

No. 24-542

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

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.

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

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

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July 24, 2024

EXHIBIT 32



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Attorney General

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Certificate of Eligibility

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What is a Certificate of Eligibility (COE)?

A "Certificate of Eligibility" certifies the Department of Justice (DOJ) has checked its records and determined the recipient is not prohibited from acquiring or possessing firearms at the time the firearms eligibility criminal background check was performed. A COE is a pre-requisite licensing/permit requirement for all prospective licensed firearms dealers, licensed ammunition vendors, manufacturers, certified instructors, gun show promoters, explosive permit holders, and other firearm related employment activities, including, any agent or employee of a vendor who handles, sells, or delivers firearms and ammunition. The initial COE application process includes a firearms eligibility criminal background check and issuance of a certificate, which is valid for one year. Thereafter, the COE must be renewed annually. A COE can be revoked, at anytime, if the COE holder becomes prohibited from owning/possessing firearms and ammunition.

Effective July 1, 2019, pursuant to California Code of Regulations, title 11, section 4033 the DOJ is no longer accepting COE applications via mail. COE applications must be filed electronically by accessing the California Firearms Application Reporting System (CFARS) at the following URL <https://cfars.doj.ca.gov/login.do>

How do I apply for a new COE (You have never had a COE or your current COE has been expired for more than 90 days)?

You must apply for a new COE through the California Firearms Application Reporting System (CFARS). The CFARS is a web-based application system that enables individuals to apply for, and receive their COE electronically from the DOJ. You can access the electronic application by accessing the following URL <https://cfars.doj.ca.gov/login.do> Please note: prior to submitting your COE application through the CFARS, you must first submit your fingerprint impressions to the DOJ. To submit fingerprint impressions, you must take a completed Request for Live Scan Service form (BCIA 8016) to a Live Scan station and pay the designated fees. Please refer to the live scan station location information. The Live Scan operator will provide an Applicant Tracking Identifier (ATI) number on your copy of the Request for Live Scan Service form (BCIA 8016). The ATI number documents your fingerprint submissions. (You must enter your ATI number on the designated space of the COE application). Once you have completed your fingerprint submission requirements, you can complete the electronic COE application process using the CFARS. A CFARS COE User Guide is available for information on how to submit a COE application electronically.

If you are an out-of-state resident applying for a COE and you are unable to provide your fingerprints via Live Scan, you must use the “hard card” fingerprint method by having your fingerprints taken on two hard cards at a local law enforcement agency in

your state of residence. You must then mail the two completed fingerprint hard cards and a check for \$71 to:

Department of Justice
Bureau of Firearms
Licensing and Certification of Eligibility Section – COE Unit
P.O. Box 160487
Sacramento, CA 95816-0487

Once mailed, you must apply for a COE through the CFARS.

How do I renew my COE (Your current COE is set to expire in the near future or has already expired)?

You must renew your COE through the CFARS. Fingerprint submissions are not required for a COE renewal.

Please note: you must renew your COE no later than 90 days after its expiration date, otherwise you must re-apply for a new COE, which will require you to re-submit fingerprint impressions.

What are the fees associated with a new and renewal COE application?

- Initial COE Application – The fee is \$71, which is collected by the Live Scan Operator during the required fingerprint submission. If you reside outside of the State of California and have your fingerprint images taken by your local law enforcement agency using hard cards, you must remit a check made payable to the DOJ in the amount of \$71.

- **Renewal COE Application** – The fee is \$22, which is paid electronically when the application is submitted through the CFARS.

Benefits of Using CFARS:

Creating a CFARS account is quick and free! Take advantage of the following benefits when you use the CFARS.

- **Convenience**– The online application eliminates the need to mail an application and/or forms to the DOJ and saves time. You have the ability to apply, renew or modify your COE as well as report any change in employment with a firearms dealer or ammunition vendor through the online application.
- **E-mail notifications** – With an account, you will receive electronic (complete, incomplete, and reject) notifications for your COE submission.
- **Pay by credit card** – The system accepts major credit cards such as Visa, Master Card, American Express and Discover.
- **Save time and money** – By applying/renewing online, you'll save time by not having to mail in an application and also save money on postage.
- **Check your COE status** – Due to the sheer volume of COE applications and renewals, the process can take anywhere between 6-8 weeks. By applying online you can log in and check the status of your application at any time.
- **View and print your Certificate of Eligibility** – Once your application is approved, you can download and print your Certificate of Eligibility directly from the CFARS.
- **View your COE account history** – You can view your account history (including notices) by logging on to your CFARS account.
- **Submit an issue** – With an account, you may submit an issue by accessing “Report an Issue.”

- **Streamlined processing** – Save time completing future renewal applications as your personal information is encrypted and securely stored. Thus, there is no longer the requirement to re-type your personal information.
- **Manage employee privileges** – As a business owner, you can confirm/track employee COE status, manage DOJ notifications, submit reports, submit payment for your employees’ COEs, or delegate said administrative responsibilities to a designated employee.

Additional Bureau of Firearms Links

- California Firearms Application Reporting System (CFARS)
- Frequently Asked Questions
- Forms and Publications
- Firearms Reporting & Law Enforcement Gun Release Application
- Assault Weapons Identification Guide
- California Firearms Laws Summary
- Firearms Information for New California Residents
- Contact Us

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Bureau of Firearms

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[Ammunition Purchase Authorization Program](#)

[Automated Firearms System Personal Information Update](#)

[California Firearms Laws Summary, pdf \(revised 2016\)](#)

[FAQs](#)

Forms and Publications

Becoming a Firearm Dealer and/or Ammunition Vendor in California

Firearms Shipment Verification/California Licensee Check (CFLC) System

Firearm Safety Certificate Program, DOJ Certified Instructor Information and Comparable Entities

Certificate of Eligibility Information and Application Process

Bullet Button Assault Weapon Information and Registration Process

Firearms Reporting & Law Enforcement Gun Release Application

Firearm Regulations/Rulemaking Activities

California Code of Regulations

Roster of Firearm Safety Devices Certified for Sale

Roster of Handguns Certified for Sale

Unique Serial Number Application (USNA) Process

Contact Us



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6
7 Attorneys for Plaintiffs

8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 KIM RHODE, et al.,
12
13 Plaintiffs,
14
15 v.
16 XAVIER BECERRA, in his official
capacity as Attorney General of the State
of California,
17 Defendant.

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

**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,
and George Dodd]

REQUEST FOR JUDICIAL NOTICE

Under Federal Rule of Evidence 201, Plaintiffs 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 d/b/a Ammunition Depot, R&S Firearms, Inc., an Arizona corporation d/b/a Sam's Shooters' Emporium, and California Rifle & Pistol Association, Incorporated, a California corporation ("Plaintiffs"), through their counsel, respectfully request that the Court take judicial notice of the following documents in support of Plaintiffs' motion for a preliminary injunction:

1. Proposition 63 (2016), available at

[https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0098%20\(Firearms\)_0.pdf](https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0098%20(Firearms)_0.pdf). A true and correct copy of this document is attached as **Exhibit 1**.

2. Senate Bill No. 1235 (2015-2016 Reg. Sess.), available at

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1235. A true and correct copy of this document is attached as **Exhibit 2**.

3. *Notice of Proposed Rulemaking*, Ammunition Purchases or Transfers – Title 11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08, California Department of Justice (Dec. 14, 2018), available at

<https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-notice-proposed-rulemaking-121418.pdf?> A true and correct copy of this document is attached as **Exhibit**

3.

4. *Initial Statement of Reasons*, Ammunition Purchases or Transfers – Title 11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08, California Department of Justice, available at [https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-isor-](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-isor-121418.pdf?)

[121418.pdf?](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-isor-121418.pdf?) A true and correct copy of this document is attached as **Exhibit 4**.

5. *Economic and Fiscal Impact Statement*, Ammunition Purchases or Transfers – Title 11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08, California Department

1 of Justice, available at [https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-std399.pdf)
2 [std399.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-std399.pdf)?. A true and correct copy of this document is attached as **Exhibit 5**.

3 6. *Text of Proposed Regulations, Ammunition Purchases or Transfers – Title*
4 *11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08, California Department of*
5 *Justice, available at [https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-text-](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-text-of-regs-121418.pdf)*
6 *[of-regs-121418.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-text-of-regs-121418.pdf)?. A true and correct copy of this document is attached as **Exhibit 6**.*

7 7. *Notice of Modification to Text of Proposed Regulations, Initial Statement of*
8 *Reasons Addendum, and revised Economic and Fiscal Impact Statement (STD. 399),*
9 *Ammunition Purchases or Transfers – Title 11, Division 5, Chapter 11, OAL File No. Z-*
10 *2018-1204-08, California Department of Justice (April 23, 2019), available at*
11 *[https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-notice-mod-15day-](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-notice-mod-15day-041819.pdf)*
12 *[041819.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-notice-mod-15day-041819.pdf)?. A true and correct copy of this document is attached as **Exhibit 7**.*

13 8. *Initial Statement of Reasons Addendum, Ammunition Purchases or Transfers*
14 *– Title 11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08, California Department*
15 *of Justice (April 23, 2019), available at*
16 *<https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-isor-addendum.pdf>. A*
17 *true and correct copy of this document is attached as **Exhibit 8**.*

18 9. *Economic and Fiscal Impact Statement (Revised), Ammunition Purchases or*
19 *Transfers – Title 11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08, California*
20 *Department of Justice (April 23, 2019), available at*
21 *[https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-std399-15day-](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-std399-15day-041819.pdf)*
22 *[041819.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-std399-15day-041819.pdf)?. A true and correct copy of this document is attached as **Exhibit 9**.*

23 10. *Text of Proposed Regulations (Revised), Ammunition Purchases or Transfers*
24 *– Title 11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08, California Department*
25 *of Justice (April 23, 2019), available at*
26 *[https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-text-of-regs-15day-](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-text-of-regs-15day-041819.pdf)*
27 *[041819.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-text-of-regs-15day-041819.pdf)?. A true and correct copy of this document is attached as **Exhibit 10**.*

28

1 11. *Updated Informative Digest*, Ammunition Purchases or Transfers – Title 11,
2 Division 5, Chapter 11, OAL File No. Z-2018-1204-08, California Department of Justice
3 (April 23, 2019), available at
4 [https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-updated-Info-](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-updated-Info-digest.pdf?)
5 [digest.pdf?](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-updated-Info-digest.pdf?). A true and correct copy of this document is attached as **Exhibit 11**.

6 12. *Final Statement of Reasons*, Ammunition Purchases or Transfers – Title 11,
7 Division 5, Chapter 11, OAL File No. Z-2018-1204-08, California Department of Justice,
8 available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-fsor.pdf?>. A
9 true and correct copy of this document is attached as **Exhibit 12**.

10 13. *Text of Adopted Regulations*, Ammunition Purchases or Transfers – Title 11,
11 Division 5, Chapter 11, OAL File No. Z-2018-1204-08, California Department of Justice,
12 available at [https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-text-of-](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-text-of-adopted-regs.pdf?)
13 [adopted-regs.pdf?](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-text-of-adopted-regs.pdf?). A true and correct copy of this document is attached as **Exhibit 13**.

14 14. *Notice of Approval of Regulatory Action*, Ammunition Purchases or
15 Transfers – Title 11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08, Office of
16 Administrative Law (June 24, 2019), available at
17 <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-oal-approval-letter.pdf?>.
18 A true and correct copy of this document is attached as **Exhibit 14**.

19 15. *Notice of Proposed Emergency Action*, Identification Requirements for
20 Firearms and Ammunition Eligibility Checks – Title 11, Division 5, Chapter 4, California
21 Department of Justice (June 10, 2019), available at
22 [https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/id-fa-ammo-notice-proposed-](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/id-fa-ammo-notice-proposed-emergency-061019.pdf?)
23 [emergency-061019.pdf?](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/id-fa-ammo-notice-proposed-emergency-061019.pdf?). A true and correct copy of this document is attached as **Exhibit**
24 **15**.

25 16. *Finding of Emergency*, Identification Requirements for Firearms and
26 Ammunition Eligibility Checks – Title 11, Division 5, Chapter 4, California Department
27 of Justice (June 10, 2019), available at
28

1 [https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/id-fa-ammo-finding-](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/id-fa-ammo-finding-emergency.pdf?)
2 [emergency.pdf?](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/id-fa-ammo-finding-emergency.pdf?). A true and correct copy of this document is attached as **Exhibit 16**.

3 17. *Economic and Fiscal Impact Statement, Identification Requirements for*
4 *Firearms and Ammunition Eligibility Checks – Title 11, Division 5, Chapter 4, California*
5 *Department of Justice (June 10, 2019), available at*
6 [https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/id-fa-ammo-std399-signed-](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/id-fa-ammo-std399-signed-061019.pdf?)
7 [061019.pdf?](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/id-fa-ammo-std399-signed-061019.pdf?). A true and correct copy of this document is attached as **Exhibit 17**.

8 18. *Text of Emergency Regulations, Identification Requirements for Firearms*
9 *and Ammunition Eligibility Checks – Title 11, Division 5, Chapter 4, California*
10 *Department of Justice (June 10, 2019), available at*
11 [https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/id-fa-ammo-text-emergency-](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/id-fa-ammo-text-emergency-regs.pdf?)
12 [regs.pdf?](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/id-fa-ammo-text-emergency-regs.pdf?). A true and correct copy of this document is attached as **Exhibit 18**.

13 19. *Recent Actions on Emergency Regulations, Office of Administrative Law,*
14 [https://oal.ca.gov/emergency_regulations/recent_actions_taken_on_emergency_regulatio](https://oal.ca.gov/emergency_regulations/recent_actions_taken_on_emergency_regulations/)
15 [ns/](https://oal.ca.gov/emergency_regulations/recent_actions_taken_on_emergency_regulations/) (last visited July 10, 2019). A true and correct copy of this document is attached as
16 **Exhibit 19**.

17 20. *Important Notice: California Department of Justice Update Regarding the*
18 *Use of “Federal Limits Apply” Driver Licenses and Identification Cards to Perform*
19 *Eligibility Checks, California Department of Justice (June 27, 2019). A true and correct*
20 *copy of this document is attached as* **Exhibit 20**.

21 21. *Important Notice: California Department of Justice Notification and*
22 *Instructions for Clearing Web Browser “Cookies and Cache” on July 1, 2019, California*
23 *Department of Justice (June 28, 2019). A true and correct copy of this document is*
24 *attached as* **Exhibit 21**.

25 22. *Important Notice: Regarding Availability of Instructional User Guides*
26 *Related to Upcoming Ammunition Sale Requirements, California Department of Justice*
27 *(June 28, 2019). A true and correct copy of this document is attached as* **Exhibit 22**.

28

1 23. *Additional Documentation Requirements for Eligibility Checks with Federal*
2 *Non-Compliant California Driver License or Identification Cards*, California Department
3 of Justice, [https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/additional-docs-](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/additional-docs-4045-1.pdf)
4 [4045-1.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/additional-docs-4045-1.pdf) (last visited July 10, 2019). A true and correct copy of this document is
5 attached as **Exhibit 23**.

6 24. *Ammunition Purchase Authorization Program*, California Department of
7 Justice, <https://oag.ca.gov/firearms/apap> (last visited July 10, 2019). A true and correct
8 copy of this document is attached as **Exhibit 24**.

9 25. *Frequently Asked Questions: Ammunition Vendor Licensing FAQ's*,
10 California Department of Justice, <https://oag.ca.gov/firearms/avlfaqs> (last visited July 10,
11 2019). A true and correct copy of this document is attached as **Exhibit 25**.

12 26. *Frequently Asked Questions: Ammunition Purchases*, California Department
13 of Justice, <https://oag.ca.gov/firearms/apfaqs> (last visited July 10, 2019). A true and
14 correct copy of this document is attached as **Exhibit 26**.

15 27. *Becoming A Firearm Dealer And/Or Ammunition Vendor In California*,
16 California Department of Justice, <https://oag.ca.gov/firearms/dealer-vendor> (last visited
17 July 10, 2019). A true and correct copy of this document is attached as **Exhibit 27**.

18 28. *Automated Firearms System Personal Information Update*, California
19 Department of Justice, <https://oag.ca.gov/firearms/afspi> (last visited July 10, 2019). A
20 true and correct copy of this document is attached as **Exhibit 28**.

21 29. *REAL ID: Easy as 1-2-3*, California Department of Motor Vehicles,
22 [https://www.dmv.ca.gov/portal/wcm/connect/2db22455-e270-47a3-819c-](https://www.dmv.ca.gov/portal/wcm/connect/2db22455-e270-47a3-819c-d7c7716d5194/List_of_Docs_REALID.pdf?MOD=AJPERES&CVID=)
23 [d7c7716d5194/List_of_Docs_REALID.pdf?MOD=AJPERES&CVID=](https://www.dmv.ca.gov/portal/wcm/connect/2db22455-e270-47a3-819c-d7c7716d5194/List_of_Docs_REALID.pdf?MOD=AJPERES&CVID=) (last visited July
24 22, 2019). A true and correct copy of this document is attached as **Exhibit 29**.

25 30. *Citizenship Evidence*, U.S. Department of State, Bureau of Consular Affairs,
26 <https://travel.state.gov/content/travel/en/passports/requirements/citizenship-evidence.html>
27 (last visited July 22, 2019). A true and correct copy of this document is attached as
28 **Exhibit 30**.

1 31. *United States Passport Fees*, U.S. Department of State, Bureau of Consular
2 Affairs, <https://travel.state.gov/content/dam/passports/forms->
3 [fees/Passport%20Fees%20Chart_TSG.pdf](https://travel.state.gov/content/dam/passports/forms-fees/Passport%20Fees%20Chart_TSG.pdf) (last visited July 22, 2019). A true and correct
4 copy of this document is attached as **Exhibit 31**.

5 32. *Certificate of Eligibility*, California Department of Justice, Bureau of
6 Firearms, <https://oag.ca.gov/firearms/cert-eligibility> (last visited July 22, 2019). A true
7 and correct copy of this document is attached as **Exhibit 32**.

