THE DAVIS LAW FIRM

Orange County Office: 27201 Puerta Real, Suite 300, Mission Viejo, California 92691
Temecula Office: 42690 Rio Nedo, Suite F, Temecula, California 92590
Tel: 866-545-4867 / Fax: 888-624-4867 / CalGunLawyers.com

March 18, 2018

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

Office of Administrative Law
300 Capitol Mall Suite 1250
Sacramento, CA 95814

VIA U.S. MAIL AND EMAIL

Re: **PROPOSED REGULATIONS:**
CHAPTER 41 FIREARMS: IDENTIFYING INFORMATION AND THE UNIQUE SERIAL NUMER APPLICATION PROCESS FOR SELF-MANUFACTURED OR SELF-ASSEMBLED FIREARMS

Ms. Thind,

On behalf of Firearms Policy Coalition, The Calguns Foundation, Firearms Policy Foundation, and California Association of Federal Firearms Licensees, I write you in opposition to the proposed Department of Justice ("DOJ") regulations purportedly implementing administration of the new statutory definitions and requirements contained in Penal Code section 29180, et seq., enacted in Assembly Bill 857 ("AB 857") (2016, Cooper), and various related statutory amendments.

AB 857

AB 857 was signed into law July 22, 2016 and was written to mandate serialization on certain specified categories of firearms. Specifically, AB 857 mandated that beginning July 1, 2018, and subject to certain exceptions, unlicensed persons who manufacture a firearm must first apply to the Department of Justice for a unique serial number or other identifying mark. The bill also required that, by January 1, 2019, and subject to certain exceptions, any person who as of July 1, 2018, owns a firearm that does not bear a statutorily-approved type of serial number to likewise apply to the DOJ for a unique serial number or other mark of identification. AB 857 also prohibits the sale or transfer of ownership of a firearm manufactured or assembled pursuant to these provisions. And, it prohibits a person from aiding in the manufacture or assembly of a firearm by a person who is prohibited from possessing a firearm. Violations of these laws were designated as misdemeanors.

Relevant to the purposes here, the DOJ is required to issue serial numbers or other identifying marks to applicants meeting specified criteria and would allow the department to charge a fee to recover its costs associated with assigning a distinguishing number or mark to the above provision. And, pursuant to Penal Code section 29182, the Legislature granted the DOJ the authority to "adopt regulations to *administer* this chapter" – referring to Chapter 3 of Division 7, of Title 4, of Part 6 of the California Penal Code, which consists of Penal Code sections 29180 through 29184 (Hereinafter referred to as "Chapter 3").

STANDARD OF REVIEW

To withstand review by the Office of Administrative Law and comply with the Government Code, the proposed regulations must withstand scrutiny of the following factors: (1) Necessity, (2) Authority, (3) Clarity, (4) Consistency, (5) Reference, and (6) Non-duplication. (Gov't Code § 11349.1.)

A proposed regulation satisfies the requirement of "necessity" if the record of the rulemaking proceeding demonstrates:

> … by *substantial evidence* the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

(Gov't Code § 11349(a).)

A proposed regulation is consistent when it is "in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law." (Gov't Code, § 11349(d).)

A proposed regulation satisfies the "authority" requirement if a provision of law permits or obligates the agency to adopt, amend, or repeal a regulation. (Gov't Code § 11349)(b).) An administrative regulation may not alter or amend a statute or enlarge or impair its scope and must be struck down by a court if it does so. In deciding whether a regulation alters, amends, enlarges, or restricts a statute, or merely implements, interprets, makes specific, or otherwise gives effect to a statute a court must interpret the meaning of the statute. In doing so, courts apply principles of statutory interpretation developed primarily in case law. It examines the language of the statute, and may consider appropriate legislative history materials to ascertain the will of the legislature so as to effectuate the purpose of the statute.

A proposed regulation satisfies the requirement of "clarity" if the record of the rulemaking proceeding demonstrates that the proposed regulations are "written or displayed so that the

meaning of regulations will be easily understood by those persons directly affected by them." (Gov't Code § 11349(c).)

Finally, a proposed regulation satisfies the requirement of "consistency" if the record of the rulemaking proceeding demonstrates that the proposed regulations are in "harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law. (Gov't Code § 11349(d).)

Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carryout those provisions of the statute, no regulation adopted is valid unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute. (Gov't Code § 11342.2.) Here, the proposed regulations described below cannot stand as they are unnecessary, inconsistent, and beyond the authority of the Department of Justice to implement.

