

1 C. D. Michel - SBN 144258  
Joseph A. Silvoso, III - SBN 248502  
2 Sean A. Brady - SBN 262007  
Anna M. Barvir - SBN 268728  
3 MICHEL & ASSOCIATES, P.C.  
180 East Ocean Blvd., Suite 200  
4 Long Beach, CA 90802  
Telephone: (562) 216-4444  
5 Fax: (562) 216-4445  
cmichel@michellawyers.com

6 Attorneys for Plaintiffs

7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF FRESNO  
9

10 KIM BELEMJIAN; JONATHAN  
FAIRFIELD; T.J. JOHNSTON;  
11 MATTHEW PIMENTEL; STANLEY ROY;  
FFLGUARD, INC.; CALIFORNIA RIFLE  
AND PISTOL ASSOCIATION;

12 Plaintiffs,

13 vs.  
14

15 KAMALA D. HARRIS, in her official  
capacity as Attorney General for the State  
of California; STEPHEN LINDLEY, in his  
16 official capacity as CHIEF OF THE  
CALIFORNIA DEPARTMENT OF  
17 JUSTICE BUREAU OF FIREARMS;  
CALIFORNIA DEPARTMENT OF  
18 JUSTICE; and DOES 1-10,

19 Defendants.  
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**FILED**  
JAN - 6 2015  
FRESNO COUNTY SUPERIOR COURT  
By \_\_\_\_\_ DEPUTY

CASE NO. **15CECG 00029**

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF AND PETITION FOR WRIT OF  
MANDATE**

Gov. Code, § 11340 et seq.; Pen. Code, § 26860

1 Plaintiffs Kim Belemjian, Jonathan Fairfield, T.J. Johnston, Matthew Pimentel, Stanley  
2 Roy, FFLGuard, Inc., and the California Rifle and Pistol Association (collectively, “Plaintiffs”),  
3 by and through their counsel, bring this Complaint for Declaratory and Injunctive Relief against  
4 the above-named Defendants, their employees, agents, and successors in office, and in support  
5 thereof allege the following upon information and belief:

## 6 INTRODUCTION

7 1. Pursuant to Senate Bill 683 (“SB 683”), effective January 1, 2015, California’s  
8 *Handgun* Safety Certificate Program<sup>1</sup> will be replaced by the *Firearm* Safety Certificate Program.  
9 SB 683 requires Defendant California Department of Justice (“Department” or “DOJ”) to  
10 administer the Firearm Safety Certificate Program pursuant to the California Penal Code and to  
11 adopt regulations creating a safe-handling demonstration to be required for purchasers of firearms  
12 other than handguns, mostly rifles and shotguns.

13 2. Plaintiffs bring this action pursuant to the California Administrative Procedure Act  
14 (Gov. Code, § 11340 et seq.) (“APA”) to challenge the validity of and to enjoin several rules  
15 improperly promulgated and enforced by Defendants the Attorney General for the State of  
16 California, Kamala D. Harris, the Chief of the California Department of Justice Bureau of  
17 Firearms, Stephen Lindley, and the California Department of Justice (collectively, “Defendants”),  
18 in connection with the Firearm Safety Certificate Program. The challenged rules took effect  
19 January 1, 2015.

20 3. Specifically, Plaintiffs challenge the Department’s four new rules of general  
21 application for the implementation of the Firearm Safety Certificate Program announced by way  
22 of a letter sent by the Department to all “California Firearms Dealers, DOJ Certified Instructors,  
23 and Comparable Entities” on October 2, 2014. The challenged rules require that:

24 (1) All California DOJ Certified Instructors have access to a personal computer,  
25 printer, and email;

26 (2) All DOJ Certified Instructors obtain Certificates of Eligibility that must be  
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28 <sup>1</sup> As described in Penal Code sections 31610-3167. Unless otherwise indicated, all  
section references are to the California Penal Code.

renewed annually;

(3) All Firearm Safety Certificate payments be limited to only major credit cards; and

(4) All DOJ Certified Instructors include the “steps in long gun safety” procedures contained in the “Firearm Safety Certificate Manual” in all long-gun safe-handling demonstrations.

4. The challenged rules implement, interpret, and make specific requirements for compliance with statutory law enforced by Defendants. They include policy decisions by Defendants that are subject to the open government and deliberative process requirements under the APA. But the challenged rules do not comply with the rulemaking provisions of the APA. They were adopted without prior public notice or opportunity for oral or written public comment. (See Gov. Code, §§ 11346.2, 11346.4, 11346.5, 11346.8.)

5. The APA does allow for adoption of regulations without any advance public notice and the opportunity for comment *only* in emergency circumstances where “the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest.” (Gov. Code, §§ 11346.1, subds. (a)-(b).) No “emergency” exists that would justify bypassing the formal process for the adoption of the challenged rules here. And no other section of the California Code exempts the adoption of rules concerning the Firearm Safety Certificate Program from the requirements of the APA.

6. Accordingly, Plaintiffs seek declaratory and injunctive relief to invalidate and enjoin Defendants’ enforcement of the challenged rules as unlawful underground regulations.

7. Plaintiffs also seek to enjoin the enforcement of Penal Code section 26860, subdivisions (a), (c), and (d) unless and until Defendants formally promulgate and adopt regulations establishing the long-gun safe-handling demonstration as they were statutorily mandated to do by January 1, 2015. (Pen. Code, § 26860, subd. (b).)

8. Penal Code section 26860, subdivisions (a), (c), and (d) require that recipients of long guns perform a long-gun safe-handling demonstration in the presence of a certified instructor before taking possession. Subdivision (c) further requires the firearm dealer to certify that the regulations adopted pursuant to subdivision (b) have been met. Because Defendants have yet to

1 formally propose or adopt any regulations establishing the long-gun safe-handling demonstration,  
2 firearm dealers and recipients, including Plaintiffs, their members, and supporters, *cannot* comply  
3 with these provisions.

4 9. Enforcement of section 26860, subdivisions (a), (c), and (d) *before* the Department  
5 has fulfilled its statutory duty to formally adopt regulations regarding the long-gun safe-handling  
6 demonstration thus irreparably harms Plaintiffs, their members, and supporters, because it  
7 precludes them from engaging in constitutionally protected conduct, i.e., transacting lawful  
8 firearms.

9 10. Accordingly, Plaintiffs seek injunctive relief to enjoin Defendants' enforcement of  
10 Penal Code section 26860, subdivisions (a), (c), and (d) unless and until Defendants formally  
11 adopt regulations establishing a long-gun safe-handling demonstration as required by Penal Code  
12 section 26860, subdivision (b).

13 11. And because the Department was required to adopt such regulations pursuant to the  
14 APA prior to January 1, 2015, but did not do so, a writ should issue from this Court mandating  
15 that the Department immediately begin the rulemaking process for those regulations.

## 16 **PARTIES**

### 17 **I. PLAINTIFFS**

18 12. Kim Belemjian is a resident of Fresno County, California. She intends to purchase  
19 a firearm in California this year. Plaintiff Belemjian does not currently possess a Handgun Safety  
20 Certificate or a Firearm Safety Certificate, and is not exempt from the Firearm Safety Certificate  
21 and long-gun safe-handling demonstration requirements of Penal Code sections 31615 and 26860.  
22 In order to purchase a firearm in California, Plaintiff Belemjian will be subject to the changes  
23 made by SB 683 and the subsequent regulations imposed by Defendants.

24 13. Plaintiff Jonathan Fairfield has been certified by the Department to issue Handgun  
25 Safety Certificates since December 8, 2008. He is also an NRA Certified Pistol Instructor and  
26 NRA Certified Rifle and Shotgun instructor. Plaintiff Fairfield issues Handgun Safety Certificates  
27 (now referred to as Firearm Safety Certificates) as part of his business as a firearm instructor at  
28 various gun shows, at other firearm-related events, and in his role as a Firearm Safety Certificate

1 instructor at the Apple Valley Gun Club located in Victorville, California. In order to continue to  
2 issue Firearm Safety Certificates, which are required to transfer or purchase any firearm in  
3 California as of January 1, 2015, Plaintiff Fairfield will be subject to the changes made by SB 683  
4 and the subsequent regulations imposed by Defendants.

5 14. Plaintiff T. J. Johnston is the owner and proprietor of AllSafe Defense Systems  
6 (“AllSafe”), located in Orange, California, which offers both armed and unarmed self-defense  
7 classes and specializes in providing safe, fun, and effective training in the use of firearms to  
8 members of the public. Over the past three decades, Plaintiff Johnston has offered armed  
9 self-defense training to thousands of students. As a certified Training Counselor of the NRA, he  
10 has presented NRA Instructor Certification courses to over a thousand highly experienced shooters  
11 and members of the law enforcement community aspiring to become NRA Certified Instructors. In  
12 this capacity, Plaintiff Johnston offered training for individuals to become NRA Certified Pistol  
13 Instructors, which satisfied the requirement to administer the Handgun Safety Certificate program  
14 (now referred to as the Firearm Safety Certificate program). In November 2000, the Department  
15 issued Certificate #222, approving the AllSafe Basic Handgun class as satisfying the training  
16 requirements for individuals to be issued a Handgun Safety Certificate. Plaintiff Johnston was then  
17 approved as a certified instructor, authorized to issue Handgun Safety Certificates, in 2003. He has  
18 since issued over 1,700 certificates. In order to continue to issue Firearm Safety Certificates,  
19 which are required to purchase any firearm in California as of January 1, 2015, Plaintiff Johnston  
20 will be subject to the changes made by SB 683 and the subsequent regulations imposed by  
21 Defendants.

22 15. Plaintiff Matthew Pimentel is a Fresno, California, based Peace Officer Standards  
23 and Training (“POST”) Instructor, a California Department of Justice Firearms Instructor, and a  
24 National Rifle Association (“NRA”) Certified Instructor who has provided firearm-related  
25 instruction throughout California since early 2000. The Department has recognized Plaintiff  
26 Pimentel’s courses as meeting the requirements to certify individuals to become Handgun Safety  
27 Certificate instructors under Penal Code section 31635, subdivision (b). Since 2007, Mr. Pimentel  
28 has certified approximately 300 individuals to administer the Handgun Safety Certificate test, and

1 has himself issued approximately 400 Handgun Safety Certificates to individuals seeking to  
2 purchase a handgun. In order to continue to issue *Firearm* Safety Certificates, which are required  
3 to transfer or purchase any firearm in California as of January 1, 2015, Plaintiff Pimentel will be  
4 subject to the changes made by SB 683 and the subsequent regulations imposed by Defendants.

5 16. Plaintiff Stanley Roy has been certified by the NRA as a Pistol Instructor since  
6 December 2013 and as a Rifle Instructor since July 2014. He is also the Education Committee  
7 Chairman of the Antelope Valley NRA Member's Council, which provides classes to the local  
8 community on firearm safety and education. Plaintiff Roy wishes to provide Firearm Safety  
9 Certificates to his group as well as other individuals as a Department certified instructor. Plaintiff  
10 Roy has yet to apply to become a certified instructor, but intends to apply this year. In order to  
11 become certified by the Department, Mr. Roy will be subject to the changes made by SB 683 and  
12 the subsequent regulations imposed by Defendants. Plaintiff Roy also intends to purchase long  
13 guns in California over the next few years.

14 17. Plaintiff FFLGuard LLC, is a Delaware corporation located at 244 Fifth Ave., Suite  
15 1960, New York, New York 10001. FFLGuard offers a cooperative compliance and legal defense  
16 program for Federal Firearms Licensees (“FFLs”) by providing clients with lawyers, subject-  
17 matter experts, professionals, and para-professionals who are specialists in the area of firearms law  
18 and compliance. FFLGuard’s legal defense program delivers FFLs with access to these legal and  
19 firearms compliance specialists—providing educational training and rapid response service—to  
20 safeguard the viability of the client’s license. Clients participating in FFLGuard’s legal defense  
21 program subscribe voluntarily to FFLGuard’s heightened compliance standards and best practices.  
22 FFLGuard represents countless California Firearm Dealers and their employees, including  
23 certified Handgun Safety Certificate Instructors and soon-to-be certified Firearm Safety Certificate  
24 Instructors throughout California. This case falls squarely within the interests of FFLGuard and its  
25 clients who are licensed dealers, the latter being subject to criminal penalties for unintentional  
26 violation of the law and who cannot comply with the long-gun safe-handling demonstration  
27 requirements placed on FFLs unless and until Defendants adopt regulations pursuant to Penal  
28 Code section 26860, subdivision (b).