8 33. *National Instance Criminal Background Check System (NICS)*, Federal
9 Bureau of Investigation, <https://www.fbi.gov/services/cjis/nics> (last visited July 22,
10 2019). A true and correct copy of this document is attached as **Exhibit 33**.

11 34. *REAL ID Act*, California Department of Motor Vehicles,
12 <https://www.dmv.ca.gov/portal/dmv/detail/realid> (last visited July 22, 2019). A true and
13 correct copy of this document is attached as **Exhibit 34**.

14
15 Dated: July 22, 2019

MICHEL & ASSOCIATES, P.C.

17 *s/ Sean A. Brady*
18 _____
19 Sean A. Brady
20 Email: sbrady@michellawyers.com
21 Attorneys for Plaintiffs

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2	Senate Bill No. 1235 (2015-2016 Reg. Sess.)	39-55
3	<i>Notice of Proposed Rulemaking, Ammunition Purchases or Transfers – Title 11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08, California Department of Justice (Dec. 14, 2018)</i>	56-64
4	<i>Initial Statement of Reasons, Ammunition Purchases or Transfers – Title 11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08, California Department of Justice</i>	65-75
5	<i>Economic and Fiscal Impact Statement, Ammunition Purchases or Transfers – Title 11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08, California Department of Justice</i>	76-82
6	<i>Text of Proposed Regulations, Ammunition Purchases or Transfers – Title 11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08, California Department of Justice</i>	83-90
7	<i>Notice of Modification to Text of Proposed Regulations, Initial Statement of Reasons Addendum, and revised Economic and Fiscal Impact Statement (STD. 399), Ammunition Purchases or Transfers – Title 11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08, California Department of Justice (April 23, 2019)</i>	91-92
8	<i>Initial Statement of Reasons Addendum, Ammunition Purchases or Transfers – Title 11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08, California Department of Justice (April 23, 2019)</i>	93-104
9	<i>Economic and Fiscal Impact Statement (Revised), Ammunition Purchases or Transfers – Title 11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08, California Department of Justice (April 23, 2019)</i>	105-113
10	<i>Text of Proposed Regulations (Revised), Ammunition Purchases or Transfers – Title 11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08, California Department of Justice (April 23, 2019)</i>	114-124

1	11	<i>Updated Informative Digest, Ammunition Purchases or Transfers</i>	125-127
2		– Title 11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08,	
3		California Department of Justice (April 23, 2019)	
4	12	<i>Final Statement of Reasons, Ammunition Purchases or Transfers</i>	128-299
5		Title 11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08,	
6		California Department of Justice	
7	13	<i>Text of Adopted Regulations, Ammunition Purchases or Transfers</i>	300-308
8		– Title 11, Division 5, Chapter 11, OAL File No. Z-2018-1204-08,	
9		California Department of Justice	
10	14	<i>Notice of Approval of Regulatory Action, Ammunition Purchases</i>	309-310
11		or Transfers – Title 11, Division 5, Chapter 11, OAL File No. Z-	
12		2018-1204-08, Office of Administrative Law (June 24, 2019)	
13	15	<i>Notice of Proposed Emergency Action, Identification</i>	311-312
14		Requirements for Firearms and Ammunition Eligibility Checks –	
15		Title 11, Division 5, Chapter 4, California Department of Justice	
16		(June 10, 2019)	
17	16	<i>Finding of Emergency, Identification Requirements for Firearms</i>	313-322
18		and Ammunition Eligibility Checks – Title 11, Division 5, Chapter	
19		4, California Department of Justice (June 10, 2019)	
20	17	<i>Economic and Fiscal Impact Statement, Identification</i>	323-329
21		Requirements for Firearms and Ammunition Eligibility Checks –	
22		Title 11, Division 5, Chapter 4, California Department of Justice	
23		(June 10, 2019)	
24	18	<i>Text of Emergency Regulations, Identification Requirements for</i>	330-335
25		Firearms and Ammunition Eligibility Checks – Title 11, Division	
26		5, Chapter 4, California Department of Justice (June 10, 2019)	
27	19	<i>Recent Actions on Emergency Regulations, Office of</i>	336-352
28		Administrative Law	
	20	<i>Important Notice: California Department of Justice Update</i>	353-356
		Regarding the Use of “Federal Limits Apply” Driver Licenses and	
		Identification Cards to Perform Eligibility Checks, California	
		Department of Justice (June 27, 2019)	

1	21	<i>Important Notice: California Department of Justice Notification and Instructions for Clearing Web Browser “Cookies and Cache” on July 1, 2019</i> , California Department of Justice (June 28, 2019)	357-363
2			
3	22	<i>Important Notice: Regarding Availability of Instructional User Guides Related to Upcoming Ammunition Sale Requirements</i> , California Department of Justice (June 28, 2019)	364-379
4			
5			
6	23	<i>Additional Documentation Requirements for Eligibility Checks with Federal Non-Compliant California Driver License or Identification Cards</i> , California Department of Justice	380-384
7			
8	24	<i>Ammunition Purchase Authorization Program</i> , California Department of Justice	385-393
9			
10	25	<i>Frequently Asked Questions: Ammunition Vendor Licensing FAQ’s</i> , California Department of Justice	394-403
11			
12	26	<i>Frequently Asked Questions: Ammunition Purchases</i> , California Department of Justice	404-423
13			
14	27	<i>Becoming A Firearm Dealer And/Or Ammunition Vendor In California</i> , California Department of Justice	424-438
15			
16	28	<i>Automated Firearms System Personal Information Update</i> , California Department of Justice	439-447
17			
18	29	<i>REAL ID: Easy as 1-2-3</i> , California Department of Motor Vehicles	448-449
19			
20	30	<i>Citizenship Evidence</i> , U.S. Department of State, Bureau of Consular Affairs	450-455
21			
22	31	<i>United States Passport Fees</i> , U.S. Department of State, Bureau of Consular Affairs	456-457
23			
24	32	<i>Certificate of Eligibility</i> , California Department of Justice, Bureau of Firearms	458-467
25			
26	33	<i>National Instance Criminal Background Check System (NICS)</i> , Federal Bureau of Investigation	468-473
27			
28	34	<i>REAL ID Act</i> , California Department of Motor Vehicles	474-477

EXHIBIT 4

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

Proposition 63 (The Safety for All Act of 2016) and Senate Bill 1235 (2016) are newly enacted laws that regulate the sale or transfer of ammunition in California. Proposition 63, section 2, paragraphs 6 and 7 state:

“6. We know background checks work. Federal background checks have already prevented more than 2.4 million gun sales to convicted criminals and other illegal purchasers in America. In 2012 alone, background checks blocked 192,043 sales of firearms to illegal purchasers including 82,000 attempted purchases by felons. That means background checks stopped roughly 225 felons from buying firearms every day. Yet California law only requires background checks for people who purchase firearms, not for people who purchase ammunition. We should close that loophole.

7. Right now, any violent felon or dangerously mentally ill person can walk into a sporting goods store or gun shop in California and buy ammunition, no questions asked. That should change. We should require background checks for ammunition sales just like gun sales, and stop both from getting into the hands of dangerous individuals.”

Proposition 63 and Senate Bill 1235 (2016) authorize the Department of Justice (Department) to adopt these regulations to interpret, and make specific the Penal Code sections that implement a background check for the purchase and transfer of ammunition.

ANTICIPATED BENEFITS

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.

These regulations will explain the process that must be followed to purchase or transfer ammunition, or what to do if an attempted purchase or transfer is denied, and will clarify what is needed to be exempt from Department approval to purchase or transfer ammunition. In brief, these regulations will provide the public and ammunition vendors with the directives that will guide both in the ammunition sale and transfer process.

PURPOSE & NECESSITY

§ 4300. Title and Scope.

This regulation identifies the scope of the new chapter - Chapter 11, “The Department of Justice Regulations for Ammunition Purchases or Transfers.” This regulation is necessary to identify the title and explain the scope of the regulations.

§ 4301. Definition of Key Terms.

Subdivisions (a) through (p) of this regulation define firearm-related words used throughout this chapter. This section is necessary because it clarifies commonly used firearm-related terms. The Department and members of the public can apply the same definitions to the firearm-related terminology used in this chapter; therefore, it will help to eliminate any misunderstandings between the Department and the public.

§ 4302. Standard Ammunition Eligibility Check.

This section establishes the fee for conducting a Standard Ammunition Eligibility Check and explains the process for an individual to purchase or transfer ammunition pursuant to Penal Code section 30370, subdivision (b).

Subdivision (a) establishes the fee for a Standard Ammunition Eligibility Check as \$1.00. The fees collected from the Standard Ammunition Eligibility Check will be used to repay the loan for start up costs including consultant and payment processing contract fees, software and hardware purchases, and personnel. (See Penal Code section 30371.) The fees also will provide for ongoing system maintenance (including recordkeeping and storage), and salaries of the 73 permanent employees. The Department will repay the loan on an ongoing basis as revenues from the Standard Ammunition Eligibility Check are collected. This subdivision is necessary to specify the fee assessed pursuant to Penal Code section 30370, subdivision (e) and to recover the total cost of implementation.

Subdivision (b) specifies the personal information that is to be collected from the purchaser or transferee, and outlines the submission process. This subdivision is necessary because an ammunition vendor needs to know what personal information to collect and submit in order for the Department to complete a Standard Ammunition Eligibility Check.

Subdivisions (c) through (d) specify that the Department shall approve or reject an ammunition purchase or transfer and outlines the process if a purchase or transfer is rejected. These subdivisions are necessary to explain that the Department will approve or reject ammunition purchases or transfers and provides the purchaser or transferee with the ability to understand why their transaction was rejected.

§ 4303. One-Time Ammunition Transactions.

This regulation establishes the process for one-time ammunition purchases or transfers. This regulation is necessary because an individual may have to request to undergo a Basic Ammunition Eligibility Check from the Department for a one-time ammunition purchase or transfer.

Subdivision (a) establishes the fee for a Basic Ammunition Eligibility Check as \$19.00. The \$19.00 fee allows the Department to recover the cost of processing the Basic Ammunition Eligibility Check, and is consistent with the fee paid for a firearms eligibility check. The Basic Ammunition Eligibility Check is essentially the same background check as a firearms eligibility

check. This subdivision is necessary to specify what the purchaser or transferee will need to pay for a Basic Ammunition Eligibility Check, as authorized by Penal Code section 30370, subdivision (c).

Subdivision (b) specifies the information an ammunition vendor must collect and submit into the Dealer Record of Sale Entry System (DES) website. This subdivision is necessary because an ammunition vendor needs to know what personal information to collect and submit in order for the Department to complete a Basic Ammunition Eligibility Check.

Subdivision (c) establishes that an ammunition vendor will provide the purchaser or transferee with an Ammunition Transaction Number (ATN), which may be used to check the status of the Basic Ammunition Eligibility Check on the Department's California Firearms Application Reporting System (CFARS) website. This subdivision is necessary to inform an individual how to use an ATN to obtain the status for the Basic Ammunition Eligibility Check from the Department.

Subdivisions (c)(1) through (2) establish that an approved Basic Ammunition Eligibility Check can be used for one ammunition purchase or transfer, and expires 30 days after issuance, and if a Basic Ammunition Eligibility Check is denied, the Department will provide the reason for the denial via U.S. Mail. These subdivisions are necessary to explain the limitations of a Basic Ammunition Eligibility Check, and its expiration period, and to explain the denial notification process.

Subdivision (d) explains that upon completion of the Basic Ammunition Eligibility Check, the transaction status will be updated in DES. This subdivision is necessary because the DES transaction status change is an indication to the ammunition vendor that the Department has completed the Basic Ammunition Eligibility Check, and upon approval, the ammunition vendor may then proceed with the ammunition sale or transfer.

§ 4304. Firearms Eligibility Check.

As authorized pursuant to Penal Code section 30352, subdivision (c), an individual that has been approved to purchase or transfer a firearm shall also be approved to purchase or transfer ammunition within the same transaction. This regulation establishes the process for an individual to purchase or transfer one or more firearms and ammunition in the same transaction.

Subdivision (a) explains that, except as provided in subdivision (b), an individual purchasing or transferring one or more firearms and ammunition within the same transaction shall only pay the fee prescribed by the California Code of Regulations, Title 11, section 4001, for a firearms eligibility check. This subdivision is necessary because both the firearms dealer and the individual need to understand the fee to be collected when one or more firearms and ammunition are purchased or transferred in the same transaction.

Subdivision (b) specifies two scenarios when a California resident may receive ammunition prior to the completion of the firearms eligibility check. Purchasers may take possession of the ammunition if they pay the \$1.00 fee for either the Standard Ammunition Eligibility Check or

the Certificate of Eligibility (COE) verification process, and are approved by the Department. This subdivision is necessary to explain to a firearms dealer that when ammunition is purchased or transferred within the same transaction as a firearm, ammunition can only be delivered prior to the firearms eligibility check if the individual has been approved following the completion of either the Standard Ammunition Eligibility Check or the COE verification.

§ 4305. COE Verification Process.

This regulation explains the process for the Department to process a COE holder's ammunition purchase or transfer. Pursuant to Penal Code section 30370, subdivision (a), the Department has the authority to process a COE holder's ammunition purchase or transfer. This regulation is necessary to establish a process for a COE holder to be approved by the Department to purchase or transfer ammunition.

Subdivision (a) establishes the fee for a COE verification as \$1.00. The fees collected from the COE verification will contribute toward start up costs and ongoing system maintenance, including employee salaries. This subdivision is necessary to specify the fee for a COE verification.

Subdivision (b) specifies what information the ammunition vendor will collect from the COE holder for the Department to verify the status of his or her COE in order to approve a purchase or transfer of ammunition. The ammunition vendor is required to submit the COE holder's personal information along with the COE number to the DES website. This subdivision is necessary to explain to an ammunition vendor how to process a COE holder's purchase or transfer.

Subdivision (c) specifies that the Department will approve or reject a COE holder's ammunition purchase or transfer and inform the ammunition vendor of the determination. If the Department determines the individual has a valid COE, the ammunition purchase or transfer shall be approved, but if the Department determines the individual's COE is not valid, the Department shall reject the ammunition purchase or transfer. This subdivision is necessary to ensure the ammunition vendor understands the Department must approve or reject the ammunition purchase or transfer.

§ 4306. Ammunition Purchases or Transfers for Exempted Individuals.

Subdivisions (a)(1) through (5) specify the types of identification that will identify an individual who is exempt from Department approval to purchase or transfer ammunition. These subdivisions are necessary because an ammunition vendor will need to verify exempted individuals' identities before processing an ammunition purchase or transfer without Department approval.

Subdivision (b) specifies that an ammunition vendor shall keep copies of the identification that identify sworn state or local peace officers or federal law enforcement officers and the original verifiable written certification from the head of the agency, and these records are to be made available to the Department upon request. Pursuant to Penal Code section 30352, subdivision

(e)(8)(iii), an ammunition vendor is required to keep the certification with the record of sale for ammunition transactions processed for sworn state or local peace officers or federal law enforcement officers. This subdivision is necessary to explain how this information must be recorded and reported to the Department.

Subdivision (c) clarifies that once an ammunition vendor has verified that an individual is exempt from Department approval for an ammunition purchase or transfer, the ammunition vendor may provide possession of the ammunition to the exempt individual. This subdivision is necessary because the ammunition vendor can only provide ammunition to an individual after it has verified that individual is exempt from the Department's ammunition eligibility check or the COE verification process.

§ 4307. Telephonic Access for Ammunition Vendors.

This regulation explains the process for an ammunition vendor to obtain telephonic access to the Department for the purposes of processing the sale or transfer of ammunition, which will allow the Department to manually determine if an individual can possess ammunition. If the ammunition vendor is able to demonstrate it does not have access to Internet service, the ammunition vendor will be able to obtain telephonic access to the Department. This regulation is necessary because an ammunition vendor needs a mechanism to apply for telephonic access to the Department, and the Department is required to process each ammunition purchase or transfer that is conducted by or processed through an ammunition vendor on a telephone line. Telephonic access for an ammunition vendor will allow the Department to manually verify that an individual is eligible to possess ammunition following the completion of a Standard Ammunition Eligibility Check, Basic Ammunition Eligibility Check, or the COE verification process.

Subdivisions (a) and (b) explain what document(s) an ammunition vendor can submit to prove that the service provider in their area does not offer Internet service at the ammunition vendor's place of business. This document is required to be mailed with the Ammunition Vendor (Non-Firearms Dealer) Application for Telephonic Approval, Form BOF 1020 (Orig. 05/2018) to apply for telephonic access to the Department. This subdivision is necessary because an ammunition vendor needs to understand the requirement to show it needs telephonic access because it cannot obtain Internet access. Telephonic access is the only mechanism for an ammunition vendor to submit an ammunition purchaser's or transferee's personal information to the Department when it does not have Internet service.

Penal Code section 30370 provides that it is important that this form be signed under penalty of perjury because the vendor is attempting to utilize a service the Legislature has made available only under specified conditions. By signing under penalty of perjury, the vendor confirms for the Department that it is aware of the restrictions and meets them.

Subdivision (c) clarifies that the Department shall either approve or deny the ammunition vendor's application for telephonic access. This subdivision is necessary because the Department shall approve telephonic access before an ammunition vendor can utilize the

Department's telephone line to submit an ammunition purchaser's or transferee's personal information to the Department.

§ 4308. Delivery of Ammunition Following DES Submission.

Subdivision (a) specifies that when the Department approves an ammunition purchase or transfer, the DES transaction record will change from "Pending" to "Approved." The DES transaction record indicates the Department's determination for the ammunition purchase or transfer. This subdivision is necessary because the ammunition vendor can only deliver ammunition to a purchaser or transferee if the DES transaction record shows as "Approved." Subdivision (b) specifies that ammunition may only be delivered if the status of the DES transaction record is approved. This subdivision is necessary to let ammunition vendors know when ammunition can be delivered to a purchaser or transferee.

