

**DEPARTMENT OF JUSTICE, FIREARMS DIVISION  
LABORATORY CERTIFICATION AND HANDGUN TESTING PROGRAMS**

**INITIAL STATEMENT OF REASONS**

**Hearing Date: October 23, 2000**

**Subject Matter of the Proposed Regulations:**

**Section 968.10      “Title”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Senate Bill 15 (Polanco) became effective January 1, 2000, and effective October 1, 2000, requires the DOJ to establish and maintain laboratory certification and handgun testing programs that will evaluate handgun functionality and safety. The law was enacted in order to establish a central, statewide roster of handguns that have been determined not to be unsafe. Serious concerns regarding handgun safety prompted the passage of the law.

Specific purpose of the regulation.

The proposed regulation will denote the title of the regulatory action.

Necessity.

Establishing a title for the regulatory action increases the general clarity of the regulatory action for persons affected by the proposed regulation.

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

The DOJ did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

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

No other alternatives were presented to or considered by the DOJ.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

## **Section 968.11 “Scope”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Senate Bill 15 (SB 15) became effective January 1, 2000, and effective October 1, 2000, requires the DOJ to establish and maintain laboratory certification and handgun testing programs that will evaluate handgun functionality and safety. The law was enacted in order to establish a central, statewide roster of handguns that have been determined not to be unsafe. Serious concerns regarding handgun safety prompted the passage of the law.

Specific purpose of the regulation.

The proposed regulation will specify the scope of the regulatory action.

Necessity.

Specifying the scope of the regulations increases the general clarity of the regulatory action for persons affected by the proposed regulations.

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

The DOJ did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

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

No other alternatives were presented to or considered by the DOJ.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

## **Section 968.12 “Exemptions for Compliance”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

The proposed regulations impose a number of deadlines on applicants, certified laboratories, and entities responsible for maintaining listings of models on the roster of certified handguns. There will be times when it would be beneficial to all parties to grant extensions of time only to these persons and/or entities.

Specific purpose of the regulation.

The proposed regulation will allow the DOJ to grant a specified extension of time for any deadline provided for in the proposed regulations.

Necessity.

There may be situations when laboratories, through no fault of their own or when there are 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 DOJ-Certified Laboratories that find themselves in such a situation.

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

The DOJ did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

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

No other alternatives were presented to or considered by the DOJ.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

## **Section 968.20 “Definition of Key Terms”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Various sections of the law and the proposed regulations use terms which require further clarification in order to fully understand and implement their intent.

### Specific purpose of the regulation.

The proposed regulation will define the following eighteen terms used in the laboratory certification process, handgun testing, and roster creation and maintenance: “BATF”; “COE”; “Completed Application”; “Compliance Test Report”; “Corporation”; “Day”; “DOJ”; “DOJ-Certification”; “DOJ-Certified Laboratory”; “Firm”; “Local License”; “Manufacturer/Importer”; “Model”; “Pistol”; “Reasonable access”; “Revolver” “Roster of Certified Handguns”; and “Standard Ammunition.”

### Necessity.

Defining the eighteen terms is necessary to promote a clear understanding of the law and proposed regulations. This understanding is crucial for the laboratories that wish to be certified to conduct handgun testing. In addition, manufacturers and/or importers must be able to understand the handgun 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 eighteen definitions in the proposed regulation:

- The United States Department of Justice, Office of Justice Programs, National Institute of Justice, Law Enforcement and Corrections Standards and Testing Program, Standard-0112.03; Autoloading Pistols for Police Officers
- Technical Correspondent’s Handbook, Section 15, Glossary of Industry Terms (Revised 1/31/00), Sporting Arms and Ammunition Manufacturers’ Institute, Inc.

The DOJ also considered the opinions of a number of firearms industry experts who were on the Senate Bill 15 Implementation Advisory Committee created by the DOJ. Documents that resulted from the advisory committee meeting are included in the rulemaking file.

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

Although no specific alternatives were formally presented to the DOJ, 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 be as effective and less burdensome to private persons.