1           18.     Plaintiff California Rifle and Pistol Association (“CRPA”) is a nonprofit  
2 organization that seeks to defend the Second Amendment and advance laws that protect the rights  
3 of individual California residents. The organization works to preserve constitutional and statutory  
4 rights of gun ownership, including the right to self-defense, right to hunt and the right to keep and  
5 bear arms. And it is dedicated to promoting the shooting sports by conducting state championship  
6 matches for adults and young shooters, teaching firearms safety, and supporting state teams that  
7 attend the national championships each year. CRPA represents the interests of the tens of  
8 thousands of its members who reside in the State of California, including those in Fresno County,  
9 who are too numerous to conveniently bring this action individually and whose interests include  
10 their desire to transact in or acquire firearms and otherwise engage in conduct protected by the  
11 Second Amendment. CRPA also represents a number of California Firearm Dealers and their  
12 employees, certified Handgun Safety Certificate Instructors and soon-to-be certified Firearm  
13 Safety Certificate Instructors throughout California who are subject to the changes made by SB  
14 683 and the subsequent regulations imposed by Defendants.

15     **II.     DEFENDANTS**

16           19.     Defendant Kamala D. Harris is the Attorney General of California, the state’s chief  
17 law officer. Pursuant to article V, section 13, of the California Constitution and Government Code  
18 sections 12524, 12550, and 12560, Defendant Harris has supervisory powers over the district  
19 attorneys, sheriffs, and other law enforcement officials to ensure the “uniform and adequate”  
20 enforcement of the laws of the state of California. She is also charged with the duty to instruct  
21 local prosecutors and law enforcement agencies regarding the meaning of the laws of the state,  
22 including the implementation of the Firearm Safety Certificate Program. Defendant Harris is sued  
23 in her official capacity.

24           20.     Defendant Stephen Lindley is the Chief of the DOJ Bureau of Firearms. As such,  
25 he is authorized to execute, interpret, and enforce the laws of the State of California pertaining to,  
26 among other things, the administration of the Firearm Safety Certificate Program, including the  
27 regulations, practices, and policies at issue in this action. Defendant Lindley is sued in his official  
28 capacity.

21. Defendant California Department of Justice (“Department”) is a lawfully constituted executive agency charged by SB 683 (Stats. 2013, ch. 761), to implement and promulgate regulations establishing a new long-gun safe-handling demonstration and to administer the Firearm Safety Certificate Program. It is the sole California agency responsible for doing so.

22. Plaintiffs do not know the true names and capacities of Defendants Doe 1 through Doe 10, inclusive, who are therefore sued by such fictitious names. Plaintiffs allege on information and belief that each person or entity designated as Doe 1 through Doe 10, is responsible in some manner for the unlawful acts alleged in this complaint. Plaintiffs pray for leave to amend this Complaint and Petition to show the true names, capacities, and/or liabilities of Doe Defendants if and when they are determined.

## JURISDICTION AND VENUE

23. This Court has jurisdiction under article VI, section 10, of the California Constitution and California Code of Civil Procedure section 410.10.

24. Venue in this Court is proper because this is an action against public officers of the State of California, in their official capacities, for acts performed as part of their public duties that have caused and will continue to cause legal injuries and deprivation of rights to persons, including Plaintiffs, in Fresno County. (Code Civ. Proc., §§ 393, subd. (b), 395, subd. (a).)

25. Venue in this Court is also proper because this is an action against the Attorney General, a public officer of the state of California, and because this Attorney General has an office in Fresno, California. (Code Civ. Proc., § 401, subd. (1).)

## AUTHENTICITY OF EXHIBITS

26. All exhibits accompanying this Complaint are true and correct copies of the original documents. The exhibits are incorporated herein by reference as though fully set forth in this Complaint.

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## STATEMENT OF FACTS

### I. THE STATUTORY AND REGULATORY FRAMEWORK

#### A. The Firearm Safety Certificate Program

27. On October 11, 2013, Governor Jerry Brown signed SB 683 into law. The bill created the Firearm Safety Certificate Program which, in pertinent part, prohibits any non-exempt person from purchasing or receiving any firearm, except an antique firearm, without a valid Firearm Safety Certificate and prohibits any person from selling, delivering, loaning, or transferring any firearm to any person who does not have a valid Firearm Safety Certificate on or after January 1, 2015.<sup>2</sup>

28. Prior to January 1, 2015, the predecessor to the *Firearm* Safety Certificate Program was known as the *Handgun* Safety Certificate Program. As its name suggests, the Handgun Safety Certificate Program was limited to the transfer of handguns. That Program was officially expanded and replaced by the Firearm Safety Certificate Program on January 1, 2015. Aside from a few exemptions not relevant here, the statutory requirements of the Firearm Safety Certificate Program are materially the same, though they apply with equal force to the transfer of firearms other than handguns, including mostly rifles and shotguns.

29. Under current law, it is a misdemeanor to purchase or receive any firearm, except an antique firearm, without a valid Firearms Safety Certificate establishing that the transferee has successfully passed the required firearm safety test. (Pen. Code, § 31615, subds. (a)(1) & (b).) In the case of a handgun, however, “an unexpired handgun safety certificate may be used.” (Pen. Code, 31615, subd. (a)(1).)

30. Subject to certain exemptions, it is a misdemeanor to transfer a firearm to any non-exempt person who does not have a valid Firearm Safety Certificate and for that person to

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<sup>2</sup> SB 683 amended Penal Code sections 27540, 27875, 27880, 27920, 27925, 28160, 31620, and 31810 and amends, repeals, and replaces sections 26840, 31610, 31615, 31625, 31630, 31635, 31640, 31645, 31650, 31655, 31660, and 31700 (effective January 1, 2015). It also adds sections 16535, 16865, and 26860.

1 receive a firearm. (Pen. Code, §§ 27540, subd. (e), 31615, subds. (a)(2) &(b).)<sup>3</sup>

2 31. A Firearm Safety Certificate is only necessary to purchase or receive a firearm, not  
3 to possess one. (Pen. Code, § 31615, subds. (a).)

4 32. If a person does not possess a Firearm Safety Certificate when attempting to  
5 purchase or receive a firearm, he or she may acquire one by paying up to \$25, Pen. Code, § 31650,  
6 subd. (a), and successfully completing a written test administered by a Department-certified  
7 instructor, Pen. Code, § 31645, subd. (a).

8 33. Pursuant to Penal Code section 31640, subdivision (c), the written test includes  
9 objective questions about, inter alia, California laws applicable to carrying and handling firearms,  
10 responsibilities of firearm ownership, and current laws relating to private sales/transfers of  
11 firearms. An applicant for a Firearm Safety Certificate must successfully complete the written test  
12 with a passing grade of at least 75%. (Pen. Code, § 31645, subd. (a).)

13 34. Upon receiving a passing grade on the written test, the applicant is to be  
14 immediately issued a Firearm Safety Certificate. (Pen. Code, § 31645, subd. (a).)

15 35. Only Department-certified instructors may administer the firearm safety test and  
16 issue Firearm Safety Certificates.

17 36. Many Federal Firearm Licensees (“FFLs”) in California are also certified  
18 instructors who administer the safety test in their stores. Some instructors are employees, agents,  
19 or independent contractors of FFLs. There are also a number of instructors, like Plaintiffs Pimentel  
20 and Johnston who, in addition to teaching firearm-related classes, administer the test in their  
21 classrooms or on ranges with students, or at gun shows.

22 37. To become a certified Firearm Safety Certificate instructor and administer the  
23 Firearm Safety Certificate test, a person must meet the prerequisite skill, knowledge, and  
24 competency. (Pen. Code, § 31635, subd. (a).)

25 38. Firearm Safety Certificate instructor applicants must obtain a certification to  
26 provide training from an organization specified by Penal Code section 31635, subdivision (b), or  
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28 <sup>3</sup> See Pen. Code, §§ 31700-31835 (listing individuals and transfers exempt from the  
Firearms Safety Certificate requirement).

1 any entity found by the Department to give comparable instruction in firearm safety. Alternatively,  
2 the applicant must have training similar or equivalent to that provided by an organization specified  
3 by Penal Code section 31635, subdivision (b).

4 39. Prior to January 1, 2015, under the *Handgun* Safety Certificate Program, to become  
5 a certified instructor, one was required to file a completed application with the Department,  
6 specify which authorized organization he or she received training from, attach a copy of the  
7 certification (initial applicants only), and *either* provide a copy of their Certificate of Eligibility *or*  
8 enclose \$14.00 for a background check. (DOJ Handgun Safety Certificate Program Certified  
9 Instructor Application (attached as Exh. A).) According to the Department's Handgun Safety  
10 Certificate Program Certified Instructor Application, an approved applicant is certified as an  
11 instructor for five years. (*Ibid.*)

12 40. On January 1, 2015, the Department released its *Firearm* Safety Certificate  
13 Program DOJ Certified Instructor Application. The new form requires applicants to file a  
14 completed application with the Department, specify which authorized organization he or she  
15 received training from, attach a copy of the certification (initial applicants only), and provide a  
16 copy of their Certificate of Eligibility. (Firearm Safety Certificate Program DOJ Certified  
17 Instructor Application (attached as Exh. B).) According to the new application, an approved  
18 applicant is certified as an instructor for five years. (*Ibid.*)

19 **B. The Long-Gun Safe-Handling Demonstration**

20 41. Subject to certain exemptions, SB 683 also requires most people purchasing a long  
21 gun from a licensed firearm dealer to perform a long-gun safe-handling demonstration with the  
22 firearm to be transferred. (Pen. Code, § 26860, subd. (a).)<sup>4</sup>

23 42. Prior to January 1, 2015, only transfers of handguns required the completion of a  
24 safe-handling demonstration. (Pen. Code, § 26860, subd. (a) (2014).) The criteria for handgun  
25 safe-handling demonstrations are expressly codified at Penal Code sections 26853 through 26859.

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27 <sup>4</sup> Persons exempt from the Firearm Safety Certificate requirement are also exempt from  
28 the safe-handling requirement. (Pen. Code, § 26860, subd. (g) [referencing the requirements for  
possession of a Firearm Safety Certificate in Penal Code section 31615, subdivision (a), and the  
exception to that requirement in section 31700].)

1 These criteria are broken up by handgun action types, i.e., semiautomatic pistol, double-action  
2 revolver, and single-action revolver. (Pen. Code, §§ 26853, 26856, 26859.)

3 43. Pursuant to Penal Code Section 26860, subdivision (b), “the [D]epartment *shall,*  
4 *not later than January 1, 2015, adopt regulations* establishing a long gun safe handling  
5 demonstration that shall include, at a minimum, loading and unloading the long gun.” (Italics  
6 added.)

7 44. Pursuant to Penal Code section 26860, subdivision (c), the FFL must “sign and  
8 date an affidavit stating that the requirements of subdivision (a) [completion of long-gun safe-  
9 handling demonstration] *and the regulations adopted [by the Department] pursuant to subdivision*  
10 *(b)* have been met.” (Italics added.)<sup>5</sup>

11 45. Pursuant to Penal Code section 26860, subdivision (d), “[t]he recipient shall  
12 perform the safe handling demonstration for a *department-certified instructor.*” (Italics added.)

13 46. Failure on the part of the FFL to require a safe-handling demonstration before  
14 transfer of the firearm can result in the forfeiture of the dealer’s California Firearm Dealer’s  
15 license. (Pen. Code, § 26800.)

16 **C. Certificates of Eligibility**

17 47. A Certificate of Eligibility (“COE”) is a certificate provided by the Department  
18 confirming its holder is eligible to possess firearms. (Pen. Code, § 26710 (2014).)

19 48. A COE is only required by California law in certain circumstances. Persons  
20 applying to be licensed firearm dealers in California must obtain one, so too must employees of  
21 firearm manufacturers, amongst other individuals.<sup>6</sup> (Pen. Code, §§ 26700, 29120.)

22 49. California law does *not* require employees and agents of FFLs to obtain a COE,  
23 unless required by their employer or the local jurisdiction. (Pen. Code, § 31660.)

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25 <sup>5</sup> The California Department of Justice Bureau of Firearms Safe Handling Demonstration  
26 Affidavit is attached as Exhibit C.

27 <sup>6</sup> One must have a COE in order to: (1) be a “consultant-evaluator” as defined in section  
28 16410; (2) produce, promote, sponsor, operate, or otherwise organize a gun show or sell used  
firearms at a gun show pursuant to sections 27200 and 26525; and (3) be exempt from certain  
firearm transfer requirements as a curio or relic collector pursuant to sections 26585, 26970, and  
27966.