Subdivision (c) requires that when an ammunition vendor delivers ammunition to a purchaser or transferee, the ammunition vendor shall submit the ammunition sale information to the Department. This subdivision is necessary because this records the ammunition transaction information as required pursuant to Penal Code section 30352, subdivision (b).

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

Subdivision (a) explains how an ammunition vendor is billed by the Department for the completion of ammunition eligibility checks and COE verifications. This subdivision is necessary because the ammunition vendor is required to collect fees for ammunition eligibility checks and COE verifications and these fees need to be paid to the Department.

Subdivision (b) specifies that an ammunition vendor shall pay the Department via a major credit card or debit card, and that this payment is due within 30-days of the billing statement date. This subdivision is necessary, so the ammunition vendor can both understand how to pay the bill and when specifically the bill is due.

Subdivision (c) explains that if the ammunition vendor does not pay the bill for the ammunition eligibility check and COE verification activity to the Department, the ammunition vendor's access to DES will be suspended until full payment for the past due amount is received. This subdivision is necessary because it explains the consequence for not paying this bill to the Department. If the ammunition vendor does not pay this bill to the Department, the ammunition vendor will be unable to facilitate an ammunition eligibility check or COE verification because the Department will suspend its access to DES.

Subdivision (d) clarifies that when an ammunition vendor's access to DES is suspended, the ammunition vendor will be unable to process or conduct an ammunition purchase or transfer for an individual that needs to undergo an ammunition eligibility check or COE verification. While an ammunition vendor's access to DES is suspended, the ammunition vendor shall still maintain its status as an ammunition vendor licensee. This subdivision is necessary to explain that if an ammunition vendor loses access to DES, its ammunition vendor license status will not be affected.

AUTHORITY AND REFERENCE

Authority: Sections 30352, and 30370, Penal Code.

Reference: Sections 16150, 16151, 26710, 28180, 28220, 30300, 30305, 30312, 30314, 30342, 30352, 30370, 30385, 30390, and 30395, Penal Code.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

Department staff relied upon their experience, expertise, and the following sources when writing these proposed regulations:

Popken, Ben, Consumer News and Business Channel, “America’s Gun Business, By the Numbers” <https://www.cnn.com/2015/10/02/americas-gun-business-by-the-numbers.html>, published on October 2, 2015.

Henderson, Peter and Daniel Trotta, Reuters, “What’s missing in U.S. gun control scramble? Bullets” <https://www.reuters.com/article/us-usa-guns-ammunition/whats-missing-in-u-s-gun-control-scramble-bullets-idUSBRE90J02K20130120>, published on January 20, 2013.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Purpose

The Department proposes to adopt California Code of Regulations Title 11, sections 4300 through 4309 to interpret, and make specific the Penal Code sections that implement an eligibility check for the purchase and transfer of ammunition.

The Department estimates there will be approximately 13 million ammunition purchases or transfers conducted each year with a Standard Ammunition Eligibility Check. This calculation was based on the fact that in 2014, California residents accounted for just 931,037 firearms background checks, which is just 4.44 percent of the 20,968,273 firearms background checks that were completed nationally in the United States.¹ Additionally, U.S. residents purchase around 12 billion rounds annually.² If this rate of firearm background checks is an indicator of approximate overall gun ownership, and in turn ammunition usage, then this equates to approximately 13.2 million boxes of ammunition per year. For this calculation, the Department has assumed that 4.44 percent of 12 billion is 528 million, and 528 million divided by 40 (40 being the amount of rounds in each box ammunition) ultimately totals approximately 13.2 million boxes of ammunition purchased by California residents each year.

¹ Ben Popken, “America’s Gun Business, By The Numbers,” Consumer News and Business Channel (CNBC), published October 2, 2015, <https://www.cnn.com/2015/10/02/americas-gun-business-by-the-numbers.html>.

² Peter Henderson and Daniel Trotta, “What’s missing in the U.S. gun control scramble? Bullets,” Reuters, published on January 20, 2013, <https://www.reuters.com/article/us-usa-guns-ammunition/whats-missing-in-u-s-gun-control-scramble-bullets-idUSBRE90J02K20130120>.

The Department translated the 13.2 million boxes of ammunition to the estimated 13 million ammunition transactions (conducted with a Standard Ammunition Eligibility Check) after careful consideration of mitigating factors which include ammunition purchased at the same time of a firearm, multiple boxes of ammunition purchased in the same transaction, and individuals transitioning to reloading their own ammunition.

Private Sector

The Department determines that these regulations will not have a significant impact on the creation or elimination of private sector jobs within the state of California. The estimated impact on businesses stems from the implied cost for ammunition vendors to process ammunition transactions. The Department estimates that it will take approximately two minutes to process a Standard Ammunition Eligibility Check, so the implied costs for an ammunition vendor can be derived from taking the approximate two-minute processing time and multiplying it by the estimated 13 million transactions, while valuing ammunition vendor staff time at \$11 per hour. In total, the annual direct cost for ammunition vendors to process these transactions is \$4,766,667. Ammunition purchasers will also have the same annual implied cost of \$4,766,667 since they have to wait for the transaction to be processed and their time is valued at \$11 per hour. 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.

The Department has determined that these regulations will not have a significant impact on the creation of new businesses or elimination of businesses within California or affect the expansion of businesses currently doing business in California because the effects of these regulations will be minimal. The costs for a business to comply with these regulations 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.

Public Sector

The Department determines that these regulations will not have a significant impact on the creation or elimination of public sector jobs within the state of California. The Department anticipates hiring personnel to develop the systems and manage ongoing ammunition sales and transfers. The revenue to pay for these employees is derived from the following fees. The Department is authorized to charge a \$1.00 fee for a Standard Ammunition Eligibility Check, a \$19.00 fee for a Basic Ammunition Eligibility Check, and a \$1.00 fee for the verification of a COE. The Department expects to collect \$13 million per year in revenue from the Standard Ammunition Eligibility Check and COE verification process (based on 13 million ammunition transactions per year). The Department expects to collect \$950,000 per year from the Basic Ammunition Eligibility Check (based on approximately 50,000 Basic Ammunition Eligibility Checks conducted per year). From this revenue, the Department will repay a \$25 million loan to the General Fund used for the start-up costs (that include consultant and payment processing contracts, software and hardware purchases, and personnel) of the implementation of

Penal Code sections 30352 and 30370, and ongoing employee salaries, system maintenance, and payment processing contracts.

The Department has made these determinations based on the fact that the fee for an ammunition eligibility check or the COE verification process is minimal and will not deter an individual from purchasing or transferring ammunition in California. Therefore, an individual will still purchase or transfer ammunition from an ammunition vendor, and an ammunition vendor will not be losing business from these regulations.

The proposed regulations are beneficial to the health and welfare of California's residents because they create a process which will ensure an individual prohibited by either state or federal law to possess ammunition will be unable to purchase or transfer ammunition. An ammunition purchase or transfer completed in California must be conducted by or processed through an ammunition vendor unless otherwise exempted. An ammunition vendor is required to submit an ammunition purchaser's or transferee's personal information directly to the Department, so the Department can complete an ammunition eligibility check or verify that the individual has a valid COE prior to approving an ammunition purchase or transfer to take place. Furthermore, these regulations will benefit the welfare of California residents because the Department shall only approve an ammunition purchase or transfer for an individual who is not prohibited by either state or federal law to possess ammunition. These regulations minimize the likelihood of a dangerous prohibited individual taking possession of ammunition.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The primary evidence supporting the Department's determination that these regulations will not result in adverse economic impact directly affecting business is that despite there being direct and implied costs to ammunition vendors and ammunition purchasers for the time it takes the Department to process a Standard Ammunition Eligibility Check, there is no evidence that these regulations will deter ammunition sales or be a significant burden to ammunition purchasers. 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.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other reasonable alternatives were presented to, or considered by, the Department that would be either more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES, AND THE AGENCY'S REASONS FOR REJECTING THEM

No other reasonable alternatives were presented to, or considered by, the Department that would be either more effective in carrying out the purpose for which the action is proposed, or would be

as effective and less burdensome.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

The proposed regulations are not mandated by federal law or regulations.

EXHIBIT 8

INITIAL STATEMENT OF REASONS ADDENDUM

[OAL File No. Z-2018-1204-08]

The following addendum clarifies the specific purpose of proposed sections 4301, 4302, 4303, 4305 and 4309, and the rationale for the determination by the Department of Justice that the regulation is necessary to carry out the purpose for which it is proposed.

PURPOSE AND NECESSITY

§ 4301. Definition of Key Terms.

Subdivision (a) establishes an initialism that is, itself, a commonly used term. The terms “AFS” and “Automated Firearms System” are used in these regulations and in Penal Code section 30370, subdivision (a)(1), which these proposed regulations implement. The definition is necessary to include, here, to guarantee the clarity of the regulations.

Subdivision (c) establishes an initialism whereby “ATN” means “Ammunition Transaction Number,” which is the name the Department has given to the unique identifying number assigned to each request to authorize an ammunition purchase. This name is necessary to communicate to a potential ammunition purchaser or transferee a key component of the process implemented by proposed sections 4302(d) and 4303(c).

Subdivision (d) establishes a name for a process that is prescribed by statute, as referenced in the definition. This process is being named for ease of reference, and to distinguish between the different types of ammunition eligibility checks. Because the eligibility check conducted pursuant to Penal Code section 30370, subdivision (c), is largely the same as the usual firearms eligibility check, the Department has named this eligibility check the “Basic Ammunition Eligibility Check.”

Subdivisions (e), (i), (o) and (p) establish a name for persons or things that are defined by statute, as referenced in each definition. The Department has exercised no discretion in defining these terms. They are necessary to include, here, for ease of reference, and because the terms are used in these regulations.

Subdivision (f) establishes an initialism that is, itself, a commonly used term. The terms “CFARS” and “California Firearm Application Reporting System” are used by Penal Code sections 33850 and 33865 to refer to the system by which members of the public contact the Department regarding their personal firearms records. The Department has exercised no discretion in defining these terms. The definitions are necessary to include, here, to guarantee the clarity of the regulations.

Subdivision (h) establishes the term “Dealer Record of Sale Entry System or DES,” which is a generally acknowledged term in the industry and is explicitly defined by title 11, chapter 8, section 4200, of the California Code of Regulations.

Subdivision (j) establishes a name for a process that is prescribed by statute, as referenced in the definition. This process is being named for ease of reference. The name chosen by the Department is self-descriptive. The statutory reference also explains the eligibility check.

Subdivision (k) establishes the meaning of the term “head of agency.” This meaning is necessary to establish in order to determine who is authorized by Penal Code section 30352, subdivision (e)(7) as having the authority relevant to sections 4306(a)(4) and (5) of these regulations. The Department has interpreted the term “head of agency” in the most commonly accepted manner.

Subdivision (n) establishes a name for a process that is prescribed by statute, as referenced in the definition. This process is being named for ease of reference, and to distinguish between types of statutory eligibility checks. Because the Department expects that 98 percent of ammunition eligibility checks will be conducted pursuant to Penal Code section 30370, subdivision (a)(1), the Department has named this eligibility check the “Standard Ammunition Eligibility Check.”

§ 4302. Standard Ammunition Eligibility Check.

Subdivision (a) establishes a fee of \$1 per Standard Ammunition Eligibility Check, to recover the reasonable cost of regulatory and enforcement activities related to Article 4 of Chapter 1 of Division 10 of Title 4 of Part 6 of the Penal Code. Pursuant to Penal Code section 30370, subdivision (e), the per-transaction fee may exceed neither \$1, nor the reasonable regulatory and enforcement costs of activities related to the article.

The Department has determined that a \$1 fee per Standard Ammunition Eligibility Check is necessary to recover the reasonable cost of regulatory and enforcement activities.

The Department estimates there will be approximately 13.2 million ammunition purchases or transfers each year (see the Economic Impact Analysis for how the Department reached this estimate). Of those 13.2 million purchases or transfers, the Department estimates that approximately 13 million will come from people who have records in the Automated Firearms System (AFS). These individuals may be authorized to purchase ammunition subsequent to the results of a Standard Ammunition Eligibility Check.

There are currently 4.5 million people with distinct entries in the Automated Firearms System. However, the Department estimates that less than 2/3 of these people are active firearms users. This is because the oldest records in AFS date back to the year 1900 and likely reflect individuals who are no longer active firearms users; some people who possess firearms do not use them regularly, and so do not purchase ammunition regularly; and people who purchase ammunition at gun ranges are exempt from these regulations per Penal Code section 30352, subdivision (e)(3). The Department estimates that each person in AFS who is actively engaged in shooting sports (roughly 3,000,000 persons) will purchase ammunition approximately 4-5 times each year, for an estimate of approximately 13,000,000 million transactions each year that

will be conducted subsequent to a Standard Ammunition Eligibility Check. At the proposed fee of \$1 per transaction, this equates to a revenue of \$13,000,000 each year.

Together with the \$950,000 generated by the fee for the Basic Ammunition Eligibility Check and the \$154,000 generated by the fee for the COE Verification (see explanations for these fees in sections 4303 and 4305, below), the Department projects a revenue of approximately \$14,104,000 each year.

The initial costs of implementing the ammunition authorization program required the Department to incur a debt of \$25 million from the state's General Fund, as authorized by Penal Code section 30371. These initial program costs include personal services, operating expenses and equipment, system enhancements, infrastructure, and other costs. This debt will need to be repaid, with interest, as stipulated by the authorizing statute.

The Department estimates the ongoing fiscal expenses to implement the entire ammunition authorization program will be approximately \$13 million for the first year, and approximately \$10 million each subsequent year (see STD 399 Attachment A). For fiscal years 2019/20, 2020/21, and 2021/22, the Department will allow for the Ammunition Safety and Enforcement Special Fund to build a reserve for economic uncertainties. This reserve will also be used to repay, with interest, the \$25 million loan from the state's General Fund. The Department projects that it will be able to repay the loan at \$3 million each year, beginning FY 2022/2023.

The Department has determined that the most effective way to recover the costs of implementing the ammunition authorization program, including the cost of repaying the loan with interest and maintaining a modest reserve, is to set the fee for the Standard Ammunition Eligibility Check at \$1 per transaction.

By fiscal year 2022/23, the Department will have a better estimate for annual revenues based on actual numbers, and at that time can adjust the fee set by proposed section 4302, subdivision (a).

Subdivision (b) specifies that the purchaser or transferee's name, date of birth, current address and driver license or other government identification number must be collected from the potential purchaser or transferee, and specifies the manner of collecting and transmitting that information to the Department.

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.

The information must be collected in the manner described in Penal Code section 28180 because Penal Code section 30370, subdivision (b) requires that it be collected in that manner. The Department has exercised no discretion in requiring this. It is necessary to include, here, to guarantee the clarity of the regulations.

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 has 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 greater ability to verify the purchaser's identity, if necessary, and to communicate with the purchaser or transferee, if necessary.

The Department has determined that the most effective way to conduct the ammunition authorization program is to require all required information be communicated to the Department through the DES website, with the notable exemption provided by Penal Code section 30370, subdivision (d), as implemented by section 4307 of these proposed regulations. Penal Code section 30370, subdivision (d) implies that the majority of ammunition vendors will submit the information "electronically." 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.

Subdivision (c) specifies that, subsequent to the submission of information described in subdivision (b), the Department will communicate to the ammunition vendor the Department's determination regarding whether the purchaser or transferee is authorized to purchase ammunition. This specifies the possible results of the Standard Ammunition Eligibility Check, and that the Department will communicate the results directly to the ammunition vendor, thereby providing the ability for the ammunition vendor to comply with Penal Code section 30352, subdivision (d).

Subdivision (d) specifies the process by which a purchaser or transferee may obtain the reason when a Standard Ammunition Eligibility Check results in a rejection. This subdivision is necessary to inform individuals who are rejected subsequent to a Standard Ammunition Eligibility Check that it is possible to obtain a reason for the rejection, and that an ATN can be used for this purpose, thereby providing transparency to the affected party and allowing for the individual to challenge the determination, as appropriate. This is only available when a purchase or transfer is rejected, since an individual who is not rejected would have no use for an ATN. The subdivision also specifies that it is incumbent upon the ammunition vendor to provide the ATN to the purchaser or transferee since, pursuant to subdivisions (b) and (c), the vendor acts as an intermediary between the Department and the purchaser or transferee.

§ 4303. One-Time Ammunition Transactions.

Subdivision (a) establishes a fee, authorized by Penal Code section 30370, subdivision (c), to recover the reasonable cost of processing and regulatory and enforcement activities related to that statute. The authorizing statute allows the Department to set the fee at an amount not to exceed the fee charged for the Department's Dealers' Record of Sale (DROS) process, and not to exceed the Department's reasonable costs.

The charge for the DROS process, as set by title 11, chapter 1, section 4001 of the California Code of Regulations, is \$19 per transaction.

The Department has determined that it must set the fee for the Basic Ammunition Eligibility Check at \$19 per transaction in order to recover the Department's reasonable costs.

The Department estimates there will be approximately 13.2 million ammunition purchases or transfers each year (see the Economic Impact Analysis for how the Department reached this estimate). Of those 13.2 million purchases or transfers, the Department estimates that approximately 154,000 will be made by people who undergo the COE verification process and 13,000,000 million made by people who have an entry in AFS. The Department therefore estimates that there will be 50,000 purchases made by people who will gain authorization to purchase ammunition by submitting to the Basic Ammunition Eligibility Check. At the maximum allowable fee of \$19 per transaction, this equates to a revenue of \$950,000 each year.

Together with the \$13,000,000 generated by the fee for the Standard Ammunition Eligibility Check and \$154,000 generated by the fee for the COE verification (see explanations for these fees in sections 4302, above, and section 4305, below), the Department projects a revenue of approximately \$14,104,000 each year.

The initial costs of implementing the ammunition authorization program required the Department to incur a debt of \$25 million from the state's General Fund, as authorized by Penal Code section 30371. These initial program costs include personal services, operating expenses and equipment, system enhancements, infrastructure, and other costs. This debt will need to be repaid, with interest, as stipulated by the authorizing statute.

