Title 11, Division 5, Chapter 3, Non-dealer Sales or Transfers of Firearms Through Licensees or Dealers and Issuance of Certificates of Eligibility Pursuant to Penal Code Sections 12070, 12071, 12071.1, and 12082

ARTICLE 1. GENERAL

4030. Scope.

The provisions of these regulations apply to sales and other transfers of firearms, as defined in subdivision (a) of section 4031, by individuals through dealers pursuant to Penal Code section 12082, and to the issuance of Certificates of Eligibility by the Department of Justice to persons described in Penal Code Sections 12070, 12071, and 12071.1.

Note: Authority cited: Sections 12070, 12071, 12071.1 and 12082, Penal Code. Reference: Sections 12001, 12070, 12071, 12071.1, 12072 and 12082, Penal Code.

ARTICLE 2. DEFINITIONS

4031. Definition of Key Terms.

(a) The term "firearm" means any firearm within the definition of Penal Code section 12001.

(b) The term "dealer" means a person having a valid license to sell firearms issued pursuant to Penal Code section 12071.

(c) The term "section 12082 transaction" means the transfer of a firearm as provided in Penal Code section 12082.

(d) The term "transferor" means any person who wishes to sell or otherwise transfer a firearm through a dealer pursuant to Penal Code section12082.

(e) The term "transferee" means any person who wishes to acquire a firearm in a transaction pursuant to Penal Code section 12082.

(f) The term "personal information" means personal information as defined in Civil Code section 1798.3.

(g) The term "Department" means the Department of Justice of the State of California.

(h) The term "Certificate of Eligibility" means a certificate which states that the Department has checked its records and determined that the applicant is not prohibited from acquiring or possessing firearms pursuant to Sections 12021 and 12021.1 of the Penal Code, and Sections

8100 and 8103 of the Welfare and Institutions Code, or Title 27, Part 178.32 of the Code of Federal Regulations at the time the check was performed.

(i) The term "applicant" means a person applying to obtain a Certificate of Eligibility.

Note: Authority cited: Sections 12070, 12071, 12071.1 and 12082, Penal Code. Reference: Sections 12001, 12021, 12021.1, 12070, 12071, 12071.1, 12072 and 12082, Penal Code; Sections 8100 and 8103, Welfare and Institutions Codes; Section 1798.3, Civil Code; and Title 27, Part 178, Subchapters 32 and 41, Code of Federal Regulations.

ARTICLE 3. TRANSFERS

4032. Transfers of Concealable Firearms.

Except as provided in Penal Code Sections 12078 and 12084, no person shall sell, lease or transfer any firearm to a person who is not a dealer unless the transaction is processed by a dealer pursuant to Penal Code Section 12082.

Note: Authority cited: Sections 12072 and 12082, Penal Code. Reference: Sections 12071, 12072, 12078, 12082 and 12084, Penal Code.

4033. Criteria for Processing Section 12082 Transactions.

(a) All dealers shall process a section 12082 transaction upon the request of the transferor. All such requests shall:

(1) Be in writing and contain all of the terms of the transaction, and

(2) Be signed by the transferor and the transferee.

(b) Except as otherwise provided in Penal Code section 12082, a dealer shall process a section 12082 transaction in the same manner as if it were a dealer retail sale.

Note: Authority cited: Section 12082, Penal Code. Reference: Section 12071, 12072, 12073, 12076 and 12077, Penal Code.

4034. Dealer Fees.

All dealers shall display on the business premises where it can easily be seen, a schedule of fees for processing Section 12082 transactions and, prior to processing, the dealer shall notify the parties of the specific fee(s) to be charged for the transaction. The dealer may also require payment of all fees prior to initiating a section 12082 transaction.

Note: Authority cited: Section 12082, Penal Code. Reference: Section 12082, Penal Code.

4035. Confidentiality of Records.

Except as otherwise provided in Penal Code sections 12076 and 12077, personal information obtained by dealers in compliance with those sections is confidential and shall not be disclosed by the dealer except in the manner provided in Civil Code section 1798.24 for the disclosure of personal information by government agencies.

ARTICLE 4. CERTIFICATE OF ELIGIBILITY

4036. Qualifications.

(a) Applicant must be at least 18 years old.

(b) Applicant must not be in a class of persons described in Penal Code Sections 12021, 12021.1, or Welfare and Institutions Code Sections 8100 or 8103, or Title 27, Part 178.32 of the Code of Federal Regulations.

Note: Authority cited: Sections 12070, 12071 and 12071.1, Penal Code. Reference: Sections 12021, 12021.1, 12070, 12071, 12071.1 and 12072, Penal Code; Sections 8100 and 8103, Welfare and Institutions Codes; and Title 27, Part 178.32, Code of Federal Regulations.

