

Analysis of DOJ Proposed Regulations Regarding Magazines Capable of Holding More Than 10 Rounds

The California Department of Justice (“DOJ”) has [proposed](#) a series of [“emergency” regulations](#) relating to magazines capable of holding more than 10 rounds. The proposed regulations were submitted under California’s emergency rulemaking [process](#).

As part of the emergency rulemaking process, there is a 5-day public comment period during the first five days the OAL reviews the documents. During this time, any member of the public may submit their opinions and comments on the proposed regulations, regardless of what state you may live in. But, any comments you wish to make must be submitted no later than 5pm on December 28. DOJ states the regulations will take effect January 2, 2017.

To assist our members and law-abiding gun owners in submitting public comments, we have prepared the following overview of the emergency rulemaking process, as well as an in depth analysis detailing all of the proposed regulatory changes and their effects on California gun owners.

I. THE “EMERGENCY” RULEMAKING PROCESS

DOJ’s proposed regulations affect Title 11, Division 5, Chapter 39 of the California Code of Regulations. Specifically, the proposal amends Article 4 of Chapter 39 to include new rules related to “Large-Capacity Magazine Permits,” and adds a new Article regarding “Large-Capacity Magazines and Large-Capacity Magazine Conversion Kits.”

Administering the emergency rulemaking process is California’s [Office of Administrative Law](#) (“OAL”). When emergency regulations are proposed, OAL assigns a file number and [posts the proposal on their website](#), indicating that the regulations are now under review and that the 5-day public comment period has begun. As of early morning on December 23, DOJ’s proposed regulations are now posted on OAL’s website.

During the first 5 days of this review, members of the public may submit any comments they wish to make on the proposed regulations. To submit comments, you must email your comments to the OAL Reference Attorney at staff@oal.ca.gov and cc Jacqueline Dosch at Regulations@doj.ca.gov. We also request that you cc the CRPA at contact@crpa.org to allow our offices to keep track of public comments.

Let's make one thing clear. This is NOT an emergency. The laws concerning so-called "large-capacity magazines" have been on California's books since 2000. DOJ had 17 years to modify or come up with regulations relating to "permanently altering" magazines. During that time, DOJ failed to provide the necessary guidance and clarification for to California firearm owners, dealers, and manufacturers. But now, DOJ is attempting to claim that the "emergency" regulations are necessary and must be enacted during the holiday season. As a result, the emergency comment period extends from today through Christmas eve, Christmas, Boxing Day (one of the busiest shopping days of the year for firearm dealers) and through December 28.

One thing is clear—California gun owners cannot stand on the sidelines during the rulemaking process. We need to make our voices heard. There is no reason DOJ's proposal should be reviewed under the emergency regulation process. ALL California firearm owners, dealers, and manufacturers should be given adequate time to review, comment on, and suggest revisions. What's more, the only substantive change from this year's bills and Prop 63 is the restriction on the *possession* of "large-capacity magazines," which isn't even effective until July 1, 2017, six months from now. This is more than enough time for the proposal to undergo the typical rulemaking process. Instead DOJ is manufacturing an "emergency." If there truly is an "emergency" as DOJ suggests, it is solely a result of DOJ's lack of action on the matter for nearly 17 years.

II. PROPOSED AMENDMENTS TO ARTICLE 4 REGARDING "LARGE-CAPACITY MAGAZINE PERMITS"

Substantively, the proposed amendments to Article 4 do not delete or amend any of the existing regulations regarding "Large-Capacity Magazine Permits." Instead, the proposal adds several new requirements for obtaining and maintaining these permits, which are necessary to engage in the sale or transfer of such magazines in California and are issued almost exclusively to California licensed firearm dealers.

Under DOJ's proposal, the following changes will be made to the requirements for "Large-Capacity Magazine Permits:"

- All permit holders with more than one business location will now be required to obtain a permit for each location. Previously, only one permit was needed for an FFL business with multiple storefront locations.