The Department estimates the ongoing fiscal expenses to implement the entire ammunition authorization program will be approximately \$13 million for the first year, and approximately \$10 million each subsequent year (see STD 399 Attachment A). For fiscal years 2019/20, 2020/21, and 2021/22, the Department will allow for the Ammunition Safety and Enforcement Special Fund to build a reserve for economic uncertainties. This reserve will also be used to repay, with interest, the \$25 million loan from the state's General Fund. The Department projects that it will be able to repay the loan at \$3 million each year, beginning FY 2022/2023.

The Department has determined that the most effective way to recover the costs of implementing the ammunition authorization program, including the cost of repaying the loan with interest and maintaining a modest reserve, is to set the fee for the Basic Ammunition Eligibility Check at \$19 per transaction.

By fiscal year 2022/23, the Department will have a better estimate for annual revenues based on actual numbers, and at that time can adjust the fee set by proposed section 4303, subdivision (a).

Subdivision (b) specifies information that must be collected from the purchaser or transferee, and the manner of collecting and transmitting that information to the Department.

The purchaser or transferee's name, date of birth, current address, gender, hair color, eye color, height, weight, driver license or other government identification number, place of birth, alias names(s), and race are required so that the Department can conduct the 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 purchase or receive possession of ammunition. Because, pursuant to Penal Code section 30305, no person prohibited from owning or possessing a firearm, as specified, shall own or possess ammunition, the Department has determined that the most effective way to implement Penal Code section 30370, subdivision (c) is to conduct an ammunition eligibility check that mirrors the processes and procedures of a firearms eligibility check, with the exception of the check of federal databases. That exception aside, a firearms eligibility check requires the aforementioned personal information in order to verify the person's identity and to check records accessible by the Department, and therefore the Department has determined that the most effective method of conducting a Basic Ammunition Eligibility Check is to require the same information from an ammunition purchaser or transferee.

The information must be collected in the manner described in Penal Code section 28180 because this is the most efficient method of accurately collecting the information required. 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. This is also the manner prescribed by Penal Code section 30370, subdivision (b), for collecting personal information for the Standard Ammunition Eligibility Check. 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.

The purchaser or transferee's United States citizenship status, and federal Alien Registration Number or I-94 (if applicable), are also required so that the Department can conduct the 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..." It is ambiguous whether "a person who is not prohibited" refers to a person who is only "not prohibited" by state law, or also to persons not prohibited by federal law. For example, title 18, section 922(g) of the federal Gun Control Act makes it unlawful for individuals meeting specified criteria ("prohibitors") to possess a firearm or ammunition. 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 under either state or federal law. The two other methods of obtaining authorization from the Department to purchase ammunition pursuant to Penal Code

section 30370 both involve a check of federal prohibitors. The Standard Ammunition Eligibility Check requires the individual to not be prohibited from owning or possessing ammunition by cross-referencing the Prohibited Armed Persons File database which, pursuant to Penal Code section 30005, explicitly includes individuals who are prohibited from firearms and ammunition possession by federal law. Similarly, a Certificate of Eligibility is issued upon a determination by the Department that the individual is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or, by extension, ammunition (see Penal Code section 26710, subdivision (b)). 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. However, because the Department is not permitted to use the federal National Instant Criminal Background Check System (NICS) for the purpose of ammunition eligibility checks, the Department has determined that the most efficient method of ensuring that a person is not prohibited to purchase ammunition under federal law is to require the ammunition vendor to collect the purchaser or transferee's United States citizenship status, and federal Alien Registration Number or I-94 (if applicable), and to report this information to the Department.

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 has 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 determined that the most effective way to conduct the ammunition authorization program is to require all required information be communicated to the Department through the DES website, with the notable exemption provided by Penal Code section 30370, subdivision (d), as implemented by section 4307 of these proposed regulations. Penal Code section 30370, subdivision (d) implies that the majority of ammunition vendors will submit the information "electronically." 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.

Subdivision (c)(1) specifies that an approved Basic Ammunition Eligibility Check can only be used for one purchase. Penal Code section 30370, subdivision (c) mandates that the procedure being developed by this proposed regulation will provide an approval "for a single ammunition transaction or purchase." The Department has determined that it is necessary to duplicate the

statutory provision in the regulation so as to provide clarity regarding the practical usefulness of a Basic Ammunition Eligibility Check.

This subdivision also specifies that the approval expires 30 calendar days from when it is issued. 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.

Subdivision (c)(2) specifies that if the Basic Ammunition Eligibility Check is denied, the Department will notify the purchaser or transferee of the reason for the denial via U.S. mail. It is necessary to communicate the reason for the denial via U.S. mail because this reason will have been determined through a review of the records available to the Department, and by referring to those records the communication may contain sensitive personal information. Providing the reason for the denial via U.S. mail rather than, for instance, via email or through an internet portal such as CFARS, ensures the security and confidentiality of the communication, while also providing transparency to the denied individual as to the reason for the Department's determination.

Subdivision (d) specifies the manner in which the Department will communicate the result of the potential purchaser or transferee's request. The Department has determined that the most effective way to communicate its determination to the vendor and to the potential purchaser or transferee is through the DES website. 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 the Department communicates determinations on firearm eligibility checks to firearms dealers, regarding potential firearms purchasers or transferees. It would be unduly burdensome for ammunition vendors, and unnecessarily expensive for the Department to develop a separate method of communicating the Department's determination to ammunition vendors for the purpose of ammunition eligibility checks. By specifying that the determination will be communicated via the DES website, the result will be communicated directly to the ammunition vendor, thereby providing the ability for the ammunition vendor to comply with Penal Code section 30352, subdivision (d).

§ 4305. COE Verification Process.

Subdivision (a) establishes a fee of \$1 per request for a Certificate of Eligibility (COE) verification for the purpose of gaining authorization to purchase or transfer ammunition, to recover the reasonable cost of regulatory and enforcement activities related to Article 4 of Chapter 1 of Division 10 of Title 4 of Part 6 of the Penal Code. Pursuant to Penal Code section 30370, subdivision (e), the per-transaction fee may exceed neither \$1, nor the reasonable regulatory and enforcement costs.

The Department has determined that a \$1 fee per COE verification is necessary to recover the reasonable cost of regulatory and enforcement activities.

The Department estimates there will be approximately 13.2 million ammunition purchases or transfers each year (see the Economic Impact Analysis for how the Department reached this estimate). Of those 13.2 million purchases or transfers, the Department estimates that approximately 154,000 will be made by people who undergo the COE verification process.

There are currently 22,000 people who hold a COE. Persons who hold a COE are likely to be actively engaged in shooting sports, and so the Department estimates that all COE holders will purchase ammunition in any given year (i.e., all 22,000 COE holders), and at a rate higher than most casual firearms enthusiasts. The Department estimates that COE holders will purchase ammunition approximately seven (7) times each year, for an estimate of 154,000 transactions each year. At the maximum allowable fee of \$1 per transaction, this equates to a revenue of \$154,000 each year.

Together with the \$13,000,000 generated by the fee for the Standard Ammunition Eligibility Check and the \$950,000 generated by the fee for the Basic Ammunition Eligibility Check, the Department projects a revenue of approximately \$14,104,000 each year.

The initial costs of implementing the ammunition authorization program required the Department to incur a debt of \$25 million from the state's General Fund, as authorized by Penal Code section 30371. These initial program costs include personal services, operating expenses and equipment, system enhancements, infrastructure, and other costs. This debt will need to be repaid, with interest, as stipulated by the authorizing statute.

The Department estimates the ongoing fiscal expenses to implement the entire ammunition authorization program will be approximately \$13 million for the first year, and approximately \$10 million each subsequent year (see STD 399 Attachment A). For fiscal years 2019/20, 2020/21, and 2021/22, the Department will allow for the Ammunition Safety and Enforcement Special Fund to build a reserve for economic uncertainties. This reserve will also be used to repay, with interest, the \$25 million loan from the state's General Fund. The Department projects that it will be able to repay the loan at \$3 million each year, beginning FY 2022/2023.

The Department has determined that the most effective way to recover the costs of implementing the ammunition authorization program, including the cost of repaying the loan with interest and maintaining a modest reserve, is to set the fee for the COE Verification at \$1 per transaction.

By fiscal year 2022/23, the Department will have a better estimate for annual revenues based on actual numbers, and at that time can adjust the fee set by proposed section 4305, subdivision (a).

Subdivision (b) specifies the information that must be collected to verify that the purchaser or transferee holds a current COE, and the manner of collecting and transmitting that information to the Department so that the Department can verify that the COE is "current" and therefore approve the purchase or transfer pursuant to Penal Code section 30370, subdivision (a)(2).

The purchaser or transferee's name, date of birth, current address and driver license or other government identification number must be collected so that the Department can verify the purchaser or transferee's identity.

The information must be collected in the manner described in Penal Code section 28180 because this is the most efficient method of accurately collecting the information required. Pursuant to Penal Code section 30385, subdivision (d), many firearms dealers are also authorized ammunition vendors. These firearms dealers are already required by that Penal Code section to collect purchaser information in that manner, for the purpose of firearm eligibility checks. This is also the manner prescribed by Penal Code section 30370, subdivision (b), for collecting personal information for the Standard Ammunition Eligibility Check. It would be unduly burdensome for ammunition vendors, and unnecessarily expensive for the Department to develop and require the use of a separate method of accurately collecting and communicating purchasers' or transferees' personal information to the Department for the specific purpose of the COE Verification.

The purchaser or transferee's COE number must be collected so that the Department can cross-reference its records to verify that the COE is "current."

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 has 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, is necessary.

The Department has determined that the most effective way to conduct the ammunition authorization program is to require all required information be communicated to the Department through the DES website, with the notable exemption provided by Penal Code section 30370, subdivision (d), as implemented by section 4307 of these proposed regulations. Penal Code section 30370, subdivision (d) implies that the majority of ammunition vendors will submit the information "electronically." 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 the COE Verification.

Subdivision (c) specifies that, subsequent to the submission of information described in subdivision (b), the Department will communicate to the ammunition vendor the Department's determination regarding whether the purchaser or transferee is authorized to purchase

ammunition. This specifies the possible results of the COE Verification, and that the Department will communicate the results directly to the ammunition vendor, thereby providing the ability for the ammunition vendor to comply with Penal Code section 30352, subdivision (d).

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

Subdivision (a) specifies how an ammunition vendor is billed by the Department. The Department has determined that the most effective way to bill an ammunition vendor is to deliver the bill through the DES website. 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 bills are delivered to firearms dealers, to provide payment for firearm eligibility checks. It would be unduly burdensome for ammunition vendors, and unnecessarily expensive for the Department to develop and require the use of a separate method of communicating billing statements to the ammunition vendor.

Subdivision (c) specifies consequences for non-payment within 30 days. The Department has determined that there must be a consequence for non-payment, in order to incentivize timely payment. Thirty days is a standard length of time to allow for payments to be made. The Department has determined that suspending access to DES is the most effective way to incentivize payment, as ammunition vendors would want sustained access to DES in order to continue to legally sell ammunition.

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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 CHRISTINA
MCNAB**

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

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DECLARATION OF CHRISTINA MCNAB

1
2 1. I, Christina McNab, 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 the owner of LAX Ammunition OC, a small family-operated licensed
6 ammunition vendor located in Huntington Beach, California. With the help of my
7 husband, I opened my doors August 2017 and hired a small team of one active and one
8 former military veteran to help operate the store. My customers are law-abiding citizens:
9 blue & white collar men and women, entrepreneurs, law enforcement, first-responders,
10 CEOs, firearms instructors, active/retired military and families, who come to buy
11 ammunition for recreational shooting, hunting, home defense, and firearms classes. Prior
12 to the enforcement of Proposition 63, my store regularly averaged 30 customers per day
13 and up to 100-300 visits per day during weekends or sales events. On average days, one
14 employee could manage the store, and on higher-volume days, I would ask for “all hands
15 on deck,” and retain both my employees and the help of my husband to better service our
16 customers. Since the adoption of Proposition 63, my business has suffered a series of
17 logistical, financial, moral, and administrative dilemmas that I fear if allowed to continue,
18 will force me to shut my doors, lose my means of supporting my family, and leave two
19 employees without jobs that they love and rely on to support their own families. I also
20 know the Second Amendment community will lose a valuable resource for exercising
21 their rights and enjoying their sport.

22 3. Following the adoption of Proposition 63 and Senate Bill No. 1235 in 2016,
23 our business was required to obtain a license issued by the California Department of
24 Justice (“DOJ”) to lawfully sell ammunition in California after January 1, 2018. But DOJ
25 failed to adopt the regulations necessary for the issuance of this license prior to the
26 January 1, 2018, deadline. Although our business was later issued a license following the
27 adoption of the necessary regulations, we were forced to operate without the license for a
28

1 brief period. DOJ never provided our business with any official guidance during this
2 period despite our repeated requests.

3 4. On July 1, 2019, new requirements regarding the sale or transfer of
4 ammunition by licensed vendors took effect. Pursuant to these requirements, our business
5 must now use DOJ’s Dealer Record of Sale (“DROS”) Entry System (“DES”) to process
6 all ammunition transactions. DES is the same system used by California licensed firearm
7 dealers to process firearm transfers in California.

8 5. Prior to the implementation of the new July 1, 2019, sales restrictions, the
9 only guidance on how to process ammunition transactions using DES was provided to us
10 by DOJ on June 28, 2019, three days before the new sales restrictions were scheduled to
11 take effect. However, our business was not provided full access to DES until the morning
12 of July 1, 2019, the same day the new sales restrictions took effect.

13 6. In preparation for the new restrictions taking effect July 1, 2019, I reviewed
14 DOJ’s proposed regulations regarding the sale or transfer of ammunition and proposed
15 “emergency” regulations requiring federally compliant IDs for all firearm and
16 ammunition transactions. I was unable to review the text of these regulations as they had
17 not been made available to me with enough time to review them prior to the July 1, 2019,
18 implementation date.

19 7. Upon logging in to DES the morning of July 1, 2019, DOJ’s system
20 prompted us to review dozens of DOJ “Information Bulletins” regarding DES. There
21 were approximately 65 bulletins in total, each numbering anywhere from 5-7 pages in
22 length, totaling over 400 pages of material. DES would not allow our business to process
23 any ammunition transactions until we first acknowledged that we had read and
24 understood all these materials. Neither DOJ’s guide nor its recently adopted regulations
25 had given us prior warning of this requirement.

26 8. Once able to access DES, we then attempted to provide access to our
27 employees. Initially, we were unable to provide this access because DES was requesting
28 our “CFD” number. Nothing in the DES guide or DOJ’s regulations explained what this

1 was. Only after conducting an online internet search did we then recognize this “CFD”
2 number as a “California Firearms Dealer” number. But because we are not a California
3 licensed firearms dealer, we had not been provided with a CFD number by DOJ. After
4 several failed attempts, we were finally able to allow our employees access to DES by
5 submitting our Ammunition Vendor License number.

6 9. Accessing and processing ammunition transactions through DES requires a
7 computer, internet connection, web browser, Adobe Acrobat Reader, a magnetic strip
8 reader that meets California Department of Motor Vehicles (“DMV”) specifications,
9 printer, paper, and printer ink, among other items. That these things would be necessary
10 was only made clear to us in the transaction guide provided to us by DOJ on June 28,
11 2019, less than 3 days before the new sales restrictions took effect.

12 10. After reviewing all required “Information Bulletins,” our business was then
13 able to begin processing ammunition transactions through DES. Our first attempts to
14 process transactions, however, resulted in several errors when attempting to populate the
15 required form fields to process transactions. Among such errors were the name and
16 address of the purchaser being transposed after swiping the purchaser’s California
17 Driver’s License or ID, requiring a manual correction. DOJ’s regulations and the DES
18 guide require our business to populate DES with the purchaser’s Driver’s License or ID
19 by swiping it through a magnetic strip reader and clicking “Populate Fields” in DES. The
20 only exceptions are when the purchaser’s ID consists of a military ID or, due to technical
21 limitations, when the magnetic strip reader is unable to obtain the required information.
22 As of the creation of this Declaration, I have yet to have one successful and complete
23 transfer of ID information into DES from a swipe of the ID through our magnetic strip
24 reader, resulting in us having to enter some or all customer information manually for
25 every purchase to date. Swiping a person’s Driver’s License or ID does not populate the
26 city, state, or zip code fields in DES, requiring us to manually enter this information.
27 Neither DOJ’s guide nor its recently adopted regulations provide any information as to
28 the cause of these errors or how to correct them.

1 11. There are generally three ways in which DES can process an ammunition
2 transaction. DOJ has labeled these options in DES as: 1) Standard Ammunition
3 Eligibility Check (SAEC); 2) Basic Ammunition Eligibility Check (BAEC); and, 3)
4 Certificate of Eligibility (COE) Verification. The Standard Ammunition Eligibility Check
5 and Certificate of Eligibility Verification require a \$1 processing fee, whereas the Basic
6 Ammunition Eligibility Check requires a \$19 processing fee.

7 12. Regardless of which transaction option is selected, DES requires our
8 business to collect a purchaser’s gender, race, eye color, hair color, height, weight, date
9 of birth, place of birth, and U.S. Citizenship status, and phone number, in addition to the
10 information collected from the purchaser’s Driver’s License or ID. DOJ’s regulations
11 state such information is only required when processing a Basic Ammunition Eligibility
12 Check. The DES guide, however, makes clear that all this information is required for
13 each type of transaction. DES will not allow our business to process a transaction unless
14 all of this information has been entered.

15 13. Depending on the purchaser’s personal information, DES will provide a
16 drop-down menu to select the city of the person’s place of residence. In some instances,
17 this drop-down menu has provided multiple options for the same city. For example, in
18 one transaction where the customer’s residence is in Huntington Beach, California, the
19 drop-down menu listed both “Huntington Beach” and “Huntington BCH” as selectable
20 options. For purchasers utilizing the Standard Ammunition Eligibility Check option, we
21 can only presume that selecting the incorrect option will result in a denial through DES.
22 Neither DOJ’s regulations, the DES guide, nor DES itself provides any information
23 regarding how to determine the appropriate option to choose from.

