

# **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 laboratory certification and handgun testing programs pursuant to Penal Code (PC) sections 12125 through 12133. 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 968.10 thru 968.95 in Title 11, Division 1, Chapter 12.4 of the California Code of Regulations (CCR). These sections apply to the laboratory certification and handgun testing programs.

### **PUBLIC HEARINGS**

The DOJ will hold a public hearing on the following date and time, at the following location:

October 23, 2000 beginning at 10:30 a.m.  
Resources Building  
Auditorium, First Floor  
1416 Ninth Street  
Sacramento, CA

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. The DOJ requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

### **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 October 23, 2000. The DOJ will consider only comments received at the DOJ offices by that time. Submit written comments to:

George Scarborough, Manager  
Department of Justice, Firearms Division  
P.O. Box 160487  
Sacramento, CA 95816-0487

## **AUTHORITY AND REFERENCE**

PC sections 12125 through 12133 authorize the DOJ to adopt regulations to comply with the mandate to certify independent laboratories to conduct specified tests of handguns and to establish and maintain the DOJ roster of certified handguns. This includes establishing procedures for laboratory certification, creating handgun testing and reporting standards, establishing and maintaining the DOJ roster of certified handguns, and setting fees for the initial and renewal laboratory certifications and DOJ roster listings.

Pursuant to Government Code sections 15376 and 15378, the DOJ is considering adopting the proposed regulations, sections 968.10 through 968.95, of Division 1 of Title 11, Chapter 12.4 of the CCR which would implement, interpret, and/or make specific California PC sections 12125 through 12133, and sections 15376, 15378 and Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code.

## **INFORMATIVE DIGEST**

PC sections 12125 through 12133 require the DOJ to certify independent laboratories to conduct testing of handguns and to establish and maintain a roster of handguns that have been tested and certified as not being unsafe. Commencing January 1, 2001, this law makes it a misdemeanor to manufacture or cause to be manufactured, import into the state for sale, keep for sale, offer or expose for sale, give, or lend any unsafe handgun, except as specified.

This law additionally requires every person licensed to manufacture firearms pursuant to federal law who manufactures firearms in this state and every person who imports into the state for sale, keeps for sale, or offers or exposes for sale any firearm to certify under penalty of perjury that every model, kind, class, style, or type of pistol, revolver, or other firearm capable of being concealed upon the person that he or she manufactures or imports, keeps, or exposes for sale is not a prohibited unsafe handgun.

This law also requires any pistol, revolver, or other firearm capable of being concealed upon the person manufactured in this state, imported into the state for sale, kept for sale, or offered or exposed for sale, to be tested by an independent laboratory certified by the DOJ to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person meets or exceeds specified standards defining unsafe handguns. The law requires the DOJ to certify laboratories for this purpose on or before October 1, 2000.

This law also requires the DOJ, on and after January 1, 2001, to compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that are not unsafe handguns by the manufacturer, model number, and model name. The law specifies that its provisions do not apply to the sale, loan, or transfer of any pistol, revolver, or other firearm capable of being concealed upon the person listed as a curio or relic.

This law authorizes the DOJ to charge every person in this state who is licensed as a manufacturer of firearms pursuant to federal law, and any person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in this state, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs necessary to implement the law. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This law provides that no reimbursement is required by this act for a specified reason.

PC sections 12125 through 12133 accordingly authorize the DOJ to adopt regulations to comply with the mandate to certify independent laboratories and to establish and maintain the DOJ roster of certified handguns as follows:

Section 968.10 denotes the title of the regulatory action.

Section 968.11 specifies the scope of the regulatory action.

Section 968.12 allows the DOJ to grant a specified extension of time for any deadline provided for in the proposed regulations.

Section 968.20 defines the following eighteen terms used in the laboratory certification process, handgun testing, and roster creation and maintenance: “BATF”; “COE”; “Completed Application”; “Compliance Test Report”; “Corporation”; “Day”; “DOJ”; “DOJ-Certification”; “DOJ-Certified Laboratory”; “Firm”; “Local License”; “Manufacturer/Importer”; “Model”; “Pistol”; “Reasonable Access”; “Revolver”; “Roster of Certified Handguns”; and “Standard Ammunition.”

Section 968.30 specifies that laboratories wishing to participate in the California Handgun Testing Program must be certified by the DOJ. It also specifies that a five percent or more change in ownership will require the submission of an application for DOJ-Certification by the proposed ownership entity or owners.

Section 968.31 specifies the information required on applications for DOJ-Certification. The requested laboratory information will allow the DOJ to identify the applicant and the agencies that have jurisdiction over the applicant. The application will also collect information regarding the person(s) who apply for and obtain the required DOJ Certificate of Eligibility. The required ownership and personnel information will include ownership structure, addresses, percentage owned/controlled, telephone numbers, articles of incorporation/partnership, as well as facility management and testing supervision/personnel information. The application will also collect information regarding security procedures and methods used to identify prohibited persons. The proposed regulation requests equipment and off-site location information as well as the identity of the authorized representative with whom the DOJ will correspond and communicate regarding application and certification issues. The proposed regulations will also require signed certifications regarding the absence of conflicts of interest, staff information, compliance with applicable federal, state, and local laws, and required equipment and materiel.

