

NOTICE OF PROPOSED RULEMAKING

Notice to be published on January 12, 2018

The Department of Justice (DOJ) proposes to adopt section 4095.1 and amend sections 4049 through 4053, 4057, 4060 through 4063, 4065 through 4068, 4070, 4071, 4082 through 4086, 4090, 4093 through 4100, 4105 through 4108, and repeal sections 4101 and 4102 of title 11, division 5, Chapters 5 and 6, of the California Code of Regulations (CCR) concerning Laboratory Certification of Handgun Testing and Certified Firearm Safety Device Laboratories, Firearm Safety Device Standards and Testing, and Standards for Gun Safes, after considering all public comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department will hold a public hearing to receive public comments on the proposed regulatory action.

The hearing will be held on February 26, 2018, 10:00 am to 12:00 pm, at the following location:

Resources Building Auditorium
1416 9th Street
Sacramento, California 95814

This auditorium is wheelchair accessible. There is no designated parking lot. Parking will need to be found nearby.

At the hearing, any person may present oral or written comments regarding the proposed regulatory action. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony.

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 February 26, 2018. Only comments received by the DOJ by that time will be considered. Written comments must be submitted to:

Jacqueline Dosch
Bureau of Firearms
Division of Law Enforcement
Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487
Phone: 916-227-5419
Email: handgunFSDtesting@doj.ca.gov

AUTHORITY AND REFERENCE

California Penal Code section 23650 states the Attorney General shall develop regulations to implement a minimum safety standard for Firearm Safety Devices (FSDs) and gun safes to significantly reduce the risk of firearm-related injuries to children 17 years of age and younger. Penal Code section 32030(c) states the Department of Justice (Department) may, in its discretion and at any time, require a manufacturer to provide to the Department any model of firearm for which listing is sought under this section, to determine whether the model complies with the requirements of this section. Furthermore, Penal Code section 32010 states the Department shall certify laboratories to verify compliance with the standards defined in Section 31910. Therefore, in order to comply with the above mentioned sections, it is necessary for the Department to revise the existing Chapters 5 and 6, in the California Code of Regulations (CCR), title 11, division 5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The “Aroner-Scott-Hayden Firearms Safety Act of 1999,” was approved by the Governor in August of 1999. The act requires that, except as provided, effective January 1, 2002, all firearms sold or transferred in California, or manufactured in California, be accompanied by a FSD approved by the Department. This act also requires the Department to certify laboratories to test FSDs. Additionally, the Attorney General is authorized to recall any gun safe or FSD sold in California that does not conform to the specified provisions of the act. (Penal Code sections 23620, 23625, 23630, 23635, 23640, 23645, 23650, 23655, 23675, 23680, 23685, and 23690.)

Also in 1999, the Legislature enacted Senate Bill 15 (Chapter 248, Statutes of 1999), which makes it a misdemeanor or felony to manufacture or import into the state an unsafe handgun. This legislation requires any pistol, revolver, or other firearm capable of being concealed upon the person that is in California, to be tested by an independent laboratory certified by the Department to determine if that firearm meets or exceeds specified standards defining unsafe handguns. The Department was required to certify laboratories for this purpose on or before January 1, 2001. (Penal Code sections 31900, 31905, 31910, 32000, 32005, 32010, 32015, 32030, 32100, and 32110.)

The California Code of Regulations, title 11, division 5, Chapters 5 and 6, detail the specifics of these laws as follows:

Section 4049 defines key terms related to the laboratory certification of handgun testing. These terms are used throughout these regulations.

Section 4050 specifies that any laboratory wanting to participate in the California Handgun Testing Program must apply for and obtain DOJ-Certification.

Section 4051 incorporates the Application for Laboratory Certification (Handgun Testing).

Section 4052 lists the requirements a laboratory needs prior to obtaining DOJ-Certification. Laboratories are required to have a Certificate of Eligibility (COE) pursuant to Penal Code section 26710. Additionally, laboratories are required to have a Federal Firearms License (FFL) and equipment for testing that is specified in this section.

Section 4053 specifies the grounds on which a laboratory will be denied for DOJ-Certification.

Section 4057 outlines the safety and security procedures that a DOJ-Certified Laboratory must have in place. A form for laboratories to report to the DOJ any lost or stolen handgun is also incorporated by reference.

