

TITLE 11. DEPARTMENT OF JUSTICE

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of Justice (DOJ) proposes to adopt as permanent regulations the Attorney General's establishment of regulations for certified firearms safety device laboratories, firearms safety device standards and testing, and standards for gun safes pursuant to Penal Code (PC) sections 12087 through 12088.9. The DOJ plans to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The DOJ proposes to adopt sections 977.10 thru 977.90 in Title 11, Division 1, Chapter 12.6 of the California Code of Regulations (CCR). These sections apply to certified firearms safety device laboratories, firearms safety device standards and testing, and standards for gun safes.

PUBLIC HEARINGS

A public hearing is not scheduled. Any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing relative to these regulations. The DOJ will hold a public hearing if an interested person or his or her duly authorized representative submits such a request in writing. In the event that a public hearing is requested, the DOJ shall, to the extent practicable, provide notice of the time, date, and place of the hearing by mailing the notice of hearing to every person who has filed a request for notice thereby with the DOJ Firearms Division. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed regulatory action described in the Informative Digest.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5:00 p.m. on April 16, 2001. The DOJ will consider only comments received at the DOJ offices by that time. Submit written comments to:

Lesa Saville
Department of Justice, Firearms Division
P.O. Box 160487
Sacramento, CA 95816-0487

or fax to: Lesa Saville at (916) 263-0676
or email to: savilll@hdcdojnet.state.ca.us

AUTHORITY AND REFERENCE

The DOJ proposes to adopt these regulations that add Chapter 12.6, sections 977.10 through 977.90 of Title 11 of the California Code of Regulations, pursuant to sections 12087 through 12088.9 of the Penal Code.

PC sections 12087 through 12088.9 authorize the DOJ to adopt regulations to comply with the mandate to certify independent laboratories to conduct specified tests of firearms safety devices, to establish and maintain the DOJ Roster of Approved Firearms Safety Devices, to set forth gun safe standards, and to prescribe a method to affix warning labels to firearms sold without packaging. This authority includes establishing procedures for laboratory certification, creating firearms safety device testing and reporting standards, gun safe standards, establishing and maintaining a roster of DOJ-approved firearms safety devices.

Pursuant to Government Code sections 15376 and 15378, the DOJ is considering adopting the proposed regulations, sections 977.10 through 977.90, of Division 1 of Title 11, Chapter 12.6 of the CCR which would implement, interpret, and/or make specific California Penal Code sections 12087 through 12088.9, and sections 15376, 15378 and Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Penal Code sections 12087 through 12088.9 require the DOJ to develop safety standards for firearms safety devices and gun safes, to certify independent laboratories to conduct testing of firearms safety devices, and to establish and maintain a roster of firearms safety devices that have been tested and certified. Commencing January 1, 2002, these Penal Code sections prohibit the manufacture or sale of a firearm unless accompanied by a DOJ-approved safety device.

This law additionally requires the packaging and descriptive materials accompanying any firearm sold or transferred in this state or delivered for sale by a manufacturer in this state to bear a label with a specified warning statement. If the firearm is sold or transferred without accompanying packaging, the warning label must be affixed to the firearm itself in a manner prescribed by regulation of the Attorney General. Furthermore, this law requires firearms dealers, commencing 1/1/2002, to sell a DOJ-approved safety device with every firearm.

The authorizing statute also requires the DOJ by January 1, 2001, to certify independent testing laboratories to test firearms safety devices and provides for the testing of firearms safety devices by such laboratories. By July 1, 2001, the DOJ is required to produce a roster listing all models of devices that have passed testing. The DOJ is also required to set standards for gun safes and firearms safety devices, and develop testing standards relative to firearms safety devices.

The authorizing statute specifies that its provisions do not apply to the commerce of any antique firearm, as defined, nor do they apply to the commerce of any firearm intended to be used by a salaried, full-time peace officer.

Penal Code sections 12087 through 12088.9 expressly require the DOJ to adopt regulations to comply with the mandates of this statute. Such regulations must establish procedures for laboratory certification, establish firearm safety device and gun safe testing and reporting standards, provide for the establishment and maintenance of the roster of certified devices, and establish a method for firearms dealers to attach a statutorily-required warning label to firearms that are sold without accompanying packaging.

The DOJ has developed a series of regulations to specify firearm safety device and gun safe standards and to establish the process for certifying laboratories to enable the laboratories to conduct tests to determine whether firearms safety devices meet the specified standards. The regulations further the certification process by identifying the qualifications and methods of operation for laboratories, and the method for reporting test results to the DOJ. In addition, the regulations set forth the process for establishing, publishing, and maintaining a roster of certified firearm safety devices.