24 14. Prior to July 1, 2019, DOJ promulgated new “emergency” regulations
25 requiring our business to verify a purchaser’s Driver’s License or ID is federally
26 compliant. Our business must now verify if a purchaser’s Driver’s License or ID has the
27 notation “FEDERAL LIMITS APPLY,” in which case we must request additional proof
28 of lawful U.S. residence (such as a U.S. passport or certified U.S. birth certificate) from

1 the purchaser prior to submitting an ammunition transaction in DES. In the event the
2 name on the purchaser’s Driver’s License or ID differs from name on the purchaser’s
3 proof of lawful U.S. residence, DOJ’s new regulations also require the purchaser to
4 provide an additional certified document (such as an adoption, name change, or marriage
5 certificate) illustrating the reason for the name change. DOJ’s new regulations also
6 require our business to retain a copy of any supplemental documentation provided by the
7 purchaser, which means taking more time and resources for copying, printing it out and
8 filing it away.

9 15. Contrary to California law and DOJ’s new “emergency” regulations
10 requiring federally compliant IDs, DOJ representatives have instructed our business to
11 manually edit the fields in DES (purchaser’s name and address) that were populated by
12 swiping the purchaser’s ID through a magnetic strip reader. DOJ representatives have
13 also instructed us to manually edit the purchaser’s information to ensure a purchaser’s
14 Standard Ammunition Eligibility Check is approved, even if the information entered in
15 DES differs from the information on the purchaser’s Driver’s License or ID.

16 16. Our business is now required to first assist the customer in identifying which
17 type of ammunition background check to run in connection with their transaction. This
18 process takes anywhere from 3-5 minutes. At no point has DOJ provided our business
19 with any materials we can share with customers, either in advance of or when processing
20 the transaction, to help them determine which background check process to use.

21 17. Once the customer has selected which background check process to use, it
22 takes our staff an additional 5 or more minutes to input the customer’s personal
23 information into DES. The ability of the magnetic strip reader to automatically populate
24 certain fields in DES determines how long this part of the process takes. Additional time
25 is also necessary should the system provide certain options, such as using “Huntington
26 Beach” or “Huntington BCH” for the purchaser’s place of residence as discussed above.
27 This takes additional time as we often have to explain the reason why selecting the
28 appropriate option is crucial to avoid inadvertent rejections by DES. During the eligibility

1 check, we also must make copies of any documents required, adding more time to the
2 transaction.

3 18. Prior to submitting the background check information, our staff must also
4 ensure the customer will pay the associated fee for the selected background check. To
5 reduce operating costs and the time it takes for our customers to purchase ammunition,
6 our business does not charge the required fee up front. Charging the required fee up front
7 would require a second transaction for payment of this fee which would take additional
8 unnecessary time. By doing so, however, our business runs the risk of a person being
9 denied a transaction through DES and then refusing to pay the required fee. What's more,
10 our credit card processing system would charge a \$0.50 processing fee for a \$1
11 transaction as necessary for the Standard Ammunition Eligibility Check or Certificate of
12 Eligibility (COE) Verification. While some customers may choose to pay in cash, we
13 estimate nearly 96% of our customers would use a credit card as their preferred payment
14 method.

15 19. Once a purchaser's personal information has been entered into DES and the
16 required background is submitted, we must then wait for DES to determine if the
17 transaction is approved or denied before proceeding to the next step of the transaction.
18 Most Standard Ammunition Eligibility checks and Certificate of Eligibility (COE)
19 Verifications have been processed almost instantly. On several instances, however, DOJ
20 has taken as long as 16 minutes to issue an approval or rejection. Of the Basic
21 Ammunition Eligibility Checks that we have submitted, it has taken DOJ at least two or
22 more hours to determine a purchaser's eligibility. It should be noted regarding the Basic
23 Eligibility Checks we have run these are customers with an AFS record. Should a
24 customer not have an AFS record, the process could take up to 10 days.

25 20. Assuming a purchaser's eligibility check is approved by DOJ, we can then
26 begin the process of assisting the customer in selecting the ammunition they wish to
27 purchase. Following the implementation of California's new ammunition sales
28 restrictions, our business is required to display any ammunition in such a manner as to

1 prevent unauthorized access by a customer, and one of our employees must assist the
2 customer in collecting the ammunition they wish to purchase. Depending on the amount
3 of different types of ammunition being purchased, and whether or not the customer
4 already knows exactly what ammunition to purchase, and an employee is able to
5 immediately assist them, this process can take several minutes.

6 21. After the ammunition has been selected, one of our employees must then
7 access DES and locate the purchaser's approved transaction in the system. Once located,
8 the employee must then enter all required information for each type of ammunition being
9 purchased into DES. The required information consists of the ammunition manufacturer,
10 caliber, condition, and quantity. DES also lists additional fields such as bullet type,
11 weight, usage type, casing, primer type, muzzle velocity, muzzle energy, and cost per
12 round, but states this information is not mandatory. A standard ammunition customer
13 purchases anywhere from 2-10 different types or calibers or brands of ammunition. The
14 DES system only allows for one type of brand and one type of caliber per page entry,
15 requiring a new DROS page generated for each brand and a new DROS page for each
16 caliber. To do this, according to the DES User guide, we must "repeat steps 2-5" to enter
17 each additional caliber or each additional brand. Therefore, depending on the amount and
18 different types of ammunition being purchased, this process will take at minimum 2
19 minutes and up to 15+ minutes depending on what a customer is buying.

20 22. Once a purchaser's ammunition information has been entered, we can then
21 "Deliver" the ammunition to the customer by making the appropriate selection in DES.
22 But before doing so, we must first take payment from the customer using our own
23 business inventory management system separate from DES. Depending on what payment
24 method the customer uses, this process can take an additional 2-3 minutes.

25 23. After selecting "Deliver" in DES, the DES guide instructs us to print the
26 transaction information "as that will be the only opportunity to generate a printed DROS
27 Ammunition copy for customer signature." For every type (brand and/or caliber) of
28 ammunition purchased, DES will print a separate page that, according to the DES guide,

1 must be signed by both the customer and our employee who is processing the transaction.
2 Neither California law nor DOJ’s regulations require us to print a copy of the transaction.
3 Since the enforcement of Proposition 63 on July 1, 2019, we have been forced to print on
4 average 1-10 pages per customer. Add to this, the required documentation for ID
5 requirements, and we have 2-12 printed pages per customer.

6 24. According to the DES guide, approvals issued in connection with a Standard
7 Ammunition Eligibility Check or Certificate of Eligibility (COE) Verification are valid
8 for a period of no more than 18 hours. Approvals for Basic Ammunition Eligibility
9 Checks, however, are valid for up to 30 days. If a customer left the store while their
10 Standard Ammunition Eligibility Check or Certificate of Eligibility (COE) Verification
11 was pending DOJ approval, they must return to the store after DOJ issues the approval,
12 select the ammunition they wish to purchase, and have the ammunition recorded and
13 delivered through DES within 18 hours. Neither California law nor DOJ’s regulations
14 expressly limit how long approvals are valid for.

15 25. Prior to the implementation of California’s ammunition transaction
16 restrictions that took effect on July 1, 2019, our business was able to process ammunition
17 transactions in less than a minute.

18 26. Following the implementation of California’s ammunition transaction
19 restrictions that took effect on July 1, 2019, it now takes at least 20 minutes—often
20 more—to process an ammunition transaction.

21 27. Following the implementation of the July 1, 2019, ammunition transaction
22 requirements, approximately half of our customers have either been unable to process a
23 transaction because they lacked the necessary documentation (such as having a
24 “FEDERAL LIMITS APPLY” ID but lacking a U.S. passport or other acceptable proof
25 of lawful U.S. residence), or have had their transaction denied by DOJ for reasons
26 unknown to us. As of the creation of this Declaration, we have suffered a significant
27 reduction in customers qualified to initiate the Standard or Basic Eligibility Checks due
28 to “FEDERAL LIMITS APPLY” ID restrictions and not having a passport or Birth

1 Certificate on their person. On Wednesday July 3, 2019, we had to turn away 12
2 customers who came into our store with the intent to purchase ammunition but were
3 unaware their ID was subject to the “FEDERAL LIMITS APPLY” restriction.

4 28. I have already fielded dozens of calls from customers asking what
5 documentation they need to purchase ammunition. In discussing the federally compliant
6 ID requirements, nearly half of the potential customers I have spoken to do not know if
7 they have the required supplemental documentation.

8 29. Of those customers who have attempted to purchase ammunition at our store
9 with a federally non-compliant ID, approximately only one in three possess the necessary
10 supplemental documentation. In one example, a customer who works as a Department of
11 Defense firearms instructor possessed a federally non-compliant ID but was unable to
12 purchase ammunition because he was unaware his ID had the “FEDERAL LIMITS
13 APPLY” notation and did not also possess the required supplemental documentation.

14 30. Nearly every customer who has attempted to purchase ammunition at our
15 store is unaware of all the new requirements applicable to ammunition transactions. On
16 multiple occasions, I have had to instruct customers on these requirements and, after
17 doing so, they decided against processing a transaction.

18 31. Of the customers who have submitted a Standard Ammunition Eligibility
19 Check, approximately 10% have been rejected. But had I not instructed my customers
20 what was required prior to initiating a transaction, I would estimate nearly half of my
21 customers would not have obtained the necessary electronic DOJ approval because they
22 would have submitted personal information that did not match one of their existing AFS
23 records.

24 32. I estimate my business has lost nearly half the daily revenue experienced
25 before the adoption of Prop 63.

26 33. California law requires my business to maintain any and all records
27 generated in connection with ammunition transactions starting July 1, 2019, and to make
28 them available for inspection for no less than 5 years. I am genuinely concerned that I

1 will be unable to maintain records for this length of time given the amount of paperwork
2 and information generated as a result of DOJ’s requirements because of the significant
3 expenses they require my business to incur, including the space necessary to store such
4 records.

5 34. I have also had to turn away at least 6 customers who are members of our
6 armed forces, who do not have a California ID. I have had to turn away at least 4
7 customers who had Driver’s Licenses issued by other states, but who either reside partly
8 in California or are visiting. I have lost business to customers who are new to the
9 shooting industry, and do not yet have an AFS record, because they haven’t purchased a
10 firearm yet. As is often the case with prospective firearm purchasers, they come to us to
11 buy ammunition at our store, then go to a range to either rent or borrow a firearm to “try
12 it out.” These customers do not have an AFS record and would therefore have to submit
13 to the \$19 Basic Eligibility Check and wait up to 10 days for approval. Of course, this
14 doesn’t seem like a suitable option to them, and they decline to do the Basic Eligibility
15 Check.

16 35. It should also be noted that along with a considerable imbalance between the
17 regulations and DES operation requirements, there is a complete lack of equitable
18 protocol in how to process customers who are either active military, or who have an old
19 address on their driver’s license, but have a firearm registered to their new address not
20 present on their driver’s license. I have been told by DOJ that members of our armed
21 forces who do not have a California ID, and/or do not have Duty Station Paperwork in
22 California, and/or have a California ID with the “FEDERAL LIMITS APPLY” notation
23 but no U.S. passport or birth certificate immediately available, cannot be processed for an
24 eligibility check. However, my parent company at LAX AMMUNITION LA, was told
25 that active military can use their Department of Defense (DoD) ID and any given
26 California address (with or without a firearm registered to it) to process a Standard
27 Eligibility Check and that retention of any address/ID paperwork was not required.
28 Furthermore, I was instructed by DOJ on two separate occasions that if a customer has an

1 alternate address that is not reflected on their ID, but the customer knows this alternate
2 address matches their existing AFS records, I could manually enter the alternate address
3 when submitting a Standard Eligibility Check for the customer in DES. DOJ instructed
4 that I would need to collect and retain proof of the alternate address. My parent company
5 was told no such protocol is needed.

6 36. DOJ has stated in its DES Guide that it has established a “Customer Support
7 Center” to assist businesses like ours with any issues processing transactions through
8 DES. We have repeatedly attempted to communicate with the Customer Support Center
9 on the issues we have experienced with DES but have to date been unable to speak with a
10 representative. The phone line is either busy or instructs us to leave a message. But even
11 after instructing us to leave a message, the system does not allow us to do so.

12 37. Prior to the implementation of the July 1, 2019, ammunition sales
13 restrictions, my business could be efficiently run with just one employee. Following the
14 implementation of the new requirements, however, we now require at least two
15 employees to effectively run the store, one to process the required background checks,
16 and one to assist customers in selecting and uploading ammunition transactions through
17 DES.

18 38. I am genuinely concerned that the recent changes to California law requiring
19 background checks for all ammunition transactions, as implemented by DOJ, will result
20 in a significant loss in business due to the complicated and unequal ID requirements, as
21 well as the time and costs necessary for processing transactions. Given those additional
22 costs our business has been forced to incur, coupled with the loss in business, I am
23 genuinely concerned that I will no longer be able to maintain a profitable business
24 moving forward and will be forced to close my business.

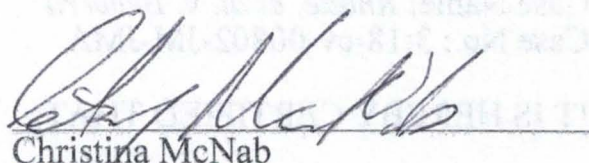
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1 I declare under penalty of perjury that the foregoing is true and correct. Executed
2 within the United States on July 10, 2019.

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6 Christina McNab
7 Declarant

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10 DECLARATION OF CHRISTINA MCNAB

11 on the following parties by electronically filing the foregoing on July 10, 2019, with
12 the Clerk of the District Court using its ECF system, which electronically notifies them

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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 CHRISTINA MCNAB

on the following parties by electronically filing the foregoing on July 22, 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 July 22, 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.
180 E. Ocean Boulevard, Suite 200
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Facsimile: (562) 216-4445
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 RICHARD TRAVIS

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

DECLARATION OF RICK TRAVIS

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

2. I am the Executive Director of the California Rifle & Pistol Association, Incorporated (“CRPA”), a nonprofit membership and donor-supported organization qualified as a tax-exempt under 26 U.S.C. § 501(c)(4) with its headquarters in Fullerton, California. CRPA is a plaintiff in this action.

3. Founded in 1875, CRPA seeks to defend the civil rights of all law-abiding individuals, including the fundamental right to acquire and possess ammunition. CRPA regularly provides guidance to California gun owners regarding their legal rights and responsibilities. In addition, CRPA is dedicated to promoting the shooting sports and providing education, training, and organized competition for adult and junior shooters. CRPA members include law enforcement officers, prosecutors, professionals, firearm experts, and the public.

4. In this suit, CRPA represents the interest of the tens of thousands of its members who reside in or visit the state of California, including in San Diego County, and who are too numerous to conveniently bring in this action individually. Those members’ interests include their intent to exercise their constitutionally protected right to acquire and otherwise transact in ammunition.

5. Many of CRPA’s members have been adversely affected by California’s new ammunition sales restrictions, including those that took effect on January 1, 2018, and more recently on July 1, 2019.

6. I am aware of CRPA members who were not provided any guidance from DOJ regarding the July 1, 2019.

7. I am aware of CRPA members who have been denied an ammunition sale because their driver’s license or identification card have a “FEDERAL LIMITS APPLY” notation and they lacked the required supplemental documentation.

1 8. I am aware of CRPA members who have been denied ammunition purchases
2 as of July 1, 2019, because their California issued identification contains a “FEDERAL
3 LIMITS APPLY” notation and they did not or do not otherwise have the ability to
4 provide supplemental proof of lawful U.S. presence as required by DOJ’s new emergency
5 regulation.

6 9. I am aware of CRPA members who are unable to renew their existing
7 Certificate of Eligibility issued by DOJ because their California issued identification
8 contains a “FEDERAL LIMITS APPLY” notation and they do not otherwise have the
9 ability to provide supplemental proof of lawful U.S. presence, as required by DOJ’s new
10 emergency regulation.

11 10. I am aware of CRPA members who are reporting ammunition transaction
12 processing times ranging anywhere from 20-30 minutes—often longer—as a result of the
13 new July 1, 2019, ammunition transaction requirements.

14 11. I am aware of CRPA members who have been have been denied an
15 ammunition transaction that are not prohibited from owning or possessing firearms.

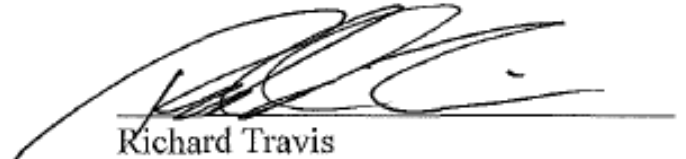
16 12. I am aware of CRPA members who are not California residents but who visit
17 California.

18 13. I am aware of CRPA members who, to correct any issues with their AFS
19 records for purposes of purchasing ammunition, have been forced to request a copy of
20 their AFS records. These same individuals have reported times as long as three to four
21 months before DOJ has responded with a copy of their AFS records.

22 14. I am aware of CRPA members and employees who have submitted
23 Certificate of Eligibility applications which have taken several weeks to process and costs
24 over \$71 when submitting an initial application.

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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 July 22, 2019.

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5 Richard Travis
6 Declarant
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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 RICHARD TRAVIS

on the following parties by electronically filing the foregoing on July 22, 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 July 22, 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
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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 SEAN A. BRADY

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

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DECLARATION OF SEAN A. BRADY

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2 1. I am an attorney at the law firm of Michel & Associates, P.C., attorneys of
3 record for plaintiffs in this action. I am licensed to practice law before the United States
4 Court for the Southern District of California. I am also admitted to practice before the
5 Central, Northern, and Eastern District Courts of California, superior courts of the state of
6 California, and the United States Supreme Court. I have personal knowledge of the facts
7 set forth herein and, if called and sworn as a witness, could and would testify
8 competently thereto.

9 2. On January 31, 2019, our office, on behalf of Plaintiff California Rifle &
10 Pistol Association, Incorporated, (“CRPA”) submitted a letter of comment on the
11 California Department of Justice’s proposed regulations regarding “Ammunition
12 Purchases or Transfers – OAL File No. Z-2018-1204-08.” A true and correct copy of this
13 letter of comment is attached as **Exhibit 35**.