Section 4060 specifies the testing procedures that laboratories are to adhere to.

Section 4061 revises and establishes the requirements for laboratories to report the test results to the Department.

Section 4062 details the required records, retention periods and reporting changes. This section is included due to the revision of a form that is incorporated by reference.

Section 4063 specifies requirements for a DOJ-Certified Laboratory should they need to use an off-site location for handgun testing. This section is included due to the revision of a form that is incorporated by reference.

Section 4065 established application fees and the forms that shall accompany the fees.

Section 4066 specifies the grounds for revocation of a DOJ-Certification for a laboratory.

Section 4067 outlines the procedures for renewal of DOJ-Certification. This section is included due to the revision of a form that is incorporated by reference.

Section 4068 specifies the procedures for renewal of a DOJ-Certification after the certification has expired. This section is included due to the revision of a form that is incorporated by reference.

Section 4070 establishes timeframes for receiving the Compliance Test Report (Handguns) in order to have the handgun listed on the Roster of Handguns Certified for Sale. Additionally, pursuant to Penal Code section 32015(b)(1), this section states the listing will be valid during the calendar year in which payment was received, ending December 31 of that year, regardless of when it was first placed on the Roster.

Section 4071 outlines the procedures for renewal of a handgun that was previously listed on the Roster of Handguns Certified for Sale, and how the Department will inform manufacturers that the handgun listing was renewed.

Section 4082 defines key terms related to the laboratory testing of FSDs. These terms are used throughout these regulations.

Section 4083 specifies that any laboratory wanting to participate in the FSD testing program must apply for and obtain DOJ-Certification.

Section 4084 incorporates the Application for Laboratory Certification (Firearm Safety Device Testing).

Section 4085 lists the requirements a laboratory needs prior to obtaining DOJ-Certification. Laboratories are required to have a COE pursuant to Penal Code section 26710.

Section 4086 specifies the grounds on which a laboratory will be denied DOJ-Certification for testing FSDs.

Section 4090 specifies that the laboratory must not have any conflicts of interest in the testing of FSDs and must not have any financial conflicts of interest.

Section 4093 specifies the FSD testing procedures that laboratories are to adhere to and the requirements for a manufacturer to submit FSDs to the laboratory. Some of the specifications include that the FSD shall be clearly marked with the manufacturer's model name and model number, and that if the FSD requires batteries to operate they must be included when provided to the laboratory.

Section 4094 establishes FSD standards. The FSDs shall be designed so that they will not allow their removal or deactivation unless by the method intended by the manufacturer.

Section 4095 establishes FSD testing procedures. The tests are designed to replicate the force that would be exerted on an FSD with common items found in the average home. Specific criteria is listed for the testing the FSDs ability to withstand tolerances of force, heights, torque and weight, exerted upon the device.

Section 4095.1 has been added to establish the testing sequence, and the number of FSDs that shall be supplied to the laboratory depending on the type of device. Some revisions have been made to the test, but mostly the order in which they are explained and the number of devices to be submitted has been clarified.

Section 4096 revises and establishes the requirements for laboratories to report the FSD test results to the Department.

Section 4097 details the required records, retention periods and reporting changes. This section is included due to the revision of forms that are incorporated by reference.

Section 4098 specifies requirements for a DOJ-Certified Laboratory performing FSD testing should they need to use an off-site location. This section is included due to the revision of a form that is incorporated by reference.

Section 4099 establishes inspections of the DOJ-Certified Laboratory that is testing FSDs. It states that within six months of the date of the certification, the Department will conduct an inspection to observe actual FSD testing.

Section 4100 outlines the procedures for establishing that a gun safe or lock box that is already in possession meets the appropriate standards. Also, this section tells how to prove that someone owns a gun safe or lock box that meets the standards.

Section 4101 has been repealed as it was combined into section 4100.

Section 4102 has been repealed as it was combined into section 4100.

Section 4105 outlines the procedures for renewal of a DOJ-Certification for a laboratory. This section is included due to the revision of forms that are incorporated by reference.

Section 4107 specifies how the Department shall receive notices, orders and communications from the laboratory. This section is included due to the revision of a form that is incorporated by reference.

