

NOTICE OF PROPOSED RULEMAKING

The Department of Justice (Department) proposes to adopt Chapter 41, sections 5505 through 5522, to Title 11, Division 5 of the California Code of Regulations. Chapter 41 is titled “Firearms: Identifying Information and the Unique Serial Number Application Process for Self-Manufactured or Self-Assembled Firearms.” Commencing July 1, 2018, this new chapter explains the process the Department will use to regulate existing self-manufactured or self-assembled firearms and firearms that an individual intends to manufacture or assemble. This process enables the Department to conduct a firearm eligibility check on an individual prior to issuing a unique serial number for the individual’s firearm. By issuing a unique serial number for every self-manufactured or self-assembled firearm, the Department’s goal is to ensure that every individual in possession of a firearm is lawfully eligible to possess a firearm, and every self-manufactured or self-assembled firearm made after 1968 is uniquely identified.

PUBLIC HEARING

The Department will hold a public hearing to receive public comments on the proposed regulatory action.

The hearing will be held on March 19, 2018, at 10:00 a.m. to 12:00 p.m., at the following location:

Resources Building Auditorium
1416 9th Street
Sacramento, California 95814

This auditorium is wheelchair accessible. There is no designated parking lot. Parking will need to be found nearby.

At the hearing, any person may present oral or written comments regarding the proposed regulatory action. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5:00 p.m. on March 19, 2018. Only comments received by the Department by that time will be considered. Written comments shall be submitted to:

Sundee Thind
Bureau of Firearms
Division of Law Enforcement
Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487
Phone: 916-227-7622
Email: AB857FirearmIDregs@doj.ca.gov

AUTHORITY AND REFERENCE

The Legislature adopted an entire new chapter, “Chapter 3. Assembly of Firearms,” to Division 7 of Title 4 of Part 6 of the California Penal Code, which includes new Penal Code sections 29180, 29181, 29182, 29183, and 29184. Penal Code section 29182(f) states that the “the department shall adopt regulations to administer this chapter.” Hence, the Legislature authorized the Department to write and adopt regulations for this entire chapter. The proposed regulations implement, interpret, and made specific Penal Code sections 29180, 29181, 29182, 29183, and 29184.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Prior to adopting California Penal Code sections 29180, 29181, 29182, 29183, and 29184, there were no provisions in existing law that addressed a non-prohibited person from manufacturing a firearm for personal use. Since a person purchasing an unfinished receiver does not have to undergo a background check, any person, even a person prohibited from possessing a firearm, can make a firearm at home. If the Legislature did not enact this law, any person prohibited from owning a firearm could easily circumvent the law by manufacturing or assembling a firearm that could potentially be used in the commission of a crime.

In addition, presently, self-manufactured or self-assembled firearms generally have no serial number and are not tracked by the Department’s automated firearm system. New technology makes it very easy to manufacture untraceable firearms which has created a public safety concern. These untraceable firearms are showing up at crime scenes, found in the hands of violent criminals, and criminal organizations are manufacturing these guns for criminal activity and profit.

The Legislature adopted California Penal Code sections 29180, 29181, 29182, 29183, and 29184 to regulate the ownership of self-manufactured or self-assembled firearms. The Legislature delegated authority to the Department to write regulations to interpret, and make specific Penal Code sections 29180, 29181, 29182, 29183, and 29184. These regulations are beneficial as they create a unique serial number application process; one that every individual shall undergo if the individual owns a self-manufactured or self-assembled firearm or intends to manufacture or assemble a firearm. Through this process, the Department can allow those who are lawfully eligible to possess a firearm, to retain their self-manufactured or self-assembled firearm while later disarming prohibited persons who have a self-manufactured or self-assembled firearm in their possession.

These regulations describe the mandatory reporting process the Department is putting into effect for the owner of a self-manufactured or self-assembled firearm, making it easy for such owners to report their firearms to the Department. Once given effect, these regulations will increase public safety by forcing individuals to demonstrate that they are not prohibited from owning firearms while allowing law-abiding individuals to maintain their firearm building hobbies. Furthermore, these regulations benefit the state as they may enable the Department to seize an unreported self-manufactured or self-assembled firearm that has no engraved serial number, once the period to engrave a serial number and record the ownership of a self-manufactured or self-assembled firearm has expired. As a result, the number of unlawful and untraceable firearms circulating within the state will decrease.