14 3. On May 8, 2019, our office, on behalf of Plaintiff CRPA submitted a second
15 letter of comment on the California Department of Justice’s proposed regulations
16 regarding “Ammunition Purchases or Transfers – Title 11, Division 5, Chapter 11 (OAL
17 File No. Z-2018-1204-08).” A true and correct copy of this second letter of comment is
18 attached as **Exhibit 36**.

19 4. On June 20, 2019, our office, on behalf of Plaintiff CRPA submitted a letter
20 of comment on the California Department of Justice’s proposed emergency regulations
21 regarding “Identification Requirements for Firearms and Ammunition Eligibility Checks
22 – Title 11, Division 5, Chapter 4.” A true and correct copy of this letter of comment is
23 attached as **Exhibit 37**.

24 5. On June 26, 2019, Plaintiff CRPA hosted a webinar presented by our office
25 regarding “Ammunition Background Checks: Prop 63, SB 1235, and DOJ’s
26 Regulations.” A recording of this webinar can be viewed online at
27 <https://crpa.org/resources/crpa-webinars/>.

1 6. On October 18, 2016, Plaintiff CRPA hosted a webinar presented by our
2 office regarding “Newsom Ballot Initiative (Proposition 63): What Does it Do? How Will
3 it Change California’s Firearms Laws?” A recording of this webinar can be viewed
4 online at <https://crpa.org/resources/crpa-webinars/>.

5 7. On April 24, 2016, Plaintiff CRPA hosted a webinar presented by our office
6 regarding “California Legal Update: SB 1235 (Ammunition).” A recording of this
7 webinar can be viewed online at <https://crpa.org/resources/crpa-webinars/>.

8 8. On July 10, 2019, I emailed opposing counsel asking DOJ’s position
9 whether out-of-state persons can ship ammunition directly to a California resident if that
10 resident has both a valid Certificate of Eligibility (“COE”) issued by DOJ and a
11 Curio/Relic license (Type 03 FFL) (“C&R”) issued by the Bureau of Alcohol, Tobacco,
12 Firearms and Explosives (“BATFE”). On July 12, 2019, opposing counsel responded that
13 it was DOJ’s position that out-of-state persons *cannot* ship ammunition directly to COE
14 and C&R holders.

15 9. On July 10, 2019, I emailed opposing counsel asking DOJ’s position
16 whether California-based ammunition vendors are required to process private party
17 ammunition transactions. On July 12, 2019, opposing counsel responded that it was
18 DOJ’s position that California-based ammunition vendors are *not required* to process
19 private party ammunition transactions.

20 10. On July 19, 2019, our office received a letter from DOJ’s Certificate of
21 Eligibility Unit on behalf of Plaintiff CRPA stating that the COE applications submitted
22 by CRPA employees “cannot be processed” because DOJ is no longer accepting COE
23 applications via mail as a result of a recently adopted regulation that took effect on July
24 1, 2019. CRPA employees originally submitted their applications and paid all associated
25 application fees in June 2019.

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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 July 22, 2019.

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4 s/ Sean A. Brady
Sean A. Brady
5 Declarant
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EXHIBIT 35

SER360

SENIOR PARTNER
C. D. MICHEL*

MANAGING PARTNER
JOSHUA ROBERT DALE

SPECIAL COUNSEL
W. LEE SMITH

ASSOCIATES
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TIFFANY D. CHEUVRONT
MATTHEW D. CUBEIRO
ALEXANDER A. FRANK
LOS ANGELES, CA



OF COUNSEL
JOSEPH DI MONDA
SCOTT M. FRANKLIN
CLINT B. MONFORT
MICHAEL W. PRICE
TAMARA M. RIDER
LOS ANGELES, CA

* ALSO ADMITTED IN TEXAS AND THE DISTRICT OF COLUMBIA

WRITER'S DIRECT CONTACT:
562-216-4465
MCUBEIRO@MICHELLAWYERS.COM

January 31, 2019

Jessie Romine
Bureau of Firearms
Division of Law Enforcement
Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487
Ammoregs@doj.ca.gov
VIA EMAIL AND U.S. MAIL

Re: Comments Regarding Proposed Regulations Regarding Ammunition Purchases or Transfers – OAL File No. Z-2018-1204-08

To Whom It May Concern:

We write on behalf of our clients, the National Rifle Association of America (“NRA”) and the California Rifle & Pistol Association, Incorporated (“CRPA”), as well as their respective members throughout California, in opposition to the proposed regulations regarding “Ammunition Purchases or Transfers,” which if adopted would add sections 4300-4309 to Title 11 of the California Code of Regulations (“C.C.R”).

For the reasons discussed below, our clients oppose the regulations as currently drafted.

I. CALIFORNIA’S ADMINISTRATIVE PROCEDURES ACT

The APA is designed to provide the public with a meaningful opportunity to participate in the making of regulations by California state agencies and to ensure the creation of an adequate record for review.¹ Every regulation is subject to the rulemaking procedures of the APA unless expressly exempted by statute.²

¹ Office of Administrative Law, *Guide to Public Participation in the Regulatory Process*, <https://www.oal.ca.gov/wp-content/uploads/sites/166/2017/05/How-2-Participate-102016.pdf> (Oct. 2016).

² A “regulation” is defined as every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order or standard adopted by any state

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Under to the APA, California's Office of Administrative Law ("OAL") is tasked with reviewing all regulations that have been submitted to it for publication in the California Code of Regulations Supplement and for transmittal to the Secretary of State.³ Specifically, OAL will review any proposed regulation to ensure it satisfies the following criteria:

- **Necessity** – meaning the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of the law that the regulation implements, interprets, or makes specific, taking into account the totality of the record (where evidence includes, but is not limited to, facts, studies, and expert opinion);
- **Authority** – meaning the provision of law which permits or obligates the agency to adopt, amend, or repeat a regulation;
- **Clarity** – meaning written or displayed so that the meaning of the regulations will be easily understood by those persons directly affected by them;
- **Consistency** – meaning being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law;
- **Reference** – meaning the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation; and,
- **Nonduplication** – meaning that a regulation does not serve the same purpose as a state or federal statute or another regulation.⁴

Should a regulation fail to comply with the above requirements, OAL may disapprove the regulation.⁵ And any person may obtain a judicial declaration as to the validity of any regulation by bringing an action for declaratory relief.⁶

II. DOJ'S PROPOSED REGULATIONS ARE INCOMPLETE AND LACK SUFFICIENT CLARITY AS REQUIRED BY THE APA

As a threshold matter, DOJ's proposed regulations are incomplete. 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. Both our clients and our office have been informed by multiple DOJ representatives that DOJ intends to propose additional

agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure. Cal. Gov. Code § 11342.600.

³ Cal. Gov. Code § 11349.1.

⁴ Cal. Gov. Code §§ 11349, 11349.1(a)(1-6). OAL may also consider the clarity of the proposed regulation in the context of related regulations already in existence. Cal. Gov. Code § 11349.1(b).

⁵ Cal. Gov. Code § 11349.3.

⁶ Cal. Gov. Code § 11350.

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regulations regarding the sale or transfer of ammunition beyond this proposal. Presumably, those regulations will address the many gaps in this current proposal.

Under the APA, the clarity of a proposed regulation may be considered in the context of related regulations already in existence.⁷ 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.

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.

III. PROPOSED SECTION 4301 – DEFINITIONS: AFS RECORDS DO *NOT* IDENTIFY AN INDIVIDUAL AS AN OWNER OF A FIREARM

Included with DOJ's proposed regulations are definitions for terms used throughout. One such definition is provided for the term "AFS Record," which reads:

[A] firearm record on file with the Department that identifies an individual as an owner of a firearm. An AFS record has been established with the Department when an individual has purchased or transferred a rifle or shotgun from a firearms dealer on or after January 1, 2014, or an individual that has purchased or transferred a handgun from a 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.

But there is a fundamental flaw in DOJ's proposed definition—AFS records do *not* 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."

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.⁸ 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:

⁷ Cal. Gov. Code § 11349.1(b).

⁸ 2009-BOF-03: *Critical Changes to the Law Enforcement Gun Release (LEGR) Program*, California Department of Justice, Division of Law Enforcement, <http://michellawyers.com/wp-content/uploads/2019/01/Info-Bulletin-re-Changes-to-LEGR-Program.pdf> (Jan. 4, 2010).

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[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.

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:

[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 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.

IV. PROPOSED SECTION 4302 - "STANDARD AMMUNITION ELIGIBILITY CHECK"

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.

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."⁹ 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.

As a result, the proposed \$1 fee exceeds DOJ's regulatory authority as it is not consistent with the authorizing statute.

⁹ 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."

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A. Lack of Established Procedures for Licensed Ammunition Vendors

The proposed regulations lack crucial information as to when or how a licensed ammunition vendor must use the Standard Ammunition Eligibility Check process. As discussed below, 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. Yet the proposed regulations are silent as to how a licensed ammunition vendor is to determine what procedure to use.

The proposed regulations also state that DOJ “shall instruct the ammunition vendor to approve or reject the purchase or transfer,” and that if rejected, “the ammunition vendor shall provide the purchaser or transferee with an ATN that can be used to obtain the reason for the rejection.” What the proposed regulations do not specify, however, is how DOJ determines whether to approve or reject a Standard Ammunition Eligibility check. There are no criteria a prospective purchaser or licensed ammunition vendor can refer to.¹⁰

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.

i. Use of Out-of-State or Other Identification

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.¹¹ The only exceptions to this requirement are for military IDs or when the magnetic strip reader is unable to obtain the required information.¹²

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

¹⁰ While it is true that an individual can request a copy of their AFS records from DOJ, the process for obtaining those records requires individuals to submit a notarized form with a copy of a valid identification card. It is our understanding, however, that the current processing time for obtaining such records is between 3 and 4 months, well beyond that which would make this a feasible option for prospective purchasers to determine if they have a valid AFS record.

¹¹ Cal. Penal Code § 28180(a).

¹² Cal. Penal Code § 28180(b)(1-2).

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with the files maintained by the California Department of Motor Vehicles (“DMV”).¹³ 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 *firearms* dealers to possess a magnetic strip reader.

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.

V. PROPOSED SECTION 4303 - “ONE-TIME AMMUNITION TRANSACTIONS”

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.

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.

A. Conflict with Federal Law

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.”¹⁴

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

¹³ See *DROS Entry System (DES) Firearms Dealership User Guide*, California Department of Justice, Bureau of Firearms at 36 (12/29/2017 Rev. 3), available online at https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/dros_entry_guide.pdf.

¹⁴ See 28 C.F.R. § 25.6.

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accessing these federal databases for purposes other than conducting a background check in connection with a firearm transaction.

B. Proposed \$19 Fee

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:

*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.*¹⁵

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.¹⁶ That fee, which is currently set at \$19 per DOJ’s regulations, has remained unchanged for over 15 years since 2004.¹⁷ 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.”¹⁸

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

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.

¹⁵ Emphasis added.

¹⁶ *Gentry v. Harris*, Case No. 34-2013-80001667. A copy of the Court’s ruling can be viewed online at <http://michellawyers.com/wp-content/uploads/2017/08/2017-08-09-Ruling-re-Mtns-for-Adjudication.pdf>.

¹⁷ 11 C.C.R. § 4001.

¹⁸ See http://michellawyers.com/wp-content/uploads/2013/12/Gentry_Complaint-for-Declaratory-and-Injunctive-Relief-and-Petition-for-Writ-of-Mandamus.pdf

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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.

C. Proposed Purchaser Information to Be Collected

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, which includes:

- The date of the sale or other transfer;
- The purchaser's driver's license or other identification number and the state in which it was issued;
- The brand, type, and amount of ammunition sold or otherwise transferred;
- The purchaser's full name and signature;
- The name of the salesperson who processed the sale or other transaction;
- The purchaser's full residential address and telephone number; and,
- The purchaser's date of birth.¹⁹

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 30352.²⁰ 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.²¹

¹⁹ Cal. Penal Code § 30352(a)(1-7).

²⁰ This is due to the doctrine of statutory construction *expressio unius est exclusio alterius* (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.

²¹ 11 C.C.R. § 4303(b) (proposed).

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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.²²

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."²³ 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.²⁴ 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.

D. Proposed ATN Numbers

Subdivision (c) of proposed section 4303 states that the ammunition vendor will provide the purchaser or transferee with an Ammunition Transaction Number ("ATN") "to monitor the status of the Basic Ammunition Eligibility Check through the Department's CFARS website. DOJ's ISOR states this subdivision is necessary "to inform an individual how to use an ATN to obtain the status for the Basic Ammunition Eligibility Check from the Department."

This subdivision, however, 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 *shall occur at the time of purchase or transfer*."²⁵ 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.²⁶

²² It is our understanding that DOJ is aware of this issue and has been expressly instructed by the Bureau of Alcohol, Tobacco, Firearms and Explosives and/or the Federal Bureau of Investigation that accessing the federal databases for purposes of conducting ammunition background checks is prohibited.

²³ Cal. Govt. Code § 7284.6(a)(1)(A) (emphasis added). Notably, Attorney General Xavier Becerra has publicly stated that DOJ is not in the business of deportation and should not be "doing the job of federal immigration agents." https://www.washingtonpost.com/world/national-security/california-tells-local-law-enforcement-to-follow-federal-law--but-dont-be-immigration-enforcers/2018/03/28/bee713f4-32b2-11e8-94fa-32d48460b955_story.html?utm_term=.076e8c8b4e71.

²⁴ See Cal. Govt. Code § 7284.6(b).

²⁵ Emphasis added.

²⁶ The legislative history of SB 1235 also makes this quite clear. For example, according to the Senate Appropriations Committee, the \$25 million start-up loan issued to DOJ was to, among other

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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.

VI. PROPOSED SECTION 4304 – “FIREARMS ELIGIBILITY CHECK”

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. But DOJ needs to clarify how licensed ammunition vendors are to determine which procedure to follow for a customer.

What's more, nothing in the proposed regulation 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.

VII. PROPOSED SECTION 4305 – “COE VERIFICATION PROCESS”

Proposed section 4305 addresses the procedure for verifying a purchaser's COE as an alternative to the Standard Ammunition Eligibility Check and Basic Ammunition Eligibility Check. DOJ has proposed a \$1 fee for this type of check, while also proposing ammunition vendors collect the following information about the purchaser in connection with the transfer:

- Name;
- Date of birth;
- Current address; and,
- Driver license or other government identification number.²⁷

As a threshold matter, the proposed regulation 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 following information in addition to what DOJ has proposed:

- The date of the sale or other transfer;
- The state in which the purchaser's driver's license or other identification was issued;

requirements, “develop the system *enabling real-time review and approval* of transactions at the point of sale/transfer.” *SB 1235, Third Reading*, Senate Rules Committee, Office of Senate Floor Analyses at 12 (emphasis added).

²⁷ 11 C.C.R. § 4305(a-b) (proposed). DOJ's proposed regulation

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- The brand, type, and amount of ammunition sold or otherwise transferred;
- The purchaser's signature;
- The name of the salesperson who processed the sale or transaction; and,
- The purchaser's telephone number.²⁸

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.

In addition to the above, 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." What's more, DOJ has demonstrated in other respects that it can verify a person's COE without cost.²⁹ 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.

VIII. PROPOSED SECTION 4306 – "AMMUNITION PURCHASES OR TRANSFERS FOR EXEMPTED INDIVIDUALS"

Proposed section 4306 lists specific types of identification that will identify an individual as exempt from the requirement that licensed ammunition vendors must first obtain DOJ approval. Specifically, proposed subdivision (a) lists the following:

- A valid FFL;
- An authorized law enforcement representative's written authorization from the head of the agency authorizing the ammunition purchase or transfer;
- A centralized list of exempted FFLs DOJ-issued certificate indicating the individual is on the centralized list of exempted FFLs;
- A sworn state, or local peace officer's credential and verifiable written certification from the head of the agency; or,
- A sword federal law enforcement officer's credential and verifiable written certification from the head of the agency.³⁰

²⁸ Cal. Penal Code § 30352(a)(1-7).

²⁹ 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. See <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/dros-text-of-regs-120718.pdf>.

³⁰ 11 C.C.R. § 4306(a)(1-5) (proposed).

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DOJ cites Penal Code section 30352 as authority for this proposed regulation. 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 30352.³¹

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.

IX. PROPOSED SECTION 4307 – “TELEPHONIC ACCESS FOR AMMUNITION VENDORS”

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.

X. DOJ’S ECONOMIC IMPACT ANALYSIS IN THEIR INITIAL STATEMENT OF REASONS IS SEVERELY FLAWED AND OTHERWISE FACTUALLY INACCURATE

In addition to the text of the proposed regulations, 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.³² 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.

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

³¹ See Cal. Penal Code §§ 30352(e)(1), 30352(e)(3).

³² Indeed, perhaps a better method of estimating the actual number of firearms currently owned by California residents would be to simply refer to the total number of records currently in DOJ’s AFS database, some of which go as far back as the early 1900’s.

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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.

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."³³ New York's Governor has also issued a statement that "the ammunition sales database *will not be prematurely introduced until the technology is ready and it does not create an undue burden for business owners*."³⁴ To date, New York has yet to implement the ammunition sales database.

XI. CONCLUSION

As currently drafted, the proposed regulations are incomplete and lack key substantive provisions that would allow members of the public to easily understand them and provide meaningful opportunity to comment. They also raise serious issues as to the required authority, clarity, and consistency required under the APA. For these reasons, we respectfully request DOJ revise the proposal accordingly and address the concerns identified above.

Should you have any questions regarding this letter, please do not hesitate to contact our office at your convenience.

Sincerely,
Michel & Associates, P.C.



Matthew D. Cubeiro

³³ See <https://www.nytimes.com/2015/07/11/nyregion/plan-to-require-background-checks-for-ammunition-sales-is-suspended-in-new-york.html>.