Section 4108 establishes the Roster of Firearms Safety Devices Certified for Sale. The section states that within 30 days of receipt of the Compliance Test Report (Firearm Safety Devices), the Department will determine whether the FSD may be placed on the Roster.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

The proposed regulations provide references for revised forms, and further clarification on the testing procedures for handguns and FSDs. With revised regulations in place, the products placed on the Departments' Roster of Handguns Certified for Sale, and Roster of Firearm Safety Devices Certified for Sale will have been tested more accurately and lead to fewer unsafe incidents.

INCORPORATED BY REFERENCE FORMS

Application for Laboratory Certification (Handgun Testing), BOF 019 (Rev. 07/2018)

Application for Laboratory Certification (Firearm Safety Device Testing), BOF 019A (Rev. 07/2018)

Request to Utilize an Additional Off-Site Location (Handgun Testing), BOF 020 (Rev. 07/2018)

Request to Utilize an Additional Off-Site Location (Firearm Safety Device Testing), BOF 020A (Rev. 07/2018)

Compliance Test Report (Handguns), BOF 021 (Rev. 07/2018)

Compliance Test Report (Firearm Safety Devices), BOF 021A (Rev. 07/2018)

DOJ-Certified Laboratory Theft Report (Handguns), BOF 022 (Orig. 07/2018)

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the DOJ must evaluate whether the proposed regulation is inconsistent or incompatible with existing state regulations. Pursuant to this evaluation, the Department has reviewed existing regulations pertaining to firearms within California Code of Regulations (CCR) title 11, division 5 and determined these proposed

regulation is not inconsistent or incompatible. This determination is based on the fact that the proposed regulations revise and reorganize existing regulations.

COMPARABLE FEDERAL REGULATIONS

The proposed action does not differ substantially from an existing comparable federal regulation or statute.

DISCLOSURES REGARDING THE PROPOSED ACTION

The DOJ has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

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.

Cost impacts that a representative person or business would incur in reasonable compliance with the proposed action: The DOJ is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: None.

Small business determination: The DOJ has determined that the proposed regulation will not affect small business because all of the current DOJ-Certified Laboratories are located outside of California. Furthermore, the proposed regulation is not expected to engender any significant, negative fiscal impact. Some of the proposed changes will result in a cost savings.

Results of the Economic Impact Assessment/Analysis:

Adoption of the proposed regulation will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.
- (4) As stated above under the "Anticipated Benefits of the Proposed Regulation," the regulations update and clarify a number of forms and testing procedures. As a result, the products placed on the Departments' Roster of Handguns Certified for Sale and Roster of Firearm Safety Devices Certified for Sale will have been tested more accurately and lead to fewer unsafe incidents.

CONSIDERATION OF ALTERNATIVES

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

CONTACT PERSONS

Please direct inquiries concerning the proposed administrative action to:

Jacqueline Dosch
Bureau of Firearms
Division of Law Enforcement
Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487
Phone: 916-227-5419
Email: handgunFSDtesting@doj.ca.gov

The back-up contact person for these inquiries is:

Audrey Durfor
Bureau of Firearms
Division of Law Enforcement
Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487
Phone: 916-227-7615
Email: handgunFSDtesting@doj.ca.gov

AVAILABILITY OF RULEMAKING FILE INCLUDING THE INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The DOJ will have the entire rulemaking file available for inspection and copying throughout the rulemaking process. The text of the proposed regulation (the “express terms”), the initial statement of reasons, and the information upon which the proposed rulemaking is based are available at the DOJ website at <http://oag.ca.gov/firearms/regs>. Copies may also be obtained by contacting Jacqueline Dosch.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the DOJ may adopt the proposed regulation 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 and accept written comments before the DOJ adopts the regulation. Copies of any modified text will be available on the DOJ website at <http://oag.ca.gov/firearms/regs>. A written copy of any modified text may be obtained by contacting Jacqueline Dosch.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon completion, the final statement of reasons will be available on the DOJ website at <http://oag.ca.gov/firearms/regs>. You may also obtain a written copy of the final statement of reasons by contacting Jacqueline Dosch.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format, as well as the Final Statement of Reasons once completed, are available on the DOJ website at <http://oag.ca.gov/firearms/regs>.