

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

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

Penal Code section 29830 allows a person who is temporarily prohibited from owning or possessing a firearm, ammunition feeding device, or ammunition, to transfer any of those items to a licensed firearms dealer or, in the case of ammunition, to a licensed ammunition vendor, for storage during the duration of their prohibition. These transfers are only permitted when the temporary prohibition will expire on a specific ascertainable date.

Penal Code section 29830 also requires every firearms dealer or ammunition vendor that stores a firearm, ammunition feeding device, or ammunition for a temporarily prohibited person to notify the Department of Justice (Department) of the date that they took possession of the item. While the Penal Code only specifies that the date must be reported to the Department, the date alone is not sufficient to implement the law. To make the date meaningful, the Department must also have information regarding the person relinquishing the item(s) for storage, information regarding the dealer or vendor accepting the item(s) for storage, and information regarding the item(s) being stored.

These regulations specify the information that the firearms dealer or ammunition vendor must report to the Department when they accept a temporarily prohibited person's firearm, ammunition feeding device, or ammunition for storage. The dealer or ammunition vendor will report this information electronically via the Dealer's Record of Sale (DROS) Entry System (DES).

BENEFITS ANTICIPATED FROM REGULATORY ACTION

These regulations create a process for firearms dealers and ammunition vendors to comply with the notification requirements of Penal Code section 29830, and will also ensure the Department complies with Penal Code section 11106, which requires the Attorney General to maintain a record of all information reported to the Department pursuant to Penal Code section 29830, and Penal Code section 30000, which requires the Attorney General to establish a database of persons who have ownership or possession of a firearm but who are legally prohibited from firearm ownership or possession. Information regarding the temporarily prohibited person and the item(s) being stored will allow the Department to accurately create a record that the stored item is not in the possession of a temporarily prohibited person.

In 2006, the State of California became the first and only state in the nation with a system for monitoring known firearm owners who might fall into a prohibited status. The Armed and

Prohibited Persons System (APPS) database cross-references records for individuals who are prohibited from possessing firearms against records of persons who own or possess a firearm. The Department utilizes Crime Analysts, Special Agents, and Special Agent Supervisors to locate and seize firearms from illegally armed prohibited persons identified through the APPS database, thereby preventing and reducing incidents of violent crime. Accurate records of the location of a firearm owned by a temporarily prohibited person, along with the date of surrender, will allow the Department to disassociate the prohibited person from the firearm in its systems for the term of the prohibition.

In addition to this important record-keeping function, this regulatory action makes effective the statutory option for temporarily prohibited persons to relinquish control of their property temporarily, rather than risking having the prohibited item confiscated and destroyed.

SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION

Chapter 2. California Firearm Dealers

The title of Chapter 2 is amended to better reflect the contents of Chapter 2.

Article 5. Additional Requirements.

§ 4028. Notification of Dealer Storage for a Person Who is Temporarily Prohibited.

Subdivision (a)

Penal Code section 29830 allows a person who is prohibited from owning or possessing a firearm, ammunition feeding device, or ammunition, to transfer any of those items to a licensed firearms dealer or, in the case of ammunition, to a licensed ammunition vendor, for storage if the prohibition will expire on a specific ascertainable date. Subdivision (a) defines the term “temporarily prohibited” in accord with this statutory definition. Defining this term simplifies the regulation text, making it easier to understand by those persons directly affected.

Pursuant to Penal Code section 29830, subdivision (a), a temporarily prohibited person may transfer any firearm, ammunition feeding device, or ammunition to a firearms dealer or an ammunition vendor. Subdivision (a) specifies who may transfer items, what items may be transferred, and to whom the items can be transferred. This is necessary because only certain persons are eligible to transfer firearms, ammunition, or ammunition feeding devices pursuant to Penal Code section 29830; only certain items may be stored pursuant to Penal Code section 29830; and only certain persons or entities can take possession of those items pursuant to Penal Code section 29830. Subdivision (a) repeats these statutory requirements for the purpose of clarifying, at the beginning, to whom these regulations apply.

Subdivision (a) also specifies what information a firearms dealer or ammunition vendor must report to the Department when they take possession of a temporarily prohibited person's firearm, ammunition feeding device, or ammunition pursuant to Penal Code section 29830.

This is necessary because the Department needs to know what item(s) are being relinquished, who is relinquishing the item(s), and who is taking possession of the item(s). The Department uses this information to update its records and disassociate the items from the prohibited person in its records.

Subdivision (a)(1)

This subdivision requires the dealer or vendor to report information that would allow the Department to identify the firearms dealer or ammunition vendor. This information is collected automatically when the dealer or vendor representative logs into the DES, pursuant to subdivision (b) of this proposed regulation.

