

## Memorandum

To: Department of Fish and Game  
All Candidates for Employment

Date: February 18, 2011

From: **Department of Fish and Game**  
**Human Resources Branch**

Subject: Federal Firearms Prohibitions

As a result of federal legislation, the department requires all candidates for employment with the department to complete the attached Self-Certification and Certification of Receipt of Memorandum form (FG-HRB-2026) as part of the job application process. On September 30, 1996, Congress enacted the Omnibus Consolidated Appropriations Act of 1997 entitled the "Gun Ban for Individuals Convicted of a Misdemeanor Crime of Domestic Violence," which amended the Gun Control Act of 1968. The law prohibits any person who has been convicted of "misdemeanor crime of domestic violence" from shipping, transporting, possessing, or receiving firearms or ammunition. In addition, the law prohibits any person who is currently the subject of a court order that restrains the person from harassing, stalking, or threatening an "intimate partner" or child of the "intimate partner" or the person, or engaging in conduct that would place an "intimate partner" in reasonable fear of bodily injury to the partner or child, from shipping, transporting, possessing, or receiving firearms or ammunition, *except* firearms or ammunition which are imported for, sold or shipped to, or issued for the use of any federal, state or local agency. This law applies to all persons, including peace officers.

The department employs a number of persons who ship, transport, possess, receive, use, or otherwise have access to firearms and ammunition in the course and scope of their duties. For example, department wardens are required to possess, receive, and transport firearms and ammunition in the course and scope of their duties. Other employees may or may not be required to possess, receive, or transport firearms and ammunition, but their duties may include such actions or otherwise having access to firearms and ammunition. These employees would include those who administer firearms auctions, those who have the key or access to the key to storage facilities containing department-owned or confiscated firearms or ammunition, those who receive, unload, or store shipments of firearms or ammunition to the department, those who use cannon nets for trapping, explosives for habitat work, net guns, certain charge fired dart guns, and the like, and those who may use flare guns on vessels. As such, the department must ensure that if your duties will require or otherwise involve shipping, transporting, possessing, or receiving firearms or ammunition, that you are not prohibited from doing so under the federal law.

In addition, should you accept employment with the department, it will be your continued responsibility to notify the department immediately if you become adversely affected by this law in the future. Please complete and return the attached Self-Certification and Certification of Receipt of Memorandum to your designated Personnel Specialist in the Regional Personnel Office or the Human Resources Branch. Should you accept employment with the department, the completed form will be kept in your personnel file.

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Federal Firearms Prohibitions  
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If you have any questions, please contact your designated Personnel Specialists for assistance.

Karen Wroten, Chief  
Human Resources Branch

Attachment:

1. Self-Certification and Certification of Receipt of Memorandum

California Department of Fish and Game  
Self-Certification and  
Certification of Receipt of Memorandum  
For Candidates for Employment

Subject: FEDERAL FIREARMS PROHIBITIONS

This certification shall be signed and dated by all candidates for employment with the Department of Fish and Game (DFG). The Human Resources Branch is responsible for ensuring completion of this certification, and if a candidate accepts employment with the department for ensuring that the original copy is inserted into the new employee's official personnel file, and for providing a copy to the new employee.

Federal law prohibits any person who has been convicted of a "misdemeanor crime of domestic violence" from shipping, transporting, possessing or receiving firearms or ammunition. (18 U.S.C. § 922(g)(9)).

A "firearm" is defined as "any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive: the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device." (18 U.S.C. § 921 (a)(3)). Examples of a "destructive device" are "any explosive, incendiary, or poison gas bomb, grenade, rocket having a propellant charge of more than four ounces, missile, mine or similar device." (18 U.S.C. § 921(a)(4)). The term "firearm" does not include an antique firearm. (18 U.S.C § 921 (a)(3)). "Ammunition" is defined as "ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm." (18 U.S.C. § 921 (a)(17)(A).) "Possession" means actual or constructive possession. A person is in actual possession of a firearm or ammunition if he or she has direct physical control of a firearm or ammunition. A person is in constructive possession of a firearm or ammunition if he or she is not in actual possession, but has both the power and the intention to later take control over the firearm or ammunition. (United States v. Winchester (1990) 916F.2d601.)