The DOJ finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

## Section 968.30 “Who Must Be DOJ-Certified”

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Penal Code section 12130 requires the DOJ to certify laboratories to verify compliance with the standards defined in Penal Code section 12126.

Specific purpose of the regulation.

The regulation specifies that laboratories wishing to participate in the California Handgun Testing Program must be certified by the DOJ. It also specifies that a five percent or more change in ownership will require the submission of an application for DOJ-Certification by the proposed ownership entity or owners.

Necessity.

Laboratories interested in participating in the handgun testing program under the provisions of this law need to understand that they must first be certified by the DOJ. They must also 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.

The DOJ did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

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

No other alternatives were presented to or considered by the DOJ.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

## **Section 968.31 “Application for DOJ-Certification”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Penal Code section 12130 requires laboratories to be certified by the DOJ if they wish to participate in the California Handgun Testing Program. The DOJ needs to establish an application process to fulfill this statutory mandate.

Specific purpose of the regulation.

The proposed regulation will specify the information required on applications for DOJ-Certification. The laboratory information will allow the DOJ to identify the applicant and the agencies that have jurisdiction over the applicant. The application will also collect 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 no persons are affected by the denial criteria set forth in regulation. The application will also collect information regarding security procedures and prohibited persons which are further requirements of the regulations. The equipment and off-site location information will allow the DOJ to ensure that the applicant will have the required equipment, and allow the DOJ to inspect any off-site location to determine whether it is suitable for testing. 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.

Necessity.

The applicant information required (name, ownership, facility design, etc.) is needed so that the DOJ can identify applicants and confirm that the applicant has the equipment and facilities required to conduct the statutorily required testing. The information is also needed to ensure that an applicant 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 to the applicant for processing the application.

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 similar applicant programs such as dealer and manufacturer licensing. The DOJ also relied upon the application used by the United States Department of Justice, Office of Justice Programs, National Institute of Justice, for a similar national certification program.

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

The DOJ used a national certification program as a model for the state program. However, the scope and nature of the national program were above and beyond the scope and nature of state statute. Therefore, the national program was not a viable alternative. Accordingly, the DOJ eliminated those aspects of the application for the national certification program that exceeded or did not correspond with the requirements of state statute.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ finds that the alternative that was considered would not have been more effective in carrying out the purpose of the proposed regulation and would have been more burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

### **Section 968.32 “Pre-DOJ-Certification Requirements”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Penal Code section 12130 requires laboratories to be certified by the DOJ if they wish to participate in the California Handgun Testing Program. The DOJ needs to determine whether an applicant has the facilities, equipment, and ability required to properly conduct handgun testing.

Specific purpose of the regulation.

The proposed regulation will require that at least one person apply for and obtain a DOJ Certificate of Eligibility. The regulation will also specify the requirement that the applicant demonstrate its ability to conduct the required firing and drop tests.

Necessity.

The DOJ needs to be able to determine whether the applicant does in fact have the facilities, equipment, and ability required to properly conduct handgun testing. Furthermore, an integral part of the testing process is the possession of firearms that are being tested. Therefore, 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.

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

The primary technical document relied upon was the application used by the United States Department of Justice, Office of Justice Programs, National Institute of Justice, for a similar national certification program. The DOJ also relied upon the knowledge and experience it has gained from implementing similar programs.

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

The DOJ used a national certification program as a model for the state program. However, the scope and nature of the national program were above and beyond the scope and nature of state statute. Therefore, the national program was not a viable alternative. Accordingly, the DOJ eliminated those aspects of the national certification program that exceeded or did not correspond with the requirements of the state statute.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ finds that the alternative that was considered would not have been more effective in carrying out the purpose of the proposed regulation and would have been more burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

### **Section 968.33 “Grounds for Denial”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

DOJ-Certification is a privilege, not a right. Accordingly, there may be times when the DOJ will find it necessary to deny an application for DOJ-Certification. In addition, the applicant would have to be notified of that decision and have the ability to appeal.

Specific purpose of the regulation.

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

Necessity.

The nine grounds give the DOJ a clear picture of the ability and objectivity of the applicant laboratory. The applicants need to be given due process by establishing both the grounds for denial as well as the method for appeal of the denial.