PROPOSED REGULATIONS

1. **Proposed Regulation Section 5506 Is Not Necessary, Inconsistent With Statutory Law, And The Department Of Justice Lacks Authority To Implement This Provision.**

Proposed Section 5506 states that the Department of Justice will not provide serial numbers for self-manufactured or self-assembled prohibited weapons pursuant to Penal Code section 16590, an assault weapon, a machine gun pursuant to Penal Code section 16880, a .50 BMG rifle pursuant to Penal Code section 30530, a destructive device pursuant to Penal Code section 16460, a short barreled rifle pursuant to Penal Code section 17170, or a short barreled shotgun pursuant to Penal Code section 17180."

However, the statutes clearly mandate that the DOJ "*shall* accept applications from, and *shall* grant applications in the form of serial numbers pursuant to Section 23910 to, persons who wish to *manufacture or assemble* firearms pursuant to subdivision (b) of Section 29180." (Penal Code § 29182(a)(1), italics added.) The statutes similarly mandate that the DOJ "*shall* accept applications from and *shall* grant applications in the form of serial numbers pursuant to Section 23910 to, persons who wish to *own* a firearm described in subdivision (c) of Section 29180." (Penal Code § 29182(a)(2), italics added.)

When the California Legislature uses the term "shall," there is no discretion by the agency to whom the statutory mandate applies. To hold otherwise via regulation, as this provision does, is in direct conflict with the statutory provision to which this proposed regulation seeks to provide guidance. Moreover, many of the lawfully possessed firearms that were deemed "assault weapons" beginning January 1, 2017 and which must be registered before July 1, 2018, are self-manufactured / self-assembled firearms, for which the DOJ requires serial numbers be requested, issued, and applied prior to accepting or processing registration.

The provision is not necessary due to the fact it is unsupported by any law: There is no California statute prohibiting issuance or application of serial numbers to any of the firearms described in this proposed regulation.

And, being both unnecessary and in direct conflict with the statutory language of Penal Code section 29182, the DOJ lacks the authority to promulgate the proposed regulation.

2. Proposed Regulation Section 5507(A), Defining "Antique Firearm" Is Not Necessary, Inconsistent With Statutory Law, And The Department Of Justice Lacks Authority To Implement This Provision.

Chapter 3 uses the term "antique firearm" one time, and that occurs in Section 29181, which provides an exemption to serialization requirements listed in Section 29180. Penal Code section 29181 expressly exempts "antique firearms," as that term "is defined in Section 479.11 of Title 27 of the Code of Federal Regulations."

Section 478.11 of Title 27 of the Code of Federal Regulations defines "antique firearm" as including:

- Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898;
- Any replica of any firearm described in paragraph (a) of this definition if such replica:
    - is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or
    - uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

Proposed regulation section 5507(a) defines "antique firearm" as:

- Any firearm not designed or redesigned for using rim fire or conventional centerfire ignition with fixed ammunition and manufactured in or before 1898 (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1989)
- Any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

While these definitions use similar terminology, they are not the same and do not include all of the same firearms. For example, the federal definition of "antique firearm" includes any firearm manufactured in or before 1898. The proposed regulation includes only those firearms with specific ignition systems, even if manufactured in or before 1898. Also, the federal definition exempts replicas that meet certain requirements, while the proposed regulation does not.

Proposed section 5507(a) is a muddle of terms used in the federal definition employed by an agency that either does not understand the meaning of 27 CFR § 478.11, or intentionally seeks to narrow the meaning of the term "antique firearm" in such a manner that conflicts with the express statutory definition provided by the Legislature. Either way, this definition is inconsistent with the legislatively mandated definition, is unnecessary as the term "antique firearm" is expressly defined in § 478.11 (where the California Legislature expressly advises us to look), and the DOJ lacks the authority to redefine the term as they have proposed.

3. Proposed Regulation Section 5507(I), Defining "Curios And Relics" Is Not Necessary, Inconsistent With Statutory Law, And The Department Of Justice Lacks Authority To Implement This Provision.

Chapter 3 uses the term "curio or relic" one time, and that occurs in Penal Code section 29181, which provides an exemption to serialization requirements listed in Section 29180. Section 29181 expressly exempts "curio or relic," as that term "is defined in Section 479.11 of Title 27 of the Code of Federal Regulations."