In addition, federal law prohibits any person who is currently the subject of a court order that restrains that person from harassing, stalking, or threatening an "intimate partner" (which is defined as "the spouse of the person, a former spouse of the person, an individual who is the parent of a child of the person, and an individual who cohabitates or has cohabitated with the person") or child of such "intimate partner," or engaging in other conduct that would place an "intimate partner" in reasonable fear of bodily injury to the "intimate partner" or child (hereinafter referred to as "domestic violence restraining order"), from shipping, transporting, possessing, or receiving firearms or ammunition, except firearms or ammunition "imported for, sold or shipped to, or issued for the use of any federal, state or local agency. (18 U.S.C §§ 922 (g)(8), 921 (a)(32), and 925(a)(I).) Therefore, any department employee, including a peace officer, who is the subject of a "domestic violence restraining order" may ship, transport, possess, and receive firearms and ammunition owned by the department or issued for the use of the department, including but not limited to, handguns, shotguns, cannon nets for trapping, explosives for habitat work, net guns, certain charge fired dart guns, and flare guns. However, such employee, including a peace officer, may not lawfully ship, transport, receive, or possess seized or confiscated firearms and ammunition that are neither owned by the department, nor issued for the use of the department. A "domestic violence restraining order" may include a court order arising from a dissolution proceeding if the court order includes language that the restrained person shall not or the parties agree to not "contact, molest, attack, strike, threaten, sexually or otherwise assault, batter, telephone, or otherwise disturb the peace of the other party." This language is standard in family law temporary restraining order legal forms.

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PERSONAL AND CONFIDENTIAL INFORMATION  
(Government Code §§6254(c), 6255; Penal Code § 832.7)

A “misdemeanor crime of domestic violence” is defined as any state or federal misdemeanor that has as an element “the use or attempted use of physical force or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.” (18 U.S.C. § 921(a)(33)(A).) This definition has been interpreted to include specific domestic violence offenses, such as California Penal Code Section 237.5; in addition, the Bureau of Alcohol, Tobacco and Firearms has interpreted it to include all misdemeanors that involve the use or attempted use of physical force (e.g., simple assault, assault and battery) if the offense is committed by one of the defined parties regardless of whether law specifically defines the offense as a domestic violence misdemeanor. This federal law applies to all persons, including peace officers.

PART I

*All candidates for employment, please complete the following:*

1. Will you be expected to ship, transport, possess, receive, or have access to (i.e., the power to take control of) firearms or ammunition in the course and scope of your employment with the department? (This would include peace officers, and *may* include pilots, biologists, clerical staff, administrative staff and others.)

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

*If your answer is “NO” to question 1, PART I above, you are not in a prohibited class. Please complete the certification on this page below by signing and dating this form as indicated. Please return this form to the department’s Human Resources Branch.*

*If your answer is “YES” to question 1, PART I above, you are in a prohibited class. Please complete PART II of this form, sign and date the last page, and return this form to the department’s Human Resources Branch.*

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Certification

I certify that I received a copy of the subject memorandum regarding federally legislated firearms prohibitions, which may relate to my eligibility to perform peace officer or other duties related to possession or handling of firearms. I understand that I am responsible for determining if I am in a prohibited class pursuant to this legislation. If my position with the department or my duties should change, I understand that I will be responsible at that time for determining and notifying my immediate supervisor in writing whether I am in a prohibited class pursuant to this legislation.

