

# **PART C**

## **INITIAL STATEMENT OF REASONS**

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### SECTION 977.20 “DEFINITION OF KEY TERMS”

#### Specific purpose of the regulation.

##### Section 977.20

(h) - Current regulations provide a definition of “Disabled.” This amendment adds the words “expelling a projectile by the force of an explosion or other form of combustion” to the existing definition. The purpose of this amendment is to clarify that those FSDs which allow a firearm to discharge a projectile will be considered disabled.

#### Factual Basis.

##### Section 977.20

(h) - After reviewing the results of FSD laboratory testing, the Department determined that there could be confusion between a *disabled* FSD and a damaged but *not disabled* FSD. This amendment is necessary to ensure that only those FSDs which allow the discharge of a projectile will fail the testing procedures.

### SECTION 977.43 “FIREARMS SAFETY DEVICE TESTING AND SUBMISSION REQUIREMENTS”

#### Specific purpose of the regulation.

##### Section 977.43

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

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

(c)(3)(D) - Current regulations require an FSD manufacturer requesting approval of an FSD to also submit a sample of the FSD. The purpose of this amendment is to give the DOJ authority to waive the requirement that an FSD sample be submitted. While it is expected that a sample will be requested in

every instance, the Department may find this requirement too burdensome and unnecessary, and therefore, possibly impacting the number of FSDs submitted for certification and made available for consumers.

Factual Basis.

Section 977.43

(a) - Some FSDs are approved without testing. As the regulations were originally written, it suggested that the Department could not remove an untested FSD from the Roster of Approved Firearms Safety Devices. It is necessary for the Department to have clear authority to remove an FSD from the roster if it is not the same item as what was approved by the Department.

(c)(2)(B) - The Department is often asked to approve an FSD without testing that differs dimensionally from the DOJ-approved FSD with which it is claimed to be similar. Giving the Department authority to approve FSDs under these circumstances is necessary because often times the dimensional changes have no impact on the performance of the FSD (e.g. a cable lock available in both a 10-inch and 12-inch cable length) and it should be eligible for DOJ-approval.

(c)(3)(D) - The Department finds that it may not be necessary to retain a sample of every approved FSD (one of every color in which the FSD is available), and requesting too many samples may become a burden on the FSD manufacturer (discouraging participation in the FSD Program). This amendment is necessary to encourage maximum participation in the FSD program.

**SECTION 977.44 “FIREARMS SAFETY DEVICE TESTING AND SUBMISSION REQUIREMENTS”**

Specific purpose of the regulation.

Section 977.44

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

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

Factual Basis.

Section 977.44

(b) - This amendment is necessary to ensure that a DOJ-approved FSD does not require a waiting period before the FSD is functional (e.g., no delayed activation). The legislative digest of the original

legislation cites an “automatically” engaging FSD as a significant factor in preventing accidental shootings and this amendment will ensure consistency with that goal.

(e) - The Department learned that some readers of the regulations took this subsection to mean that a laboratory will conduct random testing for ten minutes. This clarification is necessary to ensure that DOJ-certified test laboratories and FSD manufacturers/importers understand the FSD testing will simulate an approximate 10-minute attack.

## **SECTION 977.45 “TESTING PROCEDURES”**

### Specific purpose of the regulation.

#### Section 977.45

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

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

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

(c)(2) - Current regulations provide limited examples of the types of saw attacks that may be performed during the Saw Test. This amendment expands, for the benefit of test technicians, the types of attacks that should be investigated. The purpose is to ensure that all test attacks are considered. In addition, the amendment clarifies that an FSD that allows even a single discharge, even if unsafe to do so, will fail the testing procedure. The purpose is to ensure that FSDs that allow a single discharge do not pass the testing procedure.

(c)(4) - Current regulations allow manipulation with a screwdriver at the conclusion of the Shock Test but did not place a time limit on the manipulation. The purpose of this amendment is to set a two minute time limit on the manipulation attack.