³⁴ See https://www.syracuse.com/state/index.ssf/2015/07/cuomo_agrees_to_changes_to_ny_safe_act_regarding_ammunition_sales.html (emphasis added).

EXHIBIT 36

SER374

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May 8, 2019

VIA EMAIL & FAX

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Re: Proposed Regulations Regarding Ammunition Purchases or Transfers – Title 11, Division 5, Chapter 11 (OAL File No. Z-2018-1204-08)

To whom it may concern:

We write on behalf of our clients, the National Rifle Association of America (“NRA”) and the California Rifle & Pistol Association, Incorporated, as well as their respective members throughout California, in opposition to the proposed regulations regarding “Ammunition Purchases or Transfers” (the “proposed regulations”), which if adopted would add sections 4300-4309 to Title 11 of the California Code of Regulations (“C.C.R.”).

On January 31, 2019, our office submitted a letter of comment concerning the California Department of Justice’s (“DOJ”) original text of the proposed regulations.¹ That letter addressed the general requirements of California’s Administrative Procedure Act (“APA”) and several key deficiencies thereunder with DOJ’s proposal. For the sake of brevity, those concerns will not be repeated here. Although DOJ has addressed some of our clients’ concerns with this revised proposal, many substantial problems remain.

For these reasons and those discussed below, our clients still oppose the regulations as currently drafted.

¹ A copy of this comment letter can be viewed online at <http://michellawyers.com/wp-content/uploads/2019/01/Ltr-to-DOJ-re-Ammo-Background-Check-Regs.pdf>.

Proposed Regulations Regarding Ammunition Purchases or Transfers
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I. DOJ'S MARCH 14, 2019, STAKEHOLDERS MEETING

As an initial matter, we were recently informed that DOJ held a stakeholder's meeting on March 14, 2019, with several licensed ammunition vendors regarding the upcoming background check requirements the proposed regulations purport to implement. Among statements made by DOJ officials during this meeting, stakeholders were informed that the ammunition background check system had already been developed and was currently undergoing testing.

It is of great concern that DOJ has already created the system for which ammunition transactions will be processed beginning July 1, when *the required regulations implementing that system have yet to be formally adopted*. In this and other firearm-related rulemaking activities, our clients have repeatedly informed DOJ of one of the core tenants of the APA, namely to provide members of the public a meaningful opportunity to comment on proposed regulations. By creating a system before members of the public have been provided a meaningful opportunity to comment on regulations required to implement that system, DOJ is once again displaying its utter disregard for the rulemaking process and the public itself.

Because of this, we have little doubt DOJ will ignore the comments it receives. What's more, DOJ has taken a wholly unnecessary gamble using taxpayer funds on a system that has yet to be formally approved. DOJ owes stakeholders, members of the public, and California's Office of Administrative Law ("OAL") an explanation for this action.

A. DOJ's Statements to Stakeholders Regarding Out-of-State Driver's Licenses

DOJ also informed stakeholders during the March 14, 2019, meeting that the proposed system will not be able to accept out-of-state driver's licenses or IDs. If true, such a restriction would not only illegally constrain the scope of Penal Code section 28180, but would also amount to a violation of various constitutional provisions.

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."² 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."³ 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).

² Cal. Penal Code § 28180(a).

³ Cal. Penal Code § 28180(b)(2).

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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. *Jackson v. City & Cty. of San Francisco*, 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.” *Saenez v. Roe*, 502 U.S. 489, 501 (1999) (quoting U.S. Const. Art. IV, §2, cl. 1). Facially discriminatory 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.

B. Additional Statements Made By DOJ to Stakeholders

Several other problematic statements made by DOJ to stakeholders during the March 14, 2019 meeting, include:

- Large retailers will have access to the system as of June 1, 2019, whereas others would only have access beginning July 1, 2019—the day the background check process is scheduled to begin.
- DOJ plans on creating training materials and a step-by-step webinar for licensed ammunition vendors regarding the ammunition background check process.
- A full-scale background check for a customer is anticipated to take anywhere from several hours to several days, whereas an AFS/COE check should take a few minutes.
- A purchaser’s Driver’s License must match their AFS/COE records in order to be approved for a purchase.
- A full-scale background check will only rely on a person’s state records—federal databases will not be included as part of the background check process.

As stated by Government Code section 11342.600 and OAL, a “regulation” is “every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.”⁴ Unless expressly exempted by statute, every regulation is subject to the APA’s rulemaking procedures.⁵

⁴ Cal. Gov. Code § 11342.600; See also https://www.oal.ca.gov/wp-content/uploads/sites/166/2017/05/What_Is_a_Regulation.pdf.

⁵ Cal. Gov. Code § 11346.

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Assuming the above statements are accurate, these amount to “regulations” within the meaning of the APA, thereby requiring DOJ to provide members of the public a meaningful opportunity to comment on them or else they are void as illegal underground regulations.⁶ Yet, nowhere in the proposed regulations or their revised text does DOJ discuss access by large retailers, training materials and webinars, or the time DOJ estimates it will need to conduct the required background check.⁷

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.

i. Use of Federal Databases

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).

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”).⁸ 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.⁹ What’s

⁶ Cal. Gov. Code § 11340.5(a) (prohibiting DOJ from enforcing any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a “regulation” under the APA unless it has been adopted as such and filed with the Secretary of State pursuant to the APA).

⁷ What’s more, as noted in our prior comment letter, DOJ is statutorily obligated to approve or deny the required background check “at the time of purchase or transfer.” Cal. Penal Code § 30370(a). In other words, DOJ is statutorily prohibited from delaying ammunition background checks for any amount of time.

⁸ These restrictions were raised in our prior comment letter, but DOJ makes no mention of them in its ISOR Addendum or revised regulations.

⁹ Cal. Govt. Code § 7284.6(a)(1)(A).

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more, the California Legislature’s “intent” is irrelevant as applied to a voter approved initiative, which is what created the controlling law here.¹⁰

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.¹¹ 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.

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.

II. DOJ’S REVISED ECONOMIC AND FISCAL IMPACT STATEMENT AND PROPOSED FEES

In addition to the revised text of the proposed regulations and ISOR addendum, DOJ has also included a revised Economic and Fiscal Impact Statement that goes into additional detail concerning the expected cost and revenue of administering the required ammunition background check program. The information serves to justify DOJ’s selected fees. But as discussed below, there are serious flaws with DOJ’s estimations.

A. DOJ’s Estimated Costs to Businesses Are Grossly Understated

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

¹⁰ Although it is true that Senate Bill No. 1235 was adopted in connection with Proposition 63, Proposition 63 controls and is the actual source for these requirements. See also *In re Espinoza*, 192 Cal.App. 4th 97 (4th Dist. 2011) (prohibiting state agencies from offering an interpretation that cannot be “construed in context of the nature and obvious purpose . . . that does not harmoniz[e] [with] all [the] provisions relating to the subject matter”).

¹¹ To further illustrate this point, the COE application does not even contemplate ammunition purchases as a reason for seeking a COE, as the application and COE requirements have long been in place well before the adoption of the ammunition sales restrictions. See *BOF 4008 (Rev. 10/2014): Certificate of Eligibility Application*, California Department of Justice, Bureau of Firearms, <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/coeapp.pdf> (Oct. 2014).

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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.

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.

For these reasons, DOJ needs to revise its Economic and Fiscal Impact Statement to better account for ammunition vendor wages and related costs.

B. DOJ's Proposed Fees Exceed Its Reasonable Cost of Regulatory and Enforcement Activities

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,¹² but DOJ provides no information as to how much of a reserve it intends to maintain.

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."

Taking DOJ's estimates at face value, the proposed fees exceed 9% of its costs in the first fiscal year and nearly 30% of its overall costs in the years thereafter.

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.¹³ In other words, DOJ is not authorized to charge a fee that would allow it to

¹² See Cal. Const. art. XIII A, § 3(a)(1), (d) (when charging a fee, an agency must show "that the amount is no more than necessary to cover the reasonable costs of the governmental activity[.]")

¹³ Cal. Penal Code § 30370(e); See also Cal. Penal Code § 30370(c) (allowing DOJ to "recover the cost of processing and regulatory and enforcement activities" related to the full-scale background check procedure which cannot "exceed the fee charged for [DOJ's] Dealers' Record of Sale (DROS) process").

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“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.

III. REVISED SECTION 4306 – EXEMPTED INDIVIDUALS

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.

IV. CONCLUSION

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.¹⁴ 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.

Should you have any questions regarding this letter or its contents, please do not hesitate to contact our office at your convenience.

Sincerely,
Michel & Associates, P.C.



Matthew D. Cubeiro

¹⁴ 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.

EXHIBIT 37

SER382

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Re: Proposed Emergency Regulations Regarding Identification Requirements for Firearms and Ammunition Eligibility Checks – Title 11, Division 5, Chapter 4.

To whom it may concern:

We write on behalf of our clients, the National Rifle Association of America and the California Rifle & Pistol Association, Incorporated, as well as their respective members and clients throughout California and the United States, in opposition to the California Department of Justice's ("DOJ") proposed emergency regulations regarding "Identification Requirements for Firearms and Ammunition Eligibility Checks – Title 11, Division 5, Chapter 4."¹ If adopted, the proposed regulations would generally require federally compliant identification cards ("IDs") for all firearm and ammunition transactions that require an eligibility check.

For the following reasons, the Office of Administrative Law ("OAL") should reject the proposed emergency regulations and require DOJ to follow the standard rulemaking process:

1. The Bureau of Alcohol, Tobacco, Firearms and Explosives ("BATFE") has expressly stated that federally compliant ID's are not required to satisfy federal background check laws when purchasing a firearm or ammunition;

¹ The proposed emergency regulations were noticed to the public on or about June 10, 2019. A copy of the posted notice can be viewed online at <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/id-fa-ammo-notice-proposed-emergency-061019.pdf>. Documents relating to the proposed emergency rulemaking can also be viewed online at <https://oag.ca.gov/firearms/regs>.

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2. California statutes concerning ID requirements for firearm and ammunition transactions are in direct conflict with DOJ's proposed "emergency" regulations;
3. Federal laws concerning ID requirements for firearm transactions specifically contemplate the use of federal non-compliant IDs for legitimate firearm transactions;
4. No "emergency" exists, and DOJ's findings are otherwise insufficient and based on speculation;
5. DOJ's proposed "emergency" regulations would impose significant financial and time-related costs for businesses and individuals alike, costs which DOJ completely fails to address in its Economic and Fiscal Impact Statement; and,
6. DOJ's proposed "emergency" regulations significantly impact other pending regulatory matters which, when combined, raise serious inconsistency concerns.

Both the content and timing of DOJ's proposed "emergency" regulations are highly suspect. Our clients are gravely concerned with this latest in a series of attempts by DOJ's to circumvent the notice and hearing requirements of California's Administrative Procedure Act ("APA") at a time when California licensed firearm dealers and retailers are already facing substantial changes to their business in connection with other pending regulations from DOJ regarding ammunition purchases and transfers.²

As explained below, no emergency exists justifying the proposed regulations being submitted on an "emergency" basis under the APA. Indeed, BATFE has expressly stated that federally compliant IDs are not necessary for purposes of firearm and ammunition eligibility checks. Coupled with other pending significant changes to ammunition transactions scheduled to take effect on July 1, 2019, the shortened notice and comment period DOJ seeks will only lead to hardship for thousands of lawful California businesses and California residents.

I. THE REAL ID ACT OF 2005 AND BATFE POLICIES CONCERNING THE USE OF FEDERAL NON-COMPLIANT IDs FOR FIREARM TRANSACTIONS

In 2005, Congress enacted the REAL ID Act which, among other provisions, requires federally compliant IDs ("REAL ID") to board any airplane, enter any military base, or enter any federal facility as of October 1, 2020.³ But it was originally unclear if such IDs would also be necessary when purchasing a firearm. BATFE ultimately clarified this ambiguity in 2012 by stating such IDs would not be required for firearm-related transactions.⁴

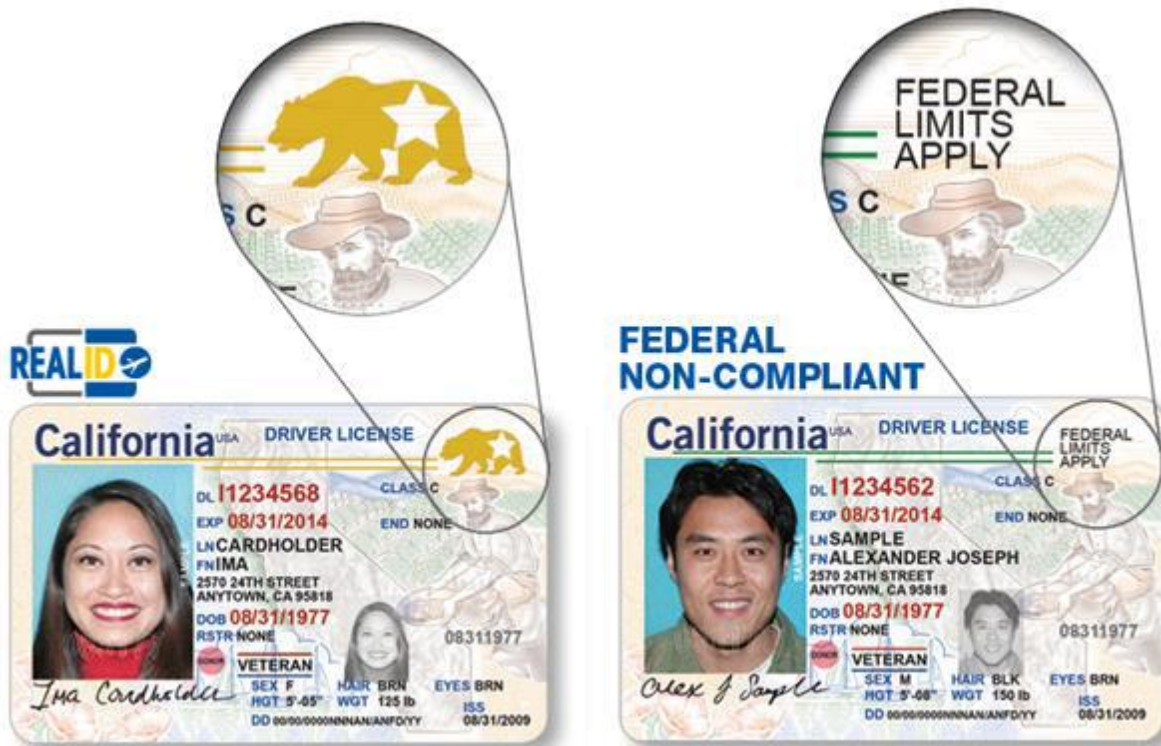
² See OAL File No. 2019-0517-07, "Ammunition Purchases or Transfers," currently scheduled for a decision from OAL by July 1, 2019.

³ H.R. 418, 109th Cong.

⁴ *FFL Newsletter: Federal Firearms Licensee Information Service*, U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, <https://www.atf.gov/firearms/docs/newsletter/federal-firearms-licensees-newsletter-may-2012/download> (May 2012).

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The following year, California enacted Assembly Bill No. 60 (“AB 60”), which required DMV to issue IDs to individuals who could not provide proof of their lawful presence in the United States.⁵ Shortly after the adoption of AB 60, BATFE issued an open letter clarifying its position, stating that AB 60 type IDs could not be used to purchase a firearm.



Example of a REAL ID (left), versus a non-REAL ID (right).⁶

Initially, BATFE’s restriction had no effect on lawful California residents’ ability to purchase a firearm because, presumably, they were not issued an AB 60 license. But in January 2018, DMV began issuing federal non-compliant IDs with the same “FEDERAL LIMITS APPLY” language printed on the front of the license to lawful residents of California. As a result, any lawful resident issued a federal non-compliant ID was, pursuant to BATFE’s policy, prohibited from purchasing a firearm or ammunition despite the person’s lawful presence in the United States.

⁵ Such IDs have the notation “FEDERAL LIMITS APPLY” printed on the front. As applied to firearm transactions, federal law generally prohibits individuals who are not lawful residents from purchasing or possessing any firearm or ammunition. See, e.g., 18 U.S.C. § 922(d)(5). Licensed firearm dealers “must establish the identity, place of residence, and age of the transferee/buyer,” who must also “provide a valid government-issued photo identification document to the transferor/seller that contains the transferee’s/buyer’s name, residence address, and date of birth.” See *ATF E-Form 4473 (5300.0)*, <https://www.atf.gov/firearms/docs/4473-part-1-firearms-transaction-record-over-counter-atf-form-53009/download> (Oct. 2016).

⁶ See also <https://www.dmv.ca.gov/portal/dmv/detail/realid>.

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After the issue was brought to BATFE's attention, BATFE de-published its previously stated position, replacing it with a new letter which stated California licensed firearm dealers:

*may accept . . . licenses/identification documents that meet the definition in 18 U.S.C. 1028(d) in fulfilling their requirements under 18 U.S.C. 922(t)(1)(C) and 27 CFR 478.124(c)(3)(i). However, licensees may consider asking for additional documentation (e.g. passport) so that the transfer is not further delayed.*⁷

BATFE's policy revision effectively meant California residents who were issued federally non-compliant IDs by DMV could continue to lawfully exercise their rights and use their ID when purchasing a firearm, even if the ID states "FEDERAL LIMITS APPLY" on the front. This position was later echoed by DOJ, who stated:

*Going forward, [DOJ] will inform interested parties that any valid California driver's license or identification card may be used as "clear evidence of the person's identity and age," including REAL ID and "FEDERAL LIMITS APPLY" versions.*⁸

Both BATFE's updated policy and DOJ's statement were made in early 2018, well over a year ago. Yet now DOJ is claiming an "emergency" exists to reverse that policy. While DOJ does mention recent changes to California law pursuant to Senate Bill 244 ("SB 244") (effective January 1, 2019), SB 244 did not change the fact that AB 60 licenses are otherwise indistinguishable from a federal non-compliant ID issued by DMV. In fact, the "guidance" issued by DOJ to California firearm dealers following the adoption of SB 244 was essentially the same as that mentioned above following BATFE's updated policy.

