

**DEPARTMENT OF JUSTICE (DOJ) FIREARMS DIVISION
REGULATIONS PERTAINING TO LABORATORY CERTIFICATION AND
FIREARMS SAFETY DEVICE TESTING**

INITIAL STATEMENT OF REASONS

Subject Matter of the Proposed Regulations:

Section 977.10 “Title and Scope”

Specific purpose of the regulation.

The proposed regulation denotes the title of and specify the scope of the regulatory action.

Necessity.

The proposed regulation establishes a title for the regulatory action and specifying the scope of the regulations increases the general clarity of the regulatory action for persons affected by the regulations.

Technical, theoretical, and/or empirical study, reports, or documents.

None.

Alternatives to the regulation considered by the agency and the agency’s reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.15 “Exemptions for Compliance”

Specific purpose of the regulation.

The proposed regulation allows the Department of Justice (DOJ) to grant a specified extension of time for any deadline provided for in the proposed regulations.

Necessity.

The DOJ recognizes that situations may arise when laboratories, through no fault of their own or under circumstances which are beyond their control, are not able to meet a regulatory deadline. Allowing the DOJ to grant extensions of time will help avoid unnecessary administrative actions against Certified FSD Laboratories that find themselves in such a situation.

Technical, theoretical, and/or empirical study, reports, or documents.

None.

Alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.20 "Definitions of Key Terms"

Specific purpose of the regulation.

The proposed regulation defines the following terms used in the laboratory certification process, firearms safety device standards and testing, gun safe standards, and Firearms Safety Device creation and maintenance: "BATF;" "Certified Firearms Safety Device Laboratory;" "COE;" "Common household tools;" "Completed Application;" "Corporation;" "Day;" "Disabled;" "DOJ;" "DOJ Approved Safety Device;" "Firearms manufacturer/importer;" "Firearms safety device;" "Firearms Safety Device Compliance Test Report;" "Firearms safety device manufacturer or dealer;" "Firing chamber;" "Firm;" "FSD Laboratory Certification;" "Keyway;" "Local License;" "Model;" "Plug;" "Properly Installed;" "Reasonable Access;" "Roster of Approved Firearms Safety Devices."

Necessity.

Defining the terms is necessary to promote a clear understanding of the proposed regulations, which is crucial for the laboratories that wish to be certified to conduct firearms safety device testing. In addition, firearms safety device manufacturers and/or dealers must be able to understand the firearms safety device certification process and how it affects their products.

Technical, theoretical, and/or empirical study, reports, or documents.

The DOJ relied on information from the following technical documents when formulating the definitions in the proposed regulations:

American Society for Testing and Materials (ASTM) F883 Standard Performance Specification for Padlocks

American National Standards Institute, Inc., (ANSI) National Standard for Auxiliary Locks and Associated Products

Underwriters Laboratories, Inc. Standards for Safety - Key Locks

Existing regulations (Laboratory Certification and Handgun Testing)

The State of California Performance Specification for Firearms Safety Devices

Survey/Study of Common Household Tools

Alternatives to the regulation considered by the agency and the agency’s reasons for rejecting those alternatives.

Several definitions were considered from the research material referenced above. The DOJ determined the definitions proposed most accurately reflect the legislative intent of the law.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.30 “Who Must be a Certified FSD Laboratory”

Specific purpose of the regulation.

The regulation specifies that laboratories wishing to participate in the California Firearms Safety Device Testing Program must be certified to do so by the DOJ. It also specifies that a five percent or more change in ownership requires the submission of an Application for Firearms Safety Device Laboratory Certification by the proposed ownership entity or owners.

Necessity.

In order for the DOJ to oversee the activities of laboratories as they relate to the testing program required by statute and described in these regulations, the DOJ requires that these laboratories apply for and obtain DOJ certification. Laboratories must understand that a five-percent or more change in ownership would require a new application because such ownership change may result in a potential conflict of interest that is prohibited by regulation.

Technical, theoretical, and/or empirical study, reports, or documents.

None.

Alternatives to the regulation considered by the agency and the agency’s reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.31 “Application for Certification”

Specific purpose of the regulations.

The proposed regulation specifies the information required on applications for Firearms Safety Device (FSD) Laboratory Certification. The requested information is to allow the DOJ to identify the applicant and the agencies that have jurisdiction over the applicant. The application also collects information regarding the person(s) who apply for and obtain the required DOJ Certificate of Eligibility. The ownership and personnel information will allow the DOJ to ensure that conflict of interest requirements are met. The facility management and testing supervision information allows the DOJ to ensure that security requirements are met and that no persons who are prohibited from possessing firearms are employed to handle firearms. The equipment and off-site location information allows the DOJ to ensure that the laboratory has the required equipment, and to determine whether it is suitable for testing firearms safety devices. The authorized representative information identifies the person with whom the DOJ will correspond and communicate regarding application and certification issues. The signed certifications reduce the amount of time the DOJ must spend verifying compliance with various requirements and further clarifies for the applicant’s knowledge of and compliance with these requirements.

