

# **Regulations for Laboratory Certification and Firearms Safety Device (FSD) Testing**

## **FINAL STATEMENT OF REASONS**

### **Update to Initial Statement of Reasons**

#### **Section 977.10 - “Title and Scope”**

There is no information to be updated. This section was adopted as originally proposed.

#### **Section 977.15 - “Extensions for Compliance”**

There is no information to be updated. This section was adopted as originally proposed.

#### **Section 977.20 - “Definition of Key Terms”**

##### *977.20 (d)*

Comments regarding this section addressed the definition of “common household tools.” The definitions as originally noticed to the public (March 2, 2001 through April 16, 2001), were based on the results of the common household tool survey. Because some tools identified during the survey, such as a hammer, could be available in a number of sizes, it was requested that the department provide more descriptive definitions of the common household tools. Length, size and power ratings of the most commonly purchased and available tools were included in the revised common household tool definition and adopted into these regulations. A related comment was directed toward the use of lineman pliers during the testing procedures and its absence from the list of common household tools. This comment resulted in no change, because although the lineman pliers were not included on the list of common household tools they are a necessary part of the testing procedure. Lineman pliers were chosen as the single tool to perform the cutting attack because of their ability to replicate the cutting attack of a variety of tools listed on the common household tool list. It is necessary for the test procedures to replicate attacks by common household tools, but for consistency and accuracy not all tests will be performed using items from the common household tool list. During the second 15-day comment period (May 29, 2001 through June 13, 2001), the definition of a common household screwdriver was broadened to include a range of commonly sized screwdrivers instead of an averaged size. A contributor suggested that during their household research they could find no screwdrivers larger than a 3/8" blade or 1/4" Phillips and therefore these should be the sizes listed in the definition. The department made no additional changes based on this comment because the common household tool list was not assembled to identify a single sized screwdriver, but a range of commonly available sized screwdrivers including those that are larger and smaller than observed by the contributor.

A contributor's request for the list of common household tools to be suggestive rather than finite was not adopted by the department. A suggestive list of common household tools would become arbitrary and the testing procedures would be limited only by the laboratory's imagination and their compliment of tools. This type of testing and compliment of tools would not be possible to apply consistently from one laboratory to another. Anything other than a finite list would produce an inconsistent testing environment. The list of common household tools remains finite.

A contributor requested definitions for the words "lock" and "vault." The definition of common household tools does not include these terms and the comment resulted in no change to the regulations. The term lock is already defined within the regulations by way of the minimum design requirements. The request to define the term "vault" was tied to a request that vaults be included as an alternative to a firearms safety device or safe so that a consumer could build a vault instead of purchase a certified firearms safety device. The use of the word "vault" in the regulations is for the benefit of certified laboratories and their firearms inventory storage, and is not intended to be an alternative to a firearms safety device or safe. For these reasons, the department did not see the need for exclusive definitions.

A contributor requested that drill bits be defined as part of the common household tool list because drill bits made of different materials would allow greater or lesser success in attacking a firearms safety device. The definition of common household tools noticed to the public does not include drill bits. The comment resulted in no change to the regulations because language that would have allowed an independent attack by drill and bit (see Section 977.45 - Testing Procedures of the Final Statement of Reasons), and would have justified an exclusive definition for drill bits, was struck from the regulations. Although, a drill and bit will still play a limited role in a single testing procedure, the type of drill bit used is not critical to the test performed and will not be provided an exclusive definition. Additionally, the size of drill bit the drill's chuck will accept was not defined because only a single standard size drill bit is used in the testing procedures. Setting a minimum or maximum drill bit size the chuck can accept is not relevant to the test being performed. An additional request for the list of common household tools to specify if drill motors had single or variable speeds did not result in a change to the regulations. The variability of drill motor speed is not relevant to the plug pulling test and therefore will not be further defined. Reduced drilling speeds are used most often to reduce drill bit wear and would have no bearing on the success or failure of the plug pulling test, while higher drill speeds are limited by the power ratings of the drills defined on the common household tool list.

A comment concerned with the department's apparent inability to suspend or revoke a COE holder resulted in no change, because the authority to suspend or revoke a COE holder is outlined in Section 977.42.

### **Section 977.30 - "Who Must be a Certified FSD Laboratory"**

There is no information to be updated. This section was adopted as originally proposed.

**Section 977.31 - “Application for Firearms Safety Device Laboratory Certification”**

Section name was changed to include the words “Firearms Safety Device Laboratory” to provide clarification.

**Section 977.32 - “Pre-Certification Requirements”**

There is no information to be updated. This section was adopted as originally proposed.

**Section 977.33 - “Grounds for Denial”**

There is no information to be updated. This section was adopted as originally proposed.