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.

No other alternatives were presented to or considered by the DOJ.



Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

### **Section 968.34 “DOJ-Certification Period”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Conditions change. Accordingly, the DOJ needs to establish the term of the DOJ-Certification in order to allow for periodic inspections to ensure continuing compliance with the regulations and the law.

Specific purpose of the regulation.

The proposed regulation will specify a two-year term for the DOJ-Certification.

Necessity.

Prior to applying for DOJ-Certification, applicants should know the two-year term of the DOJ-Certification. The DOJ believes that the two-year term specified in the regulation will provide for adequate public protection without being overly burdensome on the DOJ-Certified 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.

No other alternatives were presented to or considered by the DOJ.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

### **Section 968.35 “Processing Times”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Pursuant to Government Code section 15376 the DOJ must specify time standards for processing applications for DOJ-Certification.

Specific purpose of the regulations.

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

Necessity.

Based on past experience with similar processes and the limited number of potential applicants, the DOJ believes that applications can be processed within these shortened 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.

No other alternatives were presented to or considered by the DOJ.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

## **Section 968.36 “Appeal Process”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Pursuant to Government Code section 15378 the DOJ must specify an appeal process for situations when it has failed to meet the specified time standards for processing applications for DOJ-Certification.

Specific purpose of the regulations.

The proposed regulation will establish 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.

Necessity.

This regulation is required pursuant to Government Code section 15378 which sets forth the remedy for failing to meet the specified deadlines.

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

The DOJ did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

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

No other alternatives were presented to or considered by the DOJ.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

## **Section 968.40 “Absence of Conflict of Interest”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Conflicts of interest would lead to the appearance or reality of a lack of objectivity, and conditions change. Accordingly, the DOJ must ensure that conflicts of interest that would warrant denial of an application are not permitted while the laboratory is certified.

Specific purpose of the regulation.

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

Necessity.

The four conflicts of interest could result in a lack of objectivity on the part of the DOJ-Certified Laboratory because a vested interest in a tested handgun 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.

No other alternatives were presented to or considered by the DOJ.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

## **Section 968.41 “Security and Safety”**

### Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Firearms that are to be tested need to be handled in a safe manner. Accordingly, the DOJ must establish the minimum security standards and safety requirements which must be met while the laboratory is certified.

### Specific purpose of the regulation.

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

### Necessity.

Since an integral part of the testing process is the possession of firearms that are being tested, 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, the standards that have been chosen allow the option of storing the firearms in either a U.L. approved safe or a secure room. Additionally, the posting of the warning notice will ensure that the laboratory does not drop test any loaded 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.

No other alternatives were presented to or considered by the DOJ.

### Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

## Section 968.42 “Licensing/Minimum Standards Compliance”

### Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

An integral part of the testing process is the possession of firearms that are being tested. Local, state, and federal law prohibits certain persons from possessing firearms. If any such persons are employed by an applicant laboratory, they should not be allowed to come into contact with the handgun models being tested. In addition, most businesses that deal with firearms are required to obtain other licenses and/or permits in order to operate. Finally, certain equipment is required in order to conduct certain portions of the required testing.

### Specific purpose of the regulation.

The proposed regulation requires the DOJ-Certified Laboratory to ensure they are in compliance with federal state, or local laws as well as licensing and approval requirements that relate to handgun testing and the business enterprise. The regulation also requires the DOJ-Certified Laboratory to inform staff of laws relating to firearms possession prohibitions as well as ensure proper firearms possession. Finally, the DOJ-Certified Laboratory must possess the equipment required by regulation.

### Necessity.

DOJ-Certified Laboratories should be required 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 DOJ-Certified Laboratory. In addition, the DOJ-Certified Laboratory should be required to be in compliance with laws and licensing requirements that relate to their 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.

No other alternatives were presented to or considered by the DOJ.

### Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

**Section 968.43 “Which Handguns Must be Tested, Who May Submit Handguns, Submission Requirements”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Generally, modifications to a handgun model would invalidate the results of the required testing. However, certain model changes are permitted by law. In addition, pursuant to statute not all persons are permitted to submit handguns for testing. Furthermore, during testing DOJ-Certified Laboratories are required to operate the handgun, identify the required safety device, and clean and maintain the handgun. The laboratory must also identify the proper ammunition to be used during the firing test. Moreover, cartridges or calibers of ammunition that may be developed in the future may lead to testing problems.

