

# **TITLE 11. DEPARTMENT OF JUSTICE NOTICE OF PROPOSED RULEMAKING**

The Department of Justice (“Department” or “DOJ”) proposes to amend sections 4047, 4049, 4050, 4051, 4052, 4053, 4057, 4058, 4059, 4060, 4061, 4062, 4063, 4064, 4065, 4066, 4067, 4068, 4070, 4071, 4072, 4073, and 4074, proposes to remove Section 4055, and proposes to add section 4075 of Title 11, Division 5, Chapter 5 of the California Code of Regulations (CCR) with regard to firearm microstamping after considering all comments, objections, and recommendations regarding the proposed action.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Pursuant to California Penal Code sections 12125 and 12126, only handguns that are on a DOJ roster of handguns identified as not “unsafe” can be sold by licensed firearms dealers in this state. As of January 1, 2010, a new law mandates that for a new model of semi-automatic pistol to be placed on the DOJ roster of “not unsafe” handguns (models currently on the roster are excluded), the pistol must be designed and equipped with a microscopic array of characters that identify the make, model and serial number of the pistol, etched or otherwise imprinted in two or more places on the interior surface or internal workings parts of the pistol, that are transferred by imprinting on each cartridge case expended from the pistol when the firearm is fired. But under the new law, the requirement only takes effect “provided that the Department of Justice certifies that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions.” The proposed regulations amend sections 4049, 4059, 4061, and 4062 to provide specific criteria that semiautomatic pistols and certified test laboratories must meet to comply with the new requirements relating to microstamping. The proposed amendments to sections 4047, 4050, 4053, 4057, 4058, 4063, 4065, 4066, 4067, 4068, and 4070 through 4074 are non-substantive amendments that have no impact on the regulations or persons subject to the regulations. The proposed regulations also add section 4075, which describes the method for an alternative method of microstamping technology to be approved by the Department.

### Sections 4047, 4050, 4053, 4057, 4058, 4063, 4065, 4066, 4067, 4068, and 4070 thru 4074

The only proposed amendments made to these sections replace the symbol “§” with the word “section” and/or updating the form number and form revision date. These non-substantive amendments have no impact on the regulations, or persons subject to the regulations.

### Section 4049. Definition of Key Terms

Currently, this section defines the key terms used throughout the regulations. The proposed amendment will define a new term “FIN.” “FIN” is defined as the “firearm identification number comprised of a unique array of characters that identify the make, model and serial number of each pistol subject to the microstamping requirement for semiautomatic pistols set forth in subdivision (b)(7) of Penal Code section 12126 and which can be used to identify the pistol when it is traced through DOJ’s Automated Firearms System (AFS). The FIN shall

consist of at least eight, but no more than 12, unique alpha and/or numeric characters that must begin with the manufacturer's NCIC MAK code.”

The proposed amendment will also reorder the key terms in correct alphabetical order and will correct “BATF” to “ATF,” the current acronym for the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives.

#### Section 4051. Application for DOJ-Certification

The proposed amendments to this section are to change “FD” to “BOF,” which is the current acronym used on the Department's Bureau of Firearm (BOF) forms, change the revision dates of the BOF forms, and change the “§” symbol to the word “section.” An additional amendment removes the reference to Parts B, C, D, F and G of the DOJ-Certification application because those parts were deleted in the revised application.

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

The proposed amendment to this section changes the “§” symbol to the word “section.” Additionally, the proposed amendment specifies requirements for the microscope and digital camera necessary for examination of expended casings and, because of those added specifications, renumbers the sections.

#### Section 4055. Appeal Process

Currently, this section defines the time periods for processing an Application by a handgun testing laboratory for DOJ-Certification. The proposed amendment deletes this section in its entirety because the Permit Reform Act (Government Code section 15374 through 15378), upon which this section was based, was repealed.