1           50.     California statutory law does not require certified FSC instructors to obtain a COE.

2           **D.     Adoption of Regulations Pursuant to the Administrative Procedure Act**

3           51.     The California Administrative Procedure Act (“APA”) provides a detailed  
4 statutory scheme for public notice and comment on regulations proposed by state agencies. (Gov.  
5 Code, §§ 11340 et seq.)

6           52.     Mandatory procedures include providing adequate notice to the public of proposed  
7 regulations and an opportunity for public comment. (Gov. Code, §§ 11346.2, 11346.4, 11346.5,  
8 11346.8.)

9           53.     The agency must provide reports of detailed reasons for a proposed regulation, the  
10 alternatives considered, and the effect the proposed regulation is projected to have on individuals.  
11 (Gov. Code, §§ 11346.2, 11346.9.)

12          54.     The APA specifically prohibits any state agency from making use of a rule which  
13 is a “regulation” as defined in Government Code section 11342.600, that should have, but has not  
14 been adopted pursuant to the detailed procedures set forth in the APA. (Gov. Code, § 11340.5,  
15 subd. (a).)

16          55.     If a rule constitutes a “regulation,” and there is no express statutory exemption  
17 excusing the agency from complying with the APA, any regulation enacted without compliance  
18 with the APA is an invalid “underground regulation” and cannot be enforced. (*Tidewater Marine*  
19 *Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 576; see also Gov. Code, § 11346.)

20          56.     There is a narrow exception to the stringent requirements of the APA for  
21 “emergency” regulations if an “emergency situation clearly poses such an immediate, serious  
22 harm that delaying action to allow public comment would be inconsistent with the public  
23 interest.” (Gov. Code, § 11346.1, subd. (a)(3).)

24          57.     The purpose of the APA’s comprehensive scheme is to ensure that “those persons  
25 or entities whom a regulation will affect have a voice in its creation,” *Armistead v. State*  
26 *Personnel Board* (1978) 22 Cal.3d 198, 204-205, to allow the public to inform the agency about  
27 possible unintended consequences of a proposed regulation, and to protect against “bureaucratic  
28 tyranny,” *Cal. Advocates for Nursing Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 507-

1 508.

2 **II. THE NEW REQUIREMENTS GOVERNING THE FIREARM SAFETY CERTIFICATE**  
3 **PROGRAM**

4 58. On October 2, 2014, Defendants sent letters to all “California Firearms Dealers,  
5 DOJ Certified Instructors, and Comparable Entities” expressly outlining “the new [Firearm Safety  
6 Certificate] program, *requirements* for DOJ Certified Instructors; *requirements* for Comparable  
7 Entities; and existing Handgun Safety Certificate program updates.” (Stephen Lindley, Chief,  
8 Bureau of Firearms, letter to California Firearms Dealers, DOJ Certified Instructors, and  
9 Comparable Entities re: Firearm Safety Certificate Program, Oct. 2, 2014, p. 1 (attached as Exh.  
10 D), italics added.)

11 59. According to the October 2, 2014 letter, “the Department plans to utilize a  
12 web-based application to make [Firearm Safety Certificate] materials available, including the  
13 Firearm Safety Certificates, test materials, the [Firearm Safety Certificate] study guide and the  
14 [Firearm Safety Certificate] manual to all DOJ Certified Instructors. The [Firearm Safety  
15 Certificate] study guide will also be available for printing and audio/visual materials will be  
16 available for streaming/downloading from the public website at  
17 <http://www.oag.ca.gov/firearms/fsc>.” According to the Department’s letter, that link was not  
18 made publicly available until January 1, 2015. (Exh. D, p. 1.)

19 60. The letter sets forth, in pertinent part, several new “requirements” not previously  
20 required under the Handgun Safety Certificate Program that are generally applicable to all those  
21 engaging in the Firearm Safety Certificate Program and govern the manner in which the  
22 Department is to implement the Firearm Safety Certificate Program. (Exh. D, pp. 1-3.)

23 61. The requirements were intended by Defendants and are, on their face, intended to  
24 apply generally rather than to a specific case.

25 62. According to the October 2, 2014 letter, “[a]ny materials that require a fee  
26 will be billed through the online system. *Payment options will be limited to major*  
27 *credit/debit cards* (e.g. MasterCard, Visa, American Express, and Discover cards).  
28 **Payment by cash or check will not be accepted . . .**” (Exh. D, pp. 1-3, emphasis

1 original, italics added.)

2 63. According to the October 2, 2014 letter, “*DOJ Certified Instructors will*  
3 *need access to a personal computer and printer.* DOJ Certified Instructors will be sent  
4 login information to be able to access the new [Firearm Safety Certificate] program online  
5 system.” (Exh. D, p.1, italics added.) The letter also informed certified instructors that “*an*  
6 *email address will be required to maintain access to the new web-based application.*”  
7 (Exh. D, p. 3, italics added.)

8 64. According to the October 2, 2014 letter, “[u]pon successful login [to the  
9 Firearm Safety Certificate Program online system], existing DOJ Certified Instructors will  
10 be required to acknowledge they have read the revised Firearm Safety Certificate Manual,  
11 *which includes steps in long gun safety and that they will include both handgun and long*  
12 *gun safety as part of the safe handling demonstrations.*” (Exh. D, pp. 1-2, italics added.)

13 65. According to the October 2, 2014 letter, “ **[a]ll DOJ Certified Instructors**  
14 ***will be required to have a valid Certificate of Eligibility (COE).*** As of January 1, 2015,  
15 new applicants will be required to obtain a COE prior to submitting an application as a  
16 DOJ Certified Instructor. Existing DOJ Certified Instructors as of December 31, 2014,  
17 will be required to have a valid COE upon renewal or by June 30, 2015, whichever comes  
18 first. ***Any existing DOJ Certified Instructor who has not provided proof of a valid COE***  
19 ***by June 30, 2015, will not have access to the FSC online system.*** Mere submission of the  
20 application will not be considered proof of a COE; therefore, please allow 4-6 weeks for  
21 the Department to process the COE application. . . . COEs must be renewed annually.”  
22 (Ex. D, p. 2, emphasis added.)

23 66. The requirements set forth in Defendants’ October 2, 2014 letter constitute  
24 “regulations” and are thus subject to the stringent requirements of the APA.

25 67. The requirements set forth in Defendants’ October 2, 2014 letter are found  
26 nowhere in the California Code, and they are not mere restatements of statutory law.

27 68. The requirements set forth in Defendants’ October 2, 2014 letter were not  
28 formally noticed by the Department or any other state agency as required by the APA.

1           69. Defendants provided no period for oral or written public comment  
2 regarding the requirements set forth in Defendants' October 2, 2014 letter was provided as  
3 required by the APA.

4           70. Defendants provided no reasons for the proposed regulations, any  
5 alternatives considered, and the effect the proposed regulations are projected to have on  
6 the affected public.

7           71. Neither SB 683 nor any other section of the California Code expressly  
8 exempts the adoption of rules concerning the Firearm Safety Certificate Program and  
9 long-gun safe-handling demonstration from the procedural requirements of the APA.

10          72. There was no "emergency" sufficient to meet the narrow statutory  
11 exception to the APA for emergency regulations. Indeed, Defendants had since October  
12 2013, when SB 683 was signed into law, to promulgate any regulations regarding the  
13 Firearm Safety Certificate Program before it took effect on January 1, 2015.

14          73. On December 18, 2014, Ms. Stacy Heinsen, on behalf of Defendants, sent  
15 letters to identified certified instructors, providing them with their personal identifying  
16 information to access the online system. (Stacy Heinsen, Mgr., Bureau of Firearms, letter  
17 to DOJ Certified Instructors re: Firearm Safety Certificate Program - Online Access, Dec.  
18 18, 2014, p. 1 (attached as Exh. E).)

19          74. Defendants' December 18, 2014 letter also explained to certified  
20 instructors how the new web-based system would operate and reminded them that  
21 instructors required access to a personal computer, printer, and email address to access the  
22 system. (Exh. E, pp. 1-2.)

23          75. Plaintiffs have filed a petition with the Office of Administrative Law  
24 ("OAL") seeking an opinion on the issues raised in this complaint. (C.D. Michel, letter to  
25 Ch. 2 Compliance Unit, Office of Admin. L., Dec. 29, 2014 (attached as Exh. F).) The  
26 OAL has yet to respond, but that is of no consequence here, because an OAL opinion on  
27 an alleged underground regulation is not a prerequisite to "obtain[ing] a judicial  
28 declaration as to the validity of any regulation . . . ." (Gov. Code, § 11350, subd. (a).) This



1 Court therefore has the authority to grant Plaintiffs the relief they seek.

2 **III. THE DEPARTMENT'S FAILURE TO PROMULGATE ANY REGULATIONS**  
3 **ESTABLISHING A LONG-GUN SAFE-HANDLING DEMONSTRATION AS REQUIRED**  
4 **BY STATUTE**

5 76. Defendant Department has adopted no regulations regarding the long-gun  
6 safe-handling demonstration as it was required to do by Penal Code section 26860,  
7 subdivision (b).

8 77. According to the Department's October 2, 2014 letter, the "steps in long  
9 guns safety" procedures contained in the "Firearm Safety Certificate Manual" *must* be  
10 included in the long-gun safe-handling demonstrations." (Exh. D, p. 2.) That rule,  
11 however, was not adopted pursuant to the procedural requirements set forth in the APA.

12 **FIRST CAUSE OF ACTION**  
13 **FOR DECLARATORY AND INJUNCTIVE RELIEF**

14 Validity of Rule that Certified Instructors Have Access to a Personal Computer, Printer, & Email  
15 (Violation of California Administrative Procedure Act, Gov. Code, § 11340 et seq.)  
16 (By All Plaintiffs Against All Defendants)

17 78. Plaintiffs incorporate by reference the allegations in the above paragraphs as  
18 though fully set forth herein.

19 79. The rule that all certified instructors have access to a personal computer, printer,  
20 and email applies to all certified instructors participating in the Firearm Safety Certificate  
21 Program. It is thus a rule of general applicability.

22 80. The rule was created by the Department for the purpose of implementing,  
23 interpreting, or making specific the Firearm Safety Certificate Program, a program administered  
24 by the Department pursuant to the Penal Code. It is thus a "regulation" under the APA.

25 81. There is no express exemption from the APA in the California Code regarding the  
26 promulgation of regulations regarding the Firearm Safety Certificate Program, there was no  
27 emergency sufficient to justify bypassing the APA, and the regulation is not a mere restatement of  
28 statutory law. It is thus subject to the procedural requirements set forth in the APA.

82. By implementing, administering, and enforcing the regulation that all certified  
instructors have access to a personal computer, printer, and email without providing formal notice  
or opportunity for public comment, Defendants have violated and continue to violate the APA.

83. An actual controversy exists. Plaintiffs contend that Defendants are violating the APA and that Defendants intend to continue to do so. Plaintiffs allege on information and belief that the Defendants and each of them contend the regulation is in full compliance with the requirements of the APA or was not subject to them.

84. A judicial declaration of the legality of Defendants' conduct, and whether the regulation requiring that all certified instructors have access to a personal computer, printer, and email constitutes an invalid underground regulation in violation of the APA, is necessary and appropriate at this time, as the regulation took effect on January 1, 2015.

85. Defendants' unlawful conduct has caused and, unless enjoined by this Court, will continue to cause irreparable injury to Plaintiffs, their members, and supporters.

86. Plaintiffs, their supporters, and members, as stakeholders in the Firearm Safety Certificate Program, have been specifically harmed because Defendants' unlawful conduct has denied them their statutory right to be heard and to provide input regarding regulations governing a program that significantly affects them.

87. Further, harm from this underground regulation lies in the subversion of the democratic values the APA was intended to serve. The notice, comment, and review procedures of the APA were enacted to secure the public benefits of openness, accessibility, and accountability in the formulation of rules that implement legislative enactments. Irreparable harm to these important public benefits occurs whenever a state agency unlawfully adopts a regulation and each time the agency acts pursuant to its underground regulation.

88. The public in general and Plaintiffs specifically have an interest in preventing Defendants from enforcing the underground regulation that all certified instructors have access to a personal computer, printer, and email, as it undermines the democratic values the APA was designed to serve and prevents Plaintiffs from engaging in constitutionally protected conduct.

**SECOND CAUSE OF ACTION  
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Validity of Rule that Certified Instructors Obtain Certificates of Eligibility Annually  
(Violation of California Administrative Procedure Act, Gov. Code, § 11340 et seq.)  
(By All Plaintiffs Against All Defendants)

89. Plaintiffs incorporate by reference the allegations in the above paragraphs as

1 though fully set forth herein.