Section 968.32 requires that at least one person apply for and obtain a Certificate of Eligibility from the DOJ. The proposed regulation also specifies the requirements that the applicant demonstrate its ability to conduct the statutorily required firing and drop tests at an on-site inspection and further delineates the equipment required to conduct the tests.

Section 968.33 specifies the nine separate grounds for which an application shall be denied, the method of notifying the applicant if their application is denied, and the method for requesting an appeal of the denial decision. The appeal process will be handled in accordance with the Administrative Procedure Act, commencing with section 11500 of the Government Code.

Section 968.34 specifies a two-year term of validity of the initial DOJ-Certification.

Section 968.35 specifies the time periods within which the DOJ must inform an applicant that their application is either complete or deficient, and the time in which the DOJ must schedule and complete the required pre-DOJ-Certification on-site inspection. This proposed regulation also specifies the time period within which the DOJ must complete the processing of the application.

Section 968.36 establishes an applicant's recourse if the DOJ fails to complete processing of the application within the specified time standard set forth by section 968.35, in that he/she may apply for a refund.

Section 968.40 identifies the four conflicts of interest that are not permitted while a laboratory is certified both as to ownership and personnel.

Section 968.41 identifies the written security procedures that must be followed and the equipment required if a laboratory transports or stores handguns and requires the laboratory to comply with any existing federal, state, or local safety standards. The laboratory will also be required to exercise safe firearms handling practices and post a specifically worded warning within all areas where drop testing will be performed.

Section 968.42 requires the DOJ-Certified Laboratory to ensure they are in compliance with federal state, or local laws as well as licensing and approval requirements that relate to handgun testing and the business enterprise. The proposed regulation also requires the DOJ-Certified Laboratory to inform staff of laws relating to firearms possession prohibitions as well as ensure proper firearms possession. Finally, the DOJ-Certified Laboratory must also possess the equipment required by proposed regulation section 968.32.

Section 968.43 notes that generally speaking the modification of a handgun after certification is granted shall result in immediate removal from the DOJ roster of certified handguns. The proposed regulation also identifies the method for reviewing certain changes in a handgun model to determine whether it is exempt from separate testing based on an already tested model. Moreover, the proposed regulation restricts the persons who may submit a handgun model for testing to the DOJ or the handgun manufacturer or importer. The proposed regulation also requires the manufacturer or importer to provide three handguns of each model as well as field disassembly/assembly instructions, cleaning instructions, a description of safety features, and information regarding ammunition. Also, the manufacturer or importer will be able to provide any information they believe may be needed for proper and safe operation of the handgun. The manufacturer or importer will be able to provide or inspect the ammunition used during the firing test. Finally, the DOJ may authorize the use of “non-standard” ammunition that may be developed in the future provided such ammunition is commercially produced and factory loaded.

Section 968.44 allows representatives of the DOJ and manufacturer or importer to be present during testing, but provides that they shall not participate in the testing. The proposed regulation also clarifies how the statutorily required safety device will be identified as well as the steps the DOJ-Certified Laboratory must take if identification of the device is difficult; this includes a preliminary determination regarding the device, and a letter explaining the DOJ-Certified Laboratory’s determination relative to a BATF-approved design. The proposed regulation further clarifies the definition of a “malfunction,” identifies the criteria the ammunition and cartridge must meet, clarifies the drop test height and the condition of the handgun when dropped, identifies the criteria the primed cases must meet, describes how to test a pistol with multiple chambers and/or firing pins, provides that minimal damage need not be repaired after each of the first five drop tests unless the damage affects the handgun’s ability to fire a primed case, and requires that the primed case be fired after each drop test to ensure that the primer was functional. The proposed regulation also allows the DOJ to collect samples of testing materials.

Section 968.45 requires that laboratories report only the results of tests that certify a handgun model has passed the required testing, identifies the information and things that must accompany the report and further allows the development of automated reporting formats. It further requires that the report be submitted within ten working days, and provides that a late report does not invalidate the results of the test. Finally, the proposed regulation prohibits a manufacturer or importer from asserting that a handgun has passed the required testing until they are notified by the DOJ that the model can be sold in California and further specifies the required user statement information.

Section 968.46 specifies the five-year record keeping requirements for DOJ-Certified Laboratories must include information sufficient to support any and all Compliance Test Reports. The proposed regulation will also require that DOJ-Certified Laboratories maintain records of off-site testing locations, a current agreement or contract for any applicable 24-hour security guard system, a listing of all current employees who are involved in handgun testing, and records relating to current ownership. The proposed regulation will also allow DOJ-Certified Laboratories to maintain any other records they deem necessary and within ten working days to report changes dealing with ownership, personnel, equipment, and facilities.

Section 968.47 specifies the conditions under which an applicant would be allowed to use one off-site location. It also specifies the conditions which would cause the DOJ to prohibit the applicant from using an off-site location. The proposed regulation identifies the method for requesting an additional off-site location and requires the laboratory to pay the actual reasonable costs incurred during an inspection of any additional off-site location.