The proposed regulations will add Chapter 12.6, sections 977.10 through 977.90, to Division 1, Title 11, of the California Code of Regulations.

Section 977.10 states the title and scope of the proposed regulations.

Section 977.15 sets forth time extensions for compliance to be granted at the discretion of the DOJ.

Section 977.20 defines terms used in the laboratory certification process, firearm safety device testing and approval, and roster creation and maintenance.

Section 977.30 specifies who must be certified by the DOJ as a Firearm Safety Device (FSD) testing laboratory. Any laboratory wishing to participate in the testing program and any proposed change in the ownership of five percent or more requires a new application for DOJ certification.

Section 977.31 specifies the requirements for applications for laboratory certification including information relating to: the laboratory; Certificate of Eligibility (COE) holder(s); ownership; facility management and testing supervision; required equipment; off-site location; authorized representative; conflicts of interest; certifications relating to prohibited persons; and possession of equipment.

Section 977.32 identifies the requirements that must be met in order to qualify for certification. These requirements include: one or more of the owner(s), chief executive officer(s), or person(s) with primary responsibility for the operation of the applicant laboratory must apply for and obtain a COE; the abilities and equipment an applicant must have and demonstrate in order to be certified; and that the laboratory demonstrate its possession of all necessary equipment and its ability to properly conduct all of the required tests and procedures.

Section 977.33 specifies the grounds for which an application shall be denied, the method of notifying the applicant if his or her application is denied, the method and time frame for requesting a hearing, and the consequences of failing to request a hearing or withdrawing an appeal.

Section 977.34 specifies the certification term for a Certified FSD Laboratory as two years.

Section 977.35 specifies the time periods within which the DOJ must inform an applicant: that his or her application is either complete or deficient; to schedule and complete the on-site inspection; and complete the processing of the application. This section applies to both initial and renewal applications. This section also specifies the minimum, median, and maximum processing times for initial and renewal applications for certification as a Certified FSD Laboratory.

Section 977.36 establishes an applicant's recourse if the DOJ fails to complete processing of a completed application within specified time standards, and requires that information regarding this process be included on the application.

Section 977.40 requires a Certified FSD Laboratory to ensure that there are no conflicts of interest regarding the ownership, relationships, licensing, and financial involvements and/or interests of specified persons related to the Certified FSD Laboratory.

Section 977.41 requires a Certified FSD Laboratory to have written security procedures if firearms are to be stored and/or transported by the laboratory and for the laboratory to meet security and safety requirements regarding: storage and transportation of firearms and ammunition; firearm inventory control requirements and reporting requirements for lost/stolen firearms; use of safety equipment; laboratory design and operation; safe firearms handling and operation, including a requirement that no live ammunition be present in the testing area during testing; and posted warnings.

Section 977.42 requires a Certified FSD Laboratory to meet licensing and minimum standards regarding: complying with all applicable federal, state, and/or local laws; ensuring that any required licensing and/or approvals have been obtained and are maintained; informing staff of applicable laws relating to firearms possession prohibitions and ensuring that such persons do not possess firearms; and possessing, maintaining, and calibrating required equipment.

Section 977.43: restates and clarifies which firearms safety devices must be tested; identifies the consequences of post-certification modifications to a model; requires that four firearms safety devices of each model shall be submitted to the laboratory for testing; allows the submission of any information that may be needed for proper and safe operation of the firearms safety device; requires the manufacturer or importer to provide specific information; and sets forth the provisions where firearms safety devices may be approved without testing if they differ only superficially from devices from the same manufacturer that have already approved and requires as a condition listing of such an untested device that the manufacturer or dealer provide the DOJ with a sample of the device for evaluation.

Section 977.44 prescribes standards for firearms safety devices, specifying that devices shall be of a design that requires removal or deactivation to be by a unique method of access intended by the manufacturer within the standards set forth in these regulations; combination locking systems shall have at least 1,000 possible combinations consisting of at least three numbers, letters, or symbols per combination; that key locking systems be unique to the manufacturer's

firearms safety device; that the firearms safety device renders the firearm inoperable while installed; that the firearms safety devices must function under specific methods and specifying those methods; specifying that a firearms safety device must be capable of repeated use and shall pass the testing procedures described in these regulations; and specifying that the firearms safety device shall be capable of withstanding manipulation with common household tools for a ten-minute period without being disabled.