**Section 977.34 - “Certification Period for Certified FSD Laboratories”**

Section name was changed to include the words “for Certified FSD Laboratories” to provide clarification.

**Section 977.35 - “Processing Times”**

There is no information to be updated. This section was adopted as originally proposed.

**Section 977.36 - “Appeal Process”**

There is no information to be updated. This section was adopted as originally proposed.

**Section 977.40 - “Absence of Conflict of Interest”**

There is no information to be updated. This section was adopted as originally proposed.

**Section 977.41 - “Security and Safety”**

*977.41 (a)*

A contributor addressed the differences in firearm storage requirements for laboratories and gun owners. The regulations outline the storage requirements for firearms within a Department of Justice (DOJ)-certified laboratory’s inventory for purposes of conducting firearms safety device certification, and the contributor may have confused their storage requirements with the exemption provided by the legislature for a firearm purchaser or transferee who owns a gun safe. This comment resulted in no change to the regulations because the legislation specifically provides an exemption to firearm purchasers or transferees who own safes, and if the Legislature intended the exemption to extend to gun owners who had the same facilities as a certified laboratory, it would have made this clear in the statute.

*977.41 (a)(6)*

A contributor stated that the 10 working day time period a certified laboratory is given to report a lost or stolen firearm to the department was too long a time period. This comment resulted in no change to the regulations because the reporting requirement is only for the benefit of the department and the firearms safety device testing programs, and does not relieve the laboratory of any other state or local requirements in reporting the loss or theft of a firearm(s).

*977.41 (b)(4)*

A comment stated that the warning sign to be posted within the test laboratory facility did not contain the word “warning.” The comment resulted in no change because the content, size and conspicuous location of the sign provide the necessary admonition without “warning” being included in the text.

**Section 977.42 - “Licensing/Minimum Standards Compliance”**

There is no information to be updated. This section was adopted as originally proposed.

**Section 977.43 - “Firearms Safety Devices Testing and Submission Requirements”**

*977.43 (a)*

A comment claimed that the regulations did not contain an adequate remedy for a consumer who bought a defective device, or whether the device would be retested if found to be defective. No changes were made to the regulations because Penal Code Section 12088.4, quoted in the same subsection, provides the remedy for recall. Retesting, if necessary, is resolved in 977.85 of these regulations.

*977.43 (b)*

A comment regarding subsection (b) stated that in the initial statement of reasons it is “required” that the firearms safety device manufacturer supply information to the laboratory for proper and safe operation of the device, while in the regulations it is stated that the firearms safety device manufacturer “may” provide this information. The comment resulted in no change to the regulations. The department did not incorporate the exact language from the initial statement of reasons because it did not want to prevent the exchange of information between manufacturers and test laboratories, but would not require an exchange of information if it was not necessary.

*977.43 (c)(2)*

A contributor requested that prototypes submitted for testing be allowed to have modifications to non-locking parts and still maintain certification. This resulted in no change to the regulations because the permitted changes are already addressed in this section. The department found that modifications other than those already noticed could jeopardize the performance of the firearms safety device and would require a new test.

## **Section 977.44 - “Firearms Safety Device Standards”**

### *977.44 (a)(1)*

A comment regarding subsection (a)(1) requested an allowance for combination locks to have their combinations preset at the factory. As written, the regulations do not address this issue and this comment resulted in no change because the factory set combination is irrelevant so long as the firearms safety device can pass the standards and testing procedures outlined in the regulations.

### *977.44 (a)(2)*

Comments regarding subsection (a)(2), stated that there should be a minimum number of keys produced for each firearms safety device. These regulations do not address the number of keys that need to be produced and the number of keys the manufacturer makes available was determined to be irrelevant. Locks will need to pass the testing procedures outlined in these regulations and show that the keys are unique before they can be certified. For purposes of these regulations, keys that are common items, like a coin or screwdriver, will not pass the “unique key” standard.

### *977.44 (d)*

A comment regarding subsection (d), the requirement that a firearms safety device be designed and intended by the manufacturer to be capable of repeated use was rewritten to provide clarity. The intent of the statement did not change, but the new sentence structure will prevent multiple interpretations.