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*PERSONAL AND CONFIDENTIAL INFORMATION*  
(Government Code §§6254(c), 6255; Penal Code §832.7)

I declare that I am not covered by the restrictions described above. If I am a peace officer, I further declare that I may possess firearms or ammunition on or off duty.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

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Immediate Supervisor's Verification

Date Received: \_\_\_\_\_

Employee Classification: \_\_\_\_\_

Employee's Reporting Unit: \_\_\_\_\_

\_\_\_\_\_  
Supervisor's Name (Print)

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Date

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Human Resources Branch Verification

Date Received: \_\_\_\_\_

\_\_\_\_\_  
HRB Personnel's Name (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Original – (If hired) Employee's Official Personnel File

Copy – (If hired) Employee

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*PERSONAL AND CONFIDENTIAL INFORMATION*  
(Government Code §§6254 (c), 6255; Penal Code §832.7)

## PART II

*If you answered "YES" to question 1 in PART I above, you are in a prohibited class. You must complete this PART II, sign and date the last page, and return this form to the department's Human Resources Branch.*

*Please initial the following, as indicated:*

— As a candidate for employment with the department, I understand that it is my current responsibility to notify the department if I have ever been convicted of a "misdemeanor crime of domestic violence." If I accept employment with the department, I understand that it will be my continued responsibility to notify the department if I am ever convicted of a "misdemeanor crime of domestic violence." With regard to any conviction(s) in the future, I understand that I must notify the department by informing my immediate supervisor in writing as soon as possible after such conviction(s), or if my immediate supervisor is unavailable, I must notify the next person in my chain of command.

— As a candidate for employment with the department, I understand it is my current responsibility to notify the department if I am the subject of a court order that restrains me from harassing, stalking, or threatening an "intimate partner" or child of such "intimate partner", or engaging in other conduct that would place an "intimate partner" in reasonable fear of bodily injury to the "intimate partner" or child. If I accept employment with the department, I understand that it will be my continued responsibility to notify the department if I become the subject of a court order that restrains me from harassing, stalking or threatening an "intimate partner" or child of such "intimate partner", or engaging in other conduct that would place an "intimate partner" in reasonable fear of bodily injury to the "intimate partner" or child. With regard to any restraining order(s) in the future, I understand that I must notify the department by informing my immediate supervisor in writing as soon as possible after the issuance of such restraining order(s), or if my immediate supervisor is unavailable, I must so notify the next person in my chain of command.

— I understand that I **must** complete this Self-Certification and Certification of Receipt of Memorandum, and that refusal to respond or failure to respond truthfully to the questions herein, may affect my eligibility for employment with the department. If I accept employment with the department, I understand that failure to disclose any such future conviction(s) or restraining order(s) or submittal of any false information concerning such conviction(s) or restraining order(s) may be grounds for appropriate corrective action up to and including termination from state service.

— I understand that the Department of Justice will be conducting a criminal history check on me for the sole purpose of verifying my responses to this Self-Certification, and that if I accept employment with the department these documents will be placed in my personnel file.

— *(If applicable)* I understand that if I respond "YES" or "MAYBE" to any of the questions below **and** I am applying for a peace officer position or other position that is **required** to possess or to use a firearm in the course and scope of my employment with the department, I will not be eligible for employment for this position. However, I may be eligible for a position that does not have access to firearms or ammunition.

— *(If applicable)* I understand that if I respond "YES" or "MAYBE" to any of the questions below **and** I am applying for a position that is **not required** to possess or to use a firearm or ammunition, but the duties may involve shipment, transportation, receipt, possession, use, or access to firearms or ammunition, I will not be eligible for employment for that position. However, I may be eligible for a position with duties that do not involve access to firearms or ammunition.

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PERSONAL AND CONFIDENTIAL INFORMATION  
(Government Code §§ 6254(c), 6255; Penal Code §832.7)

— I understand that if I respond “NO” to any of the questions below and the department subsequently learns through a background check, or otherwise, that the answer to the question(s) is/are “YES,” I will not be eligible for employment with the department. If I accept employment with the department and the department subsequently learns through a background check, or otherwise, that the answer to the question(s) is/are “YES,” I may be subject to appropriate corrective action up to and including termination from state service.