Section 478.11 of Title 27 of the Code of Federal Regulations defines "curios or relics" in the exact same manner as Proposed section 5507(i), except the proposed definition fails to include the last sentence of the definition found in Section 478.11, which states: "Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less." As such, Proposed Regulation Section 5507(i) is an edited down version of the term used in the federal definition, eliminating clause that can provide clarity to the public. This definition is inconsistent with the legislatively mandated definition in that it is incomplete; it is unnecessary as the term "curio or relic" is expressly defined in 478.11 of Title 27 of the Code of Federal Regulations – where the Legislature expressly advises us to look, and the DOJ lacks the authority to redefine the term as they have proposed.

4. Proposed Regulation Section 5507(M), Defining "FSC" Is Inconsistent With Statutory Law, And The Department Of Justice Lacks Authority To Implement This Provision.

Proposed Regulation section 5507(m), defining "FSC" incorrectly defines the term as meaning "Firearm Safety Certificate as defined in Penal Code section 16540," which is a Penal Code section that does not define "Firearm Safety Certificate;" rather, Penal Code section 16540 defines "Firearm Safety Device." Thus, the definition is inconsistent with legislative intent and statutory law. Moreover, the DOJ lacks the authority to redefine term as such. To the extent that the DOJ needs assistance in locating the legislatively-correct statutory definition referenced by the Legislature, it is recommended that they examine Penal Code section 16535, which defines the term "firearm safety certificate."

5. Proposed Regulation Section 5507(Q), Defining "Receiver, Unfinished" Is Inconsistent With Statutory Law, And The Department Of Justice Lacks Authority To Implement This Provision.

In no place within Chapter 3, does the Legislature use the term "unfinished receiver" or "receiver, unfinished."

Moreover, nowhere in the proposed regulations does the DOJ use the term "unfinished receiver" or "receiver, unfinished" except for the sole purpose of defining the term. In other words, this proposed regulation defines a term that is never used in the applicable statutes or regulations. Thus, by definition, it is unnecessary.

The Proposed regulation defines "Receiver, unfinished" as:

> a precursor part to a firearm that is not yet legally a firearm. Unfinished receivers may be found in various levels of completion. As more finishing work is completed the precursor part gradually becomes a firearm. For example, some just have the shape of an AR-15 lower receiver, but are solid metal. Some have been worked on and the magazine well has been machined open.

The significance of the DOJ's attempt to define this term must not go un-addressed. The proposed regulation defines a term that has been around for decades, which was designed and intended to address the processes used by licensed firearm manufacturers. Penal Code section 16520(g), expressly states that "[a]s used in Sections *29010 to 29150 [addressing the licensed manufacture of firearms]*, inclusive, 'firearm' includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver." Specifically, licensed firearm manufacturers often use third parties, including casting companies, to manufacture or cast their raw or unfinished frames or receivers. The castings that were produced were "unfinished receivers," meaning that they were actually were "receivers" due to the fact that they contained the start of characteristics that federally made them receivers (i.e. the housing for the hammer, bolt, or breechblock, and other components of the firing mechanism)[1] but that were unfinished to the extent that these castings could not fit the parts necessary to turn the receiver into a functional receiver. Finishing work needed to be performed on these receivers. For example, the unfinished receivers often needed the trigger pins drilled and casting flash needed to be removed. Casting flash, also known as flashing, is excess material attached to a molded, forged, or cast product. This is typically caused by leakage of the material between the two surfaces of a mold (beginning along the parting line) or between the base material and the mold (in the case of overmolding). And, Penal Code section 16520(g) was designed and intended to mandate that these third-party companies, as well as first party manufactures, were required to

[1] The descriptions of "receiver, unfinished" used in Proposed Regulation 5507(q), namely the shape of the AR-15 lower, whether or not its magazine well is open, or that certain parts have been worked on are completely and totally irrelevant for the purposes of determining whether a device is a "firearm." In fact, this definition is so broad and unclear that one could potentially deem a block of metal an unfinished receiver.

comply with all of the manufacturing requirements of Penal Code section 29010 et seq., even when the receiver was unfinished.

The proposed definition attempts to use the guise of regulating self-manufactured / self-assembled firearms to expand the meaning of "unfinished receivers" (a term that is only used in the licensed manufacturing statutes) to include parts of firearms that are not receivers and are not firearms and have never been within the gambit of the term "unfinished receiver" in the decades that this term has been used. The DOJ lacks the authority to define this term, which is not used in Chapter 3, and the definition is inconsistent with the decades-long application of the term in its statutory context – which heretofore never needed defining.