- If the business location for a particular permit ever moves to a new location, the permit will automatically transfer with the business to the new location so long DOJ is notified prior to the move.
- All permit holders must now keep records of all “large-capacity” magazine *sales* on a newly proposed form ([BOF 1002 \(Rev. 12/2016\)](#)), which includes information such as the capacity, caliber, and number of magazines sold, as well as the purchaser’s name and *agency*. Records of sales using BOF 1002 will also be evidence for ongoing “good cause” for the renewal of a permit.
 - In addition to the required information on BOF 1002, the permit holder must obtain a photocopy of the front and back of the purchaser’s law enforcement credentials (or in the case of a federal law enforcement officer, a copy of their business card after their status as a federal law enforcement officer is confirmed by reviewing their credential).
- All of the required documentation must be completed no later than 24 hours after each sale, and all records of the sale must be stored in a file separate from DROS records for an indeterminate amount of time.

In addition to the above requirements, the proposal adds several new provisions relating to permit revocations. DOJ will now have the authority to revoke a permit should a permit holder become prohibited from owning or possessing firearms, as well as for violating any of the above requirements.

Although applying for a permit is free, the newly required paperwork and record keeping requirements will add significant time and monetary expenses for dealers to engage in the business of selling and transferring magazines capable of holding more than 10 rounds, which are almost exclusively sold to California’s law enforcement professionals. Coupled with the fact that DOJ is apparently requiring dealers to maintain records for an undetermined amount of time, these proposed regulations serve only to increase the costs for engaging in lawful business practices.

III. PROPOSED ADDITION OF ARTICLE 5 REGARDING “LARGE-CAPACITY MAGAZINES AND LARGE-CAPACITY MAGAZINE CONVERSION KITS”

Much of DOJ's proposal focuses on adding a new Article 5 regarding "large-capacity" magazines. The proposed article includes information for "permanently altering" "large-capacity magazines" to accept no more than 10 rounds, clarifications for multi-tube shotgun designs, and "large-capacity" magazine conversion kits.

A. DOJ Approved Methods for "Permanently Altering" Magazines

Central to DOJ's entire proposal are the approved methods for "permanently altering" "large-capacity magazines" to accept no more than 10 rounds. As stated in the proposal "[p]rior to July 1, 2017, large-capacity magazine permit holders may accept large-capacity magazines . . . from California residents for the purposes of permanently altering the magazine's feeding device so that it reduces the capacity to 10 rounds or less." Essentially, this restriction will prevent permit holders from modifying magazines after July 1, 2017, when the ban is set to take effect.

The proposal also includes specific provisions for how individuals can "permanently alter" their magazines depending on the type of magazine in question. For standard "box type" magazines, the regulations require individuals to:

- 1) Insert a "block" into the magazine and affix the magazine floorplate to the body of the magazine (using either epoxy for plastic magazines or welding for metal magazines); and,
- 2) Riveting the block to either the floor plate or side wall of the magazine body.

Keen observers have pointed out, however, that it is not entirely clear if both or just one of the above steps are required to satisfy the proposed regulations. As drafted, the proposed language appears to suggest that both are required, but an argument can be made that the lack of clear and precise language is already leaving many law-abiding gun owners confused as to what is required.

The chosen language becomes even more obscure with regards to drum magazines. The proposal notes that there are generally two styles of drum magazines: "those that are fed from the neck of the magazine (neck fed drum magazines), and those that open from the side and are loaded once a lid or cover is opened up (clam shell drum magazines)."



“Neck Fed” Drum Magazine (Left), “Clam Shell” Drum Magazine (Right)

In order for a “neck fed” drum magazine to be permanently altered pursuant to the proposed regulations, individuals must insert enough “dummy rounds” to limit the capacity to 10 rounds and then epoxy those rounds into place. Once the dummy rounds are epoxied into place, the lid must also be epoxied closed, but an additional rivet is not required. Notably, performing any of these steps is likely to result in permanent damage to the magazine.

For “clam shell” drum magazines, the regulations state that “[t]his magazine type is not a good candidate for reduction to 10 rounds or less and shall be disposed by other means if not permanently altered as described in this section.”

