

Department of Justice Regulations for Laboratory Certification and Handgun Testing

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

Section 968.10 - “Title”

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

Section 968.11 - “Scope”

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

Section 968.12 - “Exemptions for Compliance”

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

Section 968.20 - “Definition of Key Terms”

The only comments received regarding this section addressed subsection (p), the definition of “revolver,” and subsection (l), the definition of “manufacturer/importer.” The comment states that the “revolver” definition is “defective . . . Chambers are not discharged.” This definition is taken from a glossary of industry terms that is published by the Sporting Arms and Ammunition Manufacturers’ Institute, Inc, which is recognized throughout the firearms industry. The Department tried to use industry accepted terms and terminology whenever possible. This was done to ensure that a person reading the regulations did not have to have a specialized knowledge of California specific terms and terminology. This was important since the regulations and underlying statutes affect persons and entities both within and outside of California.

The comment regarding the “manufacturer/importer” definition relates primarily to used handguns and the fact that only a manufacturer/importer as defined can submit a handgun model for testing. The comment states that the Department needs to identify the method by which a person could prove that they had taken reasonable, but unsuccessful, steps to locate a “legal successor in interest” to a manufacturer. The comment recommends that the Department create an exemption for any person who is able to demonstrate this unsuccessful attempt should be allowed to submit a handgun for testing. However, an exemption is not needed because the Department would recognize a person who demonstrated this reasonable unsuccessful attempt as a legal successor in interest to the manufacturer. Accordingly, no changes were made and this entire section was adopted as originally proposed.

Section 968.30 - “Who Must Be DOJ-Certified”

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

Section 968.31 - “Application for DOJ-Certification”

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

Section 968.32 - “Pre-DOJ-Certification Requirements”

The only comments received regarding this section addressed subsections (b)(2)(A) and (B) which deal with the drop height and the required concrete slab. The comment regarding (A) argues that the Department did not have the authority to add “- 0 cm” and “- 0 in.” to the drop height stated in statute. However, the argument presented in support of this comment illustrates the exact reason why this addition was needed. According to the comment the “lack of a specification for a lower limit means that there is no lower limit.” This comment further alleges that the statute was written to allow a drop height of “0 to 1.01 m.” The Department cannot find any language in statute to support these assertions. In fact, this interpretation of the law would basically invalidate any drop tests. First, there would be no required uniformity in the height from which the handguns were dropped. More importantly, there would be no point in conducting a drop test in which a handgun was “dropped” from a height of 0 meter. It should be noted that representatives of several laboratories and manufacturers felt that it was important to add “- 0 cm” and “- 0 in.” to clarify the required drop height. This additional language also helps to eliminate outrageous interpretations of the law such as this.

The comment regarding (B) argues that the Department did not have the authority to require that the concrete slab “rest upon a firm surface.” However, this language was added in order to clarify the fact that the statute required that a handgun be dropped on a firm surface, namely a concrete slab. Unfortunately, the Department became aware of statements that were alleged to have been made by one or more manufacturers indicating that “they would do whatever it took to make sure their handguns passed the required testing.” Accordingly, this language was intended to deter any attempts to diminish the value of the required drop testing by placing the concrete slab on a resilient or soft surface. Accordingly, no changes were made to either subsection and this entire section was adopted as originally proposed.

Section 968.33 - “Grounds for Denial”

The only comment that was received regarding this section addressed subsections (a) (3), (7), and (8), which deal with conflicts of interest. The comment alleged that the Department was pre-establishing (assuming?) collusion between manufacturers and licensed dealers and between private citizens who are related to licensed dealers or manufacturers. The comment also alleges that the Department “unfairly discriminates” against licensed dealers. The subsections in question were designed to address concerns regarding conflicts of interest. This was required by language in statute that refers to “independent” testing laboratories. The Department based these grounds on the inherent conflict of interest that would occur if handgun tests were performed by a person or entity that had a financial interest in the outcome of the testing. The regulation attempts to identify those persons or entities that would have such an interest, namely manufacturers, importers, wholesalers, distributors, or dealers of handguns. The regulation further addresses familial and business relationships that involve an indirect financial interests. However, the regulation only applies to persons who are currently involved or planning to become involved in these types of financial involvements. It is interesting to note that the comment does not claim that these subsections unfairly discriminate against all of the affected entities, but limits itself to licensed dealers. Nonetheless, the comment recommends that these subsections be eliminated in their entirety without recommending a method for ensuring that a laboratory is truly independent. Conflicts of interest could taint, erode, or even invalidate the results of any required testing. Accordingly, since the Department did not have any better recommendation for ensuring that

these conflicts do not exist no changes were made to any of the subsections, and this entire section was adopted as originally proposed.

