

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 5. FIREARMS REGULATIONS

CHAPTER 6. CERTIFIED FIREARM SAFETY DEVICE LABORATORIES, FIREARM SAFETY DEVICE STANDARDS AND TESTING AND STANDARDS FOR GUN SALES

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

With limited exceptions, any firearm sold or transferred in this state by a licensed firearms dealer, including a private transfer through a dealer, and any firearm manufactured in this state, shall include or be accompanied by a firearm safety device (FSD or device) that is listed on the Roster of Approved Firearm Safety Devices (Roster) and that is identified as appropriate for that firearm by reference to either the manufacturer and model of the firearm, or to the physical characteristics of the firearm that match those listed on the Roster for use with the device. (Pen. Code, §§ 23630, 23635.)

The Department of Justice (Department) certifies laboratories to verify compliance with FSD standards. (Pen. Code, § 23655.) The certified laboratories, at the manufacturer's or dealer's expense, test FSDs and submit a copy of the final test report to the Department. After reviewing the test report and FSD, the Department determines whether the device will be placed on the Roster and may be sold in this state. (Pen. Code, § 23655, subd. (c); Cal. Code Regs., tit. 11, § 4108.) The Department must retain this prototype for at least as long as the device remains listed on the Roster. (Pen. Code, § 23655, subd. (c).)

Commencing January 1, 2026, a FSD may not be added to the Roster unless the name of the manufacturer, the model number, and the model name are engraved or otherwise permanently affixed to the device. (Pen. Code, § 23655, subd. (f)(2).)

Also commencing January 1, 2026, the Department may approve a FSD not tested by a certified laboratory and list that device on the Roster if a model of the device made by the same manufacturer is already listed on the Roster and the unlisted device differs from the listed device only in features that do not alter the material or functioning of any of the components of the device. (Pen. Code, § 23658.)

Under subdivision (d) of section 23658, the Department may, at its discretion and at any time, require a manufacturer to provide the Department a prototype of any device model for which listing on the Roster is sought without testing pursuant to subdivision (a) of section 23658 and, if the device is listed pursuant to subdivision (a), the Department must retain the prototype for at least as long as the device is listed on the Roster.

The proposed regulations:

- define the term “permanently affixed,” as used in Penal Code section 23655, subdivision (f)(2);
- edit Section 4108 to clarify a process for manufacturers who fail to satisfy the requirements of Penal Code section 23655, subdivision (f)(2), to correct that deficiency without having to go through the testing process again;
- require FSD manufacturers to request to renew the listing of their FSD model on the Roster no later than the first business day of each calendar year;
- edit Section 4082, subdivision (j), to better align the definition of “DOJ-approved FSD” with Penal Code sections 23655 and 23658; and
- edit Section 4102 to align with the requirements of Penal Code section 23635, subdivision (c), and to account for situations where a lock box is no longer listed on the Roster only because it was removed from the Roster for failure to timely request renewal.

BENEFITS ANTICIPATED FROM REGULATORY ACTION

Explaining how a manufacturer meets the requirement of Penal Code section 23655 to engrave or otherwise permanently affix the manufacturer’s name, the model name, and the model number to the device will help the Department identify devices more efficiently and will make it easier for consumers and firearm dealers to identify devices that have been approved by the Department and listed on the Roster.

The annual listing renewal certification will enable the Department to remove FSDs from the Roster, ensuring that the Roster reflects models currently on the market and provides accurate information to the public.

Explaining when a firearm may be sold or transferred by a licensed firearm dealer, including a private transfer through a dealer, without being accompanied by an FSD that is listed on the Roster will make it easier and more efficient for licensed firearm dealers to sell or transfer firearms (and for consumers to purchase or transfer firearms through a dealer) in the state while also ensuring that the purchaser or transferee possesses an FSD that meets the requirements of Penal Code section 23650 and is appropriate for the firearm.

SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION

§ 4082. Definition of Key Terms.

In subdivision (d), “phillips” is corrected to “Phillips.”

In subdivision (j), the definition of “DOJ-approved FSD” is amended to read “an FSD that the DOJ has determined meets the standards for FSDs and may be sold in California pursuant to Penal Code sections 23655 or 23658.” The requirement that the FSD has been tested by a Certified FSD Laboratory is deleted because the Department may approve a FSD not tested by a certified laboratory if a model of the device made by the same manufacturer is already listed on

the Roster and the unlisted device differs from the listed device only in features that do not alter the material or functioning of any of the components of the device. (Pen. Code, § 23658.)

In subdivision (x), “Roster” is added as an abbreviation for the “Roster of Approved Firearm Safety Devices” to make the regulations easier to read.

Commencing January 1, 2026, a device shall not be added to the Roster unless the name of the manufacturer, the model number, and the model name, as they appear on the Roster, are engraved or otherwise permanently affixed to the device. (Pen. Code, § 23655, subd. (f)(2).) However, ways to satisfy the “permanently affixed” standard are not elaborated.

