the Department for each type of eligibility check?

1. **Certificate of Eligibility Verification Checks** – A determination may be completed in approximately 2 minutes.
2. **Standard Ammunition Eligibility Check** – A determination may be completed in approximately 2 minutes.
3. **Basic Ammunition Eligibility Check** – A determination may take days to complete. Once this type of eligibility check is submitted, please provide the individual with their Ammunition Transaction Number (also known as a DROS Number) and advise them they can check the status of their eligibility check through the Department's California Firearms Application Reporting System (<https://cfars.doj.ca.gov/login.do>). Once their eligibility check is approved, they can return to your location and complete the ammunition purchase transaction.

### 6. How long are eligibility checks valid?

1. **Certificate of Eligibility Verification Checks** – 18 hours from an Approved determination.
2. **Standard Ammunition Eligibility Check** – 18 hours from an Approved determination.
3. **Basic Ammunition Eligibility Check** – 30 days from an Approved determination.

### 7. At what point do I have the individual sign ammunition purchase paperwork?

The individual and the store associate/sales person/agent are only required to sign the DROS that is generated once the **ammunition purchase** is submitted to the Department.

### 8. How long do I have to retain DROS Ammunition Sale records?

You must maintain all ammunition sale records on site for 5 years.

### 9. Do I have to maintain ammunition sale records in hard copy format?

No, whether ammunition sale records are maintained in hard copy format will be at the discretion of the vendor. However, regardless of how they are maintained, they must be accessible onsite for inspection.

### 10. If the background check is rejected/denied, what are the retention requirements for the paperwork?

There are no recordkeeping retention requirements at this time.

### 11. I made a mistake on the eligibility check, how do I correct or cancel it?

You cannot correct or cancel an eligibility check once it has been submitted. You will have to resubmit the eligibility check with the correct information. Upon submission of an eligibility check, the fee will be charged to the dealer's account. The Department will not provide refunds after submission and acceptance of an eligibility check.



## DROS Entry System Submit Ammunition Transaction Quick Reference Guide

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**12. How do I cancel an ammunition purchase that has already been submitted?**

You cannot cancel an ammunition purchase transaction. As such, it is critical associates/sales persons/agents preview their submission, and make corrections, prior to submitting the transaction.

**13. Is there a limit on how much ammunition an individual can purchase during an ammunition purchase?**

No.

**14. Does the caliber of the ammunition that is being purchased have to match the firearm information that is on record with the Department?**

No.

**15. What does it mean if someone is exempt pursuant to Penal Code section 30352 (e)?**

If someone is exempt, you do not have to submit an ammunition eligibility check for that individual, and you do not have to submit the ammunition purchase to the Department.

**16. Who is considered exempt?**

Refer to Penal Code section 30352 (e).

**17. How do I verify an individual is exempt pursuant to Penal Code section 30352 (e)?**

Refer to the Department's **Ammunition Purchases or Transfers** regulations <https://oag.ca.gov/firearms/regs> for more information.

# **EXHIBIT 24**



**XAVIER BECERRA**

*Attorney General*

<input type="text"/>	Search
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[Translate Website](#) | [Traducir Sitio Web](#)

# Ammunition Purchase Authorization Program

[Home](#) / [Firearms](#) / *Ammunition Purchase Authorization Program*

Effective July 1, 2019, persons seeking to purchase or transfer ammunition will have to undergo an eligibility check, and be approved by the Department, prior to the sale or transfer, except as otherwise specified. Departmental approval shall occur electronically through a licensed ammunition vendor. Pursuant to Penal Code sections 30352 and 30370, the Department will determine that a person is eligible to purchase or transfer ammunition if they meet one of the following requirements:

- The person has a current Certificate of Eligibility issued by the Department
- The person's information matches an entry in the Automated Firearms System (name, date of birth, current address, and driver license or other government identification) and does not fall within a class of persons who are prohibited from owning or possessing ammunition. The Department shall make this determination by cross-referencing the Prohibited Armed Persons file (also

known as the Armed and Prohibited Persons System).

- The person is not prohibited from purchasing or possessing ammunition. The Department determines eligibility based on a comprehensive review of its records (similar to a firearm eligibility check).

Please note: this eligibility check requires a manual review of records by a Department analyst. As such, the Department may take longer to respond with a determination as to eligibility. Response times may take several days. Persons will have the ability to check the status of their eligibility check through the Ammunition Eligibility Check Status and Information page (available July 1, 2019).

- The person was approved by the Department to receive a firearm from the ammunition vendor, pursuant to Penal Code section 28220, if that vendor is a licensed firearm dealer, and the ammunition is delivered to the person in the same transaction as the firearm. In this scenario, the dealer will use the approved firearm eligibility check as the approval to purchase ammunition, and will submit the ammunition purchase to the Department during the delivery of the firearm.

## Establishing a Record in the Automated Firearms System

The Automated Firearms System is a repository of firearm records maintained by the Department, as established by Penal Code section 11106. The Automated Firearms System is populated by way of firearm purchases or transfers at a California licensed

firearm dealer, registration of assault weapons (during specified registration periods), an individual's report of firearm ownership to the Department, Carry Concealed Weapons Permit records, or records entered by law enforcement agencies.