The California Code of Regulations, title 11, division 5, Chapter 41, interprets and details the specifics of these laws as follows:

Section 5505 specifies the scope of the new chapter, the regulation of self-manufactured and self-assembled firearms. The chapter applies to (1) those who own self-manufactured or self-assembled firearms as of July 1, 2018 that are not recorded with the Department or (2) those who intend to manufacture or assemble firearms on or after July 1, 2018.

Section 5506 specifies that an individual shall not build any prohibited firearm, including an assault weapon, a machine gun, a .50 BMG rifle, a destructive device, a short barreled rifle, or a short barreled shotgun.

Section 5507 defines all firearm-related words used throughout this new chapter so that the Department and members of the public can apply the same definitions to the firearm-related terminology used in the regulations to understand what the Department requires of them.

Section 5508 specifies the types of firearms that are not affected by the new Penal Code sections.

Section 5509 specifies the two groups of people who the new Penal Code sections affect: (1) individuals who own self-manufactured or self-assembled firearms as of July 1, 2018, and (2) individuals who intend to manufacture or assemble a firearm on or after July 1, 2018.

Section 5510 specifies the effective dates of the new Penal Code sections. Self-manufactured or self-assembled firearms shall be reported to the Department on or after July 1, 2018, but before January 1, 2019. An individual intending to manufacture or assemble a firearm on or after July 1, 2018, shall request a unique serial number before the individual builds the firearm.

Section 5511 specifies that unique serial number applications shall be submitted online on California Firearms Application Reporting System (CFARS) and instructs where to find the application.

Section 5512 specifies how to create a CFARS account (prior to completing a unique serial number application) and the terms the applicant shall accept before creating the account.

Section 5513 specifies the applicant and firearm identification information the applicant shall enter into CFARS. Also, it informs the applicant of the Department's Privacy Notice and requires the applicant to agree to the release of the applicant's personal information to representatives of the Department in order for the unique serial number application to be processed.

Section 5514 establishes the reporting fee to file a unique serial number application.

Section 5515 specifies that only one unique serial number will be issued per firearm.

Section 5516 describes the firearm eligibility check that the Department conducts on the applicant before determining if the applicant is eligible to possess a firearm. It also specifies that the Department will notify the applicant of its determination of eligibility electronically by email.

Section 5517 specifies that the Department shall make a decision, within 15 calendar days, to grant or deny the applicant's request for a unique serial number.

Section 5518 identifies the different deadlines that an individual has to engrave, cast, stamp (impress), or permanently place the unique serial number in a conspicuous location on the receiver or frame of the firearm, after the Department issues a unique serial number to the individual.

Section 5519 explains that any firearm manufactured or assembled from polymer plastic shall contain its unique serial number on 3.7 ounces of material type 17-4 PH stainless steel, and the stainless steel piece shall be embedded within the plastic receiver or frame.

Section 5520 specifies the proper procedure and the information that shall be engraved, cast, stamped (impressed), or permanently placed on the firearm. The unique serial number shall be to a minimum depth of .003 inch and in a print no smaller than 1/16 inch. This ensures that the unique serial number will fit on the firearm and be legible to the Department.

Section 5521 specifies that the applicant shall upload four digital images of the self-manufactured or self-assembled firearm for approval by the Department. It also establishes the procedure to submit digital images of the self-manufactured or self-assembled firearm.

Section 5522 establishes that self-manufactured or self-assembled firearms, which are built on or after July 1, 2018, may be modified by the manufacturer or assembler as long as it is done within the 30 day period after the Department issues the unique serial number.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

The Department anticipates that these regulations will benefit the health and welfare of California residents because they will protect those who manufacture or assemble a firearm, especially if the firearm is stolen and used to commit a crime by a prohibited person. These regulations will increase the number of traceable firearms, making it more effective for law enforcement to identify the root of any firearm that is potentially used in any firearm-related criminal activities. If a self-manufactured or self-assembled firearm that is recorded with the Department is stolen, its owner can immediately notify law enforcement of its identification by presenting proof of it having a unique serial number so that law enforcement can return the firearm to its lawful owner upon discovery. Additionally, if law enforcement uncovers any unreported firearms once the period to report self-manufactured or self-assembled firearms has concluded, those firearms will be taken off the streets and placed into custody, away from prohibited persons. Moreover, these regulations enable the Department to conduct a firearm eligibility check on every person who owns or intends to own a self-manufactured or self-assembled firearm, so the Department can ensure the individual is lawfully eligible to possess that firearm.