New subdivision (z) defines the term “permanently affixed,” as used in Penal Code section 23655, subdivision (f)(2). The proposed regulation explains a manufacturer meets this standard by ensuring the information is stamped, etched, molded, casted, silkscreened, indelibly printed, or otherwise marked in a way that cannot be removed or erased on a permanently attached part of the device or on a nameplate of metal, plastic, or other material fastened to the equipment by welding, riveting, or a permanent adhesive. Further, the information must be designed to last the expected lifetime of the equipment in the environments in which the equipment is reasonably expected to be operated and must not be readily detachable. This provides necessary clarity for manufacturers and enables anyone examining the FSD to determine if it is listed on the Roster.

Changes without regulatory effect. Authority and reference citations are amended.

§ 4102. Lock Box -- Proof of Ownership of an Acceptable “Lock Box” Type Firearm Safety Device.

With limited exceptions, any firearm sold or transferred in this state by a licensed firearms dealer, including a private transfer through a dealer, and any firearm manufactured in this state, shall include or be accompanied by a firearm safety device that is listed on the Department’s Roster of Approved Firearm Safety Devices and that is identified as appropriate for that firearm by reference to either the manufacturer and model of the firearm, or to the physical characteristics of the firearm that match those listed on the roster for use with the device. (Pen. Code, §§ 23630, 23635.) One such exception is:

- (1) The purchaser or transferee purchases an approved safety device no more than 30 days prior to the day the purchaser or transferee takes possession of the firearm;
- (2) The purchaser or transferee presents the approved safety device to the firearms dealer when picking up the firearm;
- (3) The purchaser or transferee presents an original receipt to the firearms dealer, which shows the date of purchase, the name, and the model number of the safety device;
- (4) The firearms dealer verifies that the requirements in paragraphs (1) to (3), inclusive, have been satisfied; and
- (5) The firearms dealer maintains a copy of the receipt along with the dealer's record of sales of firearms.

(Pen. Code, § 23635, subd. (c).)

Section 4102 implements this procedure. Subdivision (a)(2) is amended to provide additional details on what to include in the affidavit. “Make and model of the lock box” is amended to “name of the manufacturer, the model number, and the model name. This wording is aligned to match Penal Code 23655, subdivision (f)(2).

In subdivision (b), “statement(s)” is amended to “documentation and affidavit.” This is necessary to clarify what records must be maintained by the firearm dealer. Firearm dealers must maintain the documentation and affidavit from a purchaser or transferee, pursuant to subdivision (a), for three years with the DROS for the firearm. “Dealer Record of Sale” is added to clarify the “DROS” abbreviation.

New subdivision (c) allows the process described in Section 4102 to be used for lock boxes that were on the Roster and removed from the Roster only for failure to timely request renewal pursuant to Section 4110. This is necessary to align with the requirements of Penal Code section 23635, subdivision (c), and to account for situations where a lock box is no longer listed on the Roster only because it was removed from the Roster for failure to timely request renewal.

Further, this is necessary because an individual may own a lock box that was on the Roster at the time of purchase and it still meets the performance standards of section 23650, but is no longer listed on the Roster because the manufacturer failed to timely request renewal of its listing.

§ 4108. Roster of Approved Firearm Safety Devices.

Subdivision (a) is updated to require the certified laboratory to submit a prototype of the FSD when requesting to add an FSD to the Roster. This amendment is necessary to align with Penal Code section 23655, subdivision (c), which was amended to require certified laboratories to submit a prototype to the Department if the FSD passed the test.

Subdivision (b) describes the requirements for untested FSDs; the Department will determine whether a FSD will be placed on the Roster within 10 days of the manufacturer’s or dealer’s request. Subdivision (b) is amended to delete the reference to “dealer” because only a manufacturer can request to add an untested device. (Pen. Code, § 23658, subd. (b).)

Similarly, subdivision (c)(3) is amended to delete the reference to “dealer” because a FSD will not be removed from the Roster upon a dealer’s request.

New subdivision (e) provides a process for manufacturers who fail to satisfy the requirements of Penal Code section 23655, subdivision (f)(2). The Department will provide the manufacturer with one of two options. They can either correct the deficiency and provide a prototype of the redesigned FSD to the Department without having to go through the testing process again, or correct the deficiency and submit the redesigned FSD to a certified lab. Because the failure to “permanently affix” the manufacturer, the model number, and the model name on the FSD will not usually affect the functioning of the FSD, it will not always be necessary for the redesigned FSD to be submitted for testing to the certified lab.

Changes without regulatory effect. Non-substantive grammatical corrections are being made in subdivision (a). Authority and reference citations are amended.

§ 4110. Annual Listing Renewal Certification.

New Section 4110 establishes an annual listing renewal certification. Subdivision (a) requires FSD manufacturers to request to renew the listing of their FSD model on the Roster no later than the first business day of each calendar year. The FSD manufacturer must report if the FSD model has been modified in any way from the version of the model that was added to the Roster after laboratory testing and provide a description of any modifications to the FSD, if applicable. Penal Code section 23655, subdivision (d)(6), allows the Department to remove from the Roster any device that it determines is being sold or otherwise provided to the public in a form that has been modified from the form that was tested and approved. Requiring manufacturers to describe any modifications will alert the Department that the device may be removed from the Roster or may require further testing to ensure it continues to meet the Department's standards.

