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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 program¹ 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**).² This letter addressed and established

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

² 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/fscpfags> (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,³ and must present an HSC to the California firearms dealer⁴ 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.⁵ 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.⁶ When applying to be an HSC instructor a person must file an application with DOJ,

³ Cal. Penal Code § 26850 (2014).

⁴ §§ 26840(a), 27540(e), and 31615 (2014).

⁵ § 31635(a) (2014).

⁶ § 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.⁷ According to DOJ's application form a person is certified for five years.⁸

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.⁹ 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,¹⁰ so to must employees of firearm manufacturers,¹¹ amongst other individual.¹² 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.¹³ A person applying for a COE must submit fingerprints to DOJ and renew the COE yearly.¹⁴

B. Handgun Safe Handling and HSC Test Criteria

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.

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

⁸ There is no basis for this limitation under California law or regulation.

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

¹⁰ § 26700.

¹¹ § 29120.

¹² 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.

¹³ § 31660

¹⁴ 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.¹⁵ These criteria are broken up in the Penal Code by handgun action types (i.e. semiautomatic pistol, double-action revolver, and single-action revolver¹⁶). Certain people and certain transfers are exempt from this requirement.¹⁷ Once the demonstration is complete, firearm dealer¹⁸ and the firearm purchaser shall sign an affidavit stating that the safe handling requirements were met.¹⁹

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.²⁰

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.²¹ Certain individuals are exempt from the HSC requirement.²²

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).²³ The applicant must correctly answer at least 75% of the questions to get the HSC.²⁴

¹⁵ § 26853-26859 (2014).

¹⁶ §§ 26853, 26856, and 26859 (2014), respectively.

¹⁷ 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.)

¹⁸ 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).

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

²⁰ § 31615(a)(2)-(b).

²¹ Cal. Penal Code § 31645(a) (2014).

²² §§ 31700-31835 (2014).

²³ § 31650(b) (2014).

²⁴ § 31645(a) (2014).

After passing the test, the HSC is valid for five years.²⁵ 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 \$15.²⁶

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).²⁷

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.²⁸ 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.²⁹

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

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

²⁶ Cal. Penal Code § 31660 (2014).

²⁷ 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.

²⁸ 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.

²⁹ 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].³⁰

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.”³¹ Such statutes are not functional until the agency charged with implementing them adopts regulations for that implementation.³²

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.³³

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.³⁴ 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.

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

³¹ 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

³² *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”).

³³ 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.

³⁴ *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.'"³⁵

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."³⁶ 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.*³⁷

The DOJ's letter further states:

³⁵ *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)).

³⁶ **Exhibit 1** (emphasis added).

³⁷ *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.³⁸

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.

³⁸ *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.³⁹ 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.⁴⁰ 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."⁴¹ 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."⁴² Nothing in SB 683 or the Penal Code regarding the FSC program exempts DOJ from the regulation adoption requirements of the APA.⁴³ 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

³⁹ See BOF form 037 (attached as **Exhibit 3**).

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

⁴¹ *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)).

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

⁴³ 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).”⁴⁴

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.

⁴⁴ *What Must Be Adopted Pursuant to the APA?* *supra* note10, 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.

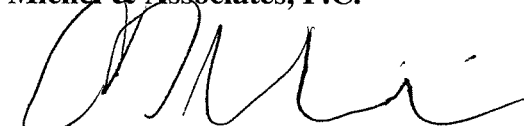
Without any statutory or regulatory authority, DOJ's October 2, 2014 letter requires **all** FSC payment be done using only major credit cards.

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

EXHIBIT 1



BUREAU OF FIREARMS
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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. **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 unused¹ 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 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.

Sincerely,



STEPHEN LINDLEY, Chief
Bureau of Firearms

For KAMALA D. HARRIS
Attorney General

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

EXHIBIT 2

State of California ~ Department of Justice

OFFICE of the ATTORNEY GENERAL
KAMALA D. HARRIS

FIREARM SAFETY CERTIFICATE PROGRAM FAQs

FAQs

1. What is the Firearm Safety Certificate Program?
2. What are the exemptions from the Firearm Safety Certificate requirement?
3. If I already have a Handgun Safety Certificate, will I still need a Firearm Safety Certificate?
4. Will I need a Firearm Safety Certificate if I begin a long gun transaction prior to January 1, 2015, but don't take possession of the long gun until after December 31, 2014?
5. Can I get a Firearm Safety Certificate prior to January 1, 2015?
6. How will I be able to obtain a Firearm Safety Certificate?
7. How much will the Firearm Safety Certificate cost?
8. Are there any minimum qualifications/requirements for a person who wants to take the Firearm Safety Certificate Test?
9. If I don't pass the test, can I take it again?
10. How long will a Firearm Safety Certificate be valid?
11. Will I need a Firearm Safety Certificate if I receive a firearm from my mother or father?
12. Will a Firearm Safety Certificate be required when a firearm is being loaned?
13. I am moving into California and intend to bring my firearm(s) with me. Will I need a Firearm Safety Certificate?