Specific purpose of the regulation.

The regulation will note that the modification of a handgun after certification is granted shall result in immediate removal from the roster of certified handguns. The regulation also identifies the method for reviewing certain changes in a handgun model to determine whether it is statutorily exempt from separate testing based on an already tested model. Moreover, the regulation restricts the persons who may submit a handgun model for testing to the DOJ or the handgun manufacturer or importer. The regulation also requires the manufacturer or importer to provide three handguns of each model as well as field disassembly/assembly instructions, cleaning instructions, a description of safety features, and information regarding ammunition. Also, the manufacturer or importer will be able to provide any other information they believe may be needed for proper and safe operation of the handgun. The manufacturer or importer will be able to provide or inspect the ammunition used during the firing test. Finally, the DOJ may authorize the use of “non-standard” ammunition that may be developed in the future provided such ammunition is commercially produced and factory loaded.

Necessity.

Manufacturers or importers need to know what is expected of them when they submit a handgun model for testing, and the consequences of modifications made after certification is granted. They also need to know that the DOJ will review requests to add a handgun to the roster of certified handguns on a case-by-case basis. In order to properly and safely conduct the required tests, DOJ-Certified Laboratories need information regarding field disassembly/assembly, cleaning, safety features, and ammunition. Allowing the manufacturer or importer to provide or inspect the ammunition used for testing helps ensure that the proper ammunition is used and may help reduce the costs of the testing. Allowing the use of “non-standard” ammunition will allow manufacturers to develop new products that use ammunition that is not yet available for purchase at consumer-level retail outlets.

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

The technical document relied upon was the United States Department of Justice, Office of Justice Programs, National Institute of Justice, Law Enforcement and Corrections Standards and Testing Program, Standard-0112.03; Autoloading Pistols for Police Officers.

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

The DOJ used the national standards as a model for the state program. However, the scope and nature of the national standards were above and beyond the scope and nature of state statute. Therefore, the national standards were not a viable alternative. Accordingly, the DOJ eliminated those aspects of the national standards that exceeded or did not correspond with the requirements of the state statute.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ finds that the alternative that was considered would not have been more effective in carrying out the purpose of the proposed regulation and would have been more burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

#### **Section 968.44 "Testing Procedures"**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

The DOJ needs to ensure that the testing is being performed properly. Certain aspects of the testing need further clarification. This includes the identification of the required safety device, the order in which the testing must be performed, the ammunition and cartridge to be used, the drop test height, the primed cases to be used, and how to test pistols with multiple chambers and/or firing pins, as well as damaged pistols. Additionally, a manufacturer or importer could supply lower powered or less explosive ammunition which would not fully test the functionality and safety of the handgun. Damage caused during one or more of the first five drop tests would render the handgun incapable of firing a primed case; thereby invalidating any subsequent drop tests.



### Specific purpose of the regulation.

The regulation will allow representatives of the DOJ and manufacturer or importer to be present during testing, but provides that they shall not participate in the testing. The regulation also clarifies how the statutorily required safety device will be identified as well as the steps the DOJ-Certified Laboratory must take if identification of the device is difficult including a preliminary determination regarding the device and the method for reporting this determination to the DOJ. The regulation also clarifies the definition of a “malfunction,” identifies the criteria the ammunition and cartridge must meet, clarifies the drop test height and the condition of the handgun when dropped, identifies the criteria the primed cases must meet, describes how to test a pistol with multiple chambers and/or firing pins, provides that minimal damage need not be repaired after each of the first five drop tests unless the damage affects the handgun’s ability to fire a primed case, provides that the laboratory must determine whether a handgun model is capable of firing a primed case after each of the first five drop tests, and requires that the primed case be fired after each drop test to ensure that the primer was functional. The regulation further allows the DOJ to collect samples of testing materials.

