

CALIFORNIA DEPARTMENT OF JUSTICE

**TITLE 11. LAW
DIVISION 5. FIREARMS REGULATIONS
CHAPTER 1. BUREAU OF FIREARMS FEES**

NOTICE OF PROPOSED RULEMAKING

Notice published August 13, 2021

The Department of Justice (Department) proposes to amend section 4001 of Title 11, Division 5, Chapter 1 of the California Code of Regulations concerning the Dealer Record of Sale (DROS) Fee.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed regulatory action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or their authorized representative may submit written comments relevant to the proposed regulatory action. The written comment period closes on September 28, 2021 at 5:00 p.m. Only written comments received by that time will be considered. Submit written comments to:

Kelan Lowney, Associate Governmental Program Analyst
Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487
(916) 210-2377
DROSfeeincrease@doj.ca.gov

NOTE: Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Authority: Penal Code sections 28233 and 28240.

Reference: Penal Code sections 28220, 28225, 28230, 28235 and 28240.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

Existing law generally requires purchases and transfers of firearms to be conducted through a licensed firearms dealer. The firearms dealer must submit the purchaser or transferee's personal information to the Department, via the DROS system, for the purpose of conducting a background check on the purchaser or transferee prior to release of a firearm to that person. If the background check reveals that the person is prohibited by state or federal law from owning a firearm, the purchase or transfer is denied.

Existing law provides that certain fees may be assessed at the time of the application to purchase or transfer a firearm. These fees are paid by the purchaser or transferee, collected by the dealer, and remitted to the Department. One such fee, the DROS Fee, is used to fund various statutorily specified activities, primarily the background check.

Until January 1, 2020, the DROS Fee was set at \$19 per transfer of one or more firearms.

Authority for the DROS Fee was repealed by Assembly Bill (AB) 1669 (Bonta, 2019), effective January 1, 2020. As of that date, Penal Code section 28233 went into effect, authorizing a new fee of \$31.19. This new fee funds the same activities that had been funded by the previous DROS Fee. On December 30, 2019, the Office of Administrative Law approved the Department's emergency rulemaking to set the fee authorized by Penal Code section 28233 at \$31.19. Because the new fee funds the same activities that had been funded by the previous DROS Fee, the Department retained the DROS Fee name.

Effect of the Proposed Rulemaking:

This rulemaking makes permanent the emergency action that implemented the \$31.19 fee authorized by Penal Code section 28233. If adopted, this fee will continue to be charged to a firearm purchaser or transferee at the time of a purchase or transfer of one or more firearms.

Anticipated Benefits of the Proposed Regulations:

This rulemaking protects public safety by providing a consistent revenue stream for the activities of the Department's Bureau of Firearms. The Department anticipates that this rulemaking would result in revenue \$27,678,006 in Fiscal Year 2021-22, and then \$24,535,738 for Fiscal Year 2022-23 and each year thereafter. Specifically, those activities related to checking the background of potential firearm purchasers serve to protect public safety by ensuring that a person prohibited by state or federal law does not purchase, or maintain possession of, a firearm. The ownership or possession of a firearm by convicted felons, persons found to be a danger to self or others because of a mental illness, persons addicted to the use of narcotics, and other prohibited persons pose a risk of immediate, serious harm to the people of the state of California.

Other activities funded by the DROS Fee, such as the maintenance of the Automated Firearm System (AFS) and certain aspects of the Armed and Prohibited Persons Section (APPS), are

directed toward the investigation and prosecution of firearms-related crimes. Addressing these important public safety issues requires a consistent revenue stream that is directly related to the number of firearms sold and possessed in the state. Penal Code section 28233, which this rulemaking implements, structures the DROS Fee in exactly this manner.

Comparable Federal Regulations:

There are no existing federal regulations or statutes comparable to the proposed regulations.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern the setting of the DROS Fee.

Forms Incorporated by Reference:

None.

Other Statutory Requirements:

The Department has determined that this is a “major regulation.” The Department has prepared a standardized regulatory impact analysis (“SRIA”) pursuant to Government Code section 11346.3 and has complied with the requirements of subdivision (f) of that code.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies or school districts:

None.

Cost or savings to any state agency:

By making permanent the fee authorized by Penal Code section 28233, the Department projects revenue of \$27,678,006 in Fiscal Year 2021-22, and then \$24,535,738 for Fiscal Year 2022-23 and each year thereafter.

Due to the potential decrease of retail firearm sales resulting from the fee increase, the Department anticipates a decrease in state sales tax collected, in a range between \$0 and \$3,351,054 in the first 12 months following full implementation of the proposed regulation.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:

None.

Other non-discretionary costs or savings imposed on local agencies:

Due to the potential decrease of retail firearm sales resulting from the fee increase, the Department anticipates a potential decrease in local sales tax revenue to local governments of between \$0 and \$1,256,645 in the first 12 months following full implementation of the proposed regulation.

Cost or savings in federal funding to the state:

None.

Cost impacts on representative person or business:

At the time of an application to purchase or transfer one or more firearms, a representative person would pay a fee of \$31.19.

Collection of statutorily authorized fees, and remission of such monies to the Department, is current practice for licensed firearms dealers. Only the dollar amount of the DROS Fee would change due to the proposed action. This dollar amount change would be made automatically within the DROS Entry System (DES), the electronic system through which firearm purchaser information is communicated to the Department, and the means by which fees are remitted. The agency is not aware of any cost impacts that a representative business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs:

None.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete:

The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Standardized Regulatory Impact Assessment (SRIA):

In the first 12 months following full implementation of the proposed regulation, the Department estimates a direct impact of \$23,396,056 on firearm purchasers, due to their payment of the DROS Fee. This direct impact may result in additional indirect and induced economic impacts;

the total impact statewide due to payment of the proposed DROS Fee is estimated to be \$47,049,469 in the first 12 months following implementation.

