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VIA E-MAIL AND U.S. MAIL

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**Re: Proposed Emergency Regulations - Carry Concealed Weapons
Licenses (OAL File # TBD)**

To whom it may concern:

We write on behalf of the California Rifle & Pistol Association, Incorporated, Gun Owners of California, and their respective law enforcement officers, firearm instructors, their members, and the below listed individual instructors and business entities in opposition to the California Department of Justice's proposed emergency regulations regarding Carry Concealed Weapons ("CCW") Licenses.

For the following reasons, the proposed regulations are not exempt from California's Administrative Procedures Act ("APA"), fail to justify an "emergency" need, are unnecessary, are inconsistent with existing statutory and court authority, and cannot be easily understood by those affected.

I. THE PROPOSED REGULATIONS ARE NOT EXEMPT FROM THE APA

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

¹ 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

As a threshold matter, subdivision (d) of Penal Code section 26225 (effective Jan. 1, 2024) states that DOJ may adopt emergency regulations to implement Penal Code sections 26150 through 26230, 29805, and 31635. Subdivision (d) further says that any proposed emergency regulation will be exempt from review by the Office of Administrative Law. However, subdivision (d) is not yet operative and takes effect on January 1, 2024.

Because the proposed regulations have been submitted prior to January 1, 2024, they *do not* have any applicable statutory exemption to the APA. Therefore, the Office of Administrative Law (“OAL”) must review DOJ’s proposed emergency regulations as a proposed regulation lacking an APA exemption.

In reviewing a proposed regulation, OAL is tasked with ensuring the regulation is necessary, is authorized by statute, can be easily understood by those affected, is consistent with existing statutes and court decisions, provides appropriate references to statutes, and does not otherwise duplicate the statute's language.² Should a regulation fail to comply with these requirements, OAL can and should disapprove the regulation.³

For “emergency” regulations to be warranted, the APA requires “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.”⁴ 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.⁵ Here, the express statement of emergency restates the language in Penal Code section 26225, subdivision (d), which is not yet operative and cannot be relied upon. Moreover, the language included states a general public need and is otherwise speculative, which the Government Code makes inadequate for emergency regulations. For this reason alone, OAL should disapprove of the proposed regulation.

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

² 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).

³ Cal. Gov. Code § 11349.3. And any person may obtain a judicial declaration as to the validity of any regulation by bringing an action for declaratory relief. Cal. Gov. Code § 11350.

⁴ Gov’t. Code § 11342.545. OAL regulations also require state agencies submitting an emergency proposal to provide specific facts demonstrating by substantial evidence that failure of the rulemaking agency to adopt the regulation within the time periods required under the typical rulemaking process would likely result in serious harm to the public peace, health, safety, or general welfare. Cal. Code Regs., tit. 1, § 50(a)(5)(B)(1). The agency must also provide specific facts demonstrating by substantial evidence that the immediate adoption of the proposed regulation can be reasonably expected to prevent or significantly alleviate that serious harm. Cal. Code Regs., tit. 1, § 50(a)(5)(B)(2).

⁵ Gov’t. Code § 11346.1(b)(2).

II. THE PROPOSED REGULATIONS REGARDING CERTIFIED CCW INSTRUCTORS ARE UNNECESSARY, INCONSISTENT WITH EXISTING STATUTORY AND COURT AUTHORITY, AND CANNOT OTHERWISE BE EASILY UNDERSTOOD

The proposal fails to explain why DOJ has deviated from the applicable statutory provisions outlined in Penal Code section 26165. As noted in subdivision (a)(4) of Penal Code section 26165 (operative January 1, 2024), the required training for a CCW course “shall be taught and supervised by firearms instructors certified by the Department of Justice pursuant to Section 31635, or in a manner to be prescribed by regulation.”⁶ Therefore, given the existing certification requirement under Section 31635, DOJ’s proposal is unnecessary. At the very least, DOJ must explain why it deviates from the statutory language, including why an “emergency” rulemaking action is needed. Absent such an explanation, OAL must reject this proposed regulation.

DOJ also fails to explain how or why proposed subdivision (c) of section 4410 (requiring CCW instructor applicants to be certified by one of 3 specified entities including: 1) The Bureau of Security and Investigate Services (“BSIS”); 2) The Commission on Peace Officer Standards and Training (“POST”); or, 3) A State of California accredited school to teach a firearm training course) deviates so substantially from those entities expressly listed in Penal Code section 31635. Specifically, Section 31635 lists the following additional certification options that are not listed as an option in DOJ’s proposal:

- Director of Civilian Marksmanship;
- Federal Government;
- Federal Law Enforcement Training Center;
- United States Military;
- National Rifle Association-Certified Instructor; or,
- Any entity found by DOJ⁷ to give comparable instruction.⁸

Before submitting this comment letter, our office received numerous inquiries regarding DOJ’s proposal, including what options were available to existing CCW instructors to provide the required certification. While it is our understanding and belief that any of the entities expressly outlined in Penal Code section 31635—including those certified by DOJ as providing comparable instruction—meet the statutory requirements of a “State of California accredited school to teach a firearm training course,” we nevertheless requested clarity from DOJ on this issue prior to the submission of this comment letter. DOJ’s response did not provide any clarification and instead invited us to submit a comment on the matter.⁹ Absent this clarification, this proposed regulation should be rejected.

