

# TITLE 11. DEPARTMENT OF JUSTICE

## PROPOSED REGULATIONS

### Text of Modified Regulations

Changes are illustrated as follows: language originally proposed is shown in regular text; deletions from the originally proposed language are shown with strikeout; additions to the originally proposed language are shown with underline.

#### § 4052. Pre-DOJ-Certification Requirements.

(a) Pursuant to subdivision (a)(4) of Penal Code section 12071, the DOJ issues COEs. One or more of the owner(s), chief executive officer(s), or person(s) with primary responsibility for the operation of the laboratory shall obtain and maintain a valid COE as a condition of obtaining and maintaining DOJ-Certification.

(b) Once a completed application has been received, the DOJ will schedule an on-site inspection of the applicant laboratory. During this inspection the applicant laboratory shall demonstrate its ability to conduct handgun testing by doing all of the following:

(1) Have available for inspection by DOJ staff, a microscope system equipped as follows:

(A) ~~A~~ Have a stereo zoom microscope with a low magnification of 25x or less, and a high magnification of at least 60x. The microscope must also be equipped with a ring-light for illumination and with polarizing filters to aid in reflection control.

(B) ~~A digital camera to capture a high quality digital photograph of viewed images.~~ Have a digital camera with the ability to capture digital images sufficient to adequately document the markings made on the cartridge cases by the microstamp.

(2) For the firing test:

(A) Fire 100 rounds through a semiautomatic pistol, stopping for 5 to 10 minutes after the first 50 rounds have been fired to allow the weapon to cool, and stopping as needed to refill the empty magazine to capacity before continuing. After the 100 rounds have been fired, tighten any loose screws and clean the gun in accordance with the manufacturer's instructions.

(B) Fire 100 rounds through a revolver, stopping for 5 to 10 minutes after the first 50 rounds have been fired to allow the weapon to cool, and stopping as needed to refill the empty cylinder to capacity before continuing. After the 100 rounds have been fired, tighten any loose screws and clean the gun in accordance with the manufacturer's instructions.

(C) Demonstrate the method to be used to determine whether there is any crack or breakage of an operating part of the handgun that increases the risk of injury to the user as set forth in subdivision (a)(2) of Penal Code section 12127.

(3) For the drop tests:

(A) Have the following testing equipment available for inspection by DOJ staff:

(i) a drop test fixture capable of dropping a handgun from a drop height of 1m + 1cm - 0cm (39.4 in. + 0.4 in. - 0 in.).

(ii) a height gauge capable of measuring the required drop height.

(iii) one or more concrete slabs with minimum dimensions of 7.5 X 15 X 15 cm (3 X 6 X 6 in.).

(B) Demonstrate that the drop test fixture is in proper working order by dropping an object of the approximate size and weight of a handgun from the fixture. The object shall drop and come to rest without interference on or near the required concrete slab which shall rest upon a firm surface.

(C) Demonstrate the ability to position a handgun in the drop fixture at the required drop height and in each of the six drop positions identified in Penal Code section 12128.

(c) The handguns and ammunition used during the demonstration shall be supplied by the applicant laboratory. The DOJ reserves the right to supply the handguns and ammunition used during the demonstration.

Authority cited: Sections 12126, 12127, 12128, 12130 and 12131.5, Penal Code.

Reference: Sections 12071, 12126 and 12130, Penal Code.

#### § 4057. Security and Safety.

(a) The DOJ-Certified Laboratory shall have written security procedures if handguns are to be stored and/or transported by the DOJ-Certified Laboratory. DOJ-Certified Laboratory staff shall be informed of these written procedures which shall be available upon request, and include all of the following:

(1) The handgun(s) shall be stored unloaded in a safe or a secure room which shall be locked while unattended, and shall meet all of the following requirements:

(A) A safe shall be ~~Underwriter's Laboratory approved.~~ certified to/listed as meeting Underwriters Laboratories Residential Security Container rating standards by a Nationally Recognized Testing Laboratory (NRTL).

(B) A secure room shall be away from any general living or work area. All doors leading into a secure storage room shall be solid core with a dead-bolt lock or the equivalent, or the handgun(s) shall be stored in an anchored, locked metal box in the

room. Anchored is defined as either permanently mounted to the floor or having a gross weight of 1,000 pounds or more so that heavy equipment or tools would be required to remove the box. Any secure storage room with direct entries, including windows and skylights, from the exterior of the building shall have: steel window guards (not recommended for private residences); an audible, silent or sonic alarm to detect entry; or a 24-hour security guard service.