## **Section 977.45 - “Testing Procedures”**

### *Opening Statement*

The testing procedures originally noticed to the public included an opening statement instructing a certified laboratory to perform an independent attack with any of the common household tools. During the initial public comment period (March 2, 2001 through April 16, 2001), there were numerous comments concerned that the independent attack would not be consistent among test personnel or laboratories. Based on these comments, the department struck language that would allow an independent attack and instructed laboratories to perform only the testing procedures outlined in these regulations. The department’s decision to strike an independent attack was to insure there was consistency in the tests being performed on each device. There were also comments regarding the time limits used during some of the tests, the request for a longer test, and a requested reduction in attack time for devices with sounding alarms. These comments resulted in no change because the approximate 10-minute time period chosen for the testing procedures was established by the protocols in Title 16 of the Federal Code of Regulations, referenced in the statute. The precedence established by the protocols allows for a rigorous but reasonable attack time expected of a child who would attack a firearms safety device. Finally, a comment suggested that only handguns listed on the department’s “Roster of Handguns Certified for Sale” should be used in testing firearms safety devices. The comment resulted in no change because the legislature did not limit the statute to handguns, and the statute will apply to many

firearms not on the roster. For these reasons, firearms used in certification will not be limited to those found on the roster.

A contributor requested that the testing procedures include a test certifying a firearms safety device's ability to prevent the partial destruction of a firearm by verifying its ability to fit on firearms with a specific sized trigger guard. No changes resulted from this comment, as not all devices secure a firearm by way of the trigger guard. While it is anticipated that some firearms safety device manufacturers will volunteer this information, it will not become part of the testing procedures.

*977.45 (a)*

A comment requested that a firearms safety device submitted for testing be rejected if the laboratory needed to ask the manufacturer for guidance regarding the device's characteristics, handling and/or operation because the directions were not complete. The comment resulted in no changes because the testing procedures require that the firearms safety device be properly installed and tested, and this may require consultation with the firearms safety device manufacturer.

*977.45 (b)(2)*

A comment requested that the testing procedures be performed in temperature extremes, both hot and cold. No changes were made to the regulations based on this comment because the temperatures at which the testing procedures will be performed (61-81 degrees Fahrenheit) are typical of those found in and around a home. Additionally, they are the same temperatures at which the incorporated American Society for Testing and Materials (ASTM) Standard Performance Specification for Padlocks F883-97 tests are performed.

*977.45 (b)(6)*

Comments addressed the testing procedure which instructs laboratories to test a firearms safety device on a loaded firearm, but to also follow the firearms safety device manufacturers' instructions which often instruct the user to not install the device on a loaded weapon. To clarify, language was noticed and adopted instructing the laboratory to follow the firearms safety device manufacturer's instructions for installation "unless otherwise stated in these regulations." This revised statement, and statements in the same subsection were necessary so that the laboratories could test a firearms safety device's ability to prevent accidental discharge while installed on a loaded firearm. This test is to insure that the certified firearms safety devices meet the requirements of the statute.

*977.45 (b)(7)*

As the result of a department inspection of a DOJ-certified laboratory, subsection (b)(7) was added. The initial test procedures required the firearms safety devices to be tested while they were installed on a firearm. Test fixtures used in some testing procedures did not always perform as intended when used on large or cumbersome firearms safety devices that were installed on a firearm. Yet, the test fixtures were necessary to provide reliable and repeatable tests. The department determined that some tests could be performed without the firearms safety device being installed on the firearm (e.g., a cable cutting test could typically be performed whether or

not the cable lock was installed on a firearm). This allowance is only for instances where the measurable forces are applied to areas of the firearms safety device that would be exposed when the device was properly installed. The purpose of adopting this language was to insure that the test fixtures replicate a firearms safety device attack accurately and consistently. This subsection was also changed to reflect a nonsubstantial grammatical correction.

*977.45 (b)(8)*

Subsection (b)(8) was renumbered with the addition of subsection (b)(7). Comments regarding the subsection requested more detail on defining partial destruction. The regulations as originally noticed to the public define and provide examples of a disabled device by way of partial destruction. The comments resulted in no changes to the regulations because the department believes that the terms are understood when used in the context of a visual inspection and the tool and time allowances. Finally, the subsection was changed to reflect a nonsubstantial grammatical correction.

*977.45 (b)(9)*

Subsection (b)(9) was renumbered with the addition of subsection (b)(7). A statement was added and adopted to this subsection requiring the certified laboratory to test a firearms safety device with a primed case installed in the test firearm even if this is contrary to the firearms safety device manufacturer's instructions. The change was necessary because of the changes made to subsection (b)(6). Despite comments claiming that performing tests on a loaded firearm promoted unsafe gun handling, the department maintains this portion of the test because it is likely that a firearms safety device will have to perform under these conditions and tests are consistent with the intent of the legislation. The only way to test for accidental discharge would be to perform the testing procedures while the firearm was loaded with a primed case even if this is not the recommended way of storing a firearm. Finally, the subsection was changed to reflect a nonsubstantial grammatical correction.