2       90.     The rule that all certified instructors obtain Certificates of Eligibility annually  
3 applies to all certified instructors participating in the Firearm Safety Certificate Program. Prior to  
4 January 1, 2015, Handgun Safety Certificate certified instructor applicants were given the option  
5 to *either* provide a current COE *or* enclose \$14.00 with their application to accomplish a  
6 background check. (Exh. A.) And there was no reoccurring obligation for HSC instructors to  
7 renew their COE or undergo another background check. The COE requirement is thus a new rule  
8 of general applicability.

9       91.     The rule was created by the Department for the purpose of implementing,  
10 interpreting, or making specific the Firearm Safety Certificate Program, a program administered  
11 by the Department pursuant to the Penal Code. It is thus a “regulation” under the APA.

12       92.     There is no express exemption from the APA in the California Code regarding the  
13 promulgation of regulations regarding the Firearm Safety Certificate Program, there was no  
14 emergency sufficient to justify bypassing the APA, and the regulation is not a mere restatement of  
15 statutory law. It is thus subject to the procedural requirements set forth in the APA.

16       93.     By implementing, administering, and enforcing the regulation that all certified  
17 instructors obtain Certificates of Eligibility annually without providing formal notice or  
18 opportunity for public comment, Defendants have violated and continue to violate the APA.

19       94.     An actual controversy exists. Plaintiffs contend that Defendants are violating the  
20 APA and that Defendants intend to continue to do so. Plaintiffs allege on information and belief  
21 that the Defendants and each of them contend the regulation is in full compliance with the  
22 requirements of the APA or was not subject to them.

23       95.     A judicial declaration of the legality of Defendants’ conduct, and whether the  
24 regulation all certified instructors obtain Certificates of Eligibility annually constitutes an invalid  
25 underground regulation in violation of the APA, is necessary and appropriate at this time, as the  
26 regulation took effect on January 1, 2015.

27       96.     Defendants’ unlawful conduct has caused and, unless enjoined by this Court, will  
28 continue to cause irreparable injury to Plaintiffs, their members, and supporters.

      97.     Plaintiffs, their supporters, and members, as stakeholders in the Firearm Safety

1 Certificate Program, have been specifically harmed because Defendants' unlawful conduct has  
2 denied them their statutory right to be heard and to provide input regarding regulations governing  
3 a program that significantly affects them.

4 98. Further, harm from this underground regulation lies in the subversion of the  
5 democratic values the APA was intended to serve. The notice, comment, and review procedures  
6 of the APA were enacted to secure the public benefits of openness, accessibility, and  
7 accountability in the formulation of rules that implement legislative enactments. Irreparable harm  
8 occurs when a state agency unlawfully adopts a regulation and each time the agency acts pursuant  
9 to its underground regulation.

10 99. The public in general and Plaintiffs specifically have an interest in preventing  
11 Defendants from enforcing the underground regulation that all certified instructors obtain  
12 Certificates of Eligibility annually, as it undermines the democratic values the APA was designed  
13 to serve and prevents Plaintiffs from engaging in constitutionally protected conduct.

14 **THIRD CAUSE OF ACTION**  
15 **FOR DECLARATORY AND INJUNCTIVE RELIEF**

16 Validity of Rule that All Firearm Safety Certificate Program Fees Be Paid By Major Credit Card  
(Violation of California Administrative Procedure Act, Gov. Code, § 11340 et seq.)  
(By All Plaintiffs Against All Defendants)

17 100. Plaintiffs incorporate by reference the allegations in the above paragraphs as  
18 though fully set forth herein.

19 101. The rule that all Firearm Safety Certificate Program fees be paid by major credit  
20 card applies to all Firearm Safety Certificate purchases and mandates its enforcement by  
21 all certified instructors. It is thus a rule of general applicability.

22 102. The rule was created by the Department for the purpose of implementing,  
23 interpreting, or making specific the Firearm Safety Certificate Program, a program administered  
24 by the Department pursuant to the Penal Code. It is thus a "regulation" under the APA.

25 103. There is no express exemption from the APA in the California Code regarding the  
26 promulgation of regulations regarding the Firearm Safety Certificate Program, there was no  
27 emergency sufficient to justify bypassing the APA, and the regulation is not a mere restatement of  
28 statutory law. It is thus subject to the procedural requirements set forth in the APA.

1           104. By implementing, administering, and enforcing the regulation that all Firearm  
2 Safety Certificate Program fees be paid by major credit card without providing formal notice or  
3 opportunity for public comment, Defendants have violated and continue to violate the APA.

4           105. An actual controversy exists. Plaintiffs contend that Defendants are violating the  
5 APA and that Defendants intend to continue to do so. Plaintiffs allege on information and belief  
6 that the Defendants and each of them contend the regulation is in full compliance with the  
7 requirements of the APA or was not subject to them.

8           106. A judicial declaration of the legality of Defendants' conduct, and whether the  
9 regulation requiring all Firearm Safety Certificate payments be made using only major credit  
10 cards constitutes an invalid underground regulation in violation of the APA, is necessary and  
11 appropriate at this time, as the regulation took effect on January 1, 2015.

12           107. Defendants' unlawful conduct has caused and, unless enjoined by this Court, will  
13 continue to cause irreparable injury to Plaintiffs, their members, and supporters.

14           108. Plaintiffs, their supporters, and members, as stakeholders in the Firearm Safety  
15 Certificate Program, have been specifically harmed because Defendants' unlawful conduct has  
16 denied them their statutory right to be heard and to provide input regarding regulations governing  
17 a program that significantly affects them.

18           109. Further, harm from this underground regulation lies in the subversion of the  
19 democratic values the APA was intended to serve. The notice, comment, and review procedures  
20 of the APA were enacted to secure the public benefits of openness, accessibility, and  
21 accountability in the formulation of rules that implement legislative enactments. Irreparable harm  
22 to these important public benefits occurs whenever a state agency unlawfully adopts a regulation  
23 and each time the agency acts pursuant to its underground regulation.

24           110. The public in general and Plaintiffs specifically have an interest in preventing  
25 Defendants from enforcing the underground regulation that all Firearm Safety Certificate fees be  
26 paid by major credit card, as it undermines the democratic values the APA was designed to serve  
27 and prevents Plaintiffs from engaging in constitutionally protected conduct.

28 ///

1 **FOURTH CAUSE OF ACTION**  
2 **FOR DECLARATORY AND INJUNCTIVE RELIEF**

3 Validity of Rule that Certified Instructors Include Procedures Contained in the Firearm Safety  
4 Certificate Manual in All Long-Gun Safe-Handling Demonstrations  
5 (Violation of California Administrative Procedure Act, Gov. Code, § 11340 et seq.)  
6 (By All Plaintiffs Against All Defendants)

7 111. Plaintiffs incorporate by reference the allegations in the above paragraphs as  
8 though fully set forth herein.

9 112. The rule that all certified instructors include procedures contained in the Firearm  
10 Safety Certificate manual in all long-gun safe-handling demonstrations applies to all certified  
11 instructors participating in the Firearm Safety Certificate Program. It is thus a rule of general  
12 applicability.

13 113. The rule was created by the Department for the purpose of implementing and  
14 interpreting Penal Code section 26860 administered by the Department. It is thus a “regulation”  
15 under the APA.

16 114. There is no express exemption in the California Code regarding the promulgation  
17 of regulations regarding the Firearm Safety Certificate Program, there was no emergency  
18 sufficient to justify bypassing the APA, and the regulation is not a mere restatement of statutory  
19 law. It is thus subject to the procedural requirements set forth in the APA.

20 115. By implementing, administering, and enforcing the regulation that all certified  
21 instructors include procedures contained in the Firearm Safety Certificate manual in all long-gun  
22 safe-handling demonstrations without providing formal notice or opportunity for public comment,  
23 Defendants have violated and continue to violate the APA.

24 116. An actual controversy exists. Plaintiffs contend that Defendants are violating the  
25 APA, and that Defendants intend to continue to do so. Plaintiffs allege on information and belief  
26 that the Defendants and each of them contend the regulation is in full compliance with the  
27 requirements of the APA or was not subject to them.

28 117. A judicial declaration of the legality of Defendants’ conduct, and whether the  
regulation all certified instructors include procedures contained in the Firearm Safety Certificate  
manual in all long-gun safe-handling demonstrations is an invalid underground regulation in  
violation of the APA, is necessary and appropriate at this time, as the regulation took effect on

1 January 1, 2015.

2 118. Defendants' unlawful conduct has caused and, unless enjoined by this Court, will  
3 continue to cause irreparable injury to Plaintiffs, their members, and supporters.

4 119. Plaintiffs, their supporters, and members, as stakeholders in the Firearm Safety  
5 Certificate Program, have been specifically harmed because Defendants' unlawful conduct has  
6 denied them their statutory right to be heard and to provide input regarding regulations governing  
7 the program.

8 120. Further, harm from the underground regulation lies in the subversion of the  
9 democratic values the APA was intended to serve. The notice, comment, and review procedures  
10 of the APA were enacted to secure the public benefits of openness, accessibility, and  
11 accountability in the formulation of rules that implement legislative enactments. Irreparable harm  
12 occurs when a state agency unlawfully adopts a regulation and each time the agency acts pursuant  
13 to its underground regulation.

14 121. The public has an interest in preventing Defendants from enforcing the  
15 underground regulation that all certified instructors include procedures contained in the Firearm  
16 Safety Certificate manual in all long-gun safe-handling demonstrations, as it undermines the  
17 democratic values the APA was designed to serve.

18 **FIFTH CAUSE OF ACTION**  
19 **FOR INJUNCTIVE RELIEF**

20 Long-Gun Safe-Handling Demonstration, Pen. Code, § 26860, subds. (a), (c), & (d)  
(Violation of Penal Code, § 26860, subd. (b))  
(By All Plaintiffs Against All Defendants)

21 122. Plaintiffs incorporate by reference the allegations in the above paragraphs as  
22 though fully set forth herein.

23 123. Penal Code section 26860, subdivision (b) clearly requires Defendant Department  
24 to promulgate and adopt regulations no later than January 1, 2015, "establishing a long gun safe  
25 handling demonstration that shall include, at a minimum, loading and unloading the long gun."

26 124. The Department has not adopted any regulations establishing a long-gun safe-  
27 handling demonstration pursuant to the procedural requirements set forth in the APA.

28 125. Individuals, including Plaintiffs, who seek to acquire long guns thus *cannot*

1 comply with Penal Code section 26860, subdivisions (a), (c), and (d), and so FFLs, including  
2 clients, members, or supporters of Plaintiffs FFLGuard and CRPA, cannot lawfully transfer or  
3 acquire long guns in California unless and until the Department enacts regulations required by  
4 subdivision (b).

5 126. Pursuant to Code of Civil Procedure sections 525 and 526, Plaintiffs seek to  
6 enjoin enforcement of Penal Code section 26860, subdivisions (a), (c), and (d), unless and until  
7 Defendants formally promulgate the required regulations. Unless enjoined by order of this Court,  
8 Plaintiffs will continue to suffer great and irreparable harm because they are unable to engage in  
9 constitutionally protected conduct, i.e., transacting in lawful firearms.

10 **SIXTH CAUSE OF ACTION**  
11 **FOR WRIT OF MANDATE**

12 Failure to Promulgate Regulations Establishing Long-Gun Safe-Handling Demonstration  
(Violation of Penal Code, § 26860, subd. (b))  
(By All Plaintiffs Against All Defendants)

13 127. Plaintiffs incorporate by reference the allegations in the above paragraphs as  
14 though fully set forth herein.

15 128. Defendants have a clear, present, and ministerial duty to enact regulations  
16 establishing a long-gun safe-handling demonstration under Penal Code section 26860,  
17 subdivision (b). They also have a clear, present, ministerial duty to comply with the procedures  
18 set forth in the California Administrative Procedure Act, Government Code, section 11340 et  
19 seq., in promulgating those regulations.

20 129. Plaintiffs, their members, and supporters, are each beneficially interested in seeing  
21 that Defendant Department performs its legal duties pursuant to section 26860, subdivision (b),  
22 for they cannot comply with section 26860, subdivisions (a), (c), or (d) or lawfully transfer or  
23 take possession of any long gun unless and until Defendant Department performs.

24 130. Defendants' unlawful failure to act has caused and, unless compelled by this  
25 Court, will continue to cause irreparable injury to Plaintiffs, their clients, members, and  
26 supporters because they are unable to engage in constitutionally protected conduct, i.e.,  
27 transacting in lawful firearms.