1. What is the Firearm Safety Certificate Program?

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).

2. What are the exemptions from the Firearm Safety Certificate requirement?

There are a variety of FSC requirement exemptions. In addition to the previous HSC exemptions, a person issued a valid hunting license is exempt from the FSC requirement for long guns only [Penal Code 31700(c)].

3. If I already have a Handgun Safety Certificate, will I still need a Firearm Safety Certificate?

A valid HSC can still be used to purchase/acquire handguns until it expires. For long gun purchases/acquisitions made January 1, 2015, and thereafter, an FSC will be required. An FSC can be used for both handgun and long gun purchases/acquisitions.

4. Will I need a Firearm Safety Certificate if I begin a long gun transaction prior to January 1, 2015, but don't take possession of the long gun until after December 31, 2014?

Yes. Effective January 1, 2015, an FSC must be obtained prior to taking possession of a long gun, regardless of when the DROS transaction was initiated

5. Can I get a Firearm Safety Certificate prior to January 1, 2015?

No. DOJ Certified Instructors are not authorized to issue FSCs until the statutory provisions establishing the FSC program go into effect on January 1, 2015.

6. How will I be able to obtain a Firearm Safety Certificate?

To obtain an FSC you must score at least 75% (23 correct answers out of 30 questions) on the FSC Test covering firearm safety and basic firearms laws. The true/false and multiple choice test is given by DOJ Certified Instructors who are generally located at firearms dealerships.

7. How much will the Firearm Safety Certificate cost?

The fee for taking the FSC Test and obtaining an FSC is twenty-five dollars (\$25). The \$25 fee entitles you to take the test twice (from the same DOJ Certified Instructor) if necessary.

8. Are there any minimum qualifications/requirements for a person who wants to take the Firearm Safety Certificate Test?

Yes. The FSC applicant must be at least 18 years of age and must present clear evidence of identity and age by presenting a California Driver License or California Department of Motor Vehicles Identification Card.

9. If I don't pass the test, can I take it again?

Yes. The \$25 fee entitles you to take the test twice if necessary. If you fail the test the first time, after 24 hours have elapsed you may retake another version of the test from the same DOJ Certified Instructor without any additional fee. The DOJ Certified Instructor is required to offer or make available to you the FSC Study Guide or refer you to view the webinar.

10. How long will a Firearm Safety Certificate be valid?

An FSC will be valid for five (5) years from the date of issuance.

11. Will I need a Firearm Safety Certificate if I receive a firearm from my mother or father?

Yes. Prior to taking possession of the firearm, you must have a valid FSC. Pursuant to Penal Code section 27875, subdivision (c), within 30 days of the transfer you must also report the acquisition to DOJ on Form BOF 4544, pdf.

12. Will a Firearm Safety Certificate be required when a firearm is being loaned?

It depends on the specific circumstances. Generally, a person being loaned a firearm must have a current FSC. However, an FSC is not required if the loan does not exceed three days in duration and the person loaning the firearm is at all times within the presence of the person being loaned the firearm.

13. I am moving into California and intend to bring my firearm(s) with me. Will I need a Firearm Safety Certificate?

No, you do not need an FSC to move into California with your firearm(s). However, pursuant to Penal Code section 17000, there are important personal firearm importation responsibilities that are explained on this website.

EXHIBIT 3



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



Initial Application

Renewal Application- _____
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):

- 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 Speciality (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.
- Authorization from a State of California accredited school to teach a firearms training.
- Training deemed equivalent by the Department.

Please select one of the following:

- I currently possess a valid Certificate of Eligibility (COE) (Attach copy of certificate).
- Enclosed is a \$14.00 non-refundable fee payable to the Department of Justice.

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 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 the Department to make this check. 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 Handgun Safety Certificate (HSC) 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. 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 order HSC tests and Handgun Safety Certificates, and oversee the handgun safe handling demonstration. (Pen. Code, §§ 26850, subd. (a) & (b), 26853, 26856, & 26859.)