(2) If the handgun(s) will be stored at a location different from the principal place of business, or at the applicant's residence and that residence is rented/leased, the applicant shall submit to the DOJ written approval from the owner and the location shall meet all security requirements.

(3) Ammunition shall be stored separately from the handguns in a secure room, cabinet or box which shall be and locked while unattended.

(4) When transporting a handgun for delivery to an authorized recipient or off-site testing location, the handgun shall be transported as required by California Penal Code section 12026.1, or as required by any applicable federal, state, and/or local statute and/or ordinance if outside of California.

(5) Any handgun not actively being tested shall be locked in the safe or the secure room or box. Upon receipt, a handgun shall be placed in the laboratory's safe or the secure room or box until testing is commenced. Any handgun to be shipped from the laboratory shall be kept in the safe or secure room or locked metal box until arrival of the person authorized to receive the handgun or until laboratory personnel are prepared to transport the handgun for delivery to an authorized recipient.

(6) Any handgun that is lost or stolen shall be reported within ten (10) working days to the submitting manufacturer/importer, local law enforcement agency, and DOJ. The DOJ-Certified Laboratory shall maintain the following records relating to any such handguns: the type, make, model, caliber, barrel length, category, and serial number of the lost/stolen handgun; the date of the loss/theft; the date the loss/theft was reported to the submitting manufacturer/importer, local law enforcement, and DOJ; and any case/report number(s) assigned by the local law enforcement agency to the loss/theft. The DOJ-Certified Laboratory shall maintain these records for at least ten (10) years.

(b) The DOJ-Certified Laboratory shall at all times ensure that:

(1) All persons conducting, supervising and/or observing handgun testing under this program have and use personal safety equipment that meets or exceeds applicable current federal, state and/or local standards and the requirements of any occupational and/or industrial safety agency having jurisdiction over the laboratory and its activities.

(2) The design and operation of the laboratory's facilities meet or exceed applicable current federal, state and/or local standards and/or requirements.

(3) Laboratory testing staff are familiar with and exercise safe firearms handling and operational practices as defined in all applicable federal, state, and/or local laws.

(4) The following warning in block letters not less than one inch in height is conspicuously posted within all areas where drop testing is performed:

"NO AMMUNITION SHALL BE PRESENT IN OR AROUND THIS DROP TESTING AREA OR IN THE POSSESSION OF ANY PERSONNEL ACTIVELY ENGAGED IN CONDUCTING DROP TESTS."

Authority cited: Section 12130, Penal Code.

Reference: Sections 12026.1 and 12130, Penal Code.

§ 4060. Testing Procedures.

(a) The only persons allowed to conduct handgun testing are authorized staff of the DOJ-Certified Laboratory. In addition to this staff, representatives of the manufacturer/importer and/or the DOJ shall be allowed to be present during testing. Any such representative(s) shall not participate in the testing. However, if deemed necessary by the staff of the DOJ-Certified Laboratory, representative(s) of the manufacturer/importer may be asked to provide advice and/or guidance regarding the characteristics, handling, and/or operation of the handgun.

(b) Prior to beginning the required testing the DOJ-Certified Laboratory shall determine whether the safety device described in Penal Code section 12126(a)(1) or (b)(1) is present.

(1) If the DOJ-Certified Laboratory needs guidance in making this determination, the information required by subdivision (d) of section 4059 of these regulations should be consulted. If the DOJ-Certified Laboratory is still not able to make this determination, they should contact the manufacturer/importer for additional information. Any additional information received from the manufacturer/importer shall be included with the information submitted pursuant to subdivision (d) of § 4059 of these regulations.

(2) If a DOJ-Certified Laboratory is still uncertain whether a positive manually operated safety device is present on a pistol even after it receives additional information, the firing and drop tests should be performed. If the pistol passes these tests, the laboratory should submit the pistol to the DOJ with a letter explaining the steps taken to determine whether the positive manually operated safety device is present. The laboratory must indicate its preliminary decision regarding the positive manually operated safety device. The letter should also include any information that would support the position taken by the laboratory. This includes a description of the positive manually operated safety device(s) incorporated into the pistol's design and an explanation of how this design replicates the positive manually operated safety device of a pistol design that has already been determined to meet the standards promulgated by the ATF. The DOJ will use this information to determine whether the pistol can be sold in California.