#### Section 4059. Which Handguns Must be Tested, Who May Submit Handguns, Submission Requirements

The proposed amendment to this section changes the “§” symbol to the word “section.” Also, the proposed amendment includes the requirement that a statement by the manufacturer indicating that each handgun of the make and model of semi-automatic pistol submitted for testing is designed and equipped with a FIN etched or otherwise imprinted in two or more places on the interior surface or internal working parts of the pistol that is transferred by imprinting on each cartridge case expended from the pistol when the pistol is fired. The FIN must be displayed or recorded on the manufacturer's packaging on any semi-automatic pistol which is imported into the state for sale, kept for sale, offered or exposed for sale, given, or lent in the state and subject to the microstamping requirement set forth in Penal Code section 12126, subdivision (b)(7).

#### Section 4060. Testing Procedures

The proposed amendment to this section changes the “§” symbol to the word “section.” Also, “BATF” is changed to “ATF,” the current acronym used for the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives.

Additional proposed amendments to this section will require the DOJ-Certified laboratory, in order to verify that every semiautomatic pistol complies with the microstamping requirement, to fire each handgun of that make and model two times before the firing portion of the testing, collect and label the two cartridge casings, retain the casings for possible later analysis, and then to repeat the process after the firing portion of the testing. The proposed amendment also includes procedures and criteria to examine the cartridge casings collected from each tested semiautomatic handgun and requires the DOJ-Certified laboratory to report a handgun to the DOJ as “not unsafe” if it complies with the microstamping requirement for semiautomatic pistols.

#### Section 4061. Test Reporting

Currently, the regulations require the DOJ-Certified handgun testing laboratory to submit one tested handgun with the Compliance Test Report. The proposed amendment to this section will require the DOJ-Certified handgun testing laboratory to also submit all expended cartridge casings collected from the pistol during testing pursuant to section 4060, subdivisions (e) and (g) of these regulations and all photographs of expended cartridge casings taken pursuant to section 4060, subdivision (h) of these regulations. Other proposed amendments change the “§” symbol to the word “section,” change “FD” to “BOF,” the current acronym used on Bureau of Firearm (BOF) forms, and change the revision dates of the BOF forms.

#### Section 4062. Required Records, Retention Periods, Reporting Changes

The proposed amendment to this section changes the “§” symbol to the word “section,” change “FD” to “BOF,” the current acronym used on Bureau of Firearm (BOF) forms, and change the revision dates of the BOF forms. A proposed amendment also requires information to be recorded, reported, and maintained as it pertains to the results of the examination of all expended cartridge casings.

#### Section 4064. Inspections

Currently, the regulations require the DOJ-Certified laboratory to submit to DOJ a monthly schedule of the days when the laboratory plans to perform handgun testing. The proposed amendment will remove this requirement. Another proposed amendment to this section changes the “§” symbol to the word “section.”

#### Section 4075. Application for Approval of Alternative Method of Microstamping Technology

The proposed amendment seeks to add a section regarding approval of an alternative method of microstamping technology. The new section would provide that, on or after January 1, 2010, any person or corporation may apply to the Attorney General for approval of an alternative method of microstamping technology, provided that the Department of Justice has already certified an original method of microstamping. The new section specifies the information that must be included in the application for such approval. Additionally, it outlines that upon receipt of a completed application, the Attorney General shall determine if the alternative method of microstamping technology is a method of equal or greater reliability and effectiveness. Further, the Attorney General shall determine if the alternative method of microstamping technology is also unencumbered by any patent restrictions.

**Incorporated By Referenced Forms:** BOF 019, Laboratory Certification Application (Handgun Testing), Rev. 12/09; BOF 020, Request to Utilize Additional Off-site Location (Handgun Testing), Rev. 12/09; BOF 021, Compliance Test Report (Handguns), Rev. 12/09.

## **AUTHORITY AND REFERENCE**

Authority: Penal Code sections 12125, 12126, 12127, 12128, 12129, 12130, 12131, 12131.5, 12132, and 12133.

Reference: Penal Code sections 1001.6, 12001.6, 12021, 12026.1, 12071, 12125, 12126, 12127, 12128, 12129, 12130, 12131, 12131.5, 12132, and 12133; Corporations Code section 102(a); Government Code section Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2; United States Code Chapter 44 sections 920 et seq.