Lastly, the proposed regulations include requirements for permanently altering tubular magazines, such as those found in shotguns (although DOJ notes that certain ammunition feeding tubes, lever action and .22 caliber tubular magazines are exempt from the “large-capacity magazine” restrictions). To permanently alter a tubular magazine, individuals must insert a block into the tube, epoxy the block into place, and then rivet the block by penetrating the tubular magazine and the magazine block.

B. Multi-Tube Shotguns

DOJ is also attempting to address recent innovative shotgun designs incorporating more than one magazine tube. The proposed regulations clarify that the capacity of a shotgun will be measured using typical 2 $\frac{3}{4}$ inch shotgun shells unless otherwise specifically marked by the manufacturer.

Under the proposed regulations, multiple 10-round magazines, whether they be tubular magazines or otherwise, are not considered to be a “large-capacity” magazine if they are simply attached to one another by a plastic or metal coupler, or if welded together. But if a firearm is equipped with more than one magazine that can hold (collectively) more than 10 rounds, which can be fired without the use of a magazine tube selector switch, or if all of the rounds from both magazines can be fired without manually switching between the tubes, the firearm will be considered to have a “large-capacity” magazine and therefore be prohibited for sale in California to most Californians.

To illustrate, DOJ has specifically referenced the DP-12 and UTS-15, stating that both shotguns are considered to be equipped with a “large-capacity” magazine under the proposed regulations. However, the regulations state that if either of these shotguns were appropriately modified, they could potentially satisfy the requirement. For example, while not specifically discussed by DOJ, the UTS-7+7 (a modified UTS-15 utilizing a *manual* selector switch) would appear to be legal in California under the proposed regulations. Likewise, for firearms that change between tubes without manually manipulating the firearm or tubes, the tubes can be permanently altered (as we mention above) to hold a combined 10 rounds. What’s more, DOJ has also specifically referenced the KSG and SRM-1216, stating that either of these shotguns do *not* violate the proposed regulations (because you must manually switch between ammunition feeding tubes) and are therefore presumably lawful to sell and possess in California.



DP-12 (Left), UTS-15 (Right)



KSG (Left), SRM-1216 (Right)

C. Magazine Conversion Kits

The final section of the proposed regulations concerns “large-capacity” magazine conversion kits. Since 2013, California has prohibited the manufacture, importation, sale, or transfer of any device or combination of parts of a fully functioning “large-capacity” magazine. The proposed regulations will clarify that a “magazine extension,” defined as “a device capable of increasing the magazine capacity of a magazine,” will also be considered to be a conversion kit and therefore prohibited in California. The proposal also states that a disassembled magazine will also be considered to be a conversion kit, even if marketed as a “repair kit.” But a simple grip extension, which solely increases the grip space on a magazine, is not considered to be a conversion kit.

IV. SUBMITTING PUBLIC COMMENTS

We encourage all of our members who are able to submit their comments on DOJ's proposal. Remember that you will need to submit your comments to both of the following recipients:

Jacqueline Dosch
regulations@doj.ca.gov

OAL Reference Attorney
staff@oal.ca.gov

And as we asked above, please cc contact@crpa.org when submitting your comments.

If you have any questions on the emergency rulemaking process, OAL has posted an in depth overview which can be viewed [here](#). OAL has also published a guide for members of the public who wish to participate in the rulemaking process which is available [here](#).

If you are looking for a suggestions what to write, we suggest the following:

To whom it may concern,

I am writing in opposition of the proposed emergency regulations by the California Department of Justice concerning “large-capacity magazines.” The laws regulating these devices have been on the books for almost 17 years and the new laws will not be enforceable until July 1, 2017. We, the California public, need ample time to review, comment on, and propose modifications to the proposed regulations. The emergency comment period over the Christmas holiday does not afford most Californians effected by these laws an opportunity to do that. We ask OAL to reject DOJ’s submission and insist that DOJ follow the standard regulation process.

Thank you for your time and consideration.