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

Pursuant to Government Code 11346.5, subdivision (a)(3)(D), the Department shall evaluate whether the proposed regulation is inconsistent or incompatible with existing state regulations. Pursuant to this evaluation, the Department has reviewed existing regulations pertaining to firearms within California

Code of Regulations (“CCR”) title 11, division 5, and determined that these proposed regulations are not inconsistent or incompatible. This determination is based on the fact that the proposed regulations specify new legislation that was enacted recently and are unconnected to any previous regulations.

COMPARABLE FEDERAL REGULATIONS

The proposed regulations are not mandated by federal statute or regulation.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which shall be reimbursed in accordance with government code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on Private Person or Business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: None.

Small business determination: The Department has determined that the proposed regulation will not affect the creation or elimination of businesses because it does not require small businesses to assist an individual with the unique serial number application process. However, there may be a positive impact on small businesses that currently conduct engraving, casting, or stamping (impressing) business in California because individuals who manufacture or assemble a firearm may seek the engraving services of a small business or a Federal Firearms Licensee (FFL) to engrave the Department issued unique serial number on the firearm.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Assessment regarding effect on jobs/businesses: Adoption of the proposed regulation will create four jobs within the Department—three full-time limited term positions and one full-time permanent position. Adoption of the proposed regulations will not:

- (1) Create or eliminate jobs within California, with the exception of the four jobs that will be created within the Department to process the unique serial number applications that will be submitted by the process proposed by these regulations;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

In addition, these proposed regulations are beneficial to the health and welfare of California's residents because they create a unique serial number application process, which will require each individual owning or intending to own a self-manufactured or self-assembled firearm to obtain a unique serial number for the firearm. Hence, the firearm will be uniquely identified and traceable. Additionally, these proposed regulations are beneficial to the welfare of California residents because they will require an individual to undergo a firearms eligibility check to ensure that the individual is not prohibited from owning a firearm before the Department issues a unique serial number to the individual. Presently, no laws mandate an individual who manufactures or assembles a firearm to undergo a background check, so it is easy for prohibited individuals to manufacture and assemble firearms. Furthermore, these regulations will benefit the welfare of California residents because they enable the Department to trace self-manufactured or self-assembled firearms, resulting in a decrease in the number of unlawful and untraceable firearms circulating within the state.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Any person interested in presenting statements or arguments with respect to alternatives to the proposed regulations may do so at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Please direct inquiries concerning the proposed administrative action to:

Sundeep Thind
Bureau of Firearms
Division of Law Enforcement
Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487
Phone: (916) 227-7622
Email: AB857FirearmIDregs@doj.ca.gov

The back-up contact person for these inquiries is:

Jacqueline Dosch
Bureau of Firearms
Division of Law Enforcement
Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487
Phone: (916) 227-5419
Email: AB857FirearmIDregs@doj.ca.gov

AVAILABILITY OF RULEMAKING FILE INCLUDING THE INITIAL STATEMENT OF REASONS

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process. The text of the proposed regulation (the “express terms”), the initial statement of reasons, and the information upon which the proposed rulemaking is based are available at the Department’s website at <http://oag.ca.gov/firearms/regs>. Copies may also be obtained by contacting Sundeep Thind.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days and accept written comments before the Department adopts the regulations. Copies of any modified text will be available on the Department’s website at <http://oag.ca.gov/firearms/regs>. A written copy of any modified text may be obtained by contacting Sundeep Thind.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon completion, the final statement of reasons will be available on the Department’s website at <http://oag.ca.gov/firearms/regs>. You may also obtain a written copy of the final statement of reasons by contacting Sundeep Thind.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format, as well as the Final Statement of Reasons once completed, are available on the Department’s website at <http://oag.ca.gov/firearms/regs>.