### Necessity.

The DOJ and manufacturers and importers need to be able to ensure that the testing is being performed properly. The DOJ also needs to eliminate to the greatest extent possible any confusion regarding the statute’s requirements. The DOJ must ensure that a manufacturer or importer is not able to thwart the intent of the statute by purposely supplying underpowered ammunition that will not fully test the functionality and safety of the handgun. In addition, the DOJ must ensure that each of the six drop tests is valid. Accordingly, based on the above considerations the DOJ has determined that these requirements are needed to ensure that the testing is not invalidated by the deliberate or inadvertent actions of the manufacturer, importer, or DOJ-Certified Laboratory.

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

The DOJ did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

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

No other alternatives were presented to or considered by the DOJ.

### Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

### **Section 968.45 “Test Reporting”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Reports regarding handguns that failed the required testing could be used in subsequent litigation regarding the model, manufacturer, and/or importer. Additionally, those handguns that pass the test need a standardized method of reporting as well as time limits for reporting the results and making a determination regarding whether the handgun can be sold in California. Manufacturers and importers may make claims that are not supported by the required testing.

Specific purpose of the regulation.

The proposed regulation requires that laboratories report only the results of tests that certify a handgun model has passed the required testing, identifies the information and things that must accompany the report and further allows the development of automated reporting formats. The regulation further requires that the report be submitted within ten working days, and provides that a late report does not invalidate the results of the test. Finally, the regulation prohibits a manufacturer or importer from asserting that a handgun has passed the required testing until they are notified by the DOJ that the model can be sold in California.

Necessity.

A handgun that has been determined not to be unsafe needs to be added to the roster of certified handguns as soon as possible 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. Finally, manufacturers and importers should be prevented from making untrue or premature statements regarding the results of the testing.

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

The DOJ did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

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

No other alternatives were presented to or considered by the DOJ.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

#### **Section 968.46 “Required Records, Retention Periods, Reporting Changes”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

The DOJ needs to be able to ensure that DOJ-Certified Laboratories are properly conducting tests and are complying with requirements established by statute and regulation. Records are needed to support this compliance. In addition, questions may arise regarding the testing results after a DOJ-Certified Laboratory determines that a handgun is not unsafe. Proper records would facilitate answering any such questions. Additionally, the information relating to ownership, personnel, equipment, and facilities needs to be current.

Specific purpose of the regulation.

The proposed regulation will specify the record keeping requirements for DOJ-Certified Laboratories to include information sufficient to support any and all Compliance Test Reports as well as information relating to off-site locations, security, personnel, and ownership. The proposed regulation will allow DOJ-Certified Laboratories to maintain any records they deem necessary. The regulation will also establish a ten working day deadline for reporting changes relating to ownership, personnel, equipment, and facilities.

Necessity.

The 11 categories of information are necessary to ensure a full substantiation of the testing procedures and results for a given handgun. These records will also help determine if a DOJ-Certified 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 will both help protect public safety and meet other requirements of statute and regulation. The ability of the DOJ-Certified 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. This will ensure that these records are as up-to-date as possible. Five years was deemed to be a sufficient period of time to keep the records.

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.

No other alternatives were presented to or considered by the DOJ.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified. The regulation requires only minimal record keeping.

#### **Section 968.47 "Off-Site Location"**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

A DOJ-Certified Laboratory may need to utilize equipment and/or locations that are not situated at their primary place of business. This would be especially beneficial to smaller laboratories. However, allowing an unlimited number of off-site locations would greatly increase application costs and inspection time, and the process for obtaining approval of an additional off-site location needs to be defined.

Specific purpose of the regulation.

The proposed regulation will specify the conditions under which an applicant would be allowed to use one off-site location. It will also specify the conditions which would cause the DOJ to prohibit the applicant from using an off-site location. The regulation identifies the method for requesting an additional off-site location and requires the laboratory to pay the actual reasonable costs incurred during an inspection of any additional off-site location.

### Necessity.

The DOJ needs to be able to ensure that an off-site location is suitable for conducting testing. The DOJ also needs to limit the number of off-site locations that are included in the processing of an application in order to keep the application costs as reasonable as possible. Laboratories need to know the grounds which would cause the DOJ to prohibit the use of off-site locations. 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.