Section 968.48 allows duly authorized DOJ representatives to inspect the facilities and records of DOJ-Certified Laboratories and to observe handgun testing. The proposed regulation also requires that the DOJ conduct an on-site inspection within six months of certifying a laboratory. The proposed regulation sets forth the method for notifying a laboratory within 15 days of the results of an inspection as well as the time frame for completing any required corrective actions, and requires DOJ-Certified Laboratories to submit a monthly schedule of days on which they will perform testing.

Section 968.50 as proposed, pursuant to the requirement to recover the full costs of laboratory certifications and renewals, establishes an initial application fee of \$1,600 for the initial two-year DOJ-Certification and a renewal fee of \$800 for each two-year period thereafter. The proposed regulation also requires that the DOJ-Certified Laboratory pay the costs, not to exceed \$1,500, incurred during a post-DOJ-Certification compliance inspection and also requires the reimbursement for the actual reasonable costs incurred during any inspection of an additional off-site location.

Section 968.60 specifies the grounds for which a DOJ-Certification may be revoked. The proposed regulation also requires that any revocation action be handled in accordance with the Administrative Procedure Act, commencing with section 11500 of the Government Code, and that revoked laboratories will be removed from the roster of certified laboratories.

Section 968.70 establishes the renewal procedures and time frames applicable to the DOJ and DOJ-Certified Laboratories, and the consequences of failing to renew.

Section 968.71 establishes that after expiration of a DOJ-Certification the person, firm, or corporation must apply for DOJ-Certification and pay the initial application fee.

Section 968.80 informs applicant and DOJ-Certified Laboratories of the method that the DOJ will use for sending or transmitting notices, orders, and/or communications. The DOJ will use the address on the application for DOJ-Certification or the DOJ-Certification itself. The proposed regulation also specifies that any notices or orders shall be deemed served upon their deposit in the United States mail and the time specified in any such notice shall commence to run from the date of the mailing.

Section 968.90 establishes the procedure related to the DOJ roster of certified handguns and requires that within ten days of receipt of the required test report and specified documentation and fees, the DOJ will determine whether a handgun model is not unsafe and may be sold in California. The proposed regulation also specifies that the handgun will be added to the DOJ roster for a one-year period once this determination is made. The proposed regulation further specifies how a handgun can be added to the DOJ roster without separate testing, specifies how a handgun can be removed from the DOJ roster, identifies the requirements for the continued listing of a handgun in situations where the handgun would otherwise be removed, and identifies how to add to the DOJ roster certain handgun models that were previously listed.

Section 968.91 requires that a listing be renewed prior to expiration. The proposed regulation also establishes the renewal procedures and time frames applicable to the DOJ and affected parties, and the consequences of failing to renew.

Section 968.95 establishes an initial fee of \$200 for a handgun to be listed on the roster for the first year and an annual fee of \$200 for maintaining the listing each year thereafter. The proposed regulation also specifies that annual maintenance fees are non-refundable irrespective of discontinuation prior to completion of a full year's listing.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

*The DOJ has made the following determinations:*

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None. Costs are paid by applicant, handgun listing, and renewal 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 adverse economic impact on business including the ability of California businesses to compete with businesses in other states: None.

Potential cost impact on private persons or directly affected businesses: \$1,600 initial application fee per applicant, \$800 renewal fee per DOJ-Certified Laboratory. DOJ-Certified Laboratories will be required to pay the costs, not to exceed \$1,500, for a post-DOJ-Certification inspection. Applicant and DOJ-Certified Laboratories will also be billed for the actual reasonable costs incurred during an inspection of an additional off-site location. Receipts will be provided to the applicant and DOJ-Certified Laboratories to substantiate these costs. Additionally, at least one person in charge of handgun testing must apply for and obtain a COE which costs \$73 for the initial application and \$17 annually thereafter. Manufacturers or importers will pay \$200 per initial handgun listing, and \$200 annually for maintaining a listing.

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.

Significant effect on housing costs: None.

## **PLAIN ENGLISH DETERMINATION AND OVERVIEW**

### *Small business determination*

The DOJ has determined that the proposed regulations affect small business.

### *Plain English Policy Overview*

The purpose of the proposed regulations is to clarify and make specific the requirements for laboratory certification, handgun testing, and the listing of handguns on the DOJ roster of certified handguns.

### *Availability of Text in Plain English*

The express terms of the proposed action written in plain English are available from the agency contact named in this notice.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(12), the DOJ must determine that no alternative it considered 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**

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:

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

or:

Colleen Stewart  
Firearms Division  
4949 Broadway  
Sacramento, CA 95820

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

George Scarborough, Manager  
Department of Justice, Firearms Division  
P.O. Box 160487  
Sacramento, CA 95816-0487  
(916) 263-0849

or:

George Scarborough, Manager  
Firearms Division  
4949 Broadway  
Sacramento, CA 95820

## **AVAILABILITY OF STATEMENT OF REASONS 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 the above address. 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 firearms definitions research material. Copies may be obtained by contacting Colleen Stewart at the address or phone number listed above.

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing 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 the DOJ adopts 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.