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

(c)(6) - Current regulations specify the use of a drill during the Plug Pulling Test to facilitate the insertion of a screw. This amendment clarifies that the drill is not to be used by a laboratory technician as a means of attack, a common misunderstanding, but instead only as a means to insert the screw. This

amendment also limits the manipulation by screwdriver to two minutes. In addition, it is clarified that screws used during this test are to be inserted as far as possible, but no further than 3/4". For laboratory technicians, the amendment also includes the clarification that FSDs which break the screw during the Plug Pulling test should be found to "pass" the test. The purpose of these amendments is to ensure consistency in the testing procedures between laboratories.

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

(c)(8) - The purpose of this amendment is to identify, for the benefit of laboratory technicians, several recently discovered methods by which an FSD may be disabled to encourage every laboratory to attempt these attack methods. In addition, while the current regulation states that 120 cutting cycles may be applied, this amendment clarifies for the test technicians that the Sawing Test can be applied to multiple locations of an FSD so long as no more than 120 cycles are applied to a single specified location. Finally, this amendment sets a two minute limit for screwdriver manipulation.

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

(e)(1) - Current regulations imply that the test firearm is to be loaded with a primed case prior to the test. The purpose of this amendment is to specify that all lock boxes shall contain a firearm loaded with a primed case during the Drop Test.

#### Factual Basis.

##### Section 977.45

(b)(7) - During the review of laboratory testing it became evident that firearms, on which FSDs were installed, were being disassembled prior to testing. It was necessary to instruct laboratories to conduct testing on complete firearms whenever possible. An FSD installed and tested on a complete firearm most accurately replicates the real world conditions under which the FSD will be expected to perform.

(b)(9) - As a result of some laboratory attacks damaging an FSD or firearm so significantly that the test firearm could be fired once, but destroy itself in the process, it was necessary for the Department to clarify to the laboratories that the FSD would still fail the test. It is necessary to fail an FSD that allows even a single shot because that one shot could cause injury or be fatal.

(b)(12) - During the review of laboratory testing it became evident that some lock box-type FSD could have small holes placed into the box, but the lock boxes were not defeated because the firearm contained inside the box was too large to be accessed through the small hole. This amendment is necessary because it is possible that smaller, readily available, firearms could have been accessed through these holes resulting in a discharge and failure. In addition, lock boxes designed to contain long guns need to be tested with long guns contained within the box because it is necessary to test the

accessibility of lock boxes with the types of firearms they are designed to secure.

(c)(2) - When laboratory test results determined that an FSD could be defeated by cutting through the firearm itself, the Department felt it was necessary to include this attack as an example of the type of attack which could be performed as part of the Forced Removal Inspection Test. It is necessary for manufacturers of FSDs as well as DOJ-approved test laboratories to be aware that this type of attack is possible.

(c)(5) - To ensure consistency among testing laboratories, it was necessary to identify the point at which the downward cutting forces were to be applied to the lineman plier handles.

(c)(6) - As a result of questions presented to the Department by DOJ-certified laboratories, it was necessary to ensure that those conducting the tests used the drill only to allow insertion of the self tapping screw and not as an independent attack on the FSD. In addition, as the variety of FSDs increased, it became apparent that not all keyways would be .75-inch deep. The Department did not intend to exclude FSDs with shallow keyways from this testing procedure, so the depth to which the self tapping screw was to be inserted was modified. Some FSDs, by design, have keyways that will break drill bits, preventing the execution of the test. It is necessary to clarify that an FSD would pass this test under these circumstances. Finally, a two minute time limit was set for screwdriver manipulation at the conclusion of the test.

(c)(7) - As a result of difficulty experienced by test laboratories in conducting this test, it became necessary to instruct test technicians to tap the screwdriver blade into the keyway to ensure that it is seated before performing the test. Finally, it was necessary to clarify that the torque may be applied in clockwise and counterclockwise directions to account for keyways that may rotate in either direction.

(c)(8) - As a result of reviewing FSDs and test results, it was necessary to instruct laboratories to apply the Sawing Test to multiple locations. Some FSDs have more than one potentially vulnerable location so the attack should be applied to each vulnerable location. This is to ensure that all weaknesses are at least explored. A two minute time limit manipulation attack is added to the testing to ensure that the FSD cannot be defeated with minimal manipulation at the conclusion of the test.