*977.45 (b)(10)*

Subsection (b)(10) was renumbered with the addition of subsection (b)(7). Comments were received claiming that the subsection also promoted unsafe gun handling. As noticed to the public, the requirement that a firearm be tested while it is cocked and without the manual safety applied was necessary, so no additional changes in the regulations were made. Testing a firearms safety device on a firearm in this condition is consistent with the intent of the legislation and is necessary because these are the conditions under which a firearms safety device may have to perform. Finally, the subsection was changed to reflect a nonsubstantial grammatical correction.

*977.45 (b)(11)* was renumbered with the addition of subsection (b)(7).

*977.45 (b)(1-5)*

Comments regarding subsections (c)(1-5) requested that the tests be performed on a new lock for each test instead of cumulatively on one lock as currently written. This comment resulted in no change to the regulations because tests (1-5) are replicating a cumulative attack on a single firearms safety device, and changing devices after each test would fail to prove whether or not the device was readily removable.

*977.45 (c)(1)*

Comments regarding this section resulted in changes in how the picking and manipulation tests would be timed. The test procedure originally noticed to the public provided only the time limits but clarification was provided to instruct that the tests should be timed only while tools or hands were in contact with the firearms safety device. This was to prevent activities, like preparation time, from being considered “attack” time. In a separate comment, it was requested that the attack times for all lock types be the same. No changes resulted from this comment, as some locks lend themselves to more attack methods by the nature of their design. Keyed locks are subject to three separate two-minute attacks requiring each two-minute attack to be conducted with a single picking tool. Combination locks are only subject to a single two minute manipulation attack. The testing procedures performed are based on the surreptitious entry tests performed in the incorporated ASTM F883-97 standard. Finally, a comment requested that the tester not be versed in the locksmith profession or use reference guides on lock picking because this would create an unrealistic test environment. The department agreed and language was adopted requiring the test laboratory to restrict a person with these skills from conducting this test.

*977.45 (c)(3)*

A comment regarding subsection (c)(3) requested that the tensile test be performed at numerous angles to the firearms safety device instead of the single angle attack noticed to the public. This comment resulted in no changes as the current method already provides a rigorous attack on the device, and the test methodology is similar to the tests performed in the incorporated ASTM F883-97 standard.

*977.45 (c)(4)*

Comments regarding this subsection requested a more clear definition of a chucked blade-type tool. Test laboratories are now told to construct the chucked blade-type tool from the shank of a screwdriver with a flathead end. Although the chucked blade-type tool is not a common household term, the tool itself is nothing more than a screwdriver shank modified to allow its placement in the shock impact fixture. Screwdrivers with a flathead end are listed as common household tools and this test is necessary to replicate an attack by screwdriver and hammer. Another contributor requested that the chucked blade-type tool be removed from the test procedure all together because it prevented the shock impact fixture from making solid contact on the firearms safety device. This request resulted in no change, as it is only necessary for the chucked blade-type tool, not the entire fixture, to make contact on the firearms safety device. Even more important to the test is that the blade-type tool is driven by the dropped weight to, theoretically, drive the blade-type tool into the locking keyway or combination of a combination lock. Additionally, comments requested that the manipulation portion of the attack test be modified to allow the use of a more commonly available sized screwdriver. The originally specified 10-inch screwdriver was difficult to acquire, so a small range of screwdriver lengths was allowed for easier laboratory acquisition (8-10 inches) with no significant change to the performance of the test. Further language was added requiring the test laboratory to manipulate the firearms safety device with a screwdriver in an attempt to discharge a primed case. The manipulation language was noticed and adopted because it is foreseeable that an unauthorized user would use a combination of force and manipulation in an effort to defeat a firearms safety



device. A final comment requested that a heavier weight be used to impact the chucked blade-type tool. This comment resulted in no change because the current weight, when combined with the drop height, will generate a force far greater than the weight alone would suggest. In addition, the weight and height specified are the same as those used in incorporated ASTM F883-97 standard which provided the model for this test.

*977.45 (c)(5)*

The department removed the word “hand” in describing the way force should be applied to pliers while cutting. The test procedure originally noticed to the public stated that hand forces should be applied to the lineman pliers while attempting to defeat a firearms safety device. However, it is undesirable to have this test conducted with hand force because of the difficulty in consistently applying a predetermined compression load. It is anticipated that laboratories will use the tensile loading device to perform this portion of the test, so the language was amended. At the same time, clarification was made to what constitutes the failure of the firearms safety device. The test procedure originally noticed stated that merely cutting through the cable or shackle would constitute a failure. To merely cut a cable or shackle would not mean that the firearms safety device will allow a primed case to discharge and therefore would not automatically be considered disabled. A contributor stated that the lineman pliers used for cutting would dull with use, and a new pair should be required for each test. This comment resulted in no change as it would be an unnecessary burden on the laboratory to use a new pair of pliers for each test. Also, it is unlikely that significant wear would occur after each test or that tools in a common household would be new and unused. Mandatory laboratory inspections will insure that the equipment being used is in good condition. Finally, the size of the pliers originally specified (10 inch) was changed to the standard size of (9 ½ inches), as a result of numerous comments stating that 10 inch pliers were uncommon. The subsection was also changed to reflect a nonsubstantial grammatical correction.