The purpose of the notification requirement of Penal Code section 29830, subdivision (c) is to provide the Department with information regarding a firearm, ammunition feeding device, or ammunition being stored by a specific firearms dealer or ammunition vendor for a person who is temporarily prohibited. To accomplish this, the notification must include information regarding the firearms dealer or ammunition vendor. Firearms dealers and ammunition vendors regularly use the DES to communicate information regarding firearm and ammunition sales and transfers to the Department. When the firearms dealer or ammunition vendor logs into the DES, basic identifying information regarding the firearms dealer or ammunition vendor (e.g., dealer name) is automatically collected and transmitted to the Department. Without this information, the Department will not be able to verify that the firearms dealer or ammunition vendor is licensed, as required by Penal Code section 29830, subdivision (a), and allows the Department to verify that the firearm, ammunition feeding device, or ammunition is no longer in the possession of a prohibited person.

By requiring notification of the date of storage, the statute implies that the Department should know where the firearm is being stored, and by whom. Reporting information about the firearms dealer or ammunition vendor information is necessary to ensure that the Department is informed of where the firearm is being stored, and by whom. Providing this information will give the Department a point of contact if any further investigation is necessary regarding the disposition of the stored item.

Subdivision (a)(1)(A)

This subdivision requires the dealer or vendor to report the name of the specific person who took possession of the item. This information is collected automatically when the dealer or vendor representative logs into the DES.

This information is necessary for the Department in case it needs to verify that the item(s) were transferred properly, and/or to trace the chain of custody of the prohibited item(s).

Subdivision (a)(2)

This subdivision requires the dealer or vendor to report the date that the dealer or vendor took possession of the item(s). This is necessary to comply with the requirement in Penal Code section 29830, subdivision (c), that the dealer or vendor “shall notify the Department of Justice of the date that the firearms dealer or ammunition vendor has taken possession of the firearm, ammunition feeding device, or ammunition.”

Subdivision (a)(3)

This subdivision requires the dealer to report information about the person relinquishing the firearm, ammunition feeding device, or ammunition for storage. This is necessary so the Department can identify the person who is complying with Penal Code section 29830 by storing the item with the dealer or vendor. The information required is the basic information that the Department regularly collects to identify persons. Keeping track of persons who are prohibited by state or federal law from possessing a firearm is a core public safety function of the Department’s Bureau of Firearms, particularly those known to own or possess firearms. (Pen. Code, § 30000.)

Subdivision (a)(4)

This subdivision requires the firearms dealer or ammunition vendor to report basic identifying information regarding the item(s) being stored. This is necessary for the Department to update its records regarding the possession of firearms and ammunition, and to allow Departmental oversight over the implementation of Penal Code section 29830.

Subdivision (a)(4)(A)

This subdivision requires the dealer to describe the firearm being stored, according to the listed attributes that constitute the basic information necessary to accurately identify a firearm. These are the standard firearm attributes that the Department records in the Automated Firearms System. This is necessary so the Department can identify what is being reported as being stored. Keeping accurate records of firearms is a core public safety function of the Department’s Bureau of Firearms (Pen. Code, § 11106) and is the purpose of the reporting requirement in Penal Code section 29830.

Subdivision (a)(4)(B)

This subdivision requires the dealer to describe the ammunition feeding device(s) being stored by selecting the “type” of device from the standard list of ammunition feeding device types used by the Department. These terms are understood by the regulated public. This is necessary so the Department can identify what is being reported as being stored. The Department has determined that “device type” is the basic information necessary to identify an ammunition feeding device, and that more specific information regarding the device is unnecessary. Keeping accurate records of certain firearms-related items is a core public safety function of the Department’s Bureau of

Firearms (Pen. Code, § 11106) and is the purpose of the reporting requirement in Penal Code section 29830.

This subdivision also clarifies the meaning of the term “large capacity,” regarding the capacity of ammunition feeding devices. This is necessary so that the public can accurately describe the item, and so that the Department can identify what is being reported as being stored. The definition is aligned with the definition of a “large-capacity” magazine in Penal Code section 16740, for consistency.

Subdivision (a)(4)(C)

This subdivision requires the dealer to report a description of the ammunition being stored, according to the listed attributes that constitute the basic information necessary to accurately identify ammunition. These terms are understood by the regulated public. This is necessary so the Department can identify what is being reported as being stored. Keeping accurate records of certain firearms-related items is a core public safety function of the Department’s Bureau of Firearms (Pen. Code, §§ 11106 and 30352, subd. (b)) and is the purpose of the reporting requirement in Penal Code section 29830.