Section 977.45 specifies: that the tests provided in this section (when applicable) are designed to replicate the forces that would be exerted through the use of common household tools for an approximate ten-minute period; the intent of the DOJ is not to restrict a testing laboratory from going beyond the testing procedures if the laboratory identifies a firearms safety device shortcoming that would allow the firearms device to be disabled in less than ten minutes using common household tools; that only employees of the Certified FSD Laboratory are allowed to conduct firearms safety device testing; that representatives of the DOJ, manufacturer, or dealer shall be allowed to be present during testing but may not participate in the testing; the tolerances, equipment, procedures, and requirements for conducting each of the required tests; the requirement that the a firearms safety device shall not be of a design to allow it to be disabled or removed from the firearm through the partial destruction of the firearm; the criteria for primed cases to be used; a requirement that for each test, the firearm be cocked and that the manual safety not be applied; a description of each test and what constitutes passing or a failure of each test, and a provision that failure of any test constitutes a failure of the complete test.

Section 977.46 requires: that laboratories report to the DOJ the results of tests that certify a firearm safety device model meets the required standards and has passed the required testing; requires laboratories to submit the drop-tested firearm safety device to the DOJ; identifies the submission requirements for the report including the time frame for submission; provides that a late report does not invalidate the results of the test; prohibits a manufacturer or importer from claiming its device(s) has passed the required testing until the DOJ has issued a letter of compliance for that model; specifies a compliance statement that may be placed on user information supplied by the manufacturer or dealer of the firearms safety device; and requires the manufacturer or dealer of a firearms safety device approved under these regulations to specify, in the packaging or descriptive materials accompanying the device, those firearms for which the device meets the standards and is capable of passing the testing described in these regulations.

Section 977.47 specifies: the record keeping requirements for Certified FSD Laboratories including: the elements of a Firearms Safety Device Compliance Test Report and the retention periods for the records used to complete the Report; a requirement that current records relating to off-site facilities, security systems, employees directly involved in firearms safety device testing, and ownership be maintained by the laboratory; and the information which must be reported to the DOJ within ten days of any change.

Section 977.48 specifies the conditions under which an applicant or certified laboratory would be allowed to use an off-site location. If more than one off-site location is needed, this regulation specifies the method for identifying any such location. It also specifies the conditions which would cause the DOJ to prohibit the use of an off-site location.

Section 977.49 specifies that: duly authorized DOJ representatives must be allowed to inspect the facilities and records of Certified FSD Laboratories and to observe firearms safety device testing; the DOJ will conduct an on-site inspection within six months of certification; the method for notifying a laboratory of any violations that have been noted and what must be done to correct any violations; the time frame and method for ensuring that any required corrective action has been completed; and a requirement that the Certified FSD Laboratory must submit a monthly schedule of the days on which testing is planned.

Section 977.50 sets forth standards for gun safes, including: that the gun safe is able to fully contain firearms and provide for their secure storage; that the device have a locking mechanism consisting of a combination or electronic tumbler of at least 10,000 possible combinations, consisting of a minimum of four numbers, letters, or symbols; that the gun safe have a locking system consisting of at least four locking bolts of at least one-half inch thickness that penetrate the body of the safe from the door, or that penetrate the door from the body; and that the exterior wall be constructed of a minimum one-eighth inch steel or a material of equivalent strength.

Section 977.51 defines satisfactory evidence of gun safe ownership as: a receipt or affidavit of ownership, plus an affidavit signed under penalty of perjury that identifies the gun safe by make and model, states that the gun safe is capable of accommodating the firearm being purchased, and finally, states that the gun safe meets the standards for gun safes described in section 977.50 of these regulations.

Section 977.55 specifies: the method by which the warning statement specified in Penal Code section 12088.3 must be attached to a firearm that is sold without accompanying packaging.

Section 977.60 specifies: that a Firearms Safety Device Laboratory Certification is subject to suspension or revocation; the grounds for suspension or revocation; the consequences of suspension or revocation; and the manner in which a suspension or revocation will be handled.

Section 977.70 establishes the renewal procedures for Firearms Safety Device Laboratory Certification and that failing to renew a Firearms Safety Device Laboratory Certification will result in expiration of the laboratory's certification.

Section 977.71 establishes the procedures for certification after expiration of an FSD Laboratory Certification and that these procedures include undergoing the complete application process.

Section 977.80 informs applicant and Certified FSD Laboratories that the address that the DOJ will use for sending or transmitting notices, orders, and communications will be the address submitted by the laboratory on the Application for Firearms Safety Device Laboratory Certification. This section also states the methods by which notices, orders, and communications may be sent, and when any time period specified in any such notice or order will commence to run.