(c)(1) Commencing May 22, 2006, the DOJ-Certified Laboratory shall conduct the required testing of a center-fire semiautomatic pistol only after ascertaining the firearm has a functioning chamber load indicator or a functioning magazine disconnect mechanism.

(2) Commencing January 1, 2007, the DOJ-Certified Laboratory shall conduct the required testing of a center-fire semiautomatic pistol which accepts a detachable

magazine only after ascertaining the firearm has both a functioning chamber load indicator and a functioning magazine disconnect mechanism.

(3) Commencing May 22, 2006, the DOJ-Certified Laboratory shall conduct the required testing of a rim-fire semiautomatic pistol which accepts a detachable magazine only after ascertaining the firearm has a functioning magazine disconnect mechanism.

(4) On or after January 1, 2010, upon DOJ's certification that the microstamping technology described in subdivision (b)(7) of Penal Code section 12126 is available to more than one manufacturer unencumbered by any patent restrictions, the DOJ-Certified Laboratory shall verify that every semiautomatic pistol complies with the microstamping requirement for semi-automatic pistols set forth in subdivision (b)(7) of Penal Code § section 12126 by following the procedures set forth in subdivisions (e),(g), and (h) of this section.

(d)(1) A functioning chamber load indicator must meet all of the following conditions:

(A) Explanatory text and/or graphics either incorporated within the chamber load indicator or adjacent to the chamber load indicator is/are permanently displayed by engraving, stamping, etching, molding, casting, or other means of permanent marking.

(B) Each letter of explanatory text must have a minimum height of 1/16 inch.

(C) The explanatory text and/or graphics shall be of a distinct visual contrast to that of the firearm.

(D) The "loaded" indication, that portion of the chamber load indicator that visually indicates there is a round in the chamber, shall be of a distinct color contrast to the firearm.

(E) Only when there is a round in the chamber, the "loaded" indication is visible on the firearm from a distance of at least twenty-four inches. When there is no round in the chamber, the "loaded" indication must not be visible.

(F) The text and/or graphics and the "loaded" indication together inform a reasonably foreseeable adult user of the pistol, that a round is in the chamber, without requiring the user to refer to a user's manual or any other resource other than the pistol itself.

(2) A functioning magazine disconnect mechanism must prevent the ammunition primer from being struck with a pull of the trigger or attempted pull of the trigger whenever a detachable magazine is not inserted in the pistol.

(e) Prior to conducting the "firing requirements for handguns" test of a semi-automatic pistol required by Penal Code section 12127, the DOJ-Certified Laboratory shall fire each handgun of that make and model of semiautomatic pistol two times. After firing the pistol two times, the DOJ-Certified Laboratory shall collect the two cartridge casings expended from that pistol, store the casings in a container labeled with the FIN of the pistol from which they

were expended and indicating that the two cartridges were expended immediately preceding the firing test, and retain the casings for possible later analysis. The cartridge casings shall be analyzed pursuant to the procedures set forth in subdivision (h) of this section only upon successful completion of the "firing requirements for handguns" test of the semiautomatic pistol.

(f) The "firing requirement for handguns" is the first test to be undertaken by the DOJ-Certified Laboratory. This test shall be conducted in the manner prescribed in Penal Code section 12127 and in accordance with the following:

(1) For the purposes of determining whether a handgun passes the "firing requirement for handguns," "malfunction" includes any failure to operate as designed including the failure of a pistol's slide to remain open after a manufacturer-approved magazine has been expended, provided that the handgun was designed by the manufacturer to remain open.

(2) If the manufacturer/importer markets and/or recommends that the handgun model is designed to handle multiple cartridges, the standard ammunition used during the firing test shall be the more powerful marketed/recommended cartridge. However, the DOJ-Certified Laboratory shall not use any standard ammunition known to be beyond the design limits of the handgun and/or known not to function in the handgun.

(3) If a pistol has multiple chambers the 600 rounds shall be evenly apportioned between the chambers.

(4) The DOJ-Certified Laboratory shall determine whether there is any crack or breakage of an operating part of the handgun that increases the risk of injury to the user, as set forth in subdivision (a)(2) of Penal Code section 12127.