*977.45 (c)(6)*

The department modified the subsection to clarify what constitutes the failure of this test. The test procedure originally noticed to the public listed the separation of the cylinder plug or cylinder assembly from the case as a failure. This language was struck because merely separating the cylinder plug or assembly from the case will not be considered a failure unless the device allowed the discharge of a primed case at which time it would fail. Additionally, the manipulation portion of the attack test was modified to allow the use of a more commonly available length and width screwdriver as had been done in other tests. Comments were also received regarding the ability of a child to have the skills or knowledge to perform a plug pull test and the laboratories use of a self tapping screw which is not included on the list of common household tools. The comments resulted in no change, as the plug pull test is designed to replicate a variety of “pull motion” attacks that an unauthorized user might attempt even if the attacker did not use the same tools and methodologies described in the test procedure. This test procedure, as do others, replicates an attack that could be performed with any number household tools. The use of a self tapping screw is necessary for accuracy and consistency in performing this test even if it was not identified as a common household tool. Additionally, comments were received which suggested that the use of power tools to attack a firearms safety device went beyond the “readily removable” standard mentioned in the statute. Although not prompted by this comment, the language that previously

allowed the certified laboratory to perform an independent attack with power tools, was struck. The result is that power tools will only be used to achieve consistency and accuracy in facilitating the test procedures, and will not be used to independently accelerate damage to the firearms safety device. If at any time the laboratory is unable to drill the keyway because the firearms safety device is designed to break the drill bit, there will not be a time limit for the test, but the device would pass the test because the test could not be performed. Finally, it was requested that the department define the ways that the firearms safety device is to be held during the plug pulling test. The method of holding the device was not specified by the department because it is not relevant to the test being performed. The attack consists of the combination of drilling and inserting a self tapping screw, and not the method by which the device is being held. It is anticipated that laboratories will use a vice to secure the device while the test is being performed to minimize possible injury to the test personnel and to bring consistency to the test.

#### *977.45 (c)(7)*

Comments regarding subsection (c)(7) resulted in changes to the screwdriver shank length and width so that both small and large lock keyhole openings could be attacked comparably. The size of screwdriver used for the plug torque test originally noticed to the public did not specify a range of blade widths, and it was felt that by limiting the test laboratory to a single size of screwdriver, that tests might be performed where the flathead was either too small or too large to have an effect on the firearms safety device. Additionally, the requirement that the screwdriver used in this torque motion attack be of a specific length was struck because the screwdriver's length would have no effect on the outcome of the test.

#### *977.45 (c)(8)*

Changes to subsection (c)(8) added hand sawing as an alternative to using a sawing machine. The test procedure originally noticed to the public required the sawing test to be performed by sawing machine. Sawing machines were difficult to acquire because they are no longer being manufactured and the department did not want a laboratory to be unable to achieve certification only because they could not acquire the necessary equipment. For laboratories using a sawing machine instructions for when the saw time should begin and ends were added. The department also noticed and adopted a statement confirming that cable style locks would not be exempt from the saw test because this was a common misunderstanding based on the content of some comments. Finally, language was added instructing the test laboratory on how to perform the hand sawing test if a sawing machine was unavailable in addition, a definition of what constituted one hand cutting cycle was included. Unlike the sawing machine attack which was measured by time, hand sawing would be counted by the number of cutting cycles. A fast or slow hand sawing tempo was determined to have no impact on the test results, so hand sawing would not be subject to a time limit. Instead, hand sawing would be subject to the same number of cutting cycles (120 cycles) that would be accomplished by a sawing machine in two minutes (60 cutting cycles per minute for two minutes totals 120 cycles). A comment requesting that a new saw blade be used for each test resulted in no change because the mandatory laboratory inspections will monitor the condition of laboratory equipment and it is not foreseen that a new blade will be required for each test.

#### *977.45 (d)*

The department noticed and adopted language to clarify in subsection (d) that the test procedures outlined would only need to be performed if the firing chamber was capable of accommodating a primed case while the firing chamber was closed and the firearms safety device was properly installed.