If you have any questions regarding the HSC 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 - HSC
P.O. Box 160367
SACRAMENTO, CA 95816-0367

DOJ USE ONLY

Received Date: _____ Processed By BOF: _____ Certified Instructor Number: _____

EXHIBIT 4



CALIFORNIA DEPARTMENT OF JUSTICE BUREAU OF FIREARMS CERTIFICATE OF ELIGIBILITY APPLICATION



Please complete this application by typing or printing in black ink.
See reverse for instructions and fees.

Application Type

New Permit

Applicant Tracking Identifier (ATI) Number _____

Annual Renewal

Certificate of Eligibility (COE) Number _____

Expiration Date _____

NOTE: One application per person.

Applicant Information

Male
 Female

Last Name _____ Suffix _____ First Name _____ Middle Name _____

Alias/Maiden Name _____ California Driver License or ID No. _____ Date of Birth _____ Social Security Number _____

United States Citizen: Yes No **IF NO:** _____
Country of Citizenship _____ Alien Registration or I-94 Number _____

Physical Residential Address _____ City _____ County _____ State _____ Zip Code _____

Mailing Address (if different) _____ City _____ County _____ State _____ Zip Code _____

Check if new mailing address Home Telephone Number _____ Daytime Telephone Number _____

Business Type (check appropriate box(es))

- | | | |
|------------------------------------------------------------------------------------------|---------------------------------------------------|-----------------------------------------------|
| <input type="checkbox"/> Importer | <input type="checkbox"/> Wholesaler / Distributor | <input type="checkbox"/> Store Manager |
| <input type="checkbox"/> Collector | <input type="checkbox"/> Pawnbroker | <input type="checkbox"/> Gunsmith |
| <input type="checkbox"/> Firearms Dealer | <input type="checkbox"/> Manufacturer | <input type="checkbox"/> Explosive Permit |
| <input type="checkbox"/> Gun Show Promoter | <input type="checkbox"/> Shooting Range | <input type="checkbox"/> Certified Instructor |
| <input type="checkbox"/> Employee*
<small>Record dealership information below</small> | <input type="checkbox"/> Prop Master | <input type="checkbox"/> Other |

*California Firearms Dealership (CFD) No: _____ (Indicate type) _____

*Name of Dealership: _____

Certification

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. I expressly authorize the Department of Justice (DOJ) to perform firearms eligibility checks of all relevant state and federal databases. I further understand that if I knowingly furnish a fictitious name or address or knowingly furnish any incorrect information or omit any information required to be provided on this application, I am guilty of a misdemeanor.

Signature _____

Date _____

FOR DOJ USE ONLY

Date Received: _____

COE #: _____

Issue/Denial Date: _____

NTN #: _____

Initials: _____

Certificate of Eligibility Application Instructions

New Applicants

Fingerprint Submission Requirements:

You must submit your fingerprint impressions before submitting this application form to the Department of Justice (DOJ). To submit fingerprint impressions, you must take a completed Request for Live Scan Service form (BCIA 8016) to a Live Scan station. Please refer to www.oag.ca.gov/fingerprints for Live Scan station location information. There, you need to have your fingerprint impressions submitted to DOJ and the Federal Bureau of Investigation (FBI). You must pay the Live Scan operator a \$54 DOJ fingerprint processing fee and Bureau of Firearms (BOF) eligibility processing fee, a \$17 FBI fingerprint processing fee, as well as the Live Scan operator's fee (Note: the Live Scan operator fee varies by Live Scan site, and the BOF does not regulate or set this price).

The Live Scan operator will provide an Applicant Tracking Identifier (ATI) number on your copy of the Request for Live Scan Service form (BCIA 8016). The ATI number documents your fingerprint submissions. You must enter your ATI number on the designated space of your Certificate of Eligibility (COE) Application form.

New Application Form Submission Requirements:

Complete the COE Application form. Be sure to include your Live Scan ATI number. Only one applicant per form. For more than one applicant per firearms dealership, each individual must complete a separate application form and submit fingerprint impressions via Live Scan to DOJ and the FBI. Check the appropriate business type box(es). If your business type is not listed, check the "Other" box and indicate the type of business on the line below. If you are applying for a COE as an employee of a California Firearms Dealer (CFD), you must provide the name of the dealership and the dealership's CFD number. You must date and sign the certification.