## **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on February 17, 2010. Only comments received at the Department offices by that time will be considered. Please submit written comments to:

Mail: Jeff Amador, Field Representative  
Department of Justice  
Division of Law Enforcement/Bureau of Firearms  
P.O. Box 160487  
Sacramento, CA 95816-0487  
or  
Email: jeff.amador@doj.ca.gov

## **PUBLIC HEARING**

The Department will hold a public hearing at 9 a.m. on Wednesday, February 17, 2010, for the purpose of receiving public comments regarding the proposed regulatory action. The hearing will be held in the Department of Water Resources auditorium located at 1416 9th Street, Sacramento, California. The auditorium is wheelchair accessible. At the hearing, any person may present oral or written comments regarding the proposed regulatory action. The Department requests that persons who make oral comments also submit written copy of their testimony at the hearing. Oral and written comments have the same weight in the regulatory process, and will be summarized and addressed in the Final Statement of Reasons for the regulations.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Department has made the following 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: The proposed amendments merely provide specification for statutorily mandated requirements and do not by themselves, impose any impact on local agencies.

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: DOJ-Certified laboratories will incur estimated costs of \$5,000.00 for a stereo zoom microscope with low magnification of 25x or less and a high magnification of at least 60x. The microscope must be equipped with a ring light for illumination and polarizing filters to aide in reflection control. DOJ-Certified laboratories will also incur an estimated cost of \$600.00 for an optical zoom digital camera to capture a high quality digital photograph of viewed images. All handgun testing laboratories currently certified by DOJ are located outside of California. In addition, costs of conducting additional testing to verify compliance with the microstamping requirement will be passed on to firearm manufacturers, who pay the cost of laboratory testing.

Significant effect on housing costs: None

Small business determination: The proposed amendments merely provide specification for statutorily mandated requirements and do not by themselves, impose any impact on any small businesses.

Assessment regarding effect on jobs/businesses: The proposed amendments 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 doing business within California.

## **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 otherwise identified and brought to the attention of the Department, would be either more effective in carrying out the purpose for which the action is proposed, or as effective and less burdensome to affected private persons, than the proposed regulations. The Department invites any person interested in

presenting statements or arguments with respect to alternatives to the proposed regulations to do so at the scheduled hearing, or during the written comment period.

## **CONTACT PERSONS**

Please direct inquiries concerning the proposed administrative action to Jeff Amador at (916) 263-0256. The backup contact person is Leslie McGovern at (916) 263-4882. The mailing address for Jeff Amador and Leslie McGovern is:

Department of Justice  
Division of Law Enforcement/Bureau of Firearms  
P.O. Box 160487  
Sacramento, CA 95816-0487

## **AVAILABILITY OF RULEMAKING FILE INCLUDING THE INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

Upon official acceptance by the Office of Administrative Law, the Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process. The initial statement of reasons and the text of proposed regulations will be available on the Department's website at [www.ag.ca.gov/firearms/regs/](http://www.ag.ca.gov/firearms/regs/). You may also obtain copies by contacting Leslie McGovern at the telephone number or address above.

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

After considering all timely and relevant comments received, the Department may adopt the proposed regulations as described in this notice. If the Department makes substantial 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 revised regulations. The Department will accept written comments on the modified text for 15 days after the date on which the revised regulations are made available. Copies of any modified text will be available from the DOJ website at [www.ag.ca.gov/firearms/regs/](http://www.ag.ca.gov/firearms/regs/). You may also obtain a written copy of any modified text by contacting Leslie McGovern at the telephone number or address above.

## **AVAILABILITY OF FINAL STATEMENT OF REASONS**

Upon completion, the final statement of reasons will be available at the DOJ website at [www.ag.ca.gov/firearms/regs/](http://www.ag.ca.gov/firearms/regs/). You may also obtain a written copy of the final statement of reasons by contacting Leslie McGovern at the telephone number or address above.

## **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in strikeout format, as well as the Final Statement of Reasons once it is completed, can be accessed through the DOJ website at [www.ag.ca.gov/firearms/regs/](http://www.ag.ca.gov/firearms/regs/).