Subdivision (b)

This subdivision requires the dealer or ammunition vendor to report the information in subdivision (a) through the DES.

The DES was determined to be the least burdensome method for firearms dealers and ammunition vendors because it is already used by firearms dealers and ammunition vendors, pursuant to California Code of Regulations, title 11, section 4210, to communicate information regarding firearms and ammunition to the Department. It is a system that they readily have access to and are familiar with.

Requiring the transmittal of information via the DES is necessary to create a consistent reporting format and timely reports. Without this section, a firearms dealer or ammunition vendor could choose any method of notifying the Department. If the Department were to accept any form of notification (electronic, hard copy, phone call, etc.), it would be a burdensome task to intake and organize these disparate forms of notification. Requiring firearms dealers and ammunition vendors to use the DES ensures that all notifications are made in a timely and uniform manner.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department concludes:

(1) It is unlikely that the proposal would create or eliminate jobs within the state because the proposed regulation prescribes the procedure for existing firearm dealers and ammunition vendors to notify the Department that they are storing an item for a temporarily prohibited person.

(2) It is unlikely that the proposal would create new businesses or eliminate existing businesses within the state because the proposed regulation prescribes the procedure for existing firearm dealers and ammunition vendors to notify the Department that they are storing an item for a temporarily prohibited person.

(3) It is unlikely that the proposal would result in the expansion of businesses currently doing business within the state because the proposed regulation prescribes the procedure for existing firearm dealers and ammunition vendors to notify the Department that they are storing an item for a temporarily prohibited person.

The Department also concludes that:

(1) The proposal would benefit the health and welfare of California residents by requiring immediate and accurate records regarding the disposition of firearms, ammunition and ammunition feeding devices in the possession of a person who is temporarily prohibited from possessing those items.

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

(3) The proposal would benefit the state's environment by establishing an electronic format for the required report and thereby preventing paper waste.

These regulations will have minimal economic impact. This rulemaking would regulate the information that must be provided, and the method of communication that a firearms dealer or ammunition vendor must use, when fulfilling the notification requirement of Penal Code section 29830, subdivision (c). The Department estimates that the 2 minutes it takes to fill out the report will cost firearms dealers and ammunition vendors approximately \$8.01 each year.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR SIMILAR DOCUMENTS RELIED UPON

The Department did not rely on any technical, theoretical, or empirical studies, reports or similar documents in proposing these regulations.

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

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

These regulations would require the notification mandated by Penal Code section 29830, subdivision (c), be communicated using the DES. Requiring notification through DES rather than other modes of transmittal will not have a significant adverse economic impact. Because firearms dealers and ammunition vendors regularly communicate with the Department using

the DES, usually multiple times each day, requiring further use of the DES would be less burdensome than any alternative.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Department finds that no reasonable alternatives were presented to, or considered by, the Department that would lessen any adverse impact on small business. Requiring the dealer or ammunition vendor to notify the Department electronically via the DES is the most efficient way to make sure that the dealer or vendor provides all required information. Dealers and vendors are already familiar with using the DES to report transactions to the Department.

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES

The Department finds that no alternatives were presented to, or considered by, the Department that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

The Department considered mandating or allowing use of a paper form to report the necessary information. The Department assumes it would take the same amount of staff time to complete the form in either format. However, use of a paper form would require postage (\$0.73). This would increase the total cost to each business that complies with this regulation (\$8.01 staff time + \$0.73 postage = \$8.74).

The Department rejected this alternative as being both more expensive and less effective. Considering the threat posed to public safety by the continued possession of firearms, ammunition feeding devices, and ammunition by persons who are prohibited from possessing those items, timely notification is of the utmost importance. In this instance, the option that results in immediate notification is also the most cost-effective.

Performance Standard as Alternative:

Penal Code section 29830, subdivision (c), requires firearms dealers and ammunition vendors to report the date that they take possession of an item for a temporarily prohibited person. The proposed regulation lists additional information that must be reported so the Department can track the temporary relinquishment of an item.

The proposed regulation requires the dealer or ammunition vendor to report information to the Department electronically via the DES. Access to the DES is provided to firearms dealers and ammunition vendors free of charge. The Department has made necessary upgrades to the DES that will allow the transmittal of the information required in these regulations. Firearms dealers and ammunition vendors regularly communicate with the Department using the DES, usually multiple times each day. Because other modes of communication (e.g., postal service, courier, etc.) would be less reliable in accurately communicating the required information; less timely than the immediate communication afforded by the DES; could be an unfamiliar medium for the

firearms dealer or ammunition vendor; and would cost the firearms dealer or ammunition vendor more money than the free system provided by the DES, the Department has rejected those alternatives.