The Department estimates further indirect economic impact of up to \$55,850,900 on firearms dealers, due to the potential decrease of demand for firearms because of the \$31.19 increase in the effective price. This indirect impact may result in additional indirect and induced economic impacts; the total impact statewide due to potential lost sales is estimated to be \$112,316,160 in the first 12 months following implementation.

The Department anticipates the possible elimination of between 0 and 1,011 jobs in the first 12 months following full implementation.

The Department does not anticipate that the new fee will lead to the elimination of existing businesses.

The Department does not anticipate the creation of businesses due to the new fee.

The Department does not anticipate that the new fee will put California businesses at a competitive disadvantage compared to businesses in other states.

The Department anticipates a possible decrease in investment in the state of between \$0 and \$68,344,746 in the first 12 months following full implementation.

The Department does not anticipate that the new fee will result in incentives for innovation in products, materials, or processes.

The Department anticipates the following benefits from the proposed action:

The revenue collected from the DROS Fee will fund the Department's public safety efforts. Specifically, the revenue will provide a consistent revenue stream for the Department's firearms-related regulatory and enforcement activities related to the sale, purchase, manufacture, possession, loan, or transfer of firearms pursuant to any provision listed in Section 16580.

Activities related to checking the background of potential firearm purchasers protects public safety by ensuring that a person prohibited by state or federal law does not purchase, or maintain possession of, a firearm. The ownership or possession of a firearm by convicted felons, persons found to be a danger to self or others because of a mental illness, persons addicted to the use of narcotics, and other prohibited persons, pose a risk of immediate, serious harm to the people of the state of California.

Other activities funded by the DROS Fee, such as the maintenance of the Automated Firearms System and certain aspects of the Armed Prohibited Persons System, are directed toward the investigation and prosecution of firearms-related crimes. Addressing these important public safety issues requires a consistent revenue stream that is directly related to the number of firearms sold and possessed in the state. Penal Code section 28233, which this rulemaking implements, structures the DROS Fee in exactly this manner.

Summary of Department of Finance Comments to SRIA and Department's Response:

The Department of Finance ("Finance") generally agreed with the Department's SRIA, but had two comments. First, Finance commented that the SRIA should consider the economic impact of the fee increase on long gun sales, not just hand gun sales. Second, Finance commented that the SRIA should provide more information regarding the fiscal impact of the fee increase. In response to these comments, the Department revised the SRIA to include an analysis of how the price effect of the proposed DROS fee will influence long gun purchases, and to provide more detail regarding program costs.

Business report requirement:

None.

Small business determination:

The Department has determined that the proposed action affects small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department has determined that the proposed regulation is the most effective way to implement this fee. Although Penal Code section 28233 grants authority to the Department to require a firearms dealer to charge a \$31.19 fee, the statute is not self-executing. At its discretion, the Department may promulgate regulations to implement the fee. Penal Code section 28233 does not grant the Department the discretion to set the initial fee at any other amount.

As an alternative, the Department could use its discretion to not implement a DROS fee at all. The Department has determined that this alternative is unreasonable, because not implementing the DROS Fee would remove the primary funding mechanism for the Department's firearms programs. If the fee implemented by the emergency regulation is not made permanent, the Department projects that the subsequent decrease in revenue would result in the insolvency of the Bureau of Firearms, as the operating budget would have a deficit of \$12,367,074 for Fiscal Year 2021-22, and a deficit of \$27,736,279 for each fiscal year thereafter.

A second alternative considered by the Department concerned the method of fee collection. The DROS Entry System (DES) is a web-based application used by dealers to report the purchase of firearms to the Department. (See Cal. Code Regs, tit. 11, § 4200 et seq.) Proposed Section 4001, subdivision (a) would require that DROS Fees be paid at the same time a dealer submits a

purchaser's identifying information through DES for a background check. Proposed Section 4001, subdivision (b) would require that DROS Fees be remitted through DES as described in Section 4240. The Department considered alternative methods of collecting the fee, such as bypassing the current DES payment mechanism, or waiting to charge the fee until the time of the physical transfer of the firearm. The Department rejected alternative methods of collection as less effective in funding the program.

A third alternative considered by the Department would be to impose a DROS Fee for each firearm purchased, rather than once per transaction of one or more firearms, as proposed. Because some people purchase multiple firearms in a single transaction, the number of billable DROS transactions are fewer than the total number of DROS transactions. If the Department imposed the \$31.19 DROS Fee for each firearm purchased, rather than for each transaction of one or more firearms, the Department would collect additional revenue. The Department rejected this alternative due to statutory constraints. Per Penal Code section 28240, for a single transaction of any number of firearms on the same date, only one billable fee may be charged.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Kelan Lowney, Associate Governmental Program Analyst
CA Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487
(916) 210-2377

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Matthew Mercado, Associate Governmental Program Analyst
CA Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487
(916) 210-2607

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice of Proposed Rulemaking (Notice) is published in the Notice Register, the rulemaking file consists of this Notice, the Text of the Proposed Regulations (the "express terms" of the regulations), the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based. The text of the Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department's website at

<https://oag.ca.gov/firearms/regs>. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the Department analyzes all timely and relevant comments received during the 45-day public comment period, the Department will either adopt the regulations substantially as described in this notice or make modifications based on the comments. If the Department makes modifications which are sufficiently related to the originally-proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the name and address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons will be available on the Department's website at: <https://oag.ca.gov/firearms/regs>. Please refer to the contact information listed above to obtain a written copy of the Final Statement of Reasons.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department's website at <https://oag.ca.gov/firearms/regs>.