II. CALIFORNIA'S EXISTING LAWS CONCERNING "CLEAR EVIDENCE OF THE PERSON'S IDENTITY AND AGE" AND "BONE FIDE EVIDENCE OF IDENTITY" ARE IN DIRECT CONFLICT WITH DOJ'S PROPOSED "EMERGENCY" REGULATIONS

When purchasing a firearm in California, purchasers must present "clear evidence of the person's identity and age" to a California licensed firearms dealer.⁹ California law defines the term "clear evidence of the person's identity and age" as either:

- 1) A "valid California driver's license;" or,
- 2) A "valid California identification card issued by the Department of Motor Vehicles."¹⁰

⁷ See <http://michellawyers.com/wp-content/uploads/2019/06/Email-from-ATF-re-Purchase-of-Firearms-Using-CA-Drivers-Licenses-or-ID-Cards.pdf>.

⁸ See <http://michellawyers.com/wp-content/uploads/2019/06/DOJ-Letter-re-Purchase-of-Firearms-Using-CA-Drivers-Licenses-or-ID-Cards-Red.pdf>.

⁹ Cal. Penal Code § 26815(c).

¹⁰ Cal. Penal Code § 16400.

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As applied to ammunition transactions, California law simply requires individuals to provide their “driver’s license or other identification number and the state in which it was issued,” or, in the case of a person meeting an exception to the ammunition transfer requirements, “bona fide evidence of identity.”¹¹ As defined under California law, “bona fide evidence of identity” is “a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator’s license, state identification card, identification card issued to a member of the armed forces, or other form of identification that bears the name, date of birth, description, and picture of the person.”¹²

Neither firearm nor ammunition transactions, therefore, require individuals to provide federally compliant IDs or any supplemental documentation demonstrating a person’s lawful presence in the United States under California law. A driver’s license or ID issued by DMV, regardless if issued pursuant to AB 60, is still a “valid” ID within the meaning of California law as applied to firearm transactions. Likewise, a federal non-compliant ID sufficiently provides a person’s name, date of birth, description, and picture as required for ammunition transactions.¹³ What’s more, having been aware of the issues concerning federal non-compliant IDs for over a year, DOJ failed to include any proposed regulatory changes requiring federally compliant IDs in their proposed regulations regarding “Ammunition Purchases or Transfers” which are currently pending before OAL.¹⁴

III. FEDERAL ID REQUIREMENTS SPECIFICALLY CONTEMPLATE THE USE OF FEDERAL NON-COMPLIANT IDs FOR FIREARM AND AMMUNITION TRANSACTIONS

Under federal law, firearm purchasers must provide a “valid identification document” containing a photograph of the purchaser.¹⁵ Such documents must be “made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a sponsoring entity of an event designated as a special event of national significance, *a foreign government, political subdivision of a foreign government, an international government or and international quasi-governmental organization* which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.”¹⁶

Federal regulations also require licensed firearm dealers to “verify the identity of the transferee by examining the identification document.”¹⁷ As defined under federal regulations, such documents must contain “the name, residence address, date of birth, and photograph of the holder and which was made or issued by or under the authority of the United States Government,

¹¹ See Cal. Penal Code §§ 30352(a)(2), 30352(c), 30352(e)(8)(B)(ii).

¹² Cal. Penal Code § 16300.

¹³ See Cal. Penal Code § 16300.

¹⁴ See OAL File No. 2019-0517-07.

¹⁵ 18 U.S.C. § 922(t)(1)(C).

¹⁶ 18 U.S.C. § 1028(d)(3) (emphasis added).

¹⁷ 27 C.F.R. § 478.124(c)(3)(i).

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a State, a political subdivision of a State, *a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization* which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.”¹⁸

This shows that federal law specifically contemplates the use of federal non-compliant IDs for purposes of firearm transactions, *including IDs issued by foreign governments*. And for good reason. There are several exceptions to the federal restrictions against non-U.S. citizens acquiring or possessing firearms. Such exceptions include aliens who have been lawfully admitted to the United States under a nonimmigrant visa who have either: 1) Been admitted to the United States for lawful hunting or sporting purposes; or, 2) Are in possession of a hunting license or permit lawfully issued in the United States.¹⁹ Such individuals are incapable of obtaining a federally compliant REAL ID by nature of their immigration status, yet are *not* also prohibited under federal law from acquiring or possessing firearms.

IV. DOJ’S CLAIM OF “EMERGENCY” IS A DIRECT RESULT OF ITS OWN POLICY AGENDA REGARDING IMMIGRATION, AND ITS FINDINGS FAIL TO ADEQUATELY DEMONSTRATE THE EXISTENCE OF AN EMERGENCY

An “emergency” in the context of the APA is a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.²⁰ Unless a situation is expressly deemed by statute as an emergency, state agencies must make a finding of emergency by describing specific facts supported by substantial evidence that demonstrate the existence of an emergency and the need for immediate adoption of the proposed regulation. But if the emergency existed and was known by the agency with sufficient time to have been addressed through nonemergency regulations, the finding of emergency must also include facts explaining the failure to address the situation. Findings based only upon expediency, convenience, best interest, general public need, or speculation, are not adequate to demonstrate the existence of an emergency under the APA.²¹

As a threshold matter, DOJ has been aware of this issue long enough to have sought adoption of regulations using the regular rulemaking process. One of the key points DOJ raises in its “Finding of Emergency” is the adoption of SB 244 by the California Legislature in 2018.²²

¹⁸ 27 C.F.R. § 478.11 (emphasis added).

¹⁹ 18 U.S.C. § 922(y)(2)(A).

²⁰ Gov’t Code § 11342.545.

²¹ Gov’t Code § 11346.1(b)(2).

²² See <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/id-fa-ammo-finding-emergency.pdf?>; See also Senate Bill No. 244 (2017-2018 Reg. Sess.) https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB244. DOJ also references a “California Special Alert” our clients presented to their members concerning the use of non-REAL IDs for firearm purchases. But DOJ fails to note that this alert is outdated and has been replaced with more recent information. The most recent information can be found online at <https://crpa.org/news/crpa/information-bulletin-real-ids-non-real-ids-and-ab-60-type-licenses->

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DOJ states that SB 244, as well as other recently adopted California laws regarding driver's licenses and identification cards, have caused "significant changes . . . governing their use as evidence of citizenship or immigration status."²³ These changes, according to DOJ, "have affected the eligibility check process and have left firearm dealers and ammunition vendors, as well as law enforcement agencies, unable to rely on federal non-compliant licenses."²⁴ But DOJ was clearly aware of the adoption of SB 244 and its effect, and still waited nearly six months after it took effect to propose their "emergency" regulations.

What is not stated by DOJ is that it failed to mention any of these concerns to the California Legislature while SB 244 and other related bills were being considered. In fact, California's Attorney General has often expressed support for California's efforts in these regards.²⁵ As a result, DOJ's claimed "emergency" is of its own making. DOJ could have raised its concerns at any point during the legislative process for the bills it mentions—yet it chose not to do so in favor of supporting its unrelated immigration agenda. What's more, DOJ's findings amount to nothing more than a general public need or speculation, as demonstrated by the fact that it has not described a single instance where a prohibited person was able to obtain firearms or ammunition as a result of these issues. DOJ's findings are therefore not adequate to demonstrate the existence of an emergency as required by the APA.

V. DOJ'S PROPOSED "EMERGENCY" REGULATIONS WILL RESULT IN SIGNIFICANT TIME AND MONETARY COSTS FOR LICENSED BUSINESSES AND THEIR CUSTOMERS

DOJ's "Estimated Private Sector Cost Impacts" information provided in its Economic and Fiscal Impact Statement grossly mischaracterizes the impact these proposed regulations will have on lawful private businesses. DOJ states that no businesses or jobs are affected because the proposal only "specif[ies] the documentation used to identify yourself when submitting a form or

[for-purchasing-a-firearm/](#). As you can see, this information was distributed in October 2018, *nearly seven months after the alert referenced by DOJ*. At the very least, DOJ's reference to outdated information highlights the lack of a true emergency, for DOJ appears to have itself relied on information provided by our client as a basis for its claim.

²³ <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/id-fa-ammo-finding-emergency.pdf?>.

²⁴ *Id.*

²⁵ See, e.g., presentation by Jonathan Blazer, Special Assistant to the Attorney General, California Department of Justice, http://www.cpcannualconference.com/uploads/8/1/4/9/81491828/bs3a_-_impact_of_immigration_policies_on_health_centers_-_2slides.pdf (Oct. 2017) (noting DOJ's "Overall commitment" to "Protect and Advance the Rights and Safety of all Californians – Including Immigrants" while also "Defend[ing] the Ability of Law Enforcement and other State/Local Agencies to Focus on Core Missions (Public health and *Safety*)" (emphasis added)). What's more, DOJ issued a press release as early as 2014 concerning licenses issued pursuant to AB 60, illustrating just how long DOJ has been aware of such licenses. See <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-issues-consumer-alert-driver-license-scams>.

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application that is already in regulation.” But all California licensed firearm dealer and licensed ammunition vendors employees must possess a valid Certificate of Eligibility (“COE”) which must be renewed annually.²⁶ Yet DOJ makes no mention of the potential impacts on the thousands of business owners and employees who may have difficulty in renewing the required licenses as a result of the proposed regulations. In fact, many younger employees of firearm businesses could find themselves out of work should they be unable to obtain the required documentation in time for the required annual renewal of their COE.

DOJ also fails to mention any of the related costs associated with obtaining the required documentation. As discussed in greater detail below, there are significant time and monetary expenses involved in obtaining the required forms of identification and/or supplemental documentation. Nowhere in DOJ’s Economic and Fiscal Impact Statement are these mentioned or even alluded to.

What’s more, DOJ makes no mention of the potential lost revenue to businesses should their customers not have the required documentation at hand when attempting to purchase a firearm or ammunition, let alone the additional time it may take to process a transaction. DOJ’s failure to address these concerns should be cause enough for OAL to disapprove of the proposed “emergency” regulations.

a. Obtaining a REAL ID in California

To obtain a REAL ID in California, individuals must present an original or certified copy of an appropriate “Identity Document,” a certified legal document supporting a name change (if applicable), proof of Social Security Number (photocopies are not accepted), and at least two different documents establishing proof of California residency.²⁷ The required “Identity Document” can include a U.S passport or U.S. birth certificate, as well as other types of identification. Application fees for a REAL ID are \$36 for a driver’s license and \$31 for an identification card, with an unspecified processing time.²⁸

While it is true some California gun owners have already obtained a REAL ID, many of those IDs are in fact federally non-compliant as a result of DMV’s failure to properly implement the REAL ID program. As stated on DMV’s website, DMV “followed the process” of Wisconsin, but several months later was informed by the federal government that those processes were inadequate.²⁹ DOJ’s proposed “emergency” regulations, however, make no mention of this issue—*let alone how a California licensed firearms dealer will be able to distinguish between*

²⁶ See, generally, <https://oag.ca.gov/firearms/cert-eligibility>. See also 11 C.C.R. § 4045.1(d)(1) (apply DOJ’s proposed “emergency” regulations to “Certificate of Eligibility applications, pursuant to Penal Code section 26710”).

²⁷ See https://www.dmv.ca.gov/portal/wcm/connect/2db22455-e270-47a3-819c-d7c7716d5194/List_of_Docs_REALID.pdf?MOD=AJPERES&CVID=.

²⁸ <https://www.dmv.ca.gov/portal/dmv/detail/realid>.

²⁹ See <https://www.dmv.ca.gov/portal/dmv/detail/realid/residencyfaqs> (last visited June 19, 2019).

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a REAL ID that is federally compliant and a REAL ID that was issued prior to DMV amending its application process to be federally compliant.

b. Required “Identity Document” for REAL IDs and DOJ’s Proposed “Emergency” Regulations as Both Applied to U.S. Citizens

Although DOJ’s proposed “emergency” regulations list several alternative documents that can be provided in support of a federally non-compliant ID, only some of these can be obtained by a U.S. citizen.³⁰ The same is true for the required “Identity Document” when applying for a REAL ID. A foreign passport with a valid U.S. immigrant visa, for example, would not be available to U.S. citizens by nature of their citizenship. This generally leaves the option of obtaining a U.S. passport or certified copy of a U.S. birth certificate, which can be both costly and time consuming.

To obtain a U.S. Passport, initial applicants must provide “primary evidence of U.S. citizenship,” which for U.S. born individuals can only be a U.S. birth certificate.³¹ Absent any expedited processing costs, initial applicants must also pay at least \$145 in fees, \$110 of which is non-refundable whether or not the passport is issued. It will also take anywhere between 6-8 weeks to process the application. Expedited processing is available, but at a cost of \$60 in addition to the \$145 fee.³² And should the individual be unable to provide a birth certificate, a file search will be necessary, requiring an additional \$150 fee.³³

Obtaining a certified copy of a U.S. birth certificate can be equally time consuming, depending on the person. Consider, for example, a California adult resident who was adopted at a young age from a different state. Not only may this person not know for certain his or her county or city of birth, but he or she may not also know the name of their biological parents—information that is often required when seeking a certified copy of a birth certificate.³⁴ While lacking this information may not ultimately prohibit the individual from obtaining a certified copy of their birth certificate, it will most certainly delay the application. Setting aside those delays, some states take up to 22 weeks to process applications and charge up to \$34 in standard processing fees (with up to an additional \$46 for “expedited” processing).³⁵

³⁰ See 11 C.C.R. § 4045.1(b) (proposed).

³¹ See <https://travel.state.gov/content/travel/en/passports/requirements/citizenship-evidence.html>.

³² See https://travel.state.gov/content/dam/passports/forms-fees/Passport%20Fees%20Chart_TSG.pdf.

³³ Id. It should also be noted that individuals must provide a 2” x 2” color photo taken within the past six months, necessitating the individual possess the equipment to do so or pay an additional fee to have the photo taken (usually \$15 if taken at a U.S. Post Office).

³⁴ See, e.g., Vital Records “Certified Copy of Birth” application, available online at <https://www.vitalrecordsonline.com/birth-certificate/application>.

³⁵ See <https://www.vitalrecordsonline.com/state-fees-vital-records>.

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In sum, expediting a U.S. Passport application for a person who also lacks a birth certificate will require over \$355 in fees, at minimum, just to be able to satisfy DOJ's proposed emergency regulations when purchasing a firearm or ammunition in California. And the least-costly alternative (obtaining a certified copy of a birth certificate) can take up to 22 weeks depending on the person's place of birth.

But the person's difficulties may not end here. Should the person's name appear differently on his or her federal non-compliant ID (or the chosen "Identity Document" when applying for a REAL ID), the individual will also be required to provide an additional certified document. Such documents include adoption paperwork or a marriage certificate. Obtaining any of these documents are likely to require a fee and additional processing time in addition to the above.³⁶

VI. EFFECT OF DOJ'S PROPOSED "EMERGENCY" REGULATIONS ON OTHER PENDING REGULATORY ACTIONS (AMMUNITION PURCHASES OR TRANSFERS)

Finally, the effect DOJ's proposed "emergency" regulations have on a currently pending regulatory proposal should be considered. As noted above, OAL is currently reviewing a standard rulemaking proposal from DOJ concerning "Ammunition Purchases or Transfers."³⁷ At the time of drafting this letter, OAL is still reviewing this proposal and is scheduled to issue a decision by July 1, 2019. Significant portions of this pending proposal address the required identification and background check requirements regarding ammunition transactions. DOJ's proposed "emergency" regulations, therefore, should be considered in connection with the pending ammunition transaction proposal.

For example, in "Attachment A" to DOJ's Economic and Fiscal Impact Statement for the related ammunition transactions proposal, DOJ states that it "estimates that it will take approximately two minutes to process a Standard Ammunition Eligibility Check or Certificate of Eligibility (COE) verification, so the direct costs for an ammunition vendor can be derived from taking the approximate two-minute processing time and multiplying it by the 13 million transactions while valuing ammunition vendor staff time at \$11 per hour."³⁸ Yet nowhere in this estimation does DOJ appear to consider the time it will take for vendors to verify the person's federally-compliant ID or any of the related documentation that may be necessary should the proposed "emergency" regulations be enacted. Nor does the proposal consider any of the costs or times associated with obtaining the necessary ID or related documents.

In sum, DOJ's Economic and Fiscal Impact Statement for the proposed regulations regarding ammunition transactions previously submitted to OAL is erroneous or, at best, incomplete, and should not be considered absent further clarification from DOJ that these issues were considered. Even then, the question remains why DOJ's Economic and Fiscal Impact

³⁶ See, e.g., <https://www.vitalrecordsonline.com/state-fees-vital-records> (listing fees for marriage certificates and processing times up to 22 weeks for standard processing).

³⁷ OAL File No. 2019-0517-07.

³⁸ <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/ammo-std399-15day-041819.pdf?>

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Statement for the proposed “emergency” regulations at issue are silent on the matter. As a result, should DOJ wish to have its “emergency” regulations adopted, consistency and fairness demands that DOJ revise its related ammunition transaction proposal accordingly.

VII. CONCLUSION

Only in the most urgent circumstances should a state agency be permitted to circumvent the strict procedural requirements of the APA through the emergency rulemaking process. As illustrated above, no such emergency exists here. What’s more, any issues are a direct result of the California Legislature and Attorney General’s policy agenda relating to immigration. Given the express guidance from BATFE allowing the use of non-REAL IDs for firearm-related transactions, as well as the many significant problems this proposal creates for existing laws and other pending regulations, it is wholly improper for DOJ to mandate their use via regulation.

Should you have any questions concerning the contents of this letter, please do not hesitate to contact our office.

Sincerely,
Michel & Associates, P.C.



Matthew D. Cubeiro

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 SEAN A. BRADY

on the following parties by electronically filing the foregoing on July 22, 2019, with the Clerk of the District Court using its ECF System, which electronically notifies them.

Nelson R. Richards
Deputy Attorney General
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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 July 22, 2019, at Long Beach, CA.

s/ Laura Palmerin
Laura Palmerin

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