28 131. Plaintiffs lack a plain, speedy, and adequate remedy at law for the harms they have



1 suffered and will continue to suffer as a result of Defendants' unlawful conduct and failure to act.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiffs pray for relief and judgment as follows:

4 1. For a declaration that Defendants' requirement that all DOJ Certified Instructors  
5 have access to a personal computer, printer, and email address constitutes an invalid underground  
6 regulation in violation of the California Administrative Procedure Act.

7 2. For a preliminary and permanent prohibitory injunction forbidding Defendants  
8 from enforcing the invalid underground regulation requiring that all DOJ Certified Instructors  
9 have access to a personal computer, printer, and email.

10 3. For a declaration that Defendants' requirement that all DOJ Certified Instructors  
11 obtain COEs annually constitutes an invalid underground regulation in violation of the California  
12 Administrative Procedure Act.

13 4. For a preliminary and permanent prohibitory injunction forbidding Defendants  
14 from enforcing the invalid underground regulation that all DOJ Certified Instructors obtain COEs  
15 annually.

16 5. For a declaration that Defendants' requirement that all Firearm Safety Certificate  
17 program payments be made using only major credit cards constitutes an invalid underground  
18 regulation in violation of California's Administrative Procedure Act.

19 6. For a preliminary and permanent prohibitory injunction forbidding Defendants,  
20 their employees, agents, and successors in office from enforcing the invalid underground  
21 regulation requiring that all Firearm Safety Certificate program payments be made using only  
22 major credit cards.

23 7. For a declaration that Defendants' requirement that all DOJ Certified Instructors  
24 include the "steps of long gun safety" procedures contained in the "Firearm Safety Certificate  
25 Manual" in the "safe handling demonstrations," constitutes an invalid underground regulation in  
26 violation of the California Administrative Procedure Act.

27 8. For a preliminary and permanent prohibitory injunction forbidding Defendants  
28 from enforcing the invalid underground regulation that all DOJ Certified Instructors use the

1 “steps of long gun safety” procedures contained in the “Firearm Safety Certificate Manual” in the  
2 “safe handling demonstrations.”

3 9. For a peremptory writ of mandate compelling the Department to promulgate  
4 regulations establishing the long-gun safe-handling demonstrations as required by Penal Code  
5 section 26860, subdivision (b).

6 10. For an award of Plaintiffs’ reasonable costs and attorneys’ fees pursuant to Code  
7 of Civil Procedure section 1021.5. and any other relevant provision of state or federal law.

8 Dated: January 5, 2015

MICHEL & ASSOCIATES, P.C.

9  
10 

11 C. D. Michel  
12 Joseph A. Silvoso, III  
13 Sean A. Brady  
14 Anna M. Barvir  
15 *Counsel for Plaintiffs*  
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VERIFICATION

I, Steven H. Dember, am the Treasurer of the California Rifle & Pistol Association, a Plaintiff in the above-entitled action. I certify under penalty of perjury that I have read the foregoing COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; VERIFIED PETITION FOR MANDATE and have authorized it for filing. Based upon my and my counsel's investigation, the contents of the foregoing Complaint and Petition are true to the best of my knowledge, information, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5<sup>th</sup> day of January 2015 at Fullerton, California.

By: Steven H. Dember  
Steven H. Dember, Treasurer  
California Rifle and Pistol Association

# EXHIBIT A



**CALIFORNIA DEPARTMENT OF JUSTICE  
HANDGUN SAFETY CERTIFICATE PROGRAM  
CERTIFIED INSTRUCTOR APPLICATION**



*Instructions on Reverse.  
Please type or print clearly in ink.*

Name: \_\_\_\_\_  
Last First Middle

Date of Birth: \_\_\_\_\_ CA DL or CA ID#: \_\_\_\_\_ Sex: ☐ Male ☐ Female  
(month/day/year)

Home Address: \_\_\_\_\_  
Street

City State Zip Code

Mailing Address (if different) \_\_\_\_\_  
Street

City State Zip Code

Daytime Phone # ( ) \_\_\_\_\_

The attached certification represents my 12804 (j) PC qualification of: \_\_\_\_\_  
(Required qualifications on reverse)

COE #: \_\_\_\_\_ Exp. Date: \_\_\_\_\_ or ☐ \$14.00 non-refundable fee payable to the  
(If applicable) (month/day/year) Department of Justice

*I declare under penalty of perjury (Sections 126 and 672 PC) that all statements made by me on this application are true and complete. I understand that the Department of Justice has no responsibility for insurance coverage for myself, my students, my classes, my courses, or my oversight of handgun safety demonstrations. If I do not have a valid or pending COE, I understand that a firearms eligibility check may be conducted on me during this application process and I expressly authorize DOJ to make this check. I understand that information submitted by me for approval as a DOJ Certified Instructor is a matter of public record. I understand that I must renew my application to be a DOJ Certified Instructor every five years. I agree to comply with the Handgun Safety Certificate Program guidelines, procedures, and legal requirements as specified in the applicable statutes and the HSC Certified Instructor Manual. I declare that I am not addicted to the use of any narcotic drug and that I am familiar with the list of prohibiting offenses and nothing would preclude me from possessing a firearm.*

Signature

Date

**Mail To:** California Department of Justice  
Bureau of Firearms, HSC  
P.O. Box 160367  
SACRAMENTO, CA 95816-0367

**DOJ Use Only**

Date Received \_\_\_\_\_

Date Processed \_\_\_\_\_

**CALIFORNIA DEPARTMENT OF JUSTICE  
CERTIFIED INSTRUCTOR APPLICATION  
INSTRUCTIONS**

***APPLICATION ON REVERSE***

Pursuant to Penal Code sections 12071(b)(8) and 12804(j), DOJ Instructor Certification requires training and certification from one of the following:

- Department of Consumer Affairs, State of CA-Firearm Training Instructor.
- Director of Civilian Marksmanship, Instructor or Rangemaster.
- Federal Government, Certified Rangemaster or Firearm Instructor.
- Federal Law Enforcement Training Center, Firearm Instructor Training Program or Rangemaster.
- United States Military, Occupational Specialty (MOS) as marksmanship or firearms instructor. Assignment as Range Officer or Safety Officer is not sufficient.
- NRA-Certified Instructor, Law Enforcement Instructor, Rangemaster, or Training Counselor.
- POST Standards and Training, State of CA Firearm Instructor or Rangemaster.
- Authorization from a State of CA accredited school to teach a firearms training course.
- Training deemed equivalent by DOJ.

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To apply to be a DOJ Certified Instructor, please complete and submit this application, a copy of your qualification certificate, and a \$14 firearms eligibility determination fee payable to the Department of Justice (this fee is waived if you possess a current Certificate of Eligibility).

NOTE: Only Department of Justice (DOJ) Certified Instructors may order the HSC tests, the Handgun Safety Certificates and oversee the handgun safe handling demonstration required by Penal Code section 12071 (b) (8) (D).

If you have any questions regarding the Handgun Safety Certificate Program, please contact the Firearms Safety and Regulatory Section at (916) 263-0183.

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Mail the completed application, a copy of your qualification certificate, and fee (if applicable) to:

**California Department of Justice  
Bureau of Firearms, HSC  
P.O. Box 160367  
SACRAMENTO, CA 95816-0367**

# **EXHIBIT B**



CALIFORNIA DEPARTMENT OF JUSTICE  
BUREAU OF FIREARMS  
Firearm Safety Certificate Program  
DOJ Certified Instructor Application



☐ Initial Application

☐ Renewal Application

DOJ Certified Instructor Number: \_\_\_\_\_

**A. Applicant Information**

Last Name:		First Name:		Middle Name:	
Residence Street Address:		City:		State:	Zip Code:
Mailing Address (if different):		City:		State:	Zip Code:
Date of Birth (mm/dd/yyyy):	CA Driver License or Identification Card Number:		Sex:	Phone No. (include area code):	
Email Address: _____					

Pursuant to Penal Code section 31635, subdivision (b), Department Instructor Certification requires training and certification from one of the following (select one training entity and attach a copy of the certification-initial applicants only):

- ☐ Department of Consumer Affairs, State of California - Firearm Training Instructor.
- ☐ Director of Civilian Marksmanship, Instructor or Rangemaster.
- ☐ Federal Government, Certified Rangemaster or Firearm Instructor.
- ☐ Federal Law Enforcement Training Center, Firearm Instructor Training Program or Rangemaster.
- ☐ United States Military, Occupational Specialty (MOS) as marksmanship or firearms instructor.
- ☐ National Rifle Association-Certified Instructor, Law Enforcement, Rangemaster, or Training Counselor.
- ☐ Commission on Peace Officer Standards and Training, State of California- Firearm Instructor or Rangemaster.
- ☐ Authorization from a State of California accredited school to teach a firearms training course.
- ☐ Training deemed equivalent by the Department.

Initial applicants for Certified Instructor must have a valid Certificate of Eligibility (COE). Any existing DOJ Certified Instructors as of December 31, 2014, must have a valid COE upon renewal or by June 30, 2015, whichever comes first. An application for COE is accessible on the Attorney General's website at <http://oag.ca.gov/firearms/forms>. Please attach a copy of your valid COE with this application.

**B. Declaration**

*I understand that the Department of Justice (the Department) has no responsibility for insurance coverage for myself, my students, my classes, my courses, or my oversight of firearm safe handling demonstrations. I understand a valid COE is required in order for my application to be considered. I understand my application may be rejected if I do not provide the requested information/documents referenced above. I understand that information submitted by me for approval as a Department Certified Instructor is a matter of public record. I understand that I must renew my application to be a Department Certified Instructor every five years. I agree to comply with the Firearm Safety Certificate (FSC) Program guidelines, procedures, and legal requirements as specified in the applicable statutes and applicable regulations. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.*

Signature \_\_\_\_\_

Date \_\_\_\_\_

**NOTE:** Only Department Certified Instructors may administer FSC tests, issue FSCs, and oversee the firearm safe handling demonstration. (Pen. Code, §§ 26850, subd. (a) & (b), 26853, 26856, 26859, 26860, and 31645.)

If you have any questions regarding the FSC Program, please contact the Firearms Safety and Regulatory Section at (916) 227-3750.

Mail completed form and all required attachments to:  
California Department of Justice  
Bureau of Firearms - FSC  
P.O. Box 160367  
Sacramento, CA 95816-0367

**DOJ USE ONLY**

Received Date: \_\_\_\_\_

Processed By BOF: \_\_\_\_\_

Certified Instructor Number: \_\_\_\_\_



## Privacy Notice

As Required by Civil Code § 1798.17

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**Collection and Use of Personal Information.** The Bureau of Firearms in the Department of Justice collects the information requested on this form as authorized by Penal Code section 31635. The Bureau of Firearms uses this information to establish grounds for the issuance of the certificate indicated on this application.

**Providing Personal Information.** All the personal information requested in the form must be provided.

**Access to Your Information.** You may review the records maintained by the Bureau of Firearms in the Department of Justice that contain your personal information, as permitted by the Information Practices Act. See below for contact information.

**Possible Disclosure of Personal Information.** In order to establish grounds for the issuance of the certificate indicated on this application, we may need to share the information you give us with any peace officer or other person designated by the Attorney General upon request.

The information you provide may also be disclosed in the following circumstances:

- In response to a Public Records Act request, as allowed by the Information Practices Act;
- To another government agency as required by state or federal law; and/or
- In response to a court or administrative order, a subpoena, or a search warrant.

**Contact Information.** For questions about this notice or access to your records, you may contact the Department of Justice, Bureau of Firearms at the address or phone number listed on this application.

# **EXHIBIT C**



CALIFORNIA DEPARTMENT OF JUSTICE  
BUREAU OF FIREARMS  
**Safe Handling Demonstration  
Affidavit**



On \_\_\_\_\_, \_\_\_\_\_  
*Date (mm/dd/yyyy)* *Printed Name of Firearm Purchaser/Recipient*

performed the safe handling demonstration as required in California Penal Code sections 26850, 26853, 26856, 26859, and 26860, with the firearm (or one of the same make and model) referenced on Dealer's Record of Sale (DROS) Number \_\_\_\_\_  
*DROS Number*

under the supervision of \_\_\_\_\_  
*Printed Name of DOJ Certified Instructor* *DOJ Certified Instructor Number*

*I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.*

\_\_\_\_\_  
DOJ Certified Instructor Signature Date

\_\_\_\_\_  
Firearm Purchaser/Recipient Signature Date

\_\_\_\_\_  
Dealer/Employee Signature Date

\_\_\_\_\_  
Printed Name of Dealer/Employee

# **EXHIBIT D**



BUREAU OF FIREARMS  
P.O. BOX 160367  
SACRAMENTO, CA 95816-0367  
Telephone: (916) 227-3750  
Fax: (916) 227-7480

October 2, 2014

California Firearms Dealers, DOJ Certified Instructors, and Comparable Entities

Re: Firearm Safety Certificate Program

Dear California Firearms Dealers, DOJ Certified Instructors, and Comparable Entities:

Pursuant to Senate Bill 683 (Stats 2013, ch. 761), effective January 1, 2015, the existing Handgun Safety Certificate (HSC) program will be expanded and renamed the Firearm Safety Certificate (FSC) program. Under the FSC program, requirements that currently apply to handguns only, will apply to all firearms (handguns and long guns).