No other alternatives were presented to or considered by the DOJ.

### Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

## **Section 968.48 "Inspections"**

### Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

DOJ-Certified Laboratories are required to comply with various statutes and regulations that deal with issues such as testing procedures, record keeping, use of off-site facilities, and submitting test reports. The DOJ needs to be able to ensure that DOJ-Certified Laboratories are properly conducting tests and are complying with requirements established by statute and regulation, and procedures to notify the DOJ-Certified Laboratory of the results of any inspections need to be established.

### Specific purpose of the regulation.

The proposed regulation will allow duly authorized DOJ representatives to inspect the facilities and records of DOJ-Certified Laboratories and to observe handgun testing. The regulation also requires that the DOJ conduct an on-site inspection within six months of certifying a laboratory. The 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 DOJ-Certified Laboratories to submit a monthly schedule of days on which they will perform testing.

### Necessity.

The DOJ needs to be able to review records and observe testing in order to determine whether DOJ-Certified Laboratories are properly conducting the required testing. The DOJ also needs to be able to ensure that DOJ-Certified Laboratories are in compliance with statutory and regulatory requirements such as security of firearms, and that they are independent and impartial testing facilities. The DOJ needs the testing schedule to conduct any unannounced inspections that are deemed necessary to determine compliance with program requirements, and needs to be able to ensure that DOJ-Certified Laboratories complete any required corrective actions.

### 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.

No other alternatives were presented to or considered by the DOJ.

### Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

## **Section 968.50 “Application Fees”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Penal Code section 12130 authorizes the DOJ to recover the full costs of administering the entire certification process by collecting fees from applicants for DOJ-Certification.

Specific purpose of the regulation.

The proposed regulation will establish an initial application fee of \$1,600 for the initial two-year DOJ-Certification and a renewal fee of \$800 every two years thereafter. The regulation also requires that the DOJ-Certified Laboratory pay the costs, not to exceed \$1,500, incurred during a post-DOJ-Certification compliance inspection and the actual reasonable costs incurred during any inspection of an additional off-site location.

Necessity.

The \$1,600 initial application fee was established based upon the following criteria: the costs of receiving and processing the application; scheduling and conducting the on-site pre-DOJ-Certification inspection; and travel costs associated with travel to applicant laboratories. Since this is a new process, staffing and travel costs are higher due to the need to hire and train personnel. The DOJ anticipates that the work involved in this process will take more than 160 hours and that travel costs will be nearly \$8,000. The initial processing and application work will be done primarily by more costly Associate level staff. These costs were spread over the seven anticipated applications. The cost of the post-DOJ-Certification inspection, which will only be conducted for successful applicants, are the actual costs of the inspection trip, not to exceed \$1,500. The DOJ set the limit at \$1,500 based upon the costs of past out-of-state trips and to assure DOJ-Certified Laboratories of an upper cost limit. The \$800 renewal fee was established based upon the following criteria: the costs of preparing, mailing, receiving, and processing the renewal application; and travel costs associated with travel to applicant laboratories. The staffing costs for renewal inspections are lower due to the fact that the inspection will be conducted by existing trained staff; however, the majority of the renewal related work will be performed by less costly clerical personnel. The DOJ anticipates that the work involved in this process will take about 60 hours and that travel costs will be approximately \$4,600. These costs were spread over the seven anticipated DOJ-Certified Laboratories. The costs associated with the inspection of off-site locations will be the actual reasonable costs incurred, since it was impossible to foresee how many off-site locations would be requested by each applicant or where the locations might be. More importantly it is not fair to require that the costs for inspecting additional locations be paid by applicants that do not request any additional locations. The associated costs will be based upon travel, manpower, and per diem. Documentation for these costs will be provided to the affected parties.

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.

No other alternatives fee amounts were presented to or considered by the DOJ.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation. Because the statute mandates that the DOJ's costs be offset through certification fees, the fiscal impact is unavoidable.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

### **Section 968.60 "DOJ-Certification Revocation"**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Penal Code section 12130 authorizes the DOJ to certify qualified, independent laboratories. A process of DOJ-Certification revocation must be established if the laboratory no longer qualifies under or if they fail to comply with the regulations and firearms laws.