— *(If applicable)* I understand that if I accept employment with the department for a position that **requires** possession or use of a firearm or ammunition, **and** I subsequently notify the department that I have been convicted of a “misdemeanor crime of domestic violence” or that I have been made the subject of a court order that restrains me from harassing, stalking, or threatening an “intimate partner” or child of such “intimate partner”, or engaging in other conduct that would place an “intimate partner” in reasonable fear of bodily injury to the “intimate partner” or child, I may be temporarily reassigned to a position that does not have access to firearms or ammunition, temporarily reassigned to a position that does not have access to firearms or ammunition, or put on administrative time off until such time as the department reviews the facts and circumstances of my case and makes a final determination as to whether I am prohibited from possessing or receiving firearms or ammunition.

— *(If applicable)* I understand that if I accept employment with the department for a position that does **not require** the possession or use of a firearm or ammunition, but my duties may involve shipment, transportation, receipt, possession, use, or access to firearms or ammunition, **and** I subsequently notify the department that I have been convicted of a “misdemeanor crime of domestic violence” or that I have been made the subject of a court order that restrains me from harassing, stalking, or threatening an “intimate partner” or child of such “intimate partner”, or engaging in other conduct that would place an “intimate partner” in reasonable fear of bodily injury to the “intimate partner” or child, I may be temporarily reassigned to a position that does not have access to firearms or ammunition, or temporarily restricted in my duties to not have access to firearms or ammunition until such time as the department reviews the facts and circumstances of my case and make a final determination as to whether I am prohibited from possessing or receiving firearms or ammunition.

— *(If applicable)* I understand that if the department makes a final determination after reviewing the facts and circumstances of my case that I have been convicted of a misdemeanor crime of domestic violence **and** I am a peace officer or other employee who is **required** to possess or to use a firearm in the course and scope of my employment with the department, I will be subject to non-punitive separation. I will have permissive reinstatement privileges, and I will be able to compete for positions that do not have access to firearms or ammunition.

— *(If applicable)* I understand that if the department makes a final determination after reviewing the facts and circumstances of my case that I have been convicted of a misdemeanor crime of domestic violence **and** I am an employee who is **not required** to possess or to use a firearm or ammunition, but I ship, transport, receive, possess, use or otherwise have access to firearms or ammunition in the course and scope of my employment with the department, the department will restrict my duties or reassign me as appropriate so I will not have access to firearms or ammunition.

— I understand that if I am non-punitively separated and I subsequently get my conviction set aside (for example, pursuant to Penal Code Section 1203.4) **and** I am not otherwise prohibited from possession of firearms or ammunition, I may apply for permissive reinstatement. Any permissive reinstatement will be made pursuant to the requirements set forth in the Fish and Game Operations Manual.

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PERSONAL AND CONFIDENTIAL INFORMATION  
(Government Code §§ 6254(c), 6255; Penal Code §832.7)

— (If applicable) I understand that if the department makes a final determination after review of the facts and circumstances of my case that I am the subject of a court order that restrains me from harassing, stalking, or threatening an “intimate partner” or child of such “intimate partner”, or engaging in other conduct that would place an “intimate partner” in reasonable fear of bodily injury to the “intimate partner” or child, **and** I am a peace officer or other employee who is **required** to possess or to use a firearm in the course and scope of my employment with the department, the department will immediately rescind my authority to possess or use firearms or ammunition while in the course and scope of my employment, and will temporarily reassign me to a position that does not have access to firearms or ammunition, temporarily restrict my duties to not have access to firearms or ammunition, or put me on administrative time off for as long as the restraining order is in force.

— (If applicable) I understand that if the department makes a final determination after review of the facts and circumstances of my case that I am the subject of a court order that restrains me from harassing, stalking, or threatening an “intimate partner” or child of such “intimate partner”, or engaging in other conduct that would place an “intimate partner” in reasonable fear of bodily injury to the “intimate partner” or child, **and** I am an transport, receive, possess, use or otherwise have access to firearms or ammunition in the course and scope of my employment with the department, the department will temporarily restrict my duties or reassign me as appropriate so I will not have access to firearms or ammunition for as long as the restraining order is in force.

*Please complete the following:*

2. Have you ever been convicted of a “misdemeanor crime of domestic violence?” (This term is defined as “a misdemeanor under federal or state law and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim.”)