(e) - After seeing an increase in the size and weight of lock boxes it became necessary to place limits on when drop testing should be performed. It would be unreasonable to expect a person to be able to drop these boxes as a means of defeating the device because of their excessive size and/or weight.

(e)(1) - It is necessary for test laboratories conducting the Drop Test to always place a firearm containing a primed case within the FSD during the drop test to test against accidental discharge.

## **SECTION 977.50 - Gun Safe Standards**

### Specific purpose of the regulation.

#### Section 977.50

(b) - The purpose of this amendment is to allow all safes certified to Underwriters Laboratory (UL) Residential Security Container by Nationally Recognized Testing Laboratories (NRTL) to meet the definition of an acceptable gun safe.

Factual Basis.

Section 977.50

(b) - Testing and listing of UL Residential Security Containers is a process not limited solely to the UL. This correction was necessary because the original language suggested that only safes tested by UL were eligible to meet the standard, which inadvertently excluded NRTLs and the safes they test to the UL Residential Security Container standard.

**SECTION 977.51 - Gun Safe - Proof of Ownership of an Acceptable Gun Safe**

Specific purpose of the regulation.

Section 977.51

(a)(2) - This amendment will allow the term “unknown” to be an acceptable entry in the make and/or model number fields of the Affidavit Stating Ownership of an Acceptable Gun Safe. The purpose of this amendment is to ensure that gun safe owners whose safes do not display a make or model, but otherwise meet our definition of an acceptable safe, can comply with the law.

Factual Basis.

Section 977.51

(a)(2) - Allowing “unknown” as a valid entry in the make and model fields of the Affidavit Stating Ownership of an Acceptable Gun Safe is necessary because a firearms purchaser who otherwise would be compliant with the law is not given an opportunity to demonstrate that compliance.

**SECTION 977.52 “Lock Box - Proof of Ownership of an Acceptable ‘Lock Box’ Type Firearms Safety Device”**

Specific purpose of the regulation.

Section 977.52

(a)(1-2) - This section adopts a definition of satisfactory evidence of “lock box” style FSD ownership as: a receipt and affidavit of ownership that is signed under penalty of perjury that identifies the lock box by make and model, states that the lock box is capable of accommodating the firearm being purchased, and states that the lock box is listed on the Roster of Firearms Safety Devices Certified for Sale. The purpose is to allow DOJ-approved lock box owners the opportunity to use the same lock box for multiple firearm purchases as long as the purchaser can demonstrate ownership and certifies that the lock box can accommodate the firearm being acquired.

(b) - This amendment requires firearms dealers to maintain records of the affidavit/receipt for three years with the dealer’s record of sales. The purpose is to ensure that dealers maintain a verifiable record of the affidavits to be presented during inspections by the Department.





Factual Basis.

Section 977.52

(a)(1-2) - The addition of this section and the recognition of a lock box affidavit are necessary because many DOJ-approved “lock box” type FSDs are designed to be permanently attached to a floor or wall, or weigh so much that it is not reasonable to expect their presentation at the time of firearms delivery.

In addition, the affidavit recognizes that many lock box type FSDs are designed to accommodate multiple firearms making their usefulness extend beyond a single firearm purchase. For these reasons, it was necessary to provide a method (the affidavit) by which the firearms purchaser could demonstrate compliance with the FSD law without having to present the FSD, and by which the same lock box could be used for multiple firearm purchases.

(b) - It is necessary for firearms dealers to keep record of the documents demonstrating lock box ownership so that compliance with the law can be confirmed by the Department during firearms dealer inspections.

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

None.

Specific technologies and new equipment.

These regulations do not mandate the use of specific technologies, but do require the use of new equipment in the form of a small handgun at an estimated cost of less than \$200.

Consideration of alternatives.

No reasonable alternative that was considered or that has otherwise been identified and brought to the attention of the Department would be either more affective in carrying out the purpose for which the action is proposed, or would be as affective and less burdensome to affected private persons than the proposed regulations.

Business Impact.

These regulations will not have a significant impact on business.