The following information outlines the new FSC program, requirements for DOJ Certified Instructors; requirements for Comparable Entities; and existing Handgun Safety Certificate program updates.

The Department plans to utilize a web-based application to make FSC materials available, including the Firearm Safety Certificates, test materials, the FSC study guide, and the FSC manual to all DOJ Certified Instructors. The FSC study guide will also be available for printing and audio/visual materials will be available for streaming/downloading from the public website at <http://www.oag.ca.gov/firearms/fsc>. **Please be advised, this link will not be available until January 1, 2015.** Any materials that require a fee will be billed through the online system. Payment options will be limited to major credit/debit cards (e.g. MasterCard, Visa, American Express, and Discover cards). **Payment by cash or check will not be accepted.**

With the new FSC program web-based application, DOJ Certified Instructors will be able to issue an FSC electronically, search for an FSC that was originally issued by them for replacement, maintain FSC records, generate reports of FSC issuances, and review/obtain FSC materials. Each existing DOJ Certified Instructor will receive login information to the new system and should keep the login information readily available.

With the new FSC program web-based application, DOJ Certified Instructors will need access to a personal computer and printer. DOJ Certified Instructors will be able to use multiple web-browsers to access the web-based application, including but not limited to: Mozilla Firefox, Internet Explorer, Safari, and Google Chrome.

- Existing DOJ Certified Instructors will not be required to be recertified in long gun safety prior to January 1, 2015. DOJ Certified Instructors will be sent login information to be able to access the new FSC program online system. A userid and temporary password will be sent separately. Upon successful

login, existing DOJ Certified Instructors will be required to acknowledge they have read the revised Firearm Safety Certificate Manual, which includes steps in long gun safety and that they will include both handgun and long gun safety as part of the safe handling demonstrations. Upon acknowledgement, a new Firearm Safety Certificate Instructor card will be generated for the DOJ Certified Instructor to print and keep for their use. If the DOJ Certified Instructor does not acknowledge the handgun and long gun safety requirement, a new DOJ Certified Instructor card will not be generated and the individual will not be in compliance as a DOJ Certified Instructor.

- All DOJ Certified Instructors will be required to have a valid Certificate of Eligibility (COE). As of January 1, 2015, new applicants will be required to obtain a COE prior to submitting an application as a DOJ Certified Instructor. Existing DOJ Certified Instructors as of December 31, 2014, will be required to have a valid COE upon renewal or by June 30, 2015, whichever comes first. Any existing DOJ Certified Instructor who has not provided proof of a valid COE by June 30, 2015, will not have access to the FSC online system. Mere submission of the application will not be considered proof of a COE; therefore, please allow 4-6 weeks for the Department to process the COE application. The Certificate of Eligibility application (form BOF 4008) is available on the Attorney General's website at <http://www.oag.ca.gov/firearms/forms>. A Request for Live Scan Service (form BCIA 8016) is attached to the COE application. COEs must be renewed annually.
- Valid HSCs can still be used to purchase **handguns only** after December 31, 2014. However, effective January 1, 2015, an FSC will be required to purchase long guns. An FSC can be used to purchase/acquire handguns and long guns.
- A Declaration will be sent out to all existing entities, recognized by the Department as a comparable entity to those entities in Penal Code section 31635, for acknowledgement of existing training courses to include long gun safety beginning January 1, 2015. The Declaration must be completed, signed and returned to the Department by January 1, 2015. Failure to do so could result in the entity being removed as giving comparable training. New applicants to be considered as a comparable entity will need to include long gun training in the course outline effective January 1, 2015.
- Firearms dealers will still be required to tag firearms with the DOJ firearms warning labels, which will not be available through the new system and must be ordered through BOF. Orders for warning tags must be made via email at [boffscprogram@doj.ca.gov](mailto:boffscprogram@doj.ca.gov). **Please be advised, this email address will not be in use until January 1, 2015.** Email requests must include the following: dealer name, CFD number, mailing address, and number of tags requested.

- Any unused<sup>1</sup> HSCs in possession of a DOJ Certified Instructor after January 1, 2015 can be returned to the Department for refund. Unused HSCs must be returned by March 1, 2015, in order to receive a refund. To receive a refund, send a written request to the Department at: Department of Justice, Bureau of Firearms – FSC, P.O. Box 160367, Sacramento, CA 95816-0367. Your written request must include the following:
  - DOJ Certified Instructor name
  - Address
  - How many HSCs are being returned

Unused HSCs received by the Department after March 1, 2015, will be destroyed and no refund will be issued.

- HSCs that have been damaged or filled out incorrectly and need to be voided can be returned to the Department prior to January 1, 2015, for a replacement HSC. Damaged or voided HSCs returned to the Department after December 31, 2014, will be destroyed. No refund will be issued for these returned HSCs.

All future correspondence between the Department and the DOJ Certified Instructors will be conducted primarily through email. DOJ Certified Instructors that currently do not have an email address will need to obtain one, otherwise, important information pertaining to the FSC program could be missed. In addition, an email address will be required to maintain access to the new web-based application (i.e., login information that is reset will be sent to an email address). If you have not been contacted recently by Department staff to confirm an email address, please send an email to [bofhscprogram@doj.ca.gov](mailto:bofhscprogram@doj.ca.gov) with the information to be updated in the Department's records. Be sure to include your name and DOJ Certified Instructor number in your email notification.

Please be sure to check your email or mail in the near future for your login information to the new FSC system. If you have any questions, please contact the Bureau of Firearms at (916) 227-3750 or via email at [bofhscprogram@doj.ca.gov](mailto:bofhscprogram@doj.ca.gov).

Sincerely,



STEPHEN LINDLEY, Chief  
Bureau of Firearms

For KAMALA D. HARRIS  
Attorney General

<sup>1</sup>Unused HSC cards for refund are cards that were not filled out previously and would not be considered voided.

# **EXHIBIT E**



KAMALA D. HARRIS  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



BUREAU OF FIREARMS  
P.O. BOX 160367  
SACRAMENTO, CA 95816-0367  
Telephone: (916) 227-3750  
Fax: (916) 227-7480

December 18, 2014

[REDACTED]

**Re: Firearm Safety Certificate Program - Online Access**

Dear DOJ Certified Instructor:

Effective January 1, 2015, the existing Handgun Safety Certificate (HSC) Program will be changed to the Firearm Safety Certificate (FSC) Program (Senate Bill 683, Stats 2013, ch. 761).

The Department of Justice (the Department) will utilize an online system for the Firearm Safety Certificate Program to make FSC materials available to all DOJ Certified Instructors, including the Firearm Safety Certificates, test materials, the FSC study guide, and the FSC manual. The study guide will be available for printing and audio/visual materials will be available for viewing/downloading from the Bureau of Firearms website at <https://oag.ca.gov/firearms/fsc>. **Please be advised, this link will not be available until January 1, 2015.**

You have been identified as an active DOJ Certified Instructor with the Department. Below is your identifying information to access the online system.

First Name: [REDACTED]  
Last Name: [REDACTED]  
DOJ Certified Instructor Number: [REDACTED]  
Website: <https://fcs.doj.ca.gov>  
Userid: [REDACTED]

With the new FSC Program web-based application, you will need access to a personal computer and printer. DOJ Certified Instructors will be able to use multiple web browsers to access the web-based application, including but not limited to: Mozilla Firefox, Internet Explorer, Safari, Google, Chrome, and others.

You will receive your temporary password separately. Once you have your userid and temporary password, you will be able to login to the new system. Upon login, you will be prompted to make acknowledgements regarding specific information and then will be required to change your password before proceeding. Please keep your userid and password secure at all times.

December 18, 2014

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With the new FSC online system, DOJ Certified instructors will be able to electronically issue an FSC, issue a replacement FSC, pay for FSCs, maintain FSC records, generate reports of FSC issuances, and review/obtain FSC materials.

- When an individual passes an FSC test, the DOJ Certified Instructor will login to the FSC online system to issue the FSC. The DOJ Certified Instructor will enter the individual's information into the system and be able to preview the information entered prior to the FSC being generated. The DOJ Certified Instructor will be required to make payment of the FSC prior to it being generated. Once the FSC is generated, the DOJ Certified Instructor will then print the FSC to present to the individual. The FSC will be good for five years from date of issuance (i.e., issued July 1, 2014 through July 1, 2019).
- If the FSC holder loses or damages their FSC and it's still within five years of when it was initially issued, the FSC holder can get a replacement FSC from the DOJ Certified Instructor who originally issued their FSC (Penal Code section 31660(b)) and pay a \$5 replacement fee. If the DOJ Certified Instructor who originally issued the FSC is no longer in business, the FSC holder will need to acquire a new FSC card, which would require retaking and passing the FSC test and paying the applicable \$25 fee for a new FSC.
- DOJ Certified Instructors will have the ability to pay for FSCs individually as they are issued or can pay for more than one FSC at a time by adding "pending" FSCs into a shopping cart or queue. An FSC will not be generated until payment has been received. Payment can be made with a credit card or debit card.
- DOJ Certified Instructors will no longer be required to maintain hard copy records of FSCs issued. Information will be maintained electronically and the DOJ Certified Instructors will be able to generate reports of issuances if needed.
- The FSC Study Guide, FSC Manual, FSC test versions, test answer sheet and test answer key will be made available for printing through the system.

Correspondence between the Department and the DOJ Certified Instructors will be conducted primarily through email. DOJ Certified Instructors that currently do not have an email address will need to obtain one, otherwise, important information pertaining to the FSC Program could be missed. In addition, a unique email address will be required to maintain access to the new online system (i.e., login information that is reset will be sent to an email address). If you have not been contacted recently by the Department staff to confirm an email address, you can send an email to [bofhscprogram@doj.ca.gov](mailto:bofhscprogram@doj.ca.gov) with the information to be updated in the Department's records. Be sure to include your name and DOJ Certified Instructor number in your email notification.

December 18, 2014

Page 3

If you have not received your userid, please contact the Bureau of Firearms at (916) 227-3750 or via email at [bofhscprogram@doj.ca.gov](mailto:bofhscprogram@doj.ca.gov). Effective January 1, 2015, the FSC Program email address will be [boffscprogram@doj.ca.gov](mailto:boffscprogram@doj.ca.gov).

Sincerely,



STACY HEINSEN, Manager  
Bureau of Firearms

For KAMALA D. HARRIS  
Attorney General

# **EXHIBIT F**

SENIOR COUNSEL  
C. D. MICHEL\*

SPECIAL COUNSEL  
JOSHUA R. DALE  
W. LEE SMITH

ASSOCIATES  
ANNA M. BARVIR  
MICHELLE BIGLARIAN  
SEAN A. BRADY  
SCOTT M. FRANKLIN  
BEN A. MACHIDA  
THOMAS E. MACIEJEWSKI  
CLINT B. MONFORT  
JOSEPH A. SILVOSO, III  
LOS ANGELES, CA

\* ALSO ADMITTED IN TEXAS AND THE  
DISTRICT OF COLUMBIA

WRITER'S DIRECT CONTACT:  
562-216-4444  
CMICHEL@MICHELLAWYERS.COM



OF COUNSEL  
DON B. KATES  
BATTLEGROUND, WA

RUTH P. HARING  
MATTHEW M. HORECZKO  
LOS ANGELES, CA

GLENN S. MCROBERTS  
SAN DIEGO, CA

AFFILIATE COUNSEL  
JOHN F. MACHTINGER  
JEFFREY M. COHON  
LOS ANGELES, CA

DAVID T. HARDY  
TUCSON, AZ

December 29, 2014

Attention: Chapter 2 Compliance Unit  
OFFICE OF ADMINISTRATIVE LAW  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

**SENT VIA USPS, EMAIL AND FAX**

**Re: California Department of Justice - Firearm Safety Certificate Program**  
**Underground Regulation**

To Whom It May Concern:

We write you on behalf of our clients the National Rifle Association (NRA) and FFLGuard, as well as their respective members and clients who reside in California. These members include firearm dealers, distributors, manufacturers, Handgun Safety Certificate (HSC) Instructors, as well as the firearm owning public.