Necessity.

The applicant information required (name, ownership, facility design, etc.) is needed so that the DOJ can identify applicants and confirm that they have the equipment and facilities required to conduct the statutorily required testing. The information is also needed to ensure that an applicant laboratory and its personnel do not have any interests or relationships that would constitute conflicts of interest which would affect the eligibility of the applicant or personnel, and/or the reliability, integrity, or results of any testing. Requiring signed certifications will reduce the costs for processing the application because certifications are more efficient and less expensive than conducting the case by-case research necessary to verify the statements on the application. The applicant is put on notice by the requirements for the certification.

Technical, theoretical, and/or empirical study, reports, or documents.

The primary empirical source relied upon was the knowledge and experience the DOJ has gained from implementing a similar applicant program, the Handgun Testing and Laboratory Certification program, and its application.

Alternatives to the regulation considered by the agency and the agency’s reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.32 “Pre-Certification Requirements”

Specific purpose of the regulations.

The purpose of the proposed regulation is to require that at least one person at the Certified FSD Laboratory apply for and obtain a DOJ Certificate of Eligibility. The proposed regulation also specifies the requirement that the applicant laboratory demonstrate its ability to conduct the required tests.

Necessity.

The testing process requires the possession of a firearm that the firearms safety device is designed for. The Certificate of Eligibility requirement will permit the DOJ to ensure that the person primarily responsible for conducting and/or overseeing the testing is not prohibited from possessing firearms. The on-site inspection allows the DOJ to determine whether the applicant has the facilities, equipment, and the ability required to properly conduct firearms safety device testing.

Technical, theoretical, and/or empirical study, reports, or documents.

The primary empirical source relied upon was the knowledge and experience the DOJ has gained from implementing the similar laboratory and handgun certification program.

Alternatives to the regulation considered by the agency and the agency’s reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.33 “Grounds for Denial”

Specific purpose of the regulations.

The purpose of the proposed regulation is to specify the nine separate grounds for which an application shall be denied, the method for notifying the applicant if his or her application is denied, and the method for requesting an appeal of the denial decision. The regulation also clarifies that the appeal process will be handled in accordance with the Administrative Procedure Act, commencing with section 11500 of the Government Code.

Necessity.

The grounds for denial give the DOJ a clear picture of the ability and objectivity of the applicant laboratory, and include circumstances where the ability of the laboratory to conduct testing objectively are compromised. The applicants must be given due-process by being informed both the grounds for denial as well as the method for appeal of the denial. False statements on the application is included as a ground for denial because such statements establish a lack of credibility on the part of the applicant laboratory. Failure to demonstrate possession of proper equipment, compliance with minimum security requirements, or ability to conduct testing in an impartial and sound manner is included as grounds for denial because any of these factors would indicate that the laboratory is unable to conduct the testing in accordance with the requirements of these regulations. Any indications of a conflict of interest is also grounds for denial because such a conflict of interest would indicate that the laboratory is unable to conduct objective testing in accordance with the requirements of these regulations. Failure to obtain the required certificate(s) of eligibility may indicate that the person responsible for testing may be legally prohibited from possessing firearms.

Technical, theoretical, and/or empirical study, reports, or documents.

The primary empirical source relied upon was the knowledge and experience the DOJ gained from having previously implemented programs for various permits and licenses related to firearms.

Alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.34 "Certification Period"

Specific purpose of the regulations.

The proposed regulation specifies a two-year term for certification.

Necessity.

The DOJ believes that due to reasonable accountability requirements and the fact that facilities and/or requirements may periodically change, a laboratory certification should not be valid for an indefinite term without re-evaluation by the DOJ. The term of two years specified in the regulation will provide for adequate public protection without being overly burdensome on the laboratory.

Technical, theoretical, and/or empirical study, reports, or documents.

The primary empirical source relied upon was the knowledge and experience the DOJ gained from having previously implemented programs for various permits and licenses related to firearms.

Alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.35 "Processing Times"

Specific purpose of the regulations.

The proposed regulation specifies the time periods within which the DOJ must inform an applicant that his/her application is either complete or deficient, and the time in which the DOJ must schedule and complete the required pre-certification on-site inspection. This proposed regulation also specifies the time period within which the DOJ must complete the processing of the application.

Necessity.

This regulation is required by the Permit Reform Act of 1981 and is based on past experience with similar processes and the limited number of potential applicants. The DOJ believes that applications can be processed within the time frames of 15 to 30 days.

Technical, theoretical, and/or empirical study, reports, or documents.

The primary empirical source relied upon was the knowledge and experience the DOJ gained from having previously implemented programs for various permits and licenses related to firearms.

Alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.36 “Appeal Process”

Specific purpose of the regulations.

The proposed regulation establishes an applicant’s recourse if the DOJ fails to complete processing of the application within the specified time standard in that he/she may apply for a refund of his/her application fee, if applicable.

Necessity.

This regulation is required pursuant to Government Code section 15378 which sets forth the remedy for if the agency fails to meet the specified deadlines. Although authorized, the DOJ charges no application fees in these regulations at this time, so no refund would be appropriate. However, due to the requirements of Government Code section 15378 and the possibility that application costs may eventually be added to these regulations, this regulation is included.

Technical, theoretical, and/or empirical study, reports, or documents.

None.

Alternatives to the regulation considered by the agency and the agency’s reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.40 “Absence of Conflict of Interest”

Specific purpose of the regulations.

The proposed regulation identifies the two basic conflicts of interest that are not permitted while a laboratory is certified both as to ownership and personnel.

Necessity.

The conflicts of interest could result in a lack of objectivity on the part of the Certified FSD Laboratory because a vested interest in a tested firearms safety device could result in bias or falsity in the testing process.

Technical, theoretical, and/or empirical study, reports, or documents.

The primary empirical source relied upon was the knowledge and experience the DOJ gained from having previously implemented programs for various permits and licenses related to firearms.

Alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.41 "Security and Safety"

Specific purpose of the regulations.

The purpose of the proposed regulation is to identify the written security procedures that must be followed and the equipment required if a laboratory transports or stores firearms, and to require the laboratory to comply with any existing federal, state and local safety standards. The proposed regulation also has the purpose of requiring the laboratory to exercise safe firearms handling practices and post a warning within all areas where testing will be performed.

Necessity.

Since an integral part of the testing process is the possession of firearms that are being used while testing firearms safety devices, laboratories must be required to meet minimum security standards and safety requirements. These standards are based upon regulations imposed upon other entities involved in the firearms industry. Since firearms can be stolen and used to commit harm, the standards that have been chosen provide for the secure storage of firearms on grounds and equipment under the control of the laboratory. The requirements that employees exercise safe firearm handling practices and that no employee possess ammunition while engaged in firearms safety device testing has been determined by the DOJ to be a reasonable safety precautions, especially in light of the fact that DOJ personnel may be present in laboratories during testing. The sign posting requirement is deemed necessary to serve as a safety reminder to personnel of the laboratory to exercise safe firearm handling practices.

Technical, theoretical, and/or empirical study, reports, or documents.

The primary empirical source relied upon was the knowledge and experience the DOJ gained from having previously implemented programs for various permits and licenses related to firearms.

Alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.42 “Licensing/Minimum Standards Compliance”

Specific purpose of the regulations.

The purpose of the proposed regulation is to require the Certified FSD Laboratory to ensure that it is in compliance with federal, state and local laws as well as licensing and approval requirements that relate to firearms safety device testing and the business enterprise. The regulation also has the purpose of requiring the laboratory to inform staff of laws relating to firearms possession prohibitions and to ensure persons who possess firearms are not prohibited from their possession. Finally, the proposed regulation requires that laboratory must possess the equipment required by regulation and that records relating to the maintenance of this equipment is made available for DOJ inspection.

Necessity.

It is reasonable to expect Certified FSD Laboratories to comply with all laws that pertain to their operation. Persons who are statutorily prohibited from possessing firearms should not be afforded the opportunity to access, come into contact with, or possess firearms as a result of their employment with a Certified FSD Laboratory. In addition, it is reasonable to require the laboratory to be in compliance with laws and licensing requirements that related to its business, and to have the equipment required by regulation.

Technical, theoretical, and/or empirical study, reports, or documents.

The primary empirical source relied upon was the knowledge and experience the DOJ gained from having previously implemented programs for various permits and licenses related to firearms.

Alternatives to the regulation considered by the agency and the agency’s reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.43 “Firearms Safety Devices Testing and Submission Requirements”

Specific purpose of the regulations.

The proposed regulation notes that the modification of a firearms safety device after certification is granted shall result in its immediate removal from the Roster of Approved Firearms Safety Devices by the DOJ. The proposed regulation also requires the firearms safety device manufacturer or dealer to provide four firearms safety devices for testing, the model name and number of the firearms safety device, a description of the firearms safety device, a description of how the firearms safety device is intended to function and how the user should install and operate (activate/deactivate) the firearms safety device, and the type, make, or model of firearm(s) for which the firearms safety device is designed. In addition, the proposed regulation requires the firearms safety device manufacturer or dealer to provide any other information it believes may be needed for proper and safe operation of the firearms safety device. This proposed regulation allows the DOJ to approve for sale a model of firearms safety device without testing if that model differs from another model made by the same manufacturer in finish, name or model number, or any other feature that does not affect the design and function of the firearms safety device. As a condition of such approval, the Firearms Division requires the manufacturer to provide the DOJ with specific information describing the device and a firearms safety device of the model for which listing is sought.