Section 968.34 - “DOJ-Certification Period”

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

Section 968.35 - “Processing Times”

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

Section 968.36 - “Appeal Process”

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

Section 968.40 - “Absence of Conflict of Interest”

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

Section 968.41 - “Security and Safety”

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

Section 968.42 - “Licensing/Minimum Standards Compliance”

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

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

The only comment received addressed subsection (a) which deals with which handguns must be tested and the consequences of certain modifications to handguns that are submitted for testing. The comment recommended that “except for those single-action revolvers exempted by Penal Code Section 12133” be added to the subsection. As indicated, this subsection deals with which handguns must be tested, not which handguns that are exempt from testing. Therefore, this change would address a topic that is not covered by this subsection. Further, the recommended change would duplicate Penal Code section 12133. Accordingly, the change was not made and this entire section was adopted as originally proposed.

Section 968.44 - “Testing Procedures”

The only comments received addressed subsections (b)(2), (d)(1), and (d) (5). Two of the comments regarding (d)(1) were identical to and made by the same person as those made regarding subsections (b)(2)(A) and (B) of section 968.32, which also deal with drop height and the surface upon which the concrete slab shall rest. For the sake of brevity, the Department incorporates by reference those comments and the Department’s responses in this discussion.

Another comment regarding (d)(1) alleges that the Department had no authority to address the orientation of the concrete slab. As indicated in the discussion of subsections (b)(2)(A) and (B) of section 968.32, the Department had concerns regarding attempts to diminish the value of the required drop testing. The Department did not want to leave a loophole that would allow the concrete slab to be oriented at an angle to the drop direction, thereby reducing the impact of the handgun on the concrete slab.

The comment regarding (b)(2) alleges that the regulation is “ambiguous” because it refers to the standards promulgated by the BATF without specific identification of such standards. The comment further alleges that “the legislature did not vote for a bill in the absense [sic] of specific knowledge about any regulations referenced in the bill.” However, the reference to BATF standards is taken from Penal Code section 12126, which does not contain any specific identification of the standards. In fact, shortly after the Department began promulgating these regulations, the BATF was asked to provide additional information regarding these standards. The Department was informed that there were no written or published standards.

The comment regarding (d)(5) alleges that the Department did not have the authority to require that the primed case be fired to ensure that the primer was functional. However, the Department realized that if the primer were not functional, the drop test would be worthless because it would be impossible for the handgun to fire the primer. The testing of the primer was in conjunction with the requirement to ensure that the handgun was capable of firing a primed case after each drop. In other words, the Department did not want a handgun to pass the required drop tests simply because the primer was not functional and could not have been fired even if the trigger had been pulled. Accordingly, no changes were made and this entire section was adopted as originally proposed.

Section 968.45 - “Test Reporting”

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

Section 968.46 - “Required Records, Retention Periods, Reporting Changes”

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

Section 968.47 - “Off-Site Location”

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

Section 968.48 - “Inspections”

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

Section 968.50 - “Application Fees”

The comments regarding this section stated that the \$1,600 application was “excessive” or that it amounted to “legalized extortion.” However, the statute allows the Department to recover the costs of certifying laboratories. The Department estimated the costs of the laboratory certification which include processing applications, corresponding with applicants, and conducting on-site

inspections. Two factors contributed to the amount of the application fee. The first was the fact that a number of laboratories that had expressed an interest in becoming certified were located out-of-state (Illinois, Kansas, and Maryland). The costs of traveling out-of-state are high and the average estimated travel cost for the certification process makes up more than half of the total application fee. The second factor was that the costs of the certification process was spread among seven prospective applicants. If there had been more prospective applicants, the cost of a single application would be less. It should be mentioned that only six laboratories have applied for certification. Therefore, it is unlikely that application fees will generate the level of revenues that were anticipated. It should also be mentioned that the comments regarding this fee were not made by current applicants or certified laboratories. In fact, no comments were submitted by any current applicants or certified laboratories. Accordingly, no change was made and this section was adopted as originally proposed.