⁶ Emphasis added.

⁷ Notably, DOJ currently has a list of approximately 88 different entities which it has found to provide comparable instruction and is therefore certified by DOJ. See <https://oag.ca.gov/firearms/fscinfo>.

⁸ See Pen. Code § 31635(b).

⁹ The need for clarification on this issue is paramount. If our understanding of what it means to be a “State of California accredited school to teach a firearm training course” is correct, then

Additionally, subdivision (d) of proposed section 4410, which concerns the requirement that CCW instructor applicants pass a “live-fire shooting qualification course on a firing range,” fails to provide any guidance or clarity regarding who must administer this course. Nor does there appear to be any information in the proposed forms as to what is required to show completion of this requirement. OAL must also reject this proposed regulation.

III. Setting Aside DOJ’s Proposal, CCW Issuing Authorities Retain Statutory Authority to Require CCW Instructors Only Be Certified Pursuant to Penal Code 31635

Subdivision (a)(4) of Penal Code section 26165 provides two options for a CCW instructor to meet the statutory requirements of being DOJ-certified. Specifically, a person must either: 1) Be certified under Penal Code section 31635; or, 2) Be certified under DOJ regulations. Although DOJ seeks to adopt regulations for CCW instructors here, such regulations are unnecessary. Accordingly, CCW issuing authorities are not required to ensure their CCW training providers are certified under these proposed regulations even if adopted. Instead, the plain language of Penal Code section 26165 will allow individuals who are DOJ-certified Firearm Safety Certificate instructors to provide the required CCW training.

This fact, however, has not been made clear in DOJ’s proposed regulations. Any proposal, therefore, should clarify that the proposed certification process is merely one of two options available to obtain the required certification.

IV. EXISTING PROCESSING TIMES FOR LIVESCAN BACKGROUND CHECKS WILL CAUSE UNCONSTITUTIONAL DELAYS FOR DOJ-CERTIFIED CCW INSTRUCTORS AND INDIVIDUAL DENIALS OR REVOCATIONS REVERSED BY COURT ORDER

Current Livescan processing times for CCW applicants vary significantly, with some taking as little as 24 hours and others up to 8 months—*not including the time it takes for DOJ to begin processing the received Livescan*. As applied to existing CCW training providers, DOJ’s proposed regulations will require them to submit a Certificate of Eligibility application, which includes a Livescan. A sudden influx of such applications on January 1, 2024, will likely result in further delays in DOJ processing times, thereby causing unconstitutional delays for the issuance of a CCW in California.

The same issue applies to proposed section 4422’s background checks following denials or revocations that are reversed by court order. Although DOJ’s proposed regulations state DOJ will notify licensing authorities of the results of the required background check within 60 days for initial denials and 30 days for revocations that are reversed by court order, it is unclear how

existing CCW instructors will have a clear path forward as to how to proceed. If, however, our understanding is not correct, and DOJ will not accept certifications from those entities outlined in Penal Code section 31635 or any comparable entity already recognized by DOJ to teach the Firearm Safety Certificate program, many—*if not all*—CCW instructors for various counties will be unable to teach the required course of training, thereby causing unconstitutional delays and/or de-facto denials of the rights of law-abiding citizens to carry a firearm in public for self-defense.

DOJ will accomplish this given the existing delays.¹⁰ What's more, there is no reason for the discrepancy between the 60-day and 30-day window.

DOJ has demonstrated its ability to perform instant eligibility verifications in the context of ammunition transactions for individuals with firearms listed in DOJ's Automated Firearm System ("AFS"). There is no reason why DOJ could not perform similar instant verifications for a CCW holder who must have their handgun(s) listed in the same AFS system, as will be required beginning January 1, 2024. OAL must also reject this unnecessary regulation.

V. CONCLUSION

For the above reasons, DOJ's proposed "emergency" regulations are not exempt from the APA and otherwise fail to meet its requirements. We respectfully request that OAL reject the proposal and that DOJ make appropriate changes.

Sincerely,
Michel & Associates, P.C.



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¹⁰ Litigation concerning such lengthy processing times has recently been commenced by CRPA and other plaintiffs against the Los Angeles County Sheriff's Department, which is currently experiencing up to an 18-month processing time for the issuance of a CCW permit. *See California Rifle & Pistol Association, et al. v. Los Angeles County Sheriff's Department*, Central District of California, Case No. 2:23-cv-10169. DOJ is named as a defendant in this lawsuit.

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