Necessity.

Modification of the design or construction of a model of firearms safety device could affect its ability to pass the testing requirements described in these regulations. Four devices are required to be submitted for testing to ensure that enough devices are available to conduct all of the required testing, and to maximize the chances that an operational device is available to forward to the DOJ pursuant to a separate regulation governing laboratory submission requirements. The DOJ has also determined that to fairly conduct the testing, the laboratory must be informed by the party submitting the firearms safety device of basic information regarding the functioning and operation of the device. The regulation also provides that the DOJ may approve models of firearm safety device that differ only superficially from models that have already been certified. The DOJ has determined that this approach is as affective and less burdensome than requiring such models to undergo the testing process. The requirement for the party seeking such a listing to provide the DOJ with a model of the device is necessary to allow DOJ staff to verify that the submitted model does not vary significantly from a previously approved model and may thus be approved for listing on the Roster of Approved Firearms Safety Devices.

Technical, theoretical, and/or empirical study, reports, or documents.

None.

Alternatives to the regulation considered by the agency and the agency’s reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.44 “Firearms Safety Device Standards”

Specific purpose of the regulation.

The proposed regulation sets forth the minimum standards for firearms safety devices.

Necessity.

Penal Code section 12088.2 requires the Attorney General to adopt regulations for firearms safety devices that include provisions to address the risk of injury from unintentional gunshot wounds, the risk of injury of self-inflicted gunshot wounds by unauthorized users, and to ensure that firearms safety devices are reusable and of adequate quality and construction to prevent children and unauthorized users from firing the firearm. The standards set forth in this regulation limit the design of such devices to those which function to keep the firearm from being accessed, operated, or loaded. The requirement for devices that operate with combinations to have at least 1,000 combinations is necessary because DOJ has determined that this number provides a reasonable balance between security vs. burden to produce and is representative of a number of devices currently on the market. The provision requiring key locks to be unique to the manufacturer’s firearms safety devices is necessary to limit the ability of a firearms safety device to be defeated with a picking device, such as a straightened paperclip, or a key that is easily available, such as a handcuff key. The provision specifying the methods by which a firearms safety device must function is necessary because the DOJ has determined that these are the only methods to meet the intent of the law, and to prevent the certification of unanticipated devices or methods that don’t meet the intent of the statute. The requirement for firearms safety devices to be reusable is based on statute and is repeated here for clarity purposes. The requirement for firearms safety devices to be capable of withstanding manipulation with common household tools for a ten-minute period without being disabled is necessary and stated here for consistency and clarity. The DOJ has determined that the ten-minute standard is reasonable.

Technical, theoretical, and/or empirical study, reports, or documents.

The DOJ relied on input from a stakeholder meeting to help determine various minimum standards.

Alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.45 "Testing Procedures"

Specific purpose of the regulations.

The proposed regulation specifies persons who may conduct testing on firearms safety devices that are submitted to a certified laboratory for testing. The proposed regulation also sets forth applicable required safety tests that must be performed on firearms safety device models submitted for testing.

Necessity.

The DOJ is charged with creating clear and objective standards for Certified FSD Laboratories to follow in the testing of submitted devices. To this end, the Firearms Division relied on the California Department of General Services Procurement Engineering Division to apply its engineering expertise to develop clear and objective testing standards. The engineering report, entitled "The State of California Performance Standard Specification for Firearms Safety Devices (FSD)" is available upon request and included in the rulemaking file as a technical report relied upon. The statement that the DOJ does not intend to restrict a testing laboratory from going beyond the testing procedures if the laboratory identifies a firearms safety device shortcoming that would allow the firearms device to be disabled in less than ten minutes using common household tools is added for safety reasons. This statement is necessary because laboratories should be made aware that they may inform the DOJ of any tested device that passes the prescribed tests but which may be otherwise defeated within the standards of these regulations.

- (a) The requirement that the only persons allowed to conduct firearms safety device testing are authorized staff of the Certified FSD Laboratory is necessary to ensure that testing objectivity is not compromised by allowing a person with a vested interest in the outcome of the test to influence outcome of the test. The requirement to allow representatives of the firearms safety device manufacturer or dealer and/or the DOJ to be present during testing, though not to participate in the testing, is deemed necessary in that it provides the manufacturer or dealer of the firearms safety device with assurance that the tests are conducted in accordance with DOJ standards.
- (b) Most testing standards and criteria were provided in the State of California Performance Standard Specification for Firearms Safety Devices. The tolerance, temperature, and