*977.45 (d)(1)*

The department noticed and adopted changes to this subsection to reference the adjustments in paragraphs (6), (9) and (10) of subsection (b) of the same section. The reference was included to draw attention to important changes elsewhere in the regulations that would affect the drop test.

*977.45 (d)(2)*

The department noticed and adopted changes to subsection (d)(2) to clarify that the discharge of a primed case from the test firearm was considered a failure of this test. This form of failure is defined elsewhere in the regulations, but was added to this subsection for emphasis.

*977.45 (f)*

Comments regarding subsection (f) stated that there was not clarity in the definition of a “disabled firearms safety device” or the “failure of a firearms safety device.” This comment resulted in no changes to subsection (f) because the terms are defined in either the definition of key terms section or within each test procedure by way of example.

**Section 977.46 - “Test Reporting”**

*977.46 (b)*

A contributor suggested that laboratory reports not received by the department by a set time, such as 30 days should be invalid. The regulations as originally noticed to the public require only that the laboratory submit the test report to the department within ten working days with late reports still being valid. While the results of the test will not be invalidated if the 10 working day requirement is not met, the department may inspect the laboratory to determine if their certification should be revoked as a result of late reporting. There is no evidence that a late report should be invalidated and the department will not add such a requirement to the regulations.

A comment addressing subsection (d) requested that firearms safety device manufacturers be required to include consumer information on the outside of their packaging to inform the buyer which firearms the device is designed to work with. This topic is not addressed in the regulations originally noticed to the public and the contributor suggested that it should be added. The comment will result in no change because the suggested consumer information would not necessarily fit due to packaging limitations. But, this compatibility information will be posted on the DOJ web site and made available to the public.

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

*977.49 (9)*

A comment claimed that the regulations did not state how many different firearms the firearms safety device must be tested or certified on. This comment resulted in no change. The testing

procedures outlined in these regulations inform the reader that the device submitted for testing will be installed and tested on a single firearm. The department recognizes that many devices will perform on firearms other than the models on which they were certified, so the department will allow the device's manufacturer to "self certify" for those additional firearms. Self certification is necessary because testing would otherwise become prohibitively expensive and time consuming resulting in few, if any, devices being certified.

#### **Section 977.48 - "Off-Site Location"**

There is no information to be updated. This section was adopted as originally proposed.

#### **Section 977.49 - "Inspections"**

There is no information to be updated. This section was adopted as originally proposed.

#### **Section 977.50 - "Gun Safe Standards"**

Comments were made addressing the entire section claiming the standards were too high. Indirectly, a variety of changes were made to the regulations broadening the definition of an acceptable safe allowing more safes to meet the acceptable definition, yet the intent of the legislation was not jeopardized.

##### *977.50 (a)*

Comments received regarding subsection (a), resulted in a new opening statement which informs the reader that there are two definitions of an acceptable safe.

##### *977.50 (a)(2)*

A comment regarding subsection (a)(2) requested that industry standard language be used in defining the type of lock required. The originally noticed term "combination or electronic tumbler" was revised to say "mechanical or electronic combination lock" in describing the type of lock required. Additionally, the minimum number of numbers, letters or symbols required of a combination lock was reduced from four to three. Three symbols can provide more than 1,000,000 potential combinations (only 10,000 are required), making a fourth number, letter, or symbol unnecessary. Although the change to three numbers, letters and symbols was noticed to the public during the first 15-day comment period (May 3, 2001 through May 18, 2001), and adopted, during the second 15-day comment period (May 29, 2001 through June 13, 2001), the word "four" appeared in the regulations again without strikeout, potentially causing confusion. To insure the regulations were clear, an immediate overlapping comment period (June 7, 2001 through June 22, 2001), was noticed to the public to clarify that "three" would be the correct number of numbers, letters or symbols adopted. Additional comments received stated that an Underwriters Laboratories (UL) listed lock should be required on the acceptable safes. The acceptable safe definition as originally noticed to the public did not require locks to be UL certified and this comment will not result in a change to the regulations. UL listing is an optional program, and there are adequate locks which are not UL listed and the department did not want to exclude safes with this type of lock. A contributor requested that an Rc60+ drill-resistant steel

plate protecting the locking system be required on an acceptable safe. A drill plate is designed to prevent the lock from being attacked by a drill, and the Rc60+ term describes the required hardness of the steel plate. The inclusion of a drill plate protecting the locking system was noticed to the public during the first 15-day comment period (May 3, 2001 through May 18, 2001), although subsequently amended. Traditionally a drill plate is used to protect the lock only and not the much larger area comprising the locking system. During the following comment period (May 29, 2001 through June 13, 2001), the definition was revised to identify the drill-resistant plate and its need to only protect the lock, not the entire locking system. Additionally, contributors presented evidence that drill-resistant materials other than steel can provide protection equivalent to the Rc60+ drill-resistant steel plate, and they should be included in the acceptable definition. To allow for the use of materials equivalent to the Rc60+ steel plate, the words “material of equivalent strength” were noticed and adopted. A request to reduce the required hardness of the drill-resistant plate resulted in no change because it would jeopardize the plate’s effectiveness. Although a drill-resistant steel plate less than Rc60+ would not be acceptable, if the plate was combined with other materials that combined to be effectively equivalent to Rc60+ it would meet the intent of the definition.