Mail your completed COE Application to:

DEPARTMENT OF JUSTICE
BUREAU OF FIREARMS
FIREARMS LICENSING AND PERMITS SECTION - COE
P.O. BOX 160367
SACRAMENTO, CA 95816-0367

It is recommended that you retain a copy of your completed COE Application form and your Request for Live Scan Service form for your records.

Renewal Applicants

Fingerprint submissions are not required for annual renewal applications. Complete the COE application, being sure to include your COE number and expiration date. Check the appropriate business type box(es). If your business type is not listed, check the "Other" box and indicate the type of business on the line below. If you are applying for a COE as an employee of a CFD, you must provide the name of the dealership and the dealership's CFD number. You must date and sign the certification.

Mail your completed COE Application along with the \$22.00 COE annual renewal fee to the address listed below.

DEPARTMENT OF JUSTICE
BUREAU OF FIREARMS
FIREARMS LICENSING AND PERMITS SECTION - COE
P.O. BOX 160367
SACRAMENTO, CA 95816-0367

It is recommended that you retain a copy of your completed COE Application form and your Request for Live Scan Service form for your records.

If you have any questions, please contact the Bureau of Firearms at (916) 227-3751.

PRIVACY NOTICE

The information requested on this form is being requested by the State of California, Department of Justice, Bureau of Firearms, to establish grounds for the issuance of the license or permit indicated on this application. The maintenance of the information collected on this form is authorized by Penal Code section 26710. All information requested on this form is mandatory. Failure to provide the requested information will result in the denial of this application. Information provided on this form may be disclosed to any peace officer or other person designated by the Attorney General upon request.

Pursuant to Civil Code section 1798.30 et seq., individuals have the right [with some exceptions] to access records containing the personal information about themselves that are maintained by the agency. The Bureau of Firearms is the agency officially responsible for the system of records that maintains the information provided on this form. For more information regarding the location of your records and the categories of any persons who use the information in those records, you may contact the Department of Justice, Bureau of Firearms at the above listed address.



REQUEST FOR LIVE SCAN SERVICE

Applicant Submission

CA0349400
ORI (Code assigned by DOJ)

FIREARMS ELIGIBILITY CERT
Authorized Applicant Type

Certificate of Eligibility
Type of License/Certification/Permit OR Working Title (Maximum 30 characters - if assigned by DOJ, use exact title assigned)

Contributing Agency Information:

Department of Justice, Bureau of Firearms
Agency Authorized to Receive Criminal Record Information

02879
Mail Code (five-digit code assigned by DOJ)

P.O. Box 160367
Street Address or P.O. Box

Firearms Licensing and Permits Section
Contact Name (mandatory for all school submissions)

Sacramento CA 95816-0367
City State ZIP Code

(916) 227-3751
Contact Telephone Number

Applicant Information:

Last Name

First Name Middle Initial Suffix

Other Name (AKA or Alias) Last

First Suffix

Date of Birth Sex Male Female

Driver's License Number

Height Weight Eye Color Hair Color

Billing Number (Agency Billing Number)

Place of Birth (State or Country) Social Security Number

Misc. Number (Other Identification Number)

Home Address Street Address or P.O. Box

City State ZIP Code

Your Number: N/A
OCA Number (Agency Identifying Number)

Level of Service: DOJ FBI

If re-submission, list original ATI number:
(Must provide proof of rejection)

Original ATI Number

Employer (Additional response for agencies specified by statute):

N/A
Employer Name

N/A
Mail Code (five digit code assigned by DOJ)

N/A
Street Address or P.O. Box

N/A
City State ZIP Code

N/A
Telephone Number (optional)

Live Scan Transaction Completed By:

Name of Operator

Date

Transmitting Agency LSID

ATI Number Amount Collected/Billed

EXHIBIT 5



CALIFORNIA DEPARTMENT OF JUSTICE BUREAU OF FIREARMS Safe Handling Demonstration Affidavit



Declaration

On _____, _____
Date (mm/dd/yyyy) *Printed Name of Handgun Purchaser/Recipient*

performed the safe handling demonstration as required in California Penal Code sections 26850, subdivisions (a) and (b), and 26853, and 26856, and 26859, with the handgun (or one of the same make and model) referenced on Dealer Record of Sale (DROS) No. _____
DROS Number

under the supervision of _____
Printed Name of Certified Instructor *Certified Instructor Number*

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

Certified Instructor Signature Date

Handgun Purchaser/Recipient Signature Date

Dealer/Employee Signature Date

Printed Name of Dealer/Employee