4037. Application for Certificate of Eligibility.

(a) Applicant shall complete and submit an application form prescribed by the Department which will require the following information: Name, address, date of birth, driver's license number, telephone number; business information, if applicable, to include business name, primary business address, and business telephone number. The application shall also require additional information requesting responses to questions asking the applicant if he or she: 1) has ever been convicted of a felony or an offense specified in Penal Code Sections 12021, 12021.1, or 12001.6; 2) is a mental patient or on leave of absence from a mental hospital; 3) has ever been adjudicated by a court to be a danger to others, found not guilty by reason of insanity of any crime, or found incompetent to stand trial for any crime, pursuant to Section 8103 of the Welfare and Institutions Code; or 4) is currently under a restraining order.

(b) Applicant shall also submit two current Department fingerprint cards (Form BID-7), with complete sets of fingerprints prepared by the Department, or any other agency which is qualified to provide fingerprinting services. For this purpose the Department shall make applicant fingerprint cards available to local law enforcement agencies at no charge. This subsection does not apply to applications for renewal of a Certificate of Eligibility.

(c) Applicant shall submit the appropriate Certificate of Eligibility fees as set forth in subdivision (b) of Section 4040.

Note: Authority cited: Sections 11105(i), 12070, 12071 and 12071.1, Penal Code. Reference: Sections 12021, 12021.1, 12070, 12071, 12071.1 and 12072, Penal Code; and Sections 8100 and 8103, Welfare and Institutions Codes; and Title 27, Part 178, Code of Federal Regulations.

4038. Processing Time.

(a) The following time standards apply to the processing of applications for Certificates of Eligibility:

(1) Within 30 days after the date of receipt of an initial or renewal application, the Department shall either inform the applicant, in writing, that the application is complete and accepted for processing, or return the applications as deficient and specify what information is required.

(2)(A) Within 120 days from the date of receipt of a completed application for an initial Certificate of Eligibility, the Department shall conclude the processing of the application.

(B) Within 60 days from the date of receipt of a completed application for a renewal of a Certificate of Eligibility, the Department shall conclude the processing of the application.

(b)(1) The Department's minimum, median, and maximum times for processing an initial application, from the date of receipt of a completed application to the final determination are:

(A) Minimum time: 30 days

(B) Median time: 75 days

(C) Maximum time: 120 days

(2) The Department's minimum, median, and maximum times for processing a renewal application, from the date of receipt of a completed application to the final determination, are:

(A) Minimum time: 20 days

(B) Median time: 40 days

(C) Maximum time: 60 days

(c) If the Department fails to meet the time period for the processing of an initial or a renewal certificate, the applicant, within 30 days of the final decision granting or denying the application, may apply in writing for a full reimbursement of all application fees. The Department shall respond within 10 days of receipt of a request for reimbursement; and, if the reimbursement is

denied by the Department, the applicant may directly appeal the denial, in writing, to the Attorney General. The appeal shall set forth a concise statement of facts and chronology of events regarding the application. An appeal concerning an application on which reimbursement is denied must be filed within 30 days of the date the applicant was notified of the denial. The appeal shall promptly be reviewed and a decision shall issue within 30 days after conducting any investigation of the matter which the Attorney General deems appropriate. This appeal shall be decided in the applicant's favor if the Department has exceeded its maximum time period for the issuance or denial of the certificate and the Department has failed to establish good cause for exceeding this time period. The Department shall include the information regarding this appeal process on all Certificate applications.

Note: Authority cited: Sections 15376 and 15378, Government Code. Reference: Sections 15376 and 15378, Government Code.

4039. Term of Certificate of Eligibility.

The term of a Certificate of Eligibility shall not exceed one year from the date issued.

Note: Authority cited: Sections 12070, 12071 and 12071.1, Penal Code. Reference: Sections 12070, 12071 and 12071.1, Penal Code.

4040. Fees.

As authorized pursuant to subdivision (a) of section 12071 of the Penal Code, the Firearms Division fees for certificate of eligibility are as follows:

(a) Fee for initial application: $22

(b) Fee for renewal application: $22

Note: Authority cited: Section 12071, Penal Code. Reference: Sections 12071, 12071.1 and 12086, Penal Code; and Section 12101, Health and Safety Code.

4041. Applicant Denial Review Process.

Upon the denial of an application, the applicant may seek review of the records upon which the denial was based pursuant to Penal Code Sections 11121 and may seek to have those records changed pursuant to Penal Code Sections 11126. If within one year of the original application date, the applicant is successful in correcting the records to show that the applicant is not in any prohibited class of persons, the applicant may resubmit the application without additional charge.

Note: Authority cited: Sections 12070, 12071 and 12071.1, Penal Code. Reference: Sections 11121, 11126, 12070, 12071 and 12071.1, Penal Code.