#### *977.50 (a)(3)*

Comments regarding subsection (a)(3) resulted in the term “locking system” being changed to “boltwork” because boltwork is the more accurate term. A contributor requested that locking bolts of dimensions other than ½-inch be allowed. No change was made to the regulations because the locking bolts only need to be at least ½-inch at their thinnest point. Locking bolts of greater thickness or variable thickness are still allowed. Bolts less than ½-inch would compromise the security of the safe and would not meet this definition of an acceptable safe. Comments were also received stating that four locking bolts were excessive, and not necessarily stronger than three locking bolts. Smaller safes normally associated with firearm storage do not always physically have the space for large numbers of locking bolts so the department provided notice to the public that the number of locking bolts would be reduced to three. In addition, language was added to ensure that the locking bolts were not superficial, but were in fact operated by a separate handle and secured by the lock. A contributor requested that the number of locking bolts be further reduced to two if the safe was equipped with hidden door hinges. This comment resulted in no change because a safe designed to store firearms will be large enough to accommodate three locking bolts as well as have a feature, such as hidden door hinges, to prevent the removal of the door. Reducing the number of locking bolts to two would weaken the safe to the point that it would no longer be acceptable.

The originally noticed subsection (b) was incorporated into subsection (a)(4).

#### *977.50 (a)(4)*

A comment regarding subsection (a)(4) requested that the safe wall thickness requirement be changed from 1/8 inch thick steel as originally noticed to the public, to the option of 12-gauge steel for a single walled safe or .100 inches of steel for the sum of the two walls on a double walled safe. This change was noticed to the public (May 3, 2001 through May 18, 2001), adopted and modified during subsequent comment periods. Comments confirmed that 12-gauge steel for singles walled safes or double walled safes of at least .100 inches of steel have been

widely used, are commonly available and acceptably strong whereas 1/8 inch thick steel was felt to be excessively thick. There was a comment requesting that the minimum wall thickness be reduced to 14-gauge steel for single walled safes, but this resulted in no change to the regulations because a single sheet of steel this thin would not provide adequate security. The wording “material of equivalent strength” in reference to non-steel products was struck from the regulations originally noticed to the public because there was no way to quantify “equivalency” when the strength of the steel would not be defined. Comments requested that we define door thickness separate from the wall thickness. It is important for the doors to be stronger than the walls of the safe because the doors are a weak point. Based on public comments, the department noticed door thickness requirements of two layers of 12-gauge steel or one layer of 7-gauge steel (May 3, 2001 through May 18, 2001). Based on this notice, a contributor encouraged the department to reduce the steel thickness of the door to as little as two layers of 14-gauge steel claiming that two layers of 12-gauge steel was excessive and would eliminate many safes from meeting the acceptable definition. Based on these statements, the department reduced the door requirements and noticed them to the public (May 29, 2001 through June 13, 2001). This change resulted in immediate feedback arguing that 14-gauge steel would be inadequate even if there were two layers. With further research by the department, it was determined that 14-gauge steel would not provide the necessary level of protection. Based on the feedback and departmental research, the regulations were revised during the next comment period (June 15, 2001 through June 30, 2001) back to two layers of 12-gauge steel or one layer of 7-gauge steel and adopted. During the same comment period it was noticed and adopted that the construction requirements for the doors was changed. Multilayered doors must be built with “compound construction.” Compound construction doors create greater door strength by combining two layers of steel in a reinforced box-like construction. The department considers the terms “compound” and “composite” to be synonymous for purposes of the definition of an acceptable safe. A minimum of 7-gauge steel is still acceptable for single layered doors, but single layer doors must be “reinforced” for greater security.

#### *977.50 (a)(5)*

Numerous comments resulted in the addition of subsection (a)(5). Language was noticed and adopted requiring that the doors be protected from attack by any one of a number of commonly accepted design techniques to provide a secondary measure of protection for the safe’s contents.