(5) Should a handgun fail the "firing requirements for handguns" test, three handguns of that make and model must be re-submitted for the firing test. Handguns that do not pass the "firing requirements for handguns" test may not be submitted for the "drop safety requirement for handguns" testing.

(g) As soon as possible after successful completion of the "firing requirements for handguns" test of a semiautomatic pistol, the DOJ-Certified Laboratory shall fire each handgun of that make and model of semiautomatic pistol two additional times. After firing the pistol two additional times, the DOJ-Certified Laboratory shall collect the two cartridge casings expended from that pistol and store the cartridges in a container labeled with the FIN of the pistol, indicating that the two cartridges were expended immediately following the firing test, and keeping them separate and apart from the cartridge casings expended and collected from the same pistol prior to conducting the "firing requirements for handguns" test pursuant to subdivision (e) of this section.

(h) In order to verify compliance with the microstamping requirement for semi-automatic pistols set forth in subdivision (b)(7) of Penal Code section 12126, the DOJ-Certified Laboratory shall use the following procedures and criteria to examine the cartridge casings collected from each tested semiautomatic pistol (pursuant to subdivisions (e) and (g) of this

section) to determine whether a FIN was transferred by imprinting onto each cartridge case when the pistol was fired:

(1) Using a stereo zoom microscope described in section 4052 of these regulations, the DOJ-Certified Laboratory shall examine each of the cartridge casings collected prior to and after the "firing requirements for handguns" test to verify that the pistol has transferred an imprint or etching in at least two places on each cartridge casing. So long as the pistol's complete FIN can be identified from the one or more etchings on each cartridge casing, the pistol will meet the microstamping requirements of Penal Code section 12126, subdivision (b)(7).

(2) The DOJ-Certified Laboratory shall take ~~a high-quality digital photograph of each set of cartridge casings it examines.~~ digital photographs sufficient to adequately document the markings made on the cartridge cases by the microstamp.

(3) The DOJ-Certified Laboratory shall repeat the examination process described above for each set of cartridge casings expended from each tested pistol of that make and model of semiautomatic pistol. If each cartridge casing from each set of expended cartridge casings satisfies paragraph (1) above, then the DOJ-Certified Laboratory shall certify that the model of semiautomatic pistol complies with the microstamping requirement set forth in subdivision (b)(7) of Penal Code section 12126.

(i) The "drop safety requirement for handguns" is the last test to be undertaken by the DOJ-Certified Laboratory. The drop tests shall be conducted in the manner prescribed in Penal Code section 12128 and in accordance with the following:

(1) The drop height of 1m + 1cm - 0cm (39.4 in. + 0.4 in. - 0 in.) shall be measured from the lowermost portion of the handgun as situated in the drop fixture to the top surface of the required concrete slab. The required concrete slab shall rest upon a firm surface and the face of the slab shall be perpendicular to the direction of the drop. If a handgun has an exposed hammer, the hammer shall be fully cocked during each drop test. When dropped the handgun shall initially strike the face of the required concrete slab and then come to rest without interference.

(2) The primed cases used during the drop test shall be produced by the ammunition manufacturer of and made from the same cases and primers as the standard ammunition that is used during the firing test as set forth in sections 4059(e) and 4060(e)(2) of these regulations.

(3) If a pistol has multiple chambers and/or firing pins, the tests shall be conducted as follows. For each of the drop tests a primed case will be placed in each chamber. If the hammer or firing pin alternates between chambers, the pistol will be dropped once for each hammer or firing pin position.

(4) Minimal damage, such as broken grips or sights, can and will occur during the course of the drop testing. Damage and/or breakage that affects the overall dimensions of the handgun shall be repaired prior to continuing the drop tests. After each of the first five

drop tests the DOJ-Certified Laboratory shall determine whether the handgun has been rendered incapable of firing a primed case prior to conducting the next drop test. If so, the handgun model shall either be repaired, or the test shall be stopped and three new handguns must be submitted for testing beginning with the "firing requirement for handguns."

(5) After examining the primed case(s) for indentations after each drop test, each primed case shall be fired to determine whether the primer was functional. If not, the drop test shall be repeated with a new primed case(s). A new primed case(s) will be used for the next drop test.