equipment requirements are necessary to ensure consistency in testing between laboratories. The requirement that the device be of a design to prevent it from being readily removed from the firearm is necessary to ensure that firearms safety devices that pass the standards described in these regulations may not otherwise be defeated through their removal from the firearm by other than the manufacturer's intended method, such as through the partial destruction of the firearm. The requirement for a primed case to be placed in the firing chamber during each test (if possible), for the firearm be cocked without the manual safety applied, and that a discharge of the primed case constitutes a failure of the test is necessary to address the statutory requirement (Penal Code section 12088.2(a)(1)) that firearms safety device standards address unintentional gunshot wounds. The regulation specifies which particular groups of tests are to be performed on a single firearms safety device. This distinction is necessary to ensure that the four samples of each safety device model provided to the testing laboratory are sufficient to complete all of the required tests; to help ensure consistency in testing between laboratories; and to ensure that a part of a firearms safety device that has been weakened in one test is not subjected to an additional test. For example, a shackle that has been cut should not additionally be subjected to the sawing test, because such double testing would exceed the testing standards of these regulations.

- (c) The tests required in subsection (c) of this proposed regulations are based on tests derived in the State of California Performance Standard Specification for Firearms Safety Devices report prepared by the California Department of General Services. The tests represent likely "methods of attack" that a person who intends to defeat a firearms safety device is likely or apt to try. The DOJ has determined that a firearms safety device should be able to stand up to ten minutes of attack by an average person using common household tools, and the tests prescribed in the report by the Department of General Services have been designed around this ten-minute standard. The DOJ has determined that the standards prescribed in these regulations are reasonable and that the testing requirements have been set at a level to provide assurance that an individual attempting to defeat an approved device utilizing common household tools would be unable to defeat the device within a ten minute period.
- (d) The drop test required in subsection (d) of this proposed regulations is based on tests derived in the State of California Performance Standard Specification for Firearms Safety Devices report prepared by the California Department of General Services. The test represents a dropping of a loaded firearm with a firearms safety device properly installed (if the firearm can be loaded with the device properly installed) to ensure that the firearms safety device prevents an unintentional discharge of the firearm if the firearm is dropped. This requirement is necessary because a firearms safety device that allows the firearm to be discharged pursuant to a drop test does not adequately address the Penal Code section 12088.2(a)(1) requirement that the regulation address unintentional gunshot wounds. The standards are consistent with existing code statute (Penal Code section 12128) and DOJ regulations (Title 11 section 968.44) addressing the drop-testing of handguns. The test further requires that the safety device fails if it becomes disabled (allowing the firearm to be operated) as a result of such dropping. The DOJ has determined that this requirement is necessary due to the reasonable possibility that the owner of a firearm equipped with an

unqualified device may accidentally drop the firearm equipped with the device, and subsequently (incorrectly) assume that the device will continue to provide adequate protection against unauthorized users and unintentional discharge. Additionally, this test is necessary because an unauthorized user attempting to defeat the device may utilize dropping of the firearm as an attack method to try to defeat the device.

- (e) The drop test required in subsection (e) of this proposed regulation is based on tests derived in the State of California Performance Standard Specification for Firearms Safety Devices report prepared by the California Department of General Services. The test represents a dropping of a lockbox-type firearms safety device containing a loaded firearm to assure that the lock box prevents an unintentional discharge if dropped. The standards are consistent with existing code statute (Penal Code section 12128) and DOJ regulations (Title 11 section 968.44) addressing the drop-testing of handguns. This requirement is necessary because a firearms safety device that allows the firearm to be discharged pursuant to a drop test does not adequately prevent an unintentional discharge. The test further requires that the safety device fails if it becomes disabled (allowing access to the firearm) as a result of such dropping. The DOJ has determined that this requirement is necessary due to the reasonable possibility that the owner of a firearm stored within an unqualified device may accidentally drop the device, and subsequently (incorrectly) assume that the device will continue to provide adequate protection against unauthorized users and unintentional discharge. Additionally, this test is necessary because an unauthorized user attempting to defeat the device may utilize dropping of the firearm as an attack method to try to defeat the device

This proposed regulation requires specific equipment to be used (i.e., shock impactor fixture, tensile loading device). The DOJ believes that this prescriptive standard is necessary in order to ensure consistency in testing between different laboratories and/or laboratory off-site locations.

Technical, theoretical, and/or empirical study, reports, or documents.

The American Society for Testing and Materials (ASTM) F883 Standard Performance Specification for Padlocks; the State of California Performance Standard Specification for Firearms Safety Devices, prepared by the Department of General Services Procurement Division at the request of the DOJ; and The Marketing Department, Inc., statewide survey of common household tools.

Alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.46 “Test Reporting”

Specific purpose of the regulations.

The proposed regulation sets forth reporting requirements for laboratories that test firearms safety devices. The regulation further requires that the report be submitted within ten working days, and provides that a later report does not invalidate the results of the test. The regulation also requires that the testing laboratory provide the DOJ with the firearms safety device that was utilized for drop-testing. The regulation prohibits a firearms safety device manufacturer or dealer from asserting that a firearms safety device has passed the required testing until notified by the DOJ that the firearms safety device has been placed on the Firearms Safety Device Roster. The regulation also requires that the packaging or descriptive materials specify the firearms for which the firearms safety device meets the standards and test requirements described in these regulations.

