

CALIFORNIA DEPARTMENT OF JUSTICE

**TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 11. POLICE BODY ARMOR**

NOTICE OF PROPOSED RULEMAKING

Notice published October 21, 2022

The Department of Justice (Department) proposes to clean up outdated regulations by repealing sections 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, and 957 of title 11, division 1, chapter 11 of the California Code of Regulations concerning Police Body Armor.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed regulatory action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or their authorized representative may submit written comments relevant to the proposed regulatory action. The written comment period closes on December 6, 2022 at 5:00 p.m. Only written comments received by that time will be considered. Please submit written comments to:

Department of Justice
Government Law Section
Marlon Martinez
300 South Spring Street, 9th Floor
Los Angeles, CA 90013
(213) 269-6437
Regulations@doj.ca.gov

NOTE: Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Authority: Penal Code Section 31355

Reference: Penal Code Sections 31310, 31315, 31320, 31325, 31330, 31355

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

In the 1970's, the National Institute of Law Enforcement and Criminal Justice (NILECJ), the research, development, and evaluation agency of the United States Department of Justice, published the first performance standard for ballistic-resistant police body armor, establishing the first minimum performance requirements and test methods for the ballistic resistance of body armor designed to protect the torso. The standards were published in the 1978 publication, *The Ballistic Resistance of Police Body Armor, NILECJ Standard-0101.01*.

Around the same time, California undertook a similar effort and the Department of Justice (Department) adopted regulations, which mostly duplicated the federal standards and testing methodology established by the NILECJ in 1978 for the state's own police body armor standard. However, the federal standards have significantly evolved since then and the 1978 publication has been superseded on numerous occasions. NILECJ, now known as the National Institute of Justice (NIJ), published their most recent body armor standard in 2008, *Ballistic Resistance of Body Armor, NIJ Standard-0101.06*. However, California's police body armor regulations remain unchanged since their adoption in 1978.

Although the Department has statutory authority to operate a testing program for police body armor, it does not currently operate a funded program for this purpose and has not done so for several decades. In contrast, the federal NIJ operates a robust, longstanding program that continuously establishes and updates voluntary minimum performance standards for body armor, conducts testing against these standards to ensure that body armor complies with the standards, and sponsors research to improve body armor. (Mark Greene, "*Body Armor: Protecting Our Nation's Officers From Ballistic Threats*," NIJ Journal 280, January 2019.) NIJ is currently working on a revision to its standard to be published as *Ballistic Resistance of Body Armor, NIJ Standard-0101.07*.

Effect of the Proposed Rulemaking:

These proposed regulations would repeal California's outdated police body armor regulations.

Anticipated Benefits of the Proposed Regulations:

Firearms are one of the most dangerous threats faced by law enforcement officers. Ballistic-resistant soft body armor has saved the lives of many police officers. Body armor is critical safety equipment that law enforcement and corrections officers need for personal protection. As reflected in *Department of General Services, Bid Specification 8470-2208, Ballistic Body Armor Level IIIA*, the State of California follows the most current federal standards when procuring police body armor, which protects the safety and welfare of California's police officers and residents by ensuring state law enforcement agencies have the most up-to-date information to make decisions regarding body armor. The repeal of the outdated regulations will remove the inconsistency between the Department's regulation and the State's current procurement practices.

Comparable Federal Regulations:

There are no existing federal regulations or statutes comparable to these proposed regulations.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that these regulations are inconsistent with the State’s current procurement policies and procedures. (See e.g., *Department of General Services, Bid Specification 8470-2208, Ballistic Body Armor Level IIIA.*)

Forms Incorporated by Reference:

None.

Other Statutory Requirements:

None.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department’s 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 non-discretionary costs or savings imposed on local agencies: None.

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

Cost impacts on representative person or business: The Department 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.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete: The Department has made an initial determination that that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Assessment (EIA):

The Department concludes that it is (1) unlikely that the proposal will create or eliminate jobs within the state, (2) unlikely that the proposal will create new businesses or eliminate existing businesses within the state, and (3) unlikely that the proposal will result in the expansion of businesses currently doing business within the state.

The Department also concludes that:

(1) The proposal would benefit the health and welfare of California residents by repealing regulations that are inconsistent with current police body armor standards. Currently, California's standards are outdated. By repealing these regulations, the Department's regulations will no longer be out of step with the most current federal standards for police body armor, standards that have improved police officer safety.

(2) The proposal would benefit worker safety because it repeals an outdated method of testing police body armor that does not conform to the current federal standard, which better protect California law enforcement while in the line of duty.

(3) The proposal would not benefit the state's environment because it does not change any applicable environmental standards.

Business report requirement: None.

Small business determination: The Department has determined that this proposed action does not affect small businesses because it pertains only to law enforcement, not private businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department has determined that the proposed action is the most effective way to follow the established national standards for police body armor.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Department of Justice
Government Law Section
Marlon Martinez
300 South Spring Street, 9th Floor
Los Angeles, CA 90013
(213) 269-6437
Regulations@doj.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Department of Justice
Government Law Section
Julia Zuffelato
1300 I Street, Suite 1270
Sacramento, CA 95814
(916) 210-6040
Julia.Zuffelato@doj.ca.gov

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process upon request to the contact person above. As of the date this Notice of Proposed Rulemaking (Notice) is published in the Notice Register, the rulemaking file consists of this Notice, the Text of Proposed Regulations (the “express terms” of the regulations), the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based. The text of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department’s website at <https://oag.ca.gov/regulations>. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the Department analyzes all timely and relevant comments received during the 45-day public comment period, the Department will either adopt these regulations substantially as described in this notice or make modifications based on the comments. If the Department 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 Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the name and address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons will be available on the Department's website at <https://oag.ca.gov/regulations>. Please refer to the contact information included above to obtain a written copy of the Final Statement of Reasons.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department's website at <https://oag.ca.gov/regulations>.