Section 977.85 specifies: that within ten days of receipt of the required test report and specified documentation, the DOJ will determine whether a firearms safety device model is

approved; within ten days of receipt of a request, that the DOJ shall make a determination and the circumstances under which the DOJ may make a determination to approve a firearms safety device without separate testing; the circumstances under which the DOJ will remove a firearms safety device from the roster; and the process for continuing a firearms safety device listing under specified conditions.

Section 977.90 specifies: the appeal process that the manufacturer, dealer, or other affected party of interest may utilize when the DOJ excludes a model of firearms safety device from the Roster of Approved Firearms Safety Devices. If, as a result of the appeal, the DOJ determines that the firearms safety device qualifies for listing on the roster, this proposed regulation requires the DOJ to immediately add the device to the roster.

DISCLOSURES REGARDING THE PROPOSED ACTION

The DOJ has made the following initial determinations:

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None. Costs are paid by firearm Dealer Record of Sale processing fees.

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

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

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

Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. The impact directly affects testing laboratories nationwide that elect to apply for certification. Additionally, once a laboratory is certified by the DOJ to test devices, that laboratory may charge a fee, of an amount determined by the laboratory, to parties who submit firearms safety devices to the laboratory for testing pursuant to these regulations.

Known cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: An estimated \$12,000 in equipment costs will be incurred per laboratory and negligible ongoing reporting costs will be incurred for Certified Firearms Safety Device Laboratories. Additionally, at least one person in charge of firearms safety device testing for the laboratory applicant must apply for and obtain a Certificate of Eligibility which costs \$73 for the initial application and \$17 annually thereafter. Pursuant to Penal Code section 12088.1(a), effective January 1, 2002, firearms dealers and manufacturers are generally required to include a DOJ-approved firearms safety device with every firearm that the firearms dealer sells or that the firearms manufacturer makes. The DOJ estimates that firearms safety devices that are capable of passing the tests prescribed in these regulations should be available at costs starting from \$10.

Adoption of these regulations may (1) create or increase jobs within California; (2) create new businesses within California; and (3) result in an expansion of businesses currently doing business within California. The extent is unknown because it depends on the number of Certified FSD Laboratories, if any, in California.

Significant effect on housing costs: None.

Department finding regarding reporting requirements: The DOJ finds that the report required for laboratories to notify the DOJ of firearms safety device test results pursuant to this proposed regulation is necessary for the health, safety, or welfare of the people of the state of California and that this proposed regulation applies to businesses.

Effect on small business: The DOJ has determined that the proposed regulations would affect small businesses.

AVAILABILITY OF STATEMENT OF REASONS, INFORMATION, AND TEXT OF PROPOSED REGULATIONS

The DOJ will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at:

Department of Justice
4949 Broadway
Sacramento, CA 95820

As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, the Economic and Fiscal Impact Statement (Std. 399), documents that resulted from the meeting held regarding the preparation of these proposed regulations, and research material. Copies of the proposed regulations and the Initial Statement of Reasons are available upon request from the contact persons named below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After a 45-day public comment period, and considering all timely and relevant comments received, the DOJ may adopt the proposed regulations substantially as described in this notice. If the DOJ makes modifications which are sufficiently related to the originally proposed text, it will make the modified text--with the changes clearly indicated--available to the public for at least 15 days before adopting the regulations as revised. Please send requests for copies of any modified regulations to the attention of Colleen Stewart at the address indicated above. If applicable, the DOJ will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS

The final statement of reasons related to this regulatory action will be available once it has been prepared. This document will be sent out to every person who has filed a request for notice related to these regulations with the Firearms Division. The final statement of reasons will also be available, upon request, from any of the contact persons listed in this notice.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the DOJ must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the DOJ would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The DOJ invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

All required rulemaking documents will be published in PDF format on the Firearms Division's website at <http://caag.state.ca.us/firearms/>.

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to:

Lesa Saville
Department of Justice, Firearms Division
P.O. Box 160487
Sacramento, CA 95816-0487
(916) 263-4868

or

Colleen Stewart
Department of Justice, Firearms Division
P.O. Box 160487
Sacramento, CA 95816-0487
(916) 263-0815

Inquiries concerning the substance of the proposed action may be directed to:

Lesa Saville
Department of Justice, Firearms Division
P.O. Box 160487
Sacramento, CA 95816-0487
(916) 263-4868