6. Proposed Regulation Section 5508(C)(1)-(2), Redefining A Statutory Exemption Is Inconsistent With Statutory Law, And The Department Of Justice Lacks Authority To Implement This Provision.

Penal Code section 29181 provides an exemption from the serialization process for any "firearm which was entered into the centralized registry set forth in Section 11106 prior to July 1, 2018, as being owned by a specific individual or entity if the firearm has assigned to it a distinguishing number or mark of identification to that firearm by virtue of the department accepting entry of that firearm into the centralized registry."

Proposed Regulation section 5508(c) limits this statutory exemption, by applying to only those firearms that qualify under Penal Code section 29181 *and* that satisfy other requirements not existing in the statutes. For example, Subsection 5508(c)(2) mandates that the "serial number or other mark of identification shall be engraved, cast, stamped (impressed) or permanently placed on the firearm in a conspicuous location." The requirement that the serial numbers for this exemption be in a "conspicuous location" is neither statutory nor permitted. The exemption applies both going forward and retroactively, meaning that firearms have already been serialized and accepted into the centralized registry as set forth in 11106. This proposed regulation would mandate those that who have already satisfied the exemption reserialize their firearms in a location that would satisfy newly proposed regulations. The DOJ lacks the authority to restrict existing statutory exemptions, especially in such a manner that would defeat the intended purpose of the exemption – i.e., grandfathering in those who have already serialized and registered their firearms. Moreover, the regulation is inconsistent with the statutory law, as described above, and is unnecessary – since said firearms are already serialized and registered in the centralized registry.

7. Proposed Regulation Section 5511-5513, 5518, And 5521, Mandating CFARS Usage Is Unnecessary, Is Inconsistent With Statutory Law, And The Department Of Justice Lacks Authority To Implement This Provision.

Proposed Regulation sections 5511-5513, 5518, and 5521 mandate electronic requests. Nothing in Chapter 3 mandates or restricts requests to electronic submissions. Submissions should be open and available to everyone, not just those that possess certain technological capacities.

Limiting the means of complying with Chapter 3 is unnecessary, as the State has long accepted and still does accept paper applications for registrations of firearms, certain firearm transfers, and other necessary firearm submissions. Moreover, nothing in Chapter 3 provides the DOJ the authority to limit the compliance to electronic means, and the overall restriction would appear to be inconsistent with the law, which is intended to permit and promote the registration and traceability of firearms that, allegedly, are not otherwise traceable. It is not proper or prudent to place unlawful technological requirements in the way of those seeking to comply with California law, especially since Penal Code section 29182 states that the DOJ "shall" accept applications.

8. Proposed Regulation Section 5513, Regarding Materials Used, Is Unnecessary.

Proposed Regulation section 5513 mandates that the applicant provide a brief description of the firearm, including the material from which the firearm is made.

The California Penal Code is one of the most comprehensive and detailed firearm schemes in the United States. In general, firearm transfers must either be performed through a dealer (which requires the submission of a dealer's record of sale) or through an exemption (which generally mandate the submission of a registration form). The information recorded during these transfers all mandate the tracking of the firearms features, i.e., barrel length, color, caliber, maker, serial number, overall length, etc. Not one of these mandated forms requires the material from which the firearm is manufactured. In these situations, the licensed manufacturer would and could provide a description of the materials from which the firearms are composed – as they are engaged in the business of manufacturing firearms. General laymen and ordinary gun owners may not know or be able to competently provide a description of the materials from which their firearm was manufactured from. And, given the fact that no other firearm recording mandates that the materials be recorded, this requirement that is not mandated statutorily in Chapter 3, is unnecessary.

9. Proposed Regulation Section 5513(c), Waiving Privacy, is Unnecessary, Inconsistent with Statutory Law, and the Department of Justice Lacks Authority to Implement This Provision.

Proposed Regulation sections 5513(c) mandates that the applicant waive their privacy rights with regard to the information submitted during the process, which includes the applicant's full name, residence street address, email address, telephone number, date of birth, gender, military identification number, driver's license number, identification number, U.S. citizen status, place of birth, country of citizenship, alien registration number, the fact that they own at least one firearm, their firearms serial numbers, their passwords for accessing their mandated electronic application system, and other private and personal information.