Section 968.60 - “DOJ-Certification Revocation”

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

Section 968.70 - “DOJ-Certification Renewal Procedures”

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

Section 968.71 - “DOJ-Certification after Expiration”

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

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

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

Section 968.90 - “Roster of Certified Handguns”

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

Section 968.91 - “Roster of Certified Handgun Listing Renewal Procedures”

The only comment received alleges that the Department did not have authority to establish renewal procedures. The comment further alleges that “the renewal application processing is the only thing that would generate costs in relation to maintaining the roster.” However, the statute explicitly allows the Department to charge an annual fee for preparing, publishing, and maintaining the roster and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs. The Department anticipates and has actually incurred some of these costs. This includes building a vault to house the prototype handguns, staffing, and installing a security system (the last two will be an on-going costs). It also includes developing data bases to track the information for the roster, and to incorporate the roster into the Dealer Record of Sale process. Maintaining these systems will also be an on-going cost. The Department also anticipates that it will be necessary to conduct spot testing of handguns to ensure that laboratory results are reliable and to ensure that handgun models have not been modified from those that were submitted for testing. In addition, the Department did not want listings to

fall off of the roster simply because a manufacturer or importer forgot to submit the annual fee. Therefore, the Department will send out a notice to remind them that the fee is due. Accordingly, no change was made and this section was adopted as originally proposed.

Section 968.95 - “Fees for the Roster of Certified Handguns”

Comments were received regarding the amount of the fee and the entities that are responsible for paying the fees. Once again, the comments alleged that the fees were excessive and unwarranted. These comments were related since they generally alleged that the fees were excessive because they were unwarranted. The allegations regarding the unwarranted nature of the fees were similar to those made regarding the renewal process for the roster listing specified in section 968.95, namely there is no work associated with maintaining the listing. For the sake of brevity, the Department incorporates by reference those comments and the Department’s responses in this discussion. It should also be noted that the fee is based on the assumption that 1,400 handgun models will eventually be listed on the roster. If this assumption is incorrect, the Department may need to adjust the listing fee at a later date.

Another comment alleges that the Department does not have the authority to charge only the manufacturers and importers for the roster listings. This comment ignores the fact that the proposed regulation includes language that would allow entities other than the manufacturer or importer to pay the listing fee. The initial fee is charged to the entity that submitted the handgun for testing. However, once the listing has been established a fully licensed wholesaler, distributor, or dealer is permitted to assume the responsibility of paying the listing fee under specified circumstances. The comment also does not recognize the fact that the statute does not require the Department to charge the listing fee to all of the entities listed, rather it gives the Department the authority to charge a fee to those entities listed. Finally, it should be noted that none of the comments regarding the listing fee were made by any manufacturers or importers. Accordingly, no changes were made and this section was adopted as originally proposed.

Local Mandate Determination

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

Business Impact

The proposed regulations do not have any adverse impact on small business.

Consideration of Alternatives

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

Objections or Recommendations/Responses

The Department worked closely with parties impacted by the underlying statutes during the development of these proposed regulations. The proposed regulations resulted in minimal input from the affected persons. During the initial 45-day comment period (September 8, 2000 through October 23, 2000), the Department received written input from five individuals. Written

comments from a sixth person were received on October 24, 2000, after the close of the comment period. However, the Department has included these comments in the rulemaking file. The Department also held a public hearing to receive oral testimony and written comments on the proposed regulations. During the hearing, held in Sacramento on October 23, 2000, the Department heard testimony from six people.

Copies of the written comments can be found under Tab D. Additionally, the speaker log and audio recordings for the public hearing are found under Tab E in the rulemaking file. The log includes a list of speakers in chronological order. Please note, Robert Fuller (Speaker A-3) declined the opportunity to present oral testimony when he was called.

Department of Justice Regulations for Laboratory Testing and Handgun Certification

ADDENDUM TO FINAL STATEMENT OF REASONS

Subject Matter of the Proposed Regulations:

Section 968.10 “Title”

This proposed regulation was changed to reflect a nonsubstantial grammatical clarifying correction.