#### *977.50 (b)*

Subsection (b) was noticed and adopted as a result of several comments requesting that safes with an Underwriters Laboratories (UL) listing automatically be defined as an acceptable safe. UL tests, monitors, and certifies safes to very high standards which the department recognizes. Although contrary to some requests, the department will not make UL listed safes the sole definition of an acceptable safe because that would disqualify many older safes that were built prior to the time UL developed its listing process. In addition, the acceptable safe definition under subsection (b) extends only to safes that have been UL listed as Residential Security Containers because these are recognized as safes for residential use and many are designed specifically for firearm storage. The request to make UL listed Residential Security Containers the minimum acceptable UL listed safe resulted in no change because non UL Residential Security Container safes typically serve commercial purposes or are UL listed only for fire resistance and

not theft security. Finally, it is anticipated that many UL commercial safes will still be meet the definition of an acceptable safe under the parameters of subsection (a) of this section.

A contributor stated that the UL Residential Security Container listing is not adequately defined in these regulations. The department finds that the listing is commonly known and understood throughout the safe manufacturing and sales industries. Additionally, safes with UL listing typically advertise this feature and wear the UL listing symbol. Without further definition, the UL Residential Security Container listing should be known to people impacted by this regulation.

#### **Section 977.51 - “Gun Safe-Proof of Ownership of an Acceptable Gun Safe”**

Section name was changed for clarity. The changes include the addition of the words “of an Acceptable Gun Safe” and the removal of the words “(Proof) of Purchase.”

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

There is no information to be updated. This section was adopted as originally proposed.

#### **Section 977.60 - “DOJ Suspension or Revocation of FSD Laboratory Certification”**

Section name was changed to include the acronym “FSD” to provide clarity.

#### **Section 977.70 - “FSD Laboratory Certification Renewal Procedures”**

There is no information to be updated. This section was adopted as originally proposed.

#### **Section 977.71 - “FSD Laboratory Certification after Expiration”**

Section name was changed to include the words “FSD Laboratory” and to remove “DOJ.” Changes were made for clarity.

#### **Section 977.80 - “Service of Notices, Orders, and Communications”**

There is no information to be updated. This section was adopted as originally proposed.

#### **Section 977.85 - “Roster of Approved Firearms Safety Devices”**

Section name was changed to replace the word “Certified” with the word “Approved.” Changes were made for clarity.

## **Section 977.90 - “Appeal Process for DOJ Exclusion of a Firearms Safety Device Model from the Roster of Approved Firearms Safety Devices”**

A comment showed concern that the regulations originally noticed to the public did not appear to allow third party participation in the appeal process. The comment resulted in no change, as this section already allows for participation by “other affected party[ies] of interest.”

### **Additional technical theoretical and/or empirical studies, reports or documents**

No additional sources were used beyond those declared in the initial statement of reasons.

### **Local Mandate Determination**

The proposed regulations do not impose any mandate on local agencies or school districts.

### **Business Impact**

The proposed regulations do not impose any significant adverse impacts on small business.

There were no comments received from the Trade and Commerce Agency or Office of Planning and Research/Small Business Advocates.

### **Consideration of Alternatives**

No alternative which was considered would be either more effective than or equally effective as and less burdensome to affected private persons than the proposed regulations.

### **Objections or Recommendations/Responses**

The proposed regulations resulted in significant input from the affected persons. During the initial 45-day comment period (March 2, 2001 through April 16, 2001), the department received written input from approximately 25 individuals totaling 75 comments and responses. In response to the revisions, approximately 32 additional comments were received during the first 15-day comment period (May 3, 2001 through May 18, 2001). Further revisions resulted in a second 15-day comment period (May 29, 2001 through June 13, 2001) in which approximately 7 comments were received. Five comments were received during the third comment period (June 15, 2001 through June 30, 2001). No comments were received during the fourth comment period (June 7, 2001 through June 22, 2001), and two comments were received during the fifth and final comment period (June 15, 2001 through June 30, 2001).

To deal with the large volume of public comments, the Comments/Responses have been organized into a spreadsheet included as Attachments A, B, C, D, and E, representing each of the comment periods. In addition to the spreadsheet, the original comments are enclosed in the rulemaking file under Part D. There were no public hearings. Each written comment/response is numbered to



correspond with the spreadsheet. For example, a comment numbered A20.01 represents a comment received in the first comment period "A," the comment addressed section 977.20 as identified by the numbers following the decimal point "20," and finally ".01" represents the *first* comment summarized and responded to by the department. The only deviations from this numbering system are those comments containing the number "99." Comments numbered as "99" represent those comments which did not fit into the numbering system because they were questions, comments received outside of the comment period, comments that did not address a section open for comment, or some other reason resulting in no departmental response. All other comments were responded to were either accepted or rejected for the reasons identified in the attachment. The department responded to repetitive comments, or summarily dismissed irrelevant comments as a group.