Necessity.

Pursuant to Penal Code section 12088(d), the DOJ is required to compile, publish, and maintain a roster listing all of the safety devices that may be sold in this state. A firearms safety device that meets the standards must be added to the Roster of Approved Firearms Safety Devices so that it can be sold. Standardizing the reporting requirements and time frames will ensure that this is done in an effective and efficient manner. In addition, testing results should not be invalidated simply because the report is submitted late. The provision prescribing the DOJ approval statement and allowing it to be placed only on DOJ-approved firearms safety devices is necessary to provide a means to allow manufacturers to provide notification with their devices that such devices have passed testing under these regulations. Firearms safety device manufacturers and dealers should be prevented from making untrue or premature statements regarding the results of the testing. The requirement for the packaging or descriptive materials to specify the firearms for which the device meets the requirements of these regulations is necessary to allow persons selling or purchasing a firearm to determine if a particular DOJ-approved firearms safety device meets the requirements described in these regulations for the particular firearm being sold or purchased.

The DOJ finds that the report required pursuant to this proposed regulation is necessary for the health, safety, or welfare of the people of the state of California and that this proposed regulation applies to businesses.

Technical, theoretical, and/or empirical study, reports, or documents.

None.

Alternatives to the regulation considered by the agency and the agency’s reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.47 “Required Records, Retention Periods, Reporting Changes”

Specific purpose of the regulations.

The proposed regulation specifies the record keeping requirements of Certified Firearms Safety Device Laboratories and the period of time for which records must be kept. The proposed regulation also establishes a ten-working-day deadline for reporting changes relating to ownership, personnel, equipment, and facilities.

Necessity.

The information required by this proposed regulation is necessary to ensure a full substantiation of the testing procedures for each firearms safety device. These records are also intended to help determine if a Certified FSD Laboratory is in compliance with statutory and regulatory requirements. These records form the basis for the Compliance Test Report. The record keeping and reporting requirements are both designed to help protect public safety and meet other requirements of statute and regulation. The ability of the Certified FSD Laboratory to maintain other records is clearly set forth as well as a need to report any changes relating to ownership, personnel, equipment, and facilities within ten working days. These requirements are designed to ensure that these records are as up-to-date as possible. The DOJ has deemed five years to be a sufficient period of time to keep the records for audit/inspection purposes.

Technical, theoretical, and/or empirical study, reports, or documents.

The primary empirical source relied upon was the knowledge and experience the DOJ gained from having previously implemented programs for various permits and licenses related to firearms.

Alternatives to the regulation considered by the agency and the agency’s reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.48 “Off-Site/Location”

Specific purpose of the regulations.

The proposed regulation specifies the conditions under which an applicant would be allowed to use an off-site location. It also specifies the conditions which would cause the DOJ to prohibit the applicant from using an off-site location.

Necessity.

The DOJ needs to be able to ensure that an off-site location utilized to conduct testing is suitable for that purpose prior to authorizing testing to take place at that location. The DOJ also needs to limit the number of off-site locations that are included in the processing of an application and their distance from the main license address in order to keep the application and travel costs as reasonable as possible. Since laboratories may need more than one off-site location, the regulation identifies the method for requesting and/or gaining approval for additional locations.

Technical, theoretical, and/or empirical study, reports, or documents.

The primary empirical source relied upon was the knowledge and experience the DOJ gained from having previously implemented programs for various permits and licenses related to firearms.

Alternatives to the regulation considered by the agency and the agency’s reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.49 “Inspections”

Specific purpose of the regulations.

The proposed regulation allows duly authorized DOJ representatives to inspect the facilities and records of Certified FSD Laboratories and to observe firearms safety device testing. The regulation also requires that the DOJ conduct an on-site inspection within six months of certifying a laboratory. The proposed regulation sets forth the method for notifying a laboratory within 15 days of the results of an inspection as well as the time frame for completing any required corrective action. The regulation further requires Certified FSD Laboratories to submit a monthly schedule of days on which they will perform testing.

Necessity.

The DOJ needs to be able to review laboratory records and observe testing in order to determine whether Certified FSD Laboratories are properly conducting the required testing. The DOJ also needs to be able to ensure that Certified FSD Laboratories are in compliance with statutory and regulatory requirements, such as security and the possession of required equipment, and that they are independent and impartial. The DOJ has also determined that the time limits for compliance set forth in this proposed regulation are reasonable. The DOJ needs the testing schedule to conduct unannounced inspections that may be necessary to ascertain compliance with regulatory requirements, and needs to be able to ensure that Certified FSD Laboratories complete any corrective actions required.