Specific purpose of the regulation.

The proposed regulation will specify the four grounds for which a DOJ-Certification may be revoked. The regulation also requires that any revocation action be conducted in accordance with the Administrative Procedure Act, commencing with section 11500 of the Government Code, and that revoked laboratories will be removed from the roster of certified laboratories.

Necessity.

The DOJ needs to be able to ensure that DOJ-Certified Laboratories conduct tests fairly, impartially, and properly, and that they are in compliance with the regulations and firearms laws. This will help ensure that the handguns tested and reported to the DOJ can be relied upon, and that listing these handguns on the DOJ roster of certified handguns will not endanger the public safety. In addition, laboratories need to know the grounds for revocation, and the manner in which any revocation action would be conducted.

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.

No other alternatives were presented to or considered by the DOJ.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

### **Section 968.70 "DOJ-Certification Renewal Procedures"**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Penal Code section 12130 authorizes the DOJ to certify qualified, independent laboratories but does not define the procedures for renewal of the DOJ-Certification.

Specific purpose of the regulation.

The proposed regulation will establish the renewal procedures and time frames applicable to the DOJ and DOJ-Certified 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 inspections during the two year term of the renewed DOJ-Certification. The costs of this inspection are included in the renewal fee.

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 be as effective and less burdensome to private persons.

The DOJ finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

**Section 968.71 “DOJ-Certification after Expiration”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Penal Code section 12130 authorizes the DOJ to certify qualified, independent laboratories but does not define the procedures for re-certification after expiration of a DOJ-Certification.

Specific purpose of the regulation.

The proposed regulation will establish that after expiration of a DOJ-Certification the person, firm, or corporation must apply for DOJ-Certification and pay the initial application fee.

Necessity.

Laboratories that allow their DOJ-Certifications to expire need to know what steps they must take in order to be re-certified. 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.

No other alternatives were presented to or considered by the DOJ.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

**Section 968.80 “Service of Notices, Orders, and Communications”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

The DOJ will be required to correspond with applicant and DOJ-Certified Laboratories in order to establish and maintain the laboratory certification and handgun testing programs. This will include notices and orders dealing with administrative actions which must be served on an applicant or DOJ-Certified Laboratory.

Specific purpose of the regulation.

The proposed regulation will inform applicant and DOJ-Certified Laboratories of the method that the DOJ will use for sending or transmitting notices, orders, and/or communications. The DOJ will use the address on the application for DOJ-Certification or the DOJ-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 the mailing.

Necessity.

Communication by regular mail, electronic transmission, and/or common carrier will facilitate and expedite the transfer of necessary information. The applicant or DOJ-Certified Laboratory needs to know how notices and orders will be served and when the time specified in the mailing commences to run. First-class mail is an easily provable means of service and was chosen on this basis.

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

The DOJ did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

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

No other alternatives were presented to or considered by the DOJ.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

**Section 968.90 “Roster of Certified Handguns”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Handgun models cannot be sold in California until they are listed on the roster of certified handguns. Therefore, those handgun models that pass the required testing need to be added to the roster as quickly as possible. In addition, Penal Code section 12131 specifically allows the DOJ to remove a handgun from the roster of certified handguns in specified situations. There may also be times when the DOJ needs to remove a handgun from the roster including situations where the entity that is responsible for paying the fee to maintain a handgun on the roster is either no longer able or willing to pay the fee. Finally, the manufacturer needs to know how to add to the roster certain handguns that were previously listed.

Specific purpose of the regulation.

The proposed regulation requires that within ten days of receipt of the required test report and specified documentation and fees the DOJ will determine whether a handgun model is not unsafe and may be sold in California. The regulation also specifies that the handgun will be added to the roster of certified handguns for one year once this determination is made. The regulation further specifies how a handgun can be statutorily added to the roster of certified handguns without separate testing, specifies how a handgun can be removed from the roster, identifies the requirements for the continued listing of a handgun in situations where the handgun would otherwise be removed from the listing, and identifies how to add to the roster certain handgun models that were previously listed.

