

PART A

NOTICE OF PROPOSED RULEMAKING

TITLE 11. DEPARTMENT OF JUSTICE

NOTICE OF PROPOSED RULEMAKING

PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Department of Justice (DOJ) proposes to amend and/or adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action. The Department proposes to amend sections 977.20, 977.43, 977.44, 977.45, 977.50 and 977.51, and adopt section 977.52 in Title 11, Division I, Chapter 12.6 of the California Code of Regulations (CCR).

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested person, or his authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on April 7, 2003. The Department will consider only comments received by that time. Submit comments to:

Mail: Steven Teeters, Analyst
Department of Justice
Firearms Information Services Section
P.O. Box 160487
Sacramento, CA 95816-0487
or,
Email: Steven.Teeters@DOJ.CA.GOV
or,
Fax: (916) 263-0676
Attn: Steven Teeters

AUTHORITY AND REFERENCE

Pursuant to authority given by California Penal Code (PC) section 12088.1 the Department plans to adopt the proposed and make amendments to existing regulations to make specific sections 12088 through 12088.9 of the Penal Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California Penal Code section 12088.1 requires the Department to establish exemptions from the requirement that all firearms sold or transferred include or be accompanied by a DOJ-certified firearms safety device. PC section 12088.2 requires the Department to develop regulations to implement minimum safety standards for firearms safety devices (FSD). In 2000 final regulations were adopted (Sections 977.10 through 977.90, of Title 11, of the California Code of Regulations) as required to implement the FSD law. The Department proposes to amend sections 977.20, 977.43, 977.44, 977.45, 977.50, 977.51 and adopt section 977.52. These sections relate to the safety standards for FSDs and gun safes, the development of testing standards relative to FSDs, and the establishment and maintenance of the Roster of Firearms Safety Devices Certified for Sale. The proposed regulations will provide clarification of definitions, testing standards, and establish the acceptability of a signed affidavit for qualifying “lock box” style FSDs.

977.20 (h)- Clarifies the definition of the term “Disabled” by identifying what constitutes the firing of a firearm.

977.43 (a), (c)(2)(B), (c)(3)(D)- Sets provision where DOJ-approved FSDs may be removed from the Roster of Approved Firearms Safety Devices whether the FSD was tested, or untested but approved under section 977.43 (c). Also allows DOJ to approve FSDs on a case-by-case basis without testing if they differ only superficially from FSDs that have already been DOJ-certified. Allows DOJ, as a condition of certifying untested FSDs, the option of requiring the manufacturer or dealer of the FSDs to make available a sample for evaluation.

977.44 (b), (e) - Requires FSDs to be activated immediately upon installation to ensure that the security the FSD provides is not delayed. Requires lock box style FSDs to prevent partial, or complete, removal of the firearm contained within the box. Establishes a 10-minute time period as the *approximate* time an FSD will be under attack with common household tools in accordance with the testing procedures (Regulations section 977.45).

977.45 (b)(7), (b)(9), (b)(12), (c)(2), (c)(4-8), (e), (e)(1) - Tests provided in this section (when applicable) should be performed on firearms that have not been disassembled. As a result of testing, an FSD that allows a single discharge, even if unsafe to do so, will fail the testing procedure. Lock box style FSDs must be tested with a small handgun inside the container, and those designed to hold long guns must be tested with a long gun inside the container. The Saw Test attacks can be applied to multiple locations on an FSD with no more than 120 cutting cycles applied to any one specified location. At the conclusion of testing, when applicable, the screwdriver manipulation should last no more than two minutes. The Cable Cutting Test forces must be applied within a predetermined distance from the tip of the cutting blades. Use of the drill during the Plug Pulling Test is only to facilitate the insertion of the screw, and not as a means to attack the FSD. Screws, as part of the Plug Pulling Test, are to be inserted as far as possible, but not to exceed 3/4 inch insertion. FSDs that break

the screw during the Plug Pulling Test will “pass” the test. Laboratory technicians may tap on the screwdriver to facilitate insertion into the keyway during the Plug Torque Test, and clockwise and/or counterclockwise torque may be applied. Lock boxes exceeding a specific size and weight are exempt from the Drop Test. Lock boxes shall contain a firearm loaded with a primed case during the Drop Test.

977.50 (b) - Allows gun safes that are certified to Underwriters Laboratories Residential Security Container rating standards by any Nationally Recognized Testing Laboratory (NRTL) to meet the gun safe standard.

977.51 (a)(2) - 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.

977.52 (a)(1-2), (b) - 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, states that the lock box is listed on the Roster of Firearms Safety Devices Certified for Sale. Requires firearms dealers to maintain records of the affidavit/receipt for three years with the dealer’s record of sales.

DISCLOSURES REGARDING THE PROPOSED ACTION

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Cost or savings to any state agency: None.

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

Mandate on local agencies and school districts: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Significant, statewide adverse economic impact directly effecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: Less than \$200 for a DOJ-certified Test Laboratory for the estimated cost of a small handgun required by testing procedures.

Adoption of these regulations will not:

1. Create or eliminate jobs within California

2. Create new businesses or eliminate existing businesses within California; or
3. Effect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Significant effect on small businesses: Less than \$200 for a DOJ-certified Test Laboratory for the estimated cost of a small handgun required by testing procedures.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention 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.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

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Firearms Information Services Section
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Telephone (916) 263-0849
Fax (916) 263-0676

The backup contact person for these inquiries is:

Lesla Saville, Manager
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PO Box 160487
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AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the entire rulemaking file available, upon completion, for inspection and copying throughout the rulemaking process. Please visit www.caag.state.ca.us/firearms/regs/index.html to obtain copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, or other information upon which the rulemaking is based. Inquiries concerning the substance of the proposed regulations may be directed to Steven Teeters.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the DOJ may adopt the proposed regulations substantially as described in this notice. If the DOJ 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 DOJ adopts the regulations as advised. Please visit www.caag.state.ca.us/firearms/regs/index.html to obtain copies of any modified regulations. The DOJ will accept written comments on the modified regulations for 15 days after the date on which they are made available. You can obtain a written copy of the documentation by contacting Steven Teeters.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion, please visit www.caag.state.ca.us/firearms/regs/index.html to obtain copies of the Final Statement of Reasons. Upon completion, you can obtain a written copy of the documentation by contacting Steven Teeters.