To establish an Automated Firearms System record, you may take one of the following actions:

- Record ownership of a firearm you possess, but were not previously required to report, by submitting a Firearm Ownership Report to the Department.

If your last firearm purchase of a long gun was prior to January 1, 2014, there is a possibility you may not have a record in the Automated Firearms System despite having purchased or transferred your firearm through a firearms dealer. The Department was statutorily prohibited from retaining information regarding sales of rifles or shotguns prior to January 1, 2014. As a result, records of rifles and shotguns in the Automated Firearms System prior to January 1, 2014, are limited to assault weapon registrations (Pen. Code, § 30500, et seq.), voluntary reports of ownership, and other records entered by the Department and California law enforcement agencies.

You may submit the Firearm Ownership Report through the California Firearms Application Reporting System (CFARS). For more information regarding this process please visit the Firearms Reporting and Law Enforcement Gun Release Application page.

- Record ownership through a purchase or transfer of a firearm from a licensed firearm dealer in California.



# Updating a Record in the Automated Firearm System

Effective July 1, 2019, persons with an outdated Automated Firearms System record will have the ability to update personal information (name, date of birth, Identification number/type, and current address) on their Automated Firearm System record via the CFARS. Please refer to the Department's Automated Firearms System Personal Information Update page for more information regarding this process.

[Ammunition Purchases or Transfers Regulations](#)

[Ammunition Purchases Frequently Asked Questions](#)

## Bureau of Firearms

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# **EXHIBIT 28**



# XAVIER BECERRA

*Attorney General*

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# Automated Firearms System Personal Information Update

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The Automated Firearms System is a repository of firearm records maintained by the Department, as established by Penal Code section 11106. The Automated Firearms System is populated by way of firearm purchases or transfers at a California licensed firearm dealer, registration of assault weapons (during specified registration periods), an individual's report of firearm ownership to the Department, Carry Concealed Weapons Permit records, or records entered by law enforcement agencies.

Commencing July 1, 2019, an individual will have the ability to electronically update one or more Automated Firearms System records through the California Firearms Application Reporting System (CFARS) to match his or her current name, date of birth, address, and California Driver License, California Identification Card, or Military Identification Number.

Maintaining accurate personal information within the Automated Firearm System is critical if you plan to purchase ammunition by meeting the eligibility requirements established by Penal Code section 30370, subdivisions (c) and (d). If the information that is provided to the ammunition vendor does not match an entry in the Automated Firearms System database, the transaction must be denied. As such, it is important to ensure records are accurate.

### **How do I update my Automated Firearm System record?**

To update your personal information on a record in the Automated Firearms System, log into your CFARS account, click on “Automated Firearms System (AFS) Personal Information Update,” and follow the instructions. If you do not have a CFARS account, you may create one by visiting <https://cfars.doj.ca.gov>.

### **What information is needed to update an Automated Firearm System record?**

- **Current personal information.** Full Name, Date of Birth, Residential Address, California Driver License/Identification Card Number, or Military Identification Number/Department of Defense Identification Number.
- **Personal information at time of firearm purchase.** Exact personal information as it was recorded on your Dealer Record of Sale or other firearms ownership record.
- **Firearm currently recorded in your name.** Type, Make, Model, Caliber and Serial Number information of one or more firearms currently recorded in the Automated Firearms System.



- **Verifying documentation.** If you are changing your name, date of birth, identification type or identification number, you must upload documents verifying the change. These documents require review and approval by the Department before changes can be updated on your record. Depending on what personal information will be updated, the following verification documents may be required:
  - California Driver License/Identification Card  
Note: If you uploaded your military identification and active duty station orders and do not have a California driver license or identification card, you may upload your military identification card again.
  - Marriage License
  - Endorsed court order regarding restoration of former name
  - Endorsed court order regarding name change
  - Birth Certificate
  - Military Orders

Please refer to the Automated Firearms System Information Update Regulations for more information.

**Is there a fee associated with updating an Automated Firearm System record?**

There is no fee for updating your record.

**What can I expect after submission of the Automated Firearms System Personal Information Update request?**

Once your submission has been processed, the Department will send an email to the email address on file to let you know the status of your submission or to advise you to log on to CFARS to review notices from the Department.

## **What if I don't know the exact personal information or firearms information that was used when I purchased or transferred my firearm?**

You can request to obtain information on all firearms for which you are listed as the purchaser, transferee, or owner in the State of California. Based on the personal information you provide, the Department will conduct a diligent search of the Automated Firearms System and will provide you with the listing via mail. Once you receive the listing, you can reference the personal and firearm information that was recorded at the time the firearm was purchased or transferred. Thereafter, you can use the information to update your Automated Firearm System record. The Automated Firearms System Request for Firearm Records (BOF 053) application can be located at <https://oag.ca.gov/firearms/forms>.

## **What if I don't have a firearm record in the Automated Firearm System and I want to purchase ammunition?**

For more information about how you can meet the requirements to purchase ammunition without having an Automated Firearms System record, please visit the Ammunition Purchase Authorization webpage.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on July 24, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/Erin E. Murphy  
Erin E. Murphy