

FINDING OF EMERGENCY

The Department of Justice Firearms Division finds that an emergency exists, and that the promulgation of these regulations is necessary for the immediate preservation of the public peace, health and safety, and the general welfare.

Specific Facts Showing the Need for Immediate Action

In the years 1987 to 1996, nearly 2,200 children in the United States under the age of 15 years died in unintentional shootings. In 1996 alone, 138 children were shot and killed unintentionally. Thus, more than 11 children every month, or one child every three days, were shot or killed unintentionally in firearms-related incidents.

The Attorney General is responsible for the implementation and maintenance of regulations designed to significantly reduce the risk of firearms-related injuries to children 17 years of age and younger. The final standard is to do all of the following: 1) Address the risk of injury from unintentional gunshot wounds; 2) Address the risk of injury from self-inflicted gunshot wounds by unauthorized users; 3) Include provisions to ensure that all firearms safety devices (FSD) and gun safes are reusable and of adequate quality and construction to prevent children and unauthorized users from firing the firearm and to ensure that these devices cannot be readily removed from the firearm or that the firearm cannot be readily removed from the gun safe except by an authorized user utilizing the key, combination, or other method of access intended by the manufacturer of the device.

These regulations established standards for FSDs and gun safes. While gun safes must comply with a written standard to be in compliance with the FSD law, gun safes themselves are exempt from testing. FSDs, however, must be tested and certified by the DOJ. A review of the laboratory testing results has shown the Department that with the knowledge gained from testing, DOJ-certified testing laboratories have developed new and previously undiscovered methods of defeating FSDs. In many instances, it has become necessary to incorporate these methods into the regulations to ensure that all laboratories and all test technicians are applying the same attack methods. In addition, new and unique FSDs have been developed. Upon the discovery of these new testing methods and devices, the Department has determined that the current testing standards and submission requirements must be updated. Adoption of these emergency regulations will prevent occurrences in which the same FSD would pass testing in one laboratory and not another, as well as ensuring that no FSD will be able to pass the testing standards, but would not otherwise meet the intent of the law as described in Penal Code section 12088.2. In addition, these amendments will allow removal of noncompliant FSDs, provide assurance that only those FSDs that have been altered in a way that does not affect the FSD's performance will receive DOJ-approval, and remove restrictions that might otherwise keep an eligible FSD from receiving DOJ-approval.

These emergency regulations will ensure that FSDs which pass the testing standards will also meet the intent of the law. Without adoption of these emergency regulations, an FSD could pass the current testing standard, receive DOJ-approval, yet be susceptible to attack and possibly contribute to a firearm-related incident, with the power of the Department's corrective action

being limited. In addition, these amendments will ensure that more eligible FSDs are DOJ-approved and made available for safe storage of firearms. Therefore, the DOJ finds that the adoption of these regulations is necessary for the immediate preservation of the public peace, health and safety, or general welfare. These emergency regulations will be effective immediately.

Authority and Reference

The DOJ amends regulation sections 977.20, 977.43, 977.44, 977.45, 977.50, 977.51 and adopts regulation section 977.52 of Title 11 of the California Code of Regulations.

Authority: Sections 12088, 12088.2, Penal Code.

Reference: Sections 12088, 12088.2, Penal Code.

Informative Digest/Plain English Overview

Existing law obligates the Attorney General to develop safety standards for FSDs and gun safes, to certify independent laboratories to conduct testing of FSDs, and to establish and maintain a roster of FSDs that have been tested and certified. Existing law provides that the Attorney General may adopt and amend regulations to maintain standards by which FSDs must adhere to receive DOJ-approval or standards by which gun safes must adhere to maintain an exemption from DOJ testing.

Furthermore, existing law requires firearms dealers to accompany a DOJ-approved safety device with every firearm purchased or transferred. The authorizing statute specifies that its provisions do not apply to the commerce of any antique firearm, as defined, nor do they apply to the commerce of any firearm intended to be used by a salaried, full time peace officer.

These Emergency Regulations Amend Sections 977.20, 977.43, 977.44, 977.45, 977.50, 977.51 and Adopt Section 977.52

Section 977.20

(h) - Current regulations provide a definition of “Disabled.” The objective of this amendment is to add the words “expelling a projectile by the force of an explosion or other form of combustion” to the existing definition, ensuring that only those FSD which allows a firearm to discharge a projectile under specific conditions will fail the testing standard. This amendment will play an important role in determining which FSD will pass or fail the testing standard.