Pursuant to Senate Bill 683(SB 683) (Stats 2013, ch. 761), effective January 1, 2015, the HSC program<sup>1</sup> will be replaced by the Firearm Safety Certificate (FSC) program. SB 683 mandates that DOJ implement regulations creating a new safe firearm handling demonstration, in addition to administering the FSC program pursuant to its enumerated provisions in the Penal Code.

On October 2, 2014 the DOJ issued a letter to "California Firearms Dealers, DOJ Certified Instructors, and Comparable Entities." (Attached as **Exhibit 1**).<sup>2</sup> This letter addressed and established

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<sup>1</sup> As described in Cal. Penal Code §§ 31610-31670. (2014). All section references are to the California Penal Code unless otherwise indicated.

<sup>2</sup> This letter was sent in advance of the pending FSC program scheduled to take effect January 1, 2015. DOJ has also published an "FAQ" concerning the FSC program. <http://oag.ca.gov/firearms/fscpfaqs> (Last visited December, 26, 2014) (**Exhibit 2**). The FAQ provides answers to general questions the public may have concerning the FSC. However, it provides no in-depth guidance outside what can be found in the California Penal Code.

policies for implementing the new FSC program, and established the requirements for instructors operating under the new program.

As explained below, DOJ's letter sets forth new rules of general application for the implementation of the FSC program that were not adopted pursuant to Administrative Procedure Act (APA). Accordingly, because DOJ's actions are not exempt from the APA, the agency's failure to properly promulgate regulations for the safe handling demonstration, and DOJ's new rules concerning the implementation of the FSC program, constitute unlawful underground regulations.

We seek assistance in having these improper underground regulations struck down.

## **I. The HSC Program Under Current California Law**

Under current California law, most people purchasing a handgun from a licensed firearm dealer must perform a safe handling demonstration with the firearm,<sup>3</sup> and must present an HSC to the California firearms dealer<sup>4</sup> from whom they are purchasing the firearm showing they have successfully passed a written "Handgun Safety" test.

### **A. Certified HSC Instructors**

The HSC may be obtained by passing a test administered by a DOJ Certified Instructor.

A person is not required to be a federal firearms licensee in order to administer the HSC test. Some Federal Firearm Licensees (FFLs) are also certified HSC instructors, who administer the written test in their store. Some instructors are employees of FFLs. There are also a number of instructors who, in addition to teaching firearm safety and/or other firearm related classes, administer the tests in their classrooms or on ranges with students. Provided a person meets the prerequisite skill, knowledge, and competency required to be a HSC instructor, any person may become an instructor.<sup>5</sup> Department Certified Instructors shall have a certification that they received training from specific organizations (specified by the Penal Code), any entity found by DOJ to give comparable instruction in firearm safety, or the applicant shall have similar or equivalent training to that provided by a specific organization.<sup>6</sup> When applying to be an HSC instructor a person must file an application with DOJ,

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<sup>3</sup> Cal. Penal Code § 26850 (2014).

<sup>4</sup> §§ 26840(a), 27540(e), and 31615 (2014).

<sup>5</sup> § 31635(a) (2014).

<sup>6</sup> § 31635(b) (2014). Below is the list of specified organizations:

- (1) Department of Consumer Affairs, State of California-Firearm Training Instructor.
- (2) Director of Civilian Marksmanship, Instructor or Rangemaster.
- (3) Federal Government, Certified Rangemaster or Firearm Instructor.
- (4) Federal Law Enforcement Training Center, Firearm Instructor Training Program or Rangemaster.
- (5) United States Military, Military Occupational Specialty (MOS) as marksmanship or firearms

specify which organization he or she received training from, attach a copy of the certification, and **either** provide a copy of their Certificate of Eligibility (COE) **or** enclose \$14.00 for a background check.<sup>7</sup> According to DOJ's application form a person is certified for five years.<sup>8</sup>

### **1. Certificate of Eligibility**

A Certificate of Eligibility (COE) is a certificate provided by the DOJ confirming the holder of the certificate is eligible to possess firearms.<sup>9</sup> A COE is only required in certain circumstances. The Penal Code does not require a COE in order to become an HSC instructor. Persons applying to be licensed firearm dealers in California must obtain a COE,<sup>10</sup> so to must employees of firearm manufacturers,<sup>11</sup> amongst other individual.<sup>12</sup> Employees of licensed firearm dealers are not required to obtain a COE unless required to by their employer or required by local jurisdiction requires a background check of agents or employees of firearm dealers.<sup>13</sup> A person applying for a COE must submit fingerprints to DOJ and renew the COE yearly.<sup>14</sup>

### **B. Handgun Safe Handling and HSC Test Criteria**

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instructor. Assignment as Range Officer or Safety Officer is not sufficient.

(6) National Rifle Association-Certified Instructor, Law Enforcement Instructor, Rangemaster, or Training Counselor.

(7) Commission on Peace Officer Standards and Training (POST), State of California-Firearm Instructor or Rangemaster.

(8) Authorization from a State of California accredited school to teach a firearm training course.

<sup>7</sup> See attached DOJ Handgun Safety Certificate Program Certified Instructor Application (**Exhibit 3**).

<sup>8</sup> There is no basis for this limitation under California law or regulation.

<sup>9</sup> Cal. Penal Code § 26710 (2014); pursuant to this section DOJ was required to adopt regulations relating to the administration of the COE program.

<sup>10</sup> § 26700.

<sup>11</sup> § 29120.

<sup>12</sup> One must have a COE: in order to be a "consultant-evaluator" as defined in Penal Code section 16410; in order to produce, promote, sponsor, operate, or otherwise organize a gun show or sell used firearms at a gun show pursuant to sections 27200 and 26525 respectively; and to be exempt from certain firearm transfer requirements as a curio or relic collector pursuant to sections 26585, 26970, and 27966.

<sup>13</sup> § 31660

<sup>14</sup> See attached "Certificate of Eligibility Application" **Exhibit 4** and 11 CCR §§ 4037 and 4039.

The criteria for the handgun safe handling demonstration are codified in the Penal Code.<sup>15</sup> These criteria are broken up in the Penal Code by handgun action types (i.e. semiautomatic pistol, double-action revolver, and single-action revolver<sup>16</sup>). Certain people and certain transfers are exempt from this requirement.<sup>17</sup> Once the demonstration is complete, firearm dealer<sup>18</sup> and the firearm purchaser shall sign an affidavit stating that the safe handling requirements were met.<sup>19</sup>

As for the HSC requirements, unless one of these few exemptions apply, it is a misdemeanor to transfer a handgun to any non-exempt person who does not have a valid HSC and for that person to receive a handgun.<sup>20</sup>

If a person does not possess an HSC when attempting to purchase or receive a handgun, that person must take a 30 question test (administered by an HSC instructor) which includes questions about California laws applicable to carrying and handling firearms, responsibilities of firearm ownership, current laws relating to private sales/transfers of firearms, etc.<sup>21</sup> Certain individuals are exempt from the HSC requirement.<sup>22</sup>

The test includes 30 multiple choice questions and costs up to \$25 (\$15 goes to the DOJ, and the rest goes to the certified instructor).<sup>23</sup> The applicant must correctly answer at least 75% of the questions to get the HSC.<sup>24</sup>

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<sup>15</sup> § 26853-26859 (2014).

<sup>16</sup> §§ 26853, 26856, and 26859 (2014), respectively.

<sup>17</sup> Persons exempt from the HSC requirement are also exempt from the safe handling requirement. (Cal. Penal Code § 26850(h) (2014) referencing the requirements for possession of an HSC in Penal Code section 31615, and the exceptions to that requirement in section 31700.)

<sup>18</sup> Despite the Code requiring the firearm *dealer* to sign the affidavit the demonstration is required to be preformed before a “department-certified *instructor*.” Cal. Penal Code § 26850(e).

<sup>19</sup> § 26850(d). See attached “Safe Handling Demonstration Affidavit,” **Exhibit 5**.

<sup>20</sup> § 31615(a)(2)-(b).

<sup>21</sup> Cal. Penal Code § 31645(a) (2014).

<sup>22</sup> §§ 31700-31835 (2014).

<sup>23</sup> § 31650(b) (2014).

<sup>24</sup> § 31645(a) (2014).



After passing the test, the HSC is valid for five years.<sup>25</sup> If an HSC is lost or completely destroyed, one can get a duplicate certificate by asking the issuing instructor for one, proving your identity, and paying up to \$15.<sup>26</sup>

To be clear, an HSC is only necessary to *receive* a handgun, not to *possess* one.

## II. The New FSC Program

On October 11, 2013, Governor Brown signed SB 683 into law. The bill completely replaces the HSC program with the new FSC program. All of the forgoing applies but instead of being applicable only to handguns the requirements now applies to all firearms. The FSC program will, in pertinent part, prohibit any person from purchasing or receiving *any* firearm (handgun or longarm) without a valid FSC, as well as prohibit any person from selling, delivering, loaning, or transferring *any* firearm to any person who does not have a valid FSC (barring limited exceptions).<sup>27</sup>

The HSC instructor program officially becomes repealed and replaced by the FSC program on January 1, 2015. The HSC requirements that currently apply only to handguns (discussed above) will be revised and expanded to cover *all firearms*. This means that anyone purchasing any firearm must present an FSC to a dealer showing that they have successfully passed a written “Firearm Safety” test.<sup>28</sup> Also beginning January 1, 2015, anyone acquiring a long gun must perform a safe handling demonstration before receiving that firearm from a licensed firearms dealer.<sup>29</sup>

### A. The DOJ Has Failed to Adopt Mandated Regulations for the Long Gun Safe Handling Demonstrations

Penal Code section 26860 provides, in pertinent part:

- (a) Except as authorized by the department, commencing January 1, 2015, a firearms dealer shall not deliver a long gun unless the recipient performs a safe handling

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<sup>25</sup> *Frequently Asked Questions*, Cal. Dept. of Justice, Office of the Attorney General, <http://oag.ca.gov/firearms/hscfaqs#a10> (last visited Dec. 18, 2014).

<sup>26</sup> Cal. Penal Code § 31660 (2014).

<sup>27</sup> SB 683 amended Cal. Penal Code §§ 27540, 27875, 27880, 27920, 27925, 28160, 31620, and 31810 and amends, repeals and replaces Cal. Penal Code §§ 26840, 31610, 31615, 31625, 31630, 31635, 31640, 31645, 31650, 31655, 31660, and 31700 (effective January 1, 2015) and adds Cal. Penal Code §§ 16535, 16865, and 26860. *See* California Legislative Information, SB-683 Firearms: firearm safety certificate.

<sup>28</sup> One of the exceptions to the FSC requirement is that if a person purchases a handgun that person may present a valid HSC. Cal. Penal Code § 26840(a) (2015). As discussed above, HSCs are only valid for 5 years after they are issued. Eventually, no members of the California public will have a valid HSC.

<sup>29</sup> Cal. Penal Code § 26860 (2014).

- demonstration with that long gun.
- (b) *The department shall, not later than January 1, 2015, adopt regulations establishing a long gun safe handling demonstration that shall include, at a minimum, loading and unloading the long gun.*
  - (c) The firearms dealer shall sign and date an affidavit stating that the requirements of subdivision (a) and the *regulations adopted*...have been met....
  - (d) The recipient shall perform the safe handling demonstration for a *department-certified instructor*....
  - (f) *Department-certified instructors* who may administer the safe handling demonstration shall meet the requirements set forth in subdivision (b) of Section 31635 [effective January 1, 2015].<sup>30</sup>

In contrast to self-executing statutes, a non-self-executing statute (also known as a “wholly enabling” statute) cannot be enforced in the absence of valid implementing regulations - i.e., it “has no legal effect without the enactment of a regulation.”<sup>31</sup> Such statutes are not functional until the agency charged with implementing them adopts regulations for that implementation.<sup>32</sup>

By the long gun safe handling statute’s own language, it is “wholly enabling.” Although the FSC program is to become effective January 1, 2015, no regulations regarding the long gun safe handling demonstration have been proposed or adopted by DOJ.<sup>33</sup>

Additionally, DOJ has not made any FSC materials, test materials, study guides or manuals available to DOJ Certified Instructors on their website. Nevertheless, DOJ has sent letters to “California Firearms Dealers, DOJ Certified Instructors, and Comparable Entities” on October 2, 2014, indicating these materials will be available no earlier than January 1, 2015, via DOJ’s website.<sup>34</sup> However, DOJ’s letter also sets forth various new requirements for the FSC program that did not exist under the previous HSC program, and that were never subjected to the notice of “rule-making” requirements of the APA.