Subdivision (b) requires the renewal certification to be signed under penalty of perjury. The necessity for a signature under penalty of perjury is to attest to the accuracy and completeness of the information submitted, and to deter misrepresentations and submission of false information.

Subdivision (c) explains that the Department will remove the device from the Roster and may destroy any prototypes of the device if the Department does not receive the annual listing renewal certification by February 28 of the calendar year. The Department is providing manufacturers a two-month grace period before removing a FSD from the Roster. The Department expects that manufacturers will not renew the listing if their FSD is no longer on the market. Allowing for the destruction of the prototype will save the Department from paying storage costs to the Department of General Services. DGS charges a storage fee of \$6.48 per cubic foot with each device averaging 16 cubic feet. The Department's annual storage cost is approximately \$104 per device ($\$6.48 \times 16 = \103.68).

Subdivision (d) explains that if a manufacturer wishes to list a device on the Roster after it is removed from the Roster pursuant to this section, the manufacturer must seek approval in accordance with Penal Code section 23655 or 23658. This is necessary to clarify the process to reinstate a FSD that has been removed for failure to timely request renewal.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department concludes:

(1) It is unlikely that the proposal would create or eliminate jobs within the state. There are approximately 29 FSD manufacturers in California. The other approximately 136 manufacturers reside outside of California in other states and countries. The regulations apply to devices listed on the Roster, irrespective of whether the manufacturer resides in California or elsewhere. Defining "permanently affixed" and establishing the annual listing renewal certification is unlikely to create or eliminate jobs within the state.

(2) It is unlikely that the proposal will affect the creation of new businesses or the elimination of existing businesses within California. There are approximately 29 FSD manufacturers in California. The other approximately 136 manufacturers reside outside of California in other

states and countries. The regulations apply to devices listed on the Roster, irrespective of whether the manufacturer resides in California or elsewhere. Defining “permanently affixed” and establishing the annual listing renewal certification is unlikely to create or eliminate businesses within the state.

(3) It is unlikely that the proposal would result in the expansion of businesses currently doing business within California. Defining “permanently affixed” and establishing the annual listing renewal certification is unlikely to affect a FSD manufacturer’s decision to expand business within California.

The Department also concludes that:

- (1) The proposal would benefit the health and welfare of California residents by ensuring FSDs meet the Department’s certification standards and that the public has access to a Roster listing all FSDs that meet those standards. Once the annual listing renewal certification is established, the Department expects that manufacturers will not renew the listing if their FSD is no longer on the market. This will enable the Department to remove the FSD from the Roster, ensuring that the Roster reflects models currently on the market and provides accurate information to the public.
- (2) The proposal would not benefit worker safety because it does not regulate worker safety standards.
- (3) The proposal would not benefit the state’s environment because it does not change any applicable environmental standards.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR SIMILAR DOCUMENTS RELIED UPON

The Department did not rely on any technical, theoretical, or empirical studies, reports or similar documents in proposing these regulations.

EVIDENCE SUPPORTING DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

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

The regulations apply to devices listed on the Roster, irrespective of whether the manufacturer resides in California or elsewhere. Defining “permanently affixed” and establishing the annual listing renewal certification will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Department determines that these proposed regulations do not affect small businesses because FSD manufacturers are not small businesses.

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES

The Department finds that no alternatives were presented to, or considered by, the Department that would be more effective in carrying out the purpose of these proposed regulations or would be as effective and less burdensome to affected private persons than these proposed regulations.

Explaining how an FSD Manufacturer meets the requirement of Penal Code section 23655, subdivision (f)(2), to engrave or otherwise permanently affix the manufacturer's name, the model name, and the model number to the device will make it easier for FSD Manufacturers to comply with the requirement, will help the Department identify devices more efficiently, and will make it easier for consumers and firearm dealers to identify devices that have been approved by the Department and listed on the Roster.

Establishing the annual listing renewal certification will enable the Department to remove the FSD from the Roster, ensuring that the Roster reflects models currently on the market and provides accurate information to the public. Requiring manufacturers to describe any modifications to the FSD, if any have been made since the FSD was listed, will enable the Department to determine if the FSD continues to meet the Department's standards.

Explaining when a firearm may be sold or transferred by a licensed firearms dealer, including a private transfer through a dealer, without being accompanied by an FSD that is listed on the Roster will make it easier for licensed firearms dealers to ensure they comply with Penal Code sections 23635, will make it easier and more efficient for licensed firearms dealers to sell or transfer firearms (and for consumers to purchase or transfer firearms through a dealer) in the state, and will help ensure that the purchaser or transferee possesses an FSD that meets the requirements of Penal Code section 23650 and is appropriate for the firearm.

Performance Standard as Alternative:

The proposed regulations do not mandate the use of specific technologies or equipment or prescribe specific actions or procedures.