Section 977.43

(a) - Current regulations provide authority for the DOJ to remove an FSD “submitted for testing” from the Roster of Approved Firearms Safety Devices if it is modified after approval. By removing the words “submitted for testing”, this amendment expands the authority of the DOJ to remove an FSD from the Roster of Approved Firearms Safety Devices whether it was approved after testing, or was approved without testing by the DOJ under section 977.43 (c), the section of these regulations that allows the DOJ to approve an FSD without testing. The objective is to ensure that the DOJ has the authority to remove any FSD from the Roster that has been modified after approval.

(c)(2)(B) - Current regulations do not allow the DOJ to approve an FSD without testing if it has had a dimensional change. The objective of this amendment is to give the DOJ the ability to approve FSDs on a case-by-case basis without testing even if they have had dimensional changes, so long as the dimensional changes do not alter the FSD's ability to operate in the same manner demonstrated in the laboratory.

(c)(3)(D) - Current regulations require an FSD manufacturer requesting approval of an FSD to also submit a sample of the FSD. This amendment will give the DOJ authority to waive the requirement that an FSD sample be submitted. While it is expected that a sample will be requested in every instance, the Department may find this requirement too burdensome and unnecessary, and therefore, possibly impacting the number of FSDs submitted for certification and made available for consumers. For example, an FSD manufacturer may produce a single cable lock in a combination of 30 colors and 30 cable lengths. This amendment would give the Department the authority to decide whether requiring 900 samples of this lock (30 colors x 30 cable lengths) would be necessary when the variations are insignificant.

Section 977.44

(b) - Current regulations do not specify that an FSD must be activated immediately upon installation. The objective of this amendment is to clarify that DOJ-approved FSDs must be activated immediately upon installation. In addition, this amendment incorporates clarifying language ensuring that all lock box FSDs which allow the test firearm to be accessed or removed will fail the testing standards.

(e) - Current regulations state that an approved FSD will be capable of withstanding attack with common household tools for 10-minutes. The objective of the amendment is to clarify that the attack(s) being performed will be only *approximately* 10-minutes in length because not all tests are timed and not all tests will apply to every FSD.

Section 977.45

(b)(7) - Current regulations allow some disassembly of a firearm if disassembly is necessary to perform a testing procedure. The objective of this amendment is to inform test technicians that disassembly should be performed only when necessary to complete the testing procedure and otherwise firearms should not be disassembled.

(b)(9) - Current regulations identify the discharge of a firearm as a failure. The objective of this amendment is to add clarifying language informing test technicians that even if total destruction of the firearm resulted from a single discharge, the FSD would still fail the testing procedure.

(b)(12) - Current regulations allow the FSD manufacturer to choose the firearm type that is placed within a lock box during testing. This amendment will require lock box manufacturers to place a small handgun in the lock box during testing and lock boxes design to accommodate long guns to have a long gun contained within the box during testing. These specified firearms will be in addition to any other firearms the FSD manufacturer chooses to use during testing. The objective is to ensure that lock boxes receiving approval are tested with the types of firearms they will be expected to accommodate.

(c)(2) - Current regulations provide limited examples of the types of saw attacks that may be performed during the Saw Test. This amendment expands, for the benefit of test technicians, the types of attacks that should be investigated. In addition, the amendment clarifies that an FSD that allows even a single discharge, even if unsafe to do so, will fail the testing procedure.

(c)(4) - Current regulations allow manipulation with a screwdriver at the conclusion of the Shock Test but did not place a time limit on the manipulation. This amendment places a two minute time limit on how long the manipulation attack may last.

(c)(5) - Current regulations specify the size of the pliers to be used in the Shackle or Cable Cutting Test, but do not specify where on the pliers the downward cutting force is to be applied. This amendment specifies that the cable cutting forces must be applied within a predetermined distance from the tip of the cutting blades to ensure that cutting forces are being applied equally in all laboratories.

(c)(6) - Current regulations specify the use of a drill during the Plug Pulling Test to facilitate the insertion of a screw. This amendment clarifies that the drill is not to be used by a laboratory technician as a means of attack, a common misunderstanding, but instead only as a means to insert the screw. This amendment also limits the manipulation by screwdriver to two minutes. In addition, it is clarified that screws used during this test are to be inserted as far as possible, but no further than 3/4". In some instances it was found that keyways were not 3/4" deep, so this amendment instructs laboratory technicians that the test shall still apply. For laboratory technicians, the amendment also includes the clarification that FSDs which break the screw during the Plug Pulling test should be found to "pass" the test.