This waiver goes so far as permitting the disclosure of this information to any person designated by the Attorney General upon request. This is, essentially, a wholesale grant for the California Attorney General to use the personal information of firearms as they see fit, even for personal or political gain *and retribution*. The information contained in firearms databases are statutorily

maintained in confidence. For example, Under the Public Records Act (PRA), government records are open and subject to inspection by and disclosure to the public, unless they are "exempt from disclosure by express provisions of law." (Gov't Code, § 6253, subd. (b).) The PRA specifically exempts certain types of documents from public disclosure, including those described in Government Code sections 6254 and 6255. In addition, Government Code section 6254, subdivision (k) incorporates confidentiality privileges set forth elsewhere in law, and makes those privileged documents exempt from the disclosure requirements of the PRA. The Department of Justice's database containing information from Dealers' Record of Sale information (including firearm ownership record) is specifically exempt from disclosure pursuant to Penal Code sections 11105 and 11106. Yet, the DOJ seeks to mandate that those seeking to comply with Chapter 3 waive their statutory rights to privacy.

And the Attorney General himself recognizes the existence and importance of privacy on his Web site about privacy laws, wherein he states, "The state Constitution gives each citizen an inalienable right to pursue and obtain privacy.". A.G. Xavier Becerra, "California Law - Constitutional Right to Privacy," *Privacy Laws*, online at https://oag.ca.gov/privacy/privacy-laws (internal quotations omitted). Indeed, "All people are by nature free and independent and have inalienable rights. Among these are . . . pursuing and obtaining safety, happiness, and privacy." Cal. Const., Art. I, Sec. 1 (underline added).

There is no conceivable legal or rational basis to mandate that those seeking to comply with the requirements of Chapter 3 waive their rights to privacy relating to their firearm ownership records. The inclusion of this mandatory waiver of privacy is in direct conflict with statutory and constitutional privacy rights and the DOJ lacks the legal authority to mandate that those seeking to comply with Chapter 3 give up their privacy rights.

10. Proposed Regulation Section 5514, Fees, is Inconsistent with Statutory Law.

Proposed Regulation Section 5514 mandates a fee of $35 for the initial serial number request, and an additional $15 for each serial number request performed in the same transaction. The DOJ states that the $35 consists of a fee of $20 or the background check, and $15 fee for processing the serial number.

Current law relating to the retail transfer of firearms mandates a total state fee of $25.00. Specifically, the DROS fee is $19.00, which covers the costs of the background checks and transfer registry (and a number of other programs; see, e.g., *Bauer v. Becerra*, 858 F. 3d 1216 (9th Cir. 2017), *cert. denied*). There is also a $1.00 Firearms Safety Act Fee and a $5.00 Safety and Enforcement Fee. And, in the event of a private party transfer (PPT), the firearms dealer may charge an additional fee of up to $10 per firearm. (Pen. Code, §§ 23690, 28055, 28225, 28230, 28300.)

The proposed regulation is inconsistent as the fee for performing a background check in the proposed regulation, $20.00, exceeds the current cost for the same thing charged in the sale of firearms, $19.00. Moreover, a dealer is limited to charging a fee of $10.00 per firearm, while

the DOJ is claiming a $15.00 fee per firearm – where the actual labor is being performed by the applicant – not the DOJ. These fees are unsupported, inconsistent, and should be adjusted accordingly.

11. Proposed Regulation Section 5519, Polymer/Plastic Firearms, Is Unnecessary, Inconsistent With Statutory Law, And The Department Of Justice Lacks Authority To Implement This Provision.

Penal Code section 29180(b)(2)(b) states: "*Commencing July 1, 2018, prior to manufacturing or assembling a firearm, a person manufacturing or assembling the firearm shall do all of the following:* If the firearm is manufactured or assembled from polymer plastic, 3.7 ounces of material type 17-4 PH stainless steel shall be embedded within the plastic upon fabrication or construction with the unique serial number engraved or otherwise permanently affixed in a manner that meets or exceeds the requirements imposed on licensed importers and licensed manufacturers of firearms pursuant to subsection (i) of Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto."

Proposed Regulation section 5519 states that "a firearm manufactured or assembled from polymer plastic shall contain its unique serial number on 3.7 ounces of material type 17-14PH stainless steel. This stainless-steel pieces shall be imbedded within the plastic receiver or frame upon the firearm's manufacturer or assembly." This proposed regulation would apply to all polymer plastic firearms – not just those manufactured after July 1, 2018. Thus, this proposed regulation seeks to impose a retroactive mandate on those firearms manufactured before July 1, 2018 – a mandate that would not only be impossible to comply with for those who already own and possess polymer plastic firearms manufactured without the steel insert – but one that would also negate the intentional grandfathering in of those firearms by the legislature. The DOJ lacks the authority to eliminate an exemption expressly provided by the legislature, and the underlying restriction directly conflicts with the statutory law. The elimination of the statutory exemption is also unnecessary for the administration of Chapter 3 – which necessitates the existence of the statutory exemption.