Technical, theoretical, and/or empirical study, reports, or documents.

The primary empirical source relied upon was the knowledge and experience the DOJ gained from having previously implemented programs for various permits and licenses related to firearms.

Alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.50 "Gun Safe Standards"

Specific purpose of the regulations.

The proposed regulations set forth standards for gun safes under these regulations.

Necessity.

Penal Code section 12088.1(c) provides that a person purchasing a firearm is exempt from the requirement to purchase a firearms safety device if that person owns a gun safe, and that gun safes shall not be required to be tested. Additionally, Penal Code section 12088.2 requires the DOJ to adopt regulations setting forth a standard for gun safes. The standards set forth in this proposed regulation are to ensure to the greatest practical extent that any device which is recognized as a gun safe for purposes of these regulations, without being tested, provides at least the same level of security as a device that has successfully passed the testing set forth in the regulations for firearms safety devices. The need for the requirement that the gun safe be able to fully contain firearms and provide for their secure storage is self-evident. The requirement for a combination or electronic locking system of at least 10,000 possible combinations is deemed by the DOJ to be

necessary and reasonable to provide adequate security. The minimum four locking bolts is deemed necessary and reasonable to provide adequate security, and is also representative of many types of gun safes that are currently available on the market. The requirement for the exterior wall to be constructed of 1/8 inch steel or material of equivalent strength is representative of a large number of gun safes currently available on the market, and is deemed necessary to provide a reasonable measure of security against a person being able to defeat the gun safe by sawing through the outside wall.

Technical, theoretical, and/or empirical study, reports, or documents.

DOJ personnel studied various advertising materials relating to gun safes currently on the market.

Alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives.

The DOJ considered regulations requiring gun safes to be at least 250 pounds. However, the DOJ determined that such a requirement was unnecessary, because a prescribed minimum weight by itself serves no functional requirement related to preventing access to the contents of the safe.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.51 "Gun Safe Proof of Purchase or Ownership"

Specific purpose of the regulations.

The proposed regulation describes the necessary proof of ownership of a qualified gun safe when purchasing a firearm.

Necessity.

Penal Code section 12088.1(c) provides that a person purchasing a firearm is exempt from the requirement to purchase a firearms safety device if that person owns a gun safe, and that gun safes shall not be required to be tested. Penal Code section 12088.2 requires the DOJ to adopt regulations setting forth a standard for gun safes. The proposed proof of ownership of such a device includes two elements: 1) Documentation demonstrating ownership; and 2) An affidavit that the gun safe meets minimum standards prescribed in these regulations. The documentation demonstrating ownership is required by Penal Code section 12088.1(c)(2). The affidavits are to ensure, to the highest degree practicable, that any gun safe that is used as an exemption from the firearms safety device requirement will provide at least the security of a DOJ-Approved Safety Device.

Technical, theoretical, and/or empirical study, reports, or documents.

None.

Alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

Section 977.55 “Required Warning Notice - Affixation to Firearms Sold Without Accompanying Packaging”

Specific purpose of the regulations.

The proposed regulation specifies the method by which the warning label specified in Penal Code section 12088.3 shall be affixed to a firearm sold without accompanying packaging.

Necessity.

This regulation is required by Penal Code section 12088.3. The DOJ has determined that the method of affixation prescribed in this regulation is reasonably unburdensome and provides consistency in application because any firearm available on the market is likely to have a trigger guard..

Technical, theoretical, and/or empirical study, reports, or documents.

The primary empirical source relied upon was the knowledge and experience the DOJ gained from having previously implemented programs for various permits and licenses related to firearms.

Alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.60 “DOJ Suspension or Revocation of Laboratory Certification”

Specific purpose of the regulations.

The proposed regulation specifies the grounds for which DOJ may suspend or revoke an FSD Laboratory Certification, the procedures for suspension or revocation, the consequences of suspension or revocation, and specifies that any suspension or revocation will be conducted in accordance with Government Code section 11500, et seq.

Necessity.

The DOJ needs to be able to ensure that Certified FSD Laboratories conduct tests fairly, impartially, and properly, and that they are in compliance with these regulations and firearms laws. This proposed regulation will help ensure that the laboratories who do not comply with the statutory or regulatory requirements will not be allowed to perform testing in accordance with these regulations. The proposed regulations also provides the Certified FSD Laboratory with due-process for suspension or revocation proceedings initiated by the DOJ.

Technical, theoretical, and/or empirical study, reports, or documents.

The primary empirical source relied upon was the knowledge and experience the DOJ gained from having previously implemented programs for various permits and licenses related to firearms.

Alternatives to the regulation considered by the agency and the agency’s reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.70 “DOJ-Certification Renewal Procedures”

Specific purpose of the regulations.

The proposed regulation establishes the renewal procedures and time frames applicable to the DOJ and Certified FSD Laboratories, and the consequences of failing to renew.