Section 968.11 “Scope”

-

Section 968.12 “Exemptions for Compliance”

-

Section 968.20 “Definition of Key Terms”

- (d) This subsection as originally submitted would define the “Compliance Test Report” and would have required the Compliance Test Report to meet the requirements of Penal Code section 12126 - a code section which has no relevant requirement. This proposed regulation further stipulates that to be certified, a handgun model must meet the requirements of these regulations (i.e., all regulations in this chapter). The removal of the reference to Penal Code section 12126 reflects a nonsubstantial clarifying correction.
- (h) This proposed regulation was changed to reflect a minor nonsubstantial grammatical clarifying correction.

Section 968.30 “Who Must Be DOJ-Certified”

This proposed regulation was changed to reflect a nonsubstantial grammatical clarifying correction.

Section 968.31 “Application for DOJ-Certification”

-

Section 968.32 “Pre-DOJ-Certification Requirements”

-

Section 968.33 “Grounds for Denial”

- (a)(2) This subsection as originally submitted would provide that the Department of Justice (DOJ) shall deny an application for certification from a laboratory if that laboratory fails to meet security requirements identified in subsection (a)(1) of section 968.41 of these regulations. However, this proposed regulation does not provide for the denial of certification to a laboratory that fails to satisfy security requirements as identified in subsections (a)(2)-(6) of that same section. This distinction is deliberate and intentional. Subsection (a)(2) of section 968.41 sets forth a security requirement affecting only those laboratories that opt to store handguns at a location different from the principal place of business, and therefore can not be a condition applicable to all laboratories. Subsections

(a)(3)-(6) of section 968.41 sets forth security requirements that are at least in part procedural and that are meant to apply to practices and conduct of laboratories that have been granted DOJ certification.

- (a)(4) This proposed regulation was changed to reflect a nonsubstantial grammatical clarifying correction.
- (a)(7) This proposed regulation was changed to reflect a nonsubstantial grammatical clarifying correction.
- (a)(8) This proposed regulation was changed to reflect a nonsubstantial grammatical clarifying correction.
- (a)(9) This proposed regulation was changed to reflect a nonsubstantial grammatical clarifying correction.
- (b) This proposed regulation was changed to reflect a nonsubstantial grammatical clarifying correction.

Section 968.34 “DOJ-Certification Period”

-

Section 968.35 “Processing Times”

- (a)(3) This proposed regulation was changed to reflect a nonsubstantial grammatical clarifying correction.
- (c)(2) This proposed regulation was changed to reflect a nonsubstantial grammatical clarifying correction.

Section 968.36 “Appeal Process”

- (d) This proposed regulation was changed to reflect a nonsubstantial grammatical clarifying correction.

Section 968.40 “Absence of Conflict of Interest”

- (b)(3) This proposed regulation was changed to reflect nonsubstantial grammatical clarifying corrections involving the modification of language that can be construed as a double-negative so that the language is clarified and can no longer be construed as a double-negative.

Section 968.41 “Security and Safety”

-

Section 968.42 “Licensing/Minimum Standards Compliance”

-

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

-

Section 968.44 “Testing Procedures”

- (a) This proposed regulation was changed to reflect a nonsubstantial grammatical clarifying correction.

Section 968.45 “Test Reporting”

Necessary Department Finding:

The DOJ finds that the report required 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.

- (c) This proposed regulation was changed to reflect a nonsubstantial grammatical clarifying correction.

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

-

Section 968.47 “Off-Site Location”

-

Section 968.48 “Inspections”

- (b) This proposed regulation was changed due to an unintentional reference to subsection (b)(3) of section 968.50 of these regulations. It is clear from the context of the proposed regulations that this reference should instead be to subsection (b)(2) of section 968.50.

Section 968.50 “Application Fees”

-

Section 968.70 “DOJ-Certification Renewal Procedures”

- (b) This proposed regulation was changed due to an unintentional reference to subsection (b)(2) of section 968.50 of these regulations. It is clear from the context of the proposed regulations that this reference should instead be to subsection (b)(3) of section 968.50.

Section 968.71 “DOJ-Certification after Expiration”

-

Section 968.90 “Roster of Certified Handguns”

-

Section 968.91 “Roster of Certified Handgun Listing Renewal Procedures”

-

Section 968.95 “Fees for the Roster of Certified Handguns”

-