12. Proposed Regulation Section 5520, Additional Markings, is Unnecessary.

Proposed Regulation section 5520 mandates that certain additional information be engraved on the frame or receiver, including the caliber or gauge of the firearm, the manufacturer's first and last name, their city and state, and the model of the firearm. Yet, depending on the date of manufacture, the serialization requirement begins either once the firearm is a frame or receiver or the owner intends to manufacture the frame or receiver. This presents a few important issues.

First, the gauge or caliber of the firearm may not be determined at the time that the frame or receiver is manufactured, or it may be a multi-caliber firearm.

Second, the frame, receiver, and/or barrel may not be large enough to sufficiently conspicuously engrave all of the required markings. Traditionally, semi-automatic firearms include many of the

federally-required markings on exterior components like the slide (such as the caliber, make, model, city and state).

Third, and perhaps most significantly, this is all irrelevant information when the sole provider of the serial numbers is the DOJ. As we understand it, the DOJ will not reissue any numbers. Thus, unlike commercially manufactured firearms which could have identical serial numbers and therefore the need of the additional information in traces becomes relevant, the state being the sole issuer of serial numbers for firearms serialized in accordance with Chapter 3 eliminates that need. All DOJ-issued numbers will be unique and linked to the applicant directly. The inclusion of all the other markings will not only confuse law enforcement into thinking that the firearm is manufactured by a federally licensed firearms manufacturer, but it will slow down investigations as they seek to trace the firearms through the ATF. It is recommended that only the DOJ-issued serial number be applied to the frame or receiver, and not the additional information proposed in the section 5520.

13. Proposed Regulation Section 5521, Digital Pictures, Is Unnecessary, Inconsistent With Statutory Law, And The Department Of Justice Lacks Authority To Implement This Provision.

Proposed Regulation section 5521 mandates that four digital pictures be submitted in order to complete the process. Submissions should be open and available to everyone, not just those with technological capacities, including digital cameras that are capable of taking the type and clarity of photos required to comply with the proposed regulations. Limiting the means of complying with Chapter 3 is unnecessary, as the State has long accepted and still does accept paper applications for registrations of firearms, certain firearm transfers, and other necessary firearm submissions. Moreover, Nothing in Chapter 3 provides the DOJ the authority to limit the compliance to electronic means, and the overall restriction would appear to be inconsistent with the law, which is intended to permit and promote the registration and traceability of firearms that, allegedly, are not otherwise traceable. It would not be prudent or consistent to place technological barriers upon those seeking to comply with California law – especially when Penal Code section 29182 states that the DOJ "shall" accept applications.

14. Proposed Regulation Section 5522, Final Version, Is Unnecessary, Inconsistent With Statutory Law, And The Department Of Justice Lacks Authority To Implement This Provision.

Proposed Regulation section 5522 states that the "uploaded images shall reflect the final version of the firearm, including any changes that were made to it by the applicant." This implies that the firearm cannot be modified, altered, gun-smithed, enhanced, or otherwise changed once the firearm owner has complied with Chapter 3. Nothing in Chapter 3 prohibits or restricts a person from making any alterations or changes to their firearms, either before or after complying with the serialization requirements contained therein. The DOJ was granted the limited authority to adopt regulations to *administer* Chapter 3, and that is it. Section 5522 is unrelated to the administration of Chapter 3 and woefully exceeds that authority. Prohibiting users from making

any changes or alterations to their firearms is unnecessary for the *administration* of Chapter 3. Moreover, it is inconsistent with Chapter 3, which is void of any legislative intent, design, or desire to prohibit someone from changing, altering, or customizing their firearm once serialized.

CONCLUSION

Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carryout those provisions of the statute, no regulation adopted is valid unless consistent and not in conflict with the statute and is reasonably necessary to effectuate the purpose of the statute. (Gov't Code section 11342.2.) Here, the proposed regulations discussed above cannot stand as they are unnecessary, inconsistent, beyond the authority of the Department of Justice to implement, and unclear. As such, we recommend that the department either delete or appropriately revise the above-referenced provisions.

Sincerely,
THE DAVIS LAW FIRM

s/ *Jason Davis*

JASON DAVIS

cc: Robert Wilson (Robert.Wilson@doj.ca.gov)