Necessity.

Once certified, a laboratory should not have to undergo the same application process as a new laboratory. Instead, the renewal process should focus on information that has changed since the previous application was filed. Accordingly, the application facilitates the notification of these

changes to the DOJ. There will still be a need for on-site inspection during the two-year term of the renewed FSD Laboratory Certification.

Technical, theoretical, and/or empirical study, reports, or documents.

The primary empirical source relied upon was the knowledge and experience the DOJ gained from having previously implemented programs for various permits and licenses related to firearms.

Alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives.

The alternative to this regulation would be to require a laboratory to undergo the entire certification process again, which would be unfair and unduly burdensome.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.71 "DOJ-Certification After Expiration"

Specific purpose of the regulations.

The proposed regulation will establish that after expiration of an FSD Laboratory Certification, the person, firm, or corporation must apply for a new FSD Laboratory Certification.

Necessity.

Due to changes that could occur during the time the laboratory is not certified, the DOJ needs to make a thorough and complete evaluation of the applicant given the laboratory's displayed inattention to normal business requirements.

Technical, theoretical, and/or empirical study, reports, or documents.

The primary empirical source relied upon was the knowledge and experience the DOJ gained from having previously implemented programs for various permits and licenses related to firearms.

Alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.80 “Services of Notices, Orders, and Communications”

Specific purpose of the regulations.

The proposed regulation establishes the method and addresses that the DOJ will use for sending or transmitting notices, orders, and/or communications to applicant and Certified FSD Laboratories. The DOJ will use the address on the application for FSD Laboratory Certification or the FSD Laboratory Certification itself. The regulation also specifies that any notices or orders shall be deemed served upon their deposit in the United States mail and the time specified in any such notice shall commence to run from the date of mailing.

Necessity.

Communication by regular mail, electronic transmission, and/or common carrier will facilitate and expedite the transfer of necessary information. This regulation is necessary because it helps ensure that correspondence, including notices and orders, from the DOJ to the applicant or Certified FSD Laboratory will be delivered and/or served to the proper address and in a timely manner. First-class mail is an easily provable means of services and was chosen on that basis.

Technical, theoretical, and/or empirical study, reports, or documents.

None.

Alternatives to the regulation considered by the agency and the agency’s reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.85 “Roster of Certified Firearms Safety Devices”

Specific purpose of the regulations.

The proposed regulation specifies how a firearms safety device may be added or removed from the Roster of Approved Firearms Safety Devices, and establishes a maximum time period for the DOJ to make its determination regarding whether any particular device submitted for inclusion on the roster be added to the roster.

Necessity.

The DOJ is required by Penal Code section 12088(d) to compile and publish a roster of all firearms safety devices that have been approved by the DOJ for sale in this state. This proposed regulation is necessary because it establishes guidelines governing the addition and removal of devices from this roster. Ten days was deemed a reasonable amount of time for the DOJ to ascertain whether a particular device meets the requirements to be listed on the roster based on review of test results of a tested device or similarity to an existing listed firearms safety device. Firearms safety devices should be removed from the roster at the request of the manufacture or dealer, if the production models of a device are substantially modified from the tested model, or if it is determined that the device does not actually meet the testing standards. The provision to allow for listing of a discontinued firearms safety device is necessary to allow interested parties who have invested in substantial number of devices that otherwise meet the requirements of these regulations to have a means to list such devices so that they may liquidate their supplies.

Technical, theoretical, and/or empirical study, reports, or documents.

The primary empirical source relied upon was the knowledge and experience the DOJ gained from having previously implemented programs that require the compilation and publication of official DOJ rosters.

Alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.

Section 977.90 "Appeal Process for DOJ Exclusion of a Firearms Safety Device Model from the Roster of Approved Firearms Safety Devices"

Specific purpose of the regulations.

The proposed regulation specifies a process for the manufacturer, dealer, or other affected party of interest to appeal either the DOJ refusal to list a firearms safety device model on the Roster of Approved Firearms Safety Devices, or the DOJ removal of a firearms safety device model from the Roster of Approved Firearms Safety Devices.

Necessity.

The DOJ has determined that it is reasonable to allow the manufacturer, dealer, or other affected party of interest with a means to appeal a decision by the DOJ to not list a particular device on the roster. If evidence is brought to light that clearly indicates that a firearms safety device model that

the DOJ excluded from the list meets the standards prescribed in the regulations, this proposed regulation compels the DOJ to add that model to the roster. Absent such evidence, the DOJ is not obligated to list the device on the roster.

Technical, theoretical, and/or empirical study, reports, or documents.

The primary empirical source relied upon was the knowledge and experience the DOJ gained from having previously implemented programs that require the compilation and publication of official DOJ rosters.

Alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives.

None.

Alternatives to the proposed regulatory action that would lessen any adverse impact on small businesses.

None.