(c)(7) - Current regulations instruct test technicians to insert a screwdriver into an FSD's keyway, which was not always possible without some manipulation. This amendment clarifies that laboratory technicians may tap the screwdriver into the keyway to facilitate insertion. In addition, laboratory technicians are informed that clockwise and/or counterclockwise torque may be applied to the keyway during the Plug Torque Test.

(c)(8) - Current regulations define the failure of an FSD, but do not detail how failure may occur. This amendment provides laboratory technicians several recently discovered methods of how an FSD may be disabled to encourage every laboratory to attempt these attack methods. In addition, while the current regulation states that 120 cutting cycles may be applied, this amendment clarifies for the test technicians that the Sawing Test can be applied to multiple locations of an FSD so long as no more than 120 cycles are applied to a single specified location. Finally, this amendment specifies a two minute limit for screwdriver manipulation.

(e) - Current regulations specify that the Drop Test is to apply to all FSD. This amendment exempts lock boxes that are too large or too heavy (110 inches combined length and girth, or more than 75 lbs.) from the Drop Test. The objective is to eliminate tests that cannot be performed in the laboratory or in the real world.

(e)(1) - Current regulations imply that the test firearm is to be loaded with a primed case prior to the test. This amendment clarifies, for test technicians, that lock boxes shall contain a firearm loaded with a primed case during the Drop Test.

Section 977.50

(b) - Current regulations imply that only safes tested by Underwriters Laboratories meet the Department's gun safe standard. This amendment clarifies that gun safes certified to Underwriters Laboratories Residential Security Container rating standards by any Nationally Recognized Testing Laboratory (NRTL) are considered acceptable. NRTL's are certified to conduct the Underwriters Laboratories Residential Security Container testing standards.

Section 977.51

(a)(2) - Current regulations require gun safe owners to document the make and model of gun safe that they own on a gun safe affidavit. This amendment recognizes that not all gun safes feature a make and model designation, and therefore, allows owners of gun safes to enter "unknown" as a valid entry in the make and model fields of the Affidavit Stating Ownership of an Acceptable Gun Safe and still be in compliance with the law.

Section 977.52 - NEW SECTION

- (a)(1-2) - Adopts a definition of satisfactory evidence of “lock box” style FSD ownership as: a receipt and affidavit of ownership that is signed under penalty of perjury that identifies the lock box by make and model, states that the lock box is capable of accommodating the firearm being purchased, and states that the lock box is listed on the Roster of Firearms Safety Devices Certified for Sale. The objective is to allow DOJ-approved lock box owners the opportunity to use the same lock box for multiple firearm purchases as long as the purchaser can demonstrate ownership and certifies that the lock box can accommodate the firearm being acquired.
- (b) - This amendment requires firearms dealers to maintain records of the affidavit/receipt for three years with the dealer’s record of sales. The objective is to ensure that dealers maintain a verifiable record of the affidavits to be presented during inspections by the Department.

DISCLOSURES AND DETERMINATIONS REGARDING THE REGULATIONS

1. Cost Estimate: The DOJ has determined that the regulations will involve no cost or savings to any State agency, no nondiscretionary costs or savings to local agencies, no reimbursable costs or savings to local agencies, and no costs or savings in federal funding to the State.

2. Cost to any local agency or school district which must be reimbursed in accordance with Government Code Section 17561: None.

3. Other non-discretionary cost or savings imposed upon local agencies: None.

4. Cost or savings in federal funding to the state: None.

5. Cost impact on private persons or directly affected businesses: None.

6. Significant adverse effect on business including the ability of California businesses to compete with businesses in other States: None.

7. Significant effect on housing costs: None.

8. Alternatives considered: The DOJ has determined that no alternative it has considered would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affected private persons than the emergency action and regulations.

9. Local Mandate Determination: DOJ has determined that these emergency regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

In accordance with Government Code Section 11346.3, the following are required responses as State agencies proposing to adopt or amend any administrative regulations shall

assess whether and to what extent it will affect the following:

- (a) The creation or elimination of jobs within the State of California: Minimal increase.
- (b) The creation of new businesses or the elimination of existing businesses with the State of California: Minimal increase.
- (c) The expansion of businesses currently doing business with the State of California: Minimal.