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

\_\_\_\_\_  
MAYBE

*If yes, please complete the following:*

- 1) Were you represented by counsel, or did you knowingly and intelligently waive your right to counsel in the case?

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

\_\_\_\_\_  
MAYBE

- 2) Was the case tried by a jury, or did you knowingly and intelligently waive your right to have the case tried by a jury, by guilty plea or otherwise?

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

\_\_\_\_\_  
MAYBE

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PERSONAL AND CONFIDENTIAL INFORMATION  
(Government Code §§ 6254(c), 6255; Penal Code §832.7)

3) Has the conviction been expunged, or set aside, or pardoned or have you had your civil rights restored?

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

\_\_\_\_\_  
MAYBE

4) Does the expungement, pardon, or restoration of civil rights expressly provide that you may not ship, transport, possess or receive firearms?

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

\_\_\_\_\_  
MAYBE

3. Are you currently subject to a court order that restrains you from harassing, stalking, or threatening an "intimate partner" (which is defined as "the spouse of the person, a former spouse of the person, an individual who is the parent of a child of the person, and an individual who cohabits or has cohabited with the person") or child of such "intimate partner," or engaging in other conduct that would place an "intimate partner" in reasonable fear of bodily injury to the "intimate partner" or child?

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

\_\_\_\_\_  
MAYBE

*If YES, please complete the following:*

1) Was the restraining order issued after a hearing of which you received actual notice and in which you had the opportunity to participate?

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

\_\_\_\_\_  
MAYBE

2) Does the restraining order find that you represent a credible threat to the physical safety of an "intimate partner" or child?

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

\_\_\_\_\_  
MAYBE

3) Do the terms of the restraining order explicitly prohibit the use, attempted use, or threatened use of physical force against an "intimate partner" or child, that would reasonably be expected to cause bodily injury?

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

\_\_\_\_\_  
MAYBE

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#### Certification

I certify that I received a copy of the subject memorandum regarding federally legislated firearms prohibitions, which may relate to my eligibility to perform peace officer or other duties related to possession or handling of firearms. I understand that I am responsible for determining if I am in a prohibited class pursuant to this legislation. I understand I must report any such convictions and restraining orders to upon the application to the department for employment for any position that requires possession or use of a firearm or ammunition, or for any position that does not require the possession or use of a firearm or ammunition, but the duties of which may involve shipment, transportation, receipt, possession, or access to firearms or ammunition. If I accept employment with the department, I understand that I must report any such future convictions or restraining orders to my supervisor even if I have previously reported such convictions and restraining orders and/or have been previously disciplined.

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PERSONAL AND CONFIDENTIAL INFORMATION  
(Government Code §§ 6254(c), 6255; Penal Code §832.7)

Check One Box Only

— I declare that I AM covered by the restrictions described above, and I may not possess, ship, transport, or receive firearms or ammunition. If I am a peace officer, I further declare that I may not possess firearms or ammunition on or off duty.

— I declare that I MAY BE covered by the restrictions described above.

— I declare that I AM NOT covered by the restrictions described above, and I may possess, ship, transport, or receive firearms or ammunition. If I am a peace officer, I further declare that I may possess firearms or ammunition on or off duty.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Last 4 digits of Social Security Number

\_\_\_\_\_  
Date of Birth

\_\_\_\_\_  
Drivers License Number

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Immediate Supervisor's Verification

Date Received: \_\_\_\_\_

Employee Classification: \_\_\_\_\_

Employee's Reporting Unit: \_\_\_\_\_

\_\_\_\_\_  
Supervisor's Name (Print)

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Date

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Human Resources Branch Verification

Date Received: \_\_\_\_\_

\_\_\_\_\_  
HRB Personnel's Name (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Original – (If hired) Employee's Official Personnel File

Copy – (If hired) Employee

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PERSONAL AND CONFIDENTIAL INFORMATION  
(Government Code §§ 6254(c), 6255; Penal Code §832.7)