### **III. DOJ’s Letter to California Firearms Dealers, DOJ Certified Instructors, and Comparable Entities Sets Forth Illegal Underground Regulations.**

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<sup>30</sup> Cal. Penal Code § 26860(a)-(d), (f) (2014) (emphasis added).

<sup>31</sup> Office of Administrative Law, *What Must Be Adopted Pursuant to the APA?*, (Apr. 6, 2006), at 1, available at [www.oal.ca.gov/res/docs/pdf/what\\_is\\_a\\_regulation.pdf](http://www.oal.ca.gov/res/docs/pdf/what_is_a_regulation.pdf)

<sup>32</sup> See *Harrott v. County of Kings*, 25 Cal. 4th 1138, 1150 (2001) (noting that amendments to the Assault Weapons Control Act of 1989 were not self-executing and thus regulations were required to define weapons covered by the statute); *Alfaro v. Terhune*, 98 Cal. App. 4th 492, 502 (“Some statutory schemes, by their nature, cannot be implemented without administrative regulations”).

<sup>33</sup> By contrast the safe handling requirements for semiautomatic pistols, double and single action revolvers are located in the California Penal Code. Cal. Penal Code §§ 26853-26859.

<sup>34</sup> See DOJ Letter, **Exhibit 1**.

Cal. Gov't Code section 11342.600 defines a "regulation" as "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure."

"A regulation subject to the APA thus has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must 'implement, interpret, or make specific the law enforced or administered by [the agency], or ... govern [the agency's] procedure.'"<sup>35</sup>

On October 2, 2014, DOJ sent letters to all California Firearms Dealers, DOJ Certified Instructors, and Comparable Entities expressly outlining "the new FSC program, *requirements* for DOJ Certified Instructors; *requirements* for Comparable Entities; and existing Handgun Safety Certificate program updates."<sup>36</sup> The letter sets forth, in pertinent part, the following "requirements" that are generally applicable to all those engaging in the FSC program and govern the manner in which DOJ is to implement the FSC program:

The Department plans to utilize a web-based application to make FSC materials available, including the Firearm Safety Certificates, test materials, the FSC study guide and the FSC manual to all DOJ Certified Instructors. The FSC study guide will also be available for printing and audio/visual materials will be available for streaming/downloading from the public website at <http://www.oag.ca.gov/firearms/fsc>. **Please be advised, this link will not be available until January 1, 2015.** Any materials that require a fee will be billed through the online system. *Payment options will be limited to major credit/debit cards (e.g. MasterCard, Visa, American Express, and Discover cards). Payment by cash or check will not be accepted....DOJ Certified Instructors will need access to a personal computer and printer....DOJ Certified Instructors will be sent login information to be able to access the new FSC program online system....Upon successful login, existing DOJ Certified Instructors will be required to acknowledge they have read the revised Firearm Safety Certificate Manual, which includes steps in long gun safety and that they will include both and handgun and long gun safety as part of the safe handling demonstrations.*<sup>37</sup>

The DOJ's letter further states:

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<sup>35</sup> *Sherwin-Williams Co. v. S. Coast Air Quality Mgmt. Dist.*, 86 Cal. App. 4th 1258, 1283 (2001), as modified (Feb. 15, 2001) (citing *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 571 (1996)).

<sup>36</sup> **Exhibit 1** (emphasis added).

<sup>37</sup> *Id.* (emphasis original) (italics added).

*All DOJ Certified Instructors will be required to have a valid Certificate of Eligibility (COE).* As of January 1, 2015, new applicants will be required to obtain a COE prior to submitting an application as a DOJ Certified Instructor. Existing DOJ Certified Instructors as of December 31, 2014, will be required to have a valid COE upon renewal or by June 30, 2015, whichever comes first. *Any existing DOJ Certified Instructor who has not provided proof of a valid COE by June 30, 2015, will not have access to the FSC online system.* Mere submission of the application will not be considered proof of a COE; therefore, please allow 4-6 weeks for the Department to process the COE application....COEs must be renewed annually.<sup>38</sup>

The letter sets forth new rules of general applicability for DOJ's implementation of the FSC program that did not exist under the HSC program. These new rules are not authorized by any existing statute or regulation.

Specifically, the letter *requires* all DOJ Certified Instructors to have access to a *personal computer, printer, and email*. This "requirement" applies to all DOJ Certified Instructors and is thus a rule of general applicability. Furthermore, this "requirement" was created by DOJ for the purpose of implementing the FSC program and its enumerated provisions in the Penal Code. Therefore, the "requirement" that all DOJ Certified Instructors have access to a personal computer, printer, and email is a regulation subject to the requirements of the APA.

The letter also mandates that all FSC payments will be limited to *only major credit cards*. This "requirement" applies to all FSC purchasers and mandates its enforcement by DOJ Certified Instructors. Thus, this is a rule of general applicability and was created by DOJ for the purpose of implementing the FSC program. Therefore, the "requirement" that only major credit cards may be used as payment for an FSC is a regulation subject to the requirements of the APA.

The letter further mandates that the "steps in long guns safety" procedures contained in the forthcoming "revised Firearm Safety Certificate Manual" be included in the "safe handling demonstrations." But *DOJ still has not adopted any regulations regarding long gun safety demonstrations* as it is required to do so by Cal. Penal Code § 26860(b). DOJ has informed our clients that these regulations will not be available until **June, 2015**, despite the fact that Section 26860, subdivision (d) clearly requires DOJ to promulgate and adopt regulations *no later than January 1, 2015, "establishing a long gun safe handling demonstration that shall include, at a minimum, loading and unloading the long gun."*

DOJ is essentially shirking its statutory obligation to adopt regulations regarding long gun safety demonstrations by mandating instructors to use the procedures set forth in the "Firearm Safety Certificate Manual." DOJ's requirement that all DOJ Certified Instructors use the "steps in long guns safety" procedures contained in the forthcoming Firearm Safety Certificate Manual is a rule of general applicability and was created by DOJ for the purpose of implementing the FSC program. Therefore, this requirement is a regulation and subject to the requirements of the APA.

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<sup>38</sup> *Id.* (emphasis added).

Lastly, DOJ's letter mandates that **all** DOJ Certified Instructors obtain a Certificate of Eligibility, *which must be renewed each year*. Previously, prospective HSC Certified Instructor applicants were given **the option** to either to provide a current COE or enclose \$14.00 with their application to accomplish a background check.<sup>39</sup> The sole purpose of providing a COE or conducting a background check is to verify whether the applicant is eligible to lawfully possess firearms. Under the HSC program, there was no reoccurring obligation for HSC Instructors to provide a renewed COE or undergo an additional background check.

DOJ's reoccurring COE requirement for all Certified FSC Instructor's lacks any regulatory or statutory basis. DOJ's COE requirement is generally applicable to all DOJ Certified Instructors and was created pursuant to implementing the FSC program. DOJ's COE requirement for all DOJ Certified Instructors is an underground regulation and subject to the requirements APA.

In sum, DOJ's letter clearly sets forth several "regulations" because these rules are generally applicable to all DOJ Certified Instructors and those seeking an FSC.<sup>40</sup> Additionally, the rules set forth in DOJ's letter were created for the purpose of the FSC program's implementation. "If an agency rule looks like a regulation, reads like a regulation, and acts like a regulation, it will be treated by the courts as a regulation whether or not the issuing agency so labeled it."<sup>41</sup> The rules DOJ sets forth in its letter are "regulations" and subject to the requirements of the APA

#### **IV. DOJ's Regulations Are Not Exempted From the APA's Requirements.**

The regulations set forth in DOJ's letter for the implementation of the FSC program are not expressly exempted by statute from the requirements of the APA. "When the Legislature has intended to exempt regulations from the APA, it has done so by clear, unequivocal language."<sup>42</sup> Nothing in SB 683 or the Penal Code regarding the FSC program exempts DOJ from the regulation adoption requirements of the APA.<sup>43</sup> In the case of the long gun safe handling demonstration the Penal Code requires DOJ to implement regulations.

"The APA specifically prohibits any state agency from making any use of a state agency rule which is a 'regulation' as defined in Government Code section 11342.600, that should have, but has

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<sup>39</sup> See BOF form 037 (attached as **Exhibit 3**).

<sup>40</sup> See *Faulkner v. California Toll Bridge Authority*, 40 Cal. 2d 317 (standard of general application applies to all members of any open class).

<sup>41</sup> *What Must Be Adopted Pursuant to the APA?* *supra* note 10, at 7 (citing *State Water Resources Control Board v. OAL*, 12 Cal. App. 4th 697 (1993)).

<sup>42</sup> *United Systems of Arkansas v. Stamhon*, 63 Cal. App. 4th 1001 (1998).

<sup>43</sup> See *Winzler & Kelly v. Department of Industrial Relations*, 121 Cal. App. 3d 120, 174 (1981) (unless "expressly" or specifically exempted, all state agencies not in legislative or judicial branch must comply with rulemaking part of the APA when engaged in quasi-legislative activities).

not been adopted pursuant to the APA (unless expressly exempted by statute).”<sup>44</sup>

California Government Code section 11340.5(a) provides:

No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

Therefore, the letter DOJ sent to all California Firearms Dealers, DOJ Certified Instructors, and Comparable Entities on October 2, 2014, establish “regulations” that are not exempt from the APA. In establishing the aforementioned regulations, DOJ did not follow the procedures outlined in the APA. Thus, the regulations DOJ sets forth in its October 2, 2015, letter constitute unlawful underground regulations.

**V. This Petition Raises Issues of Considerable Public Importance Because DOJ’s Underground Regulations Unduly Infringe Upon the Fundamental Right to Keep and Bear Arms.**

The Second Amendment of the United States Constitution guarantees the right of law-abiding adults to keep and bear arms for lawful purposes. Our clients, the National Rifle Association and FFLGuard, represent countless California Firearm Dealers, employees of firearm dealers, firearm owners, DOJ Certified HSC Instructors, and, soon to be, DOJ Certified FSC Instructors throughout the State of California. DOJ’s underground regulations, with regard to the FSC program, unduly affect the entire process of lawfully acquiring a firearm. The safe handling demonstration and FSC test are required to be conducted through a FSC certified instructor. The requirements that FSC instructors possess computer access, e-mail, and a COE limits current HSC instructors and prevents individuals from becoming FSC instructors. The implementation of these underground regulations on January 1, 2015, will effectively “bottleneck” the public’s ability to purchase firearms within the State of California until DOJ certifies instructors qualified to issue FSC’s. Such a restriction is unconstitutional as it unduly infringes on the Second Amendment right to keep and bear arms.

**V. Conclusion**

DOJ was statutorily entrusted to promulgate and adopt regulations regarding the safe handling of long guns by January 1, 2015. DOJ’s letter requires **all** DOJ Certified Instructors to use the “steps of long gun safety” procedures contained in the forthcoming “revised Firearm Safety Certificate Manual” be included in the “safe handling demonstrations,” however, ***DOJ still has not adopted any regulations regarding long gun safety demonstrations*** as it was required to do so by Cal. Penal Code § 26860(b). DOJ has failed to act on the authority granted to it and has now attempted to circumvent its responsibility by creating underground regulations outside the requirements outlined by the APA.

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<sup>44</sup> *What Must Be Adopted Pursuant to the APA?* *supra* note 10, at 2.

Without any statutory or regulatory authority, DOJ's October 2, 2014 letter requires **all** DOJ Certified Instructors to have COE's.

Without any statutory or regulatory authority, DOJ's October 2, 2014 letter requires **all** DOJ Certified Instructors to have access to computer, printer, and email.

Without any statutory or regulatory authority, DOJ's October 2, 2014 letter requires **all** FSC payment be done using only major credit cards.

These requirements are "regulations" and thus subject to the requirements of the APA. Neither the Penal Code nor SB 683 exempt DOJ from the requirements of the APA, thus the requirements set forth in DOJ's October 2, 2015, letter constitute unlawful underground regulations.

I certify that I have submitted a copy of this petition and all attachments to the state agency which has issued, used, enforced, or attempted to enforce the purported underground regulations.

Sincerely,

**Michel & Associates, P.C.**

Carl D. Michel

CDM/llq

cc: Kamala Harris  
Stephen Lindley