Necessity.

Manufacturers and importers need to have a handgun model added to the list as quickly as possible, since the model cannot be sold until it is listed. Accordingly, ten days was deemed to be a reasonable amount of time for the DOJ to make a determination regarding whether a handgun is not unsafe and can be sold in California. The one year listing period is statutorily mandated. Additionally, since the statute authorizes a method for listing without separate testing, a procedure that parallels the procedure for tested handguns is established to accomplish this goal. Furthermore, as required by statute, if a modification to a handgun is made or if a finding that a handgun is unsafe is made, the handgun must be removed from the roster. Finally, manufacturers or importers are allowed to add a handgun that was previously listed, because it would serve no purpose to retest a handgun that had not been modified.

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.

No other alternatives were presented to or considered by the DOJ.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

#### **Section 968.91 “Roster of Certified Handgun Listing Renewal Procedures”**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Penal Code section 12131 authorizes the DOJ to charge an annual fee for listings on the roster of certified handguns, but does not identify the mechanism for assessing or collecting this fee.

Specific purpose of the regulation.

The proposed regulation requires that a listing be renewed prior to expiration. The regulation also establishes the renewal procedures and time frames applicable to the DOJ and affected parties, and the consequences of failing to renew.

Necessity.

The DOJ needs adequate time to ensure that the roster is maintained in accordance with statutory mandates. For example, if the fee is not paid, the statute requires that the listing be removed from the roster immediately. Otherwise, the roster would be inaccurate. The DOJ will send a renewal notice which indicates the renewal fee 60 days in advance of expiration to ensure that the process is as timely and efficient as possible.

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.

No other alternatives were presented to or considered by the DOJ.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.

### **Section 968.95 "Fees for the Roster of Certified Handguns"**

Public problem, administrative requirement, or other condition or circumstance that the regulation is intended to address.

Penal Code section 12131 authorizes the DOJ to recover the full costs of preparing and administering the roster of certified handguns and the program infrastructure costs necessary to implement the overall program by collecting fees from handgun manufacturers, importers, and other entities for each handgun listed on the roster. Costs include upgrading computer systems to include the roster, and building and equipping the vault that will be used to store prototype handguns. Furthermore, infrastructure costs do not change after implementation.

Specific purpose of the regulation.

The proposed regulation will establish an initial fee of \$200 for a handgun to be listed on the roster for the first year and an annual fee of \$200 for maintaining the listing each year thereafter.

Necessity.

The \$200 initial listing fee was established based upon the following criteria: the costs of receiving, evaluating, and processing the Compliance Test Reports including handling the prototype handguns; the costs of preparing the notifications to the manufacturer or importer that their handguns are not unsafe and can be sold in California; the costs of creating and maintaining a database of handgun listings; the costs of creating and maintaining the roster of certified handguns; and costs of building and equipping the vault in which the prototype handguns will be stored. The costs include the salaries for one and one-third Associate level positions and the associated operating expenses, including travel, and equipment for these positions. The costs also include the salary for part-time legal counsel, the estimated costs for developing and upgrading the required data systems (roster of certified handguns, Dealer Record of Sale system, etc.), and building and equipping the vault in which prototype handguns will be stored. These anticipated costs of approximately \$280,000 per year were spread over the 1,400 anticipated handgun models. Since the on-going costs associated with maintaining the roster do not decrease substantially from the costs associated with the initial listing, the annual maintenance fee is also

\$200. The DOJ plans to review these charges on a periodic basis to determine whether changes are necessary or warranted.

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.

No other alternatives fee amounts were presented to or considered by the DOJ. This is the fee amount necessary to generate revenue sufficient to cover all of the DOJ's costs relative to DOJ-Certification.

Alternatives to the proposed regulatory action that would be as effective and less burdensome to private persons.

The DOJ did not identify any alternatives that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation. Because the statute mandates that the DOJ's costs be offset through certification fees, the fiscal impact is unavoidable.

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

The DOJ finds that the proposed regulation would not have any adverse impact on small businesses, thus no alternatives were identified.