

CALIFORNIA DEPARTMENT OF JUSTICE

**TITLE 11. LAW
DIVISION 5. FIREARMS REGULATIONS
CHAPTER 16. BUREAU OF FIREARMS FEES**

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

As authorized by Government Code section 11346.9, subdivision (d), the Department of Justice (“Department”) hereby incorporates the Initial Statement of Reasons (ISOR) prepared in this matter. The ISOR’s stated bases for the necessity of the proposed regulations continue to apply to the regulations as adopted.

No modifications, corrections, or edits have been made to the initial proposed text of the regulations.

SUMMARY OF COMMENTS AND DEPARTMENT RESPONSES

During the 45-day public comment period (August 13, 2021 through September 28, 2021), the Department received two letters from members of the public which included six distinct comments. The first letter is as follows:

This fee is unconstitutional and only serves to disarm the economically disadvantaged.

I do not support this rule.

The Department has made no change in response to the comment regarding constitutionality because the Department determines that this comment objects to any implementation of the underlying statute, not to the specific regulations proposed. The Department has no authority to refuse to implement the underlying statute on the allegation that it is unconstitutional. No appellate court has declared it so. Per Article 3, section 3.5 of the California Constitution:

An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

- (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
- (b) To declare a statute unconstitutional;
- (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

The Department has made no change in response to the comment regarding “the economically disadvantaged.” The proposed regulation would impose the DROS Fee on all firearm purchasers equally. As stated in the Standardized Regulatory Impact Analysis, hereby incorporated by reference, the Department recognizes that this equality of treatment may result in a disparate impact, as purchasers with lower incomes may experience more of an impact on their disposable

income due to the \$31.19 fee, while purchasers with higher incomes may experience less of an impact. However, while Penal Code section 28233 grants the Department the authority to require a dealer to charge each firearm purchaser a fee, it does not grant the Department the discretion to set the initial fee at any other amount. The Department is setting the initial fee at \$31.19 for the reasons stated in the ISOR.

The Department has made no change in response to the comment regarding the commenter's lack of support, as this is interpreted as a generalized opposition to the regulation and is neither specifically directed at the Department's proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the ISOR.

The second letter is as follows:

I am no more responsible for people who commit a crime with a gun than for people who commit a crime with a car, or a computer, or a hammer, etc. Using DROS fees for anything beyond supporting the system to verify I am a law-abiding citizen is simply a means of forcing a group of people you don't agree with politically to fund a societal problem they did not create.

You are making us pay for the privilege of exercising a constitutional right!

It is an abuse of power to artificially increase the cost of buying a gun just because you hate them.

Focus on the criminals, not the lawful citizens!

The Department has made no change in response to the comment regarding the use of the DROS Fee. Penal Code section 28233, subdivision (a) grants the Department the authority to require a dealer to charge each firearm purchaser a fee in the amount of \$31.19. The Department is adopting the regulation for the reasons stated in the ISOR. Penal Code section 28233, subdivision (b), makes funds collected pursuant to subdivision (a) available, upon appropriation by the Legislature, for expenditure by the Department, as specified. The commenter's disagreement with the authorized use of the fee is directed at this other, related statute, but is neither specifically directed at the Department's proposed action nor to the procedures followed by the Department in proposing or adopting the action.

The Department has made no change in response to the comment regarding "making us pay" to exercise a constitutional right, because the Department determines that this comment objects to any implementation of the underlying statute, not to the specific regulations proposed. The Department has no authority to refuse to implement the underlying statute on the allegation that it is unconstitutional, as explained above.

The Department has made no change in response to the comment regarding "hating guns," as this is interpreted as a generalized opposition to the regulation and the underlying statute, and is neither specifically directed at the Department's proposed action nor to the procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the ISOR.

The Department has made no change in response to the comment regarding "focusing on criminals," as this is neither specifically directed at the Department's proposed action nor to the

procedures followed by the Department in proposing or adopting the action. The Department is adopting the regulation for the reasons stated in the ISOR.

LOCAL MANDATE DETERMINATION

The proposed regulation does not impose any mandate on local agencies or school districts.

ALTERNATIVES DETERMINATIONS

In accordance with Government Code section 111346.9, subdivision (a)(4), the Department has determined that no alternative it considered, or that it otherwise identified, or was brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, 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.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

The Department finds that no reasonable alternatives were presented to, or considered by, the Department that would lessen any adverse impact on small business.

NON-DUPLICATION

Some of the regulations may repeat or rephrase, in whole or in part, a state or federal statute or regulation. This was necessary to satisfy the clarity standard set forth in Government Code section 11349.1, subdivision (a)(3).