(6) Should a handgun fail the "drop safety requirement for handguns," or be found incapable of firing a primed case, three new handguns of that make and model must be submitted for testing beginning with the "firing requirements for handguns" test.

(j) A DOJ representative may request and shall be provided with spent or unspent rounds of and/or the packaging for the standard ammunition that is being used for firing tests. A DOJ representative may also request and shall be provided with the packaging for and/or used or unused primed cases that are being used for drop tests.

(k) The same three handguns that pass the "firing requirements for handguns" test must also pass the "drop safety requirement for handguns" before that make and model can be considered for certification.

(l) The DOJ-Certified Laboratory shall report a handgun to the DOJ as "not unsafe" only if it has passed the required testing, has been found to comply with the microstamping requirement for semi-automatic pistols pursuant to subdivision (h) of these regulations, if applicable, and the laboratory has confirmed that any chamber load indicator and/or magazine disconnect identified pursuant to subdivisions (c) and (d) of this section continues to function upon completion of the required testing.

Authority cited: Sections 12126, 12127, 12128 and 12130, Penal Code.

Reference: Sections 12125-12131.5, Penal Code.

#### § 4075 Application for Approval of Alternative Method of Microstamping Technology

(a) On or after January 1, 2010, upon DOJ's certification of a microstamping technology pursuant to subdivision (b)(7) of Penal Code section 12126, any person or corporation may apply to the Attorney General for approval of an alternative method of microstamping technology.

(b) The application for such approval must be in writing, and must include the following information:

(1) A description of the alternative method of microstamping technology, including a statement explaining how the alternative microstamping method identifies the specific serial number of a pistol from spent cartridge casings discharged by that pistol.

(2) Verification that the alternative method of microstamping technology is unencumbered by any patent restrictions. For purposes of this paragraph, “verification” includes, but is not limited to, the following information: A search, initiated and paid for by the applicant and conducted by a licensed patent attorney, of the United States Patent Office records within the past 30 days indicating that the alternative method of microstamping technology is unencumbered by any patent restrictions.

(3) A report from a DOJ-Certified Laboratory indicating that the alternative method of microstamping technology has been tested by the DOJ-Certified Laboratory as follows:

(A) The DOJ-Certified Laboratory conducted a firing test as described in Penal Code section 12127 and complied with subdivisions (e) and (g) of section 4060 of these regulations for each of the pistols.

(B) The DOJ-Certified Laboratory examined the first two and last two expended cartridge casings from each pistol (collected pursuant to subdivisions (e) and (g) of section 4060 of these regulations) and, using a stereo zoom microscope described in section 4052 of these regulations, was able to identify the specific serial number of the firing pistol on each expended cartridge.

(C) The DOJ-Certified Laboratory took ~~the high quality digital photographs of the examined cartridge casings included in the application.~~ digital photographs sufficient to adequately document the markings made on the cartridge cases by the microstamp and included such photographs in the application for certification of an alternative microstamping method.

(c) Upon receipt of a complete application, the Attorney General shall determine both of the following in order to approve the alternative method of microstamping:

(1) That the alternative method of microstamping technology is a method of equal or greater reliability and effectiveness than the method of microstamping described in subdivision (h) of Section 4060 of these regulations based upon findings that (1) the method satisfies the requirements of paragraphs (1) and (2) of subdivision (b) of this section; (2) the method utilizes a unique identifier that can be used to ascertain the serial number of the firing pistol; and (3) the method permits the firing weapon to be identified after examination of the spent cartridge casings through AFS.

(2) Certification that the alternative method of microstamping technology is unencumbered by any patent restrictions.

(d) The Attorney General shall notify the applicant in writing of the intent to approve, or the denial of any application for approval of alternative method of microstamping, within 90 days of receiving a complete application. However, notification of the intent to approve an alternative method of microstamping shall not constitute approval by the Attorney General of that alternative method of microstamping technology.

(e) If the approval or denial determinations are delayed by circumstances beyond the control of the Attorney General, the Attorney General shall notify the applicant in writing about when the approval or denial determinations are expected to be made.

(f) Certification and approval of an alternative method of microstamping technology by the Attorney General shall only be made by notice via regulations adopted by the Attorney General for purposes of implementing the alternative method of microstamping technology.

Authority cited: Sections 12126, Penal Code.

Reference: Sections 12125-12131.5, Penal Code.