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FILED

AUG 25 2015

FRESNO COUNTY SUPERIOR COURT

By _____ LP - DEPUTY

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

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

13 Plaintiffs,

14 vs.

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

20 Defendants.

CASE NO. 15-CE-CG-00029

DECLARATION OF ANNA M. BARVIR
IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES; EXHIBITS F-
R

Date: December 16, 2015
Time: 3:30 pm
Dept.: 503
Judge: Honorable Alan M. Simpson

Action Filed: January 6, 2015

1 **DECLARATION OF ANNA M. BARVIR**

2 I, Anna M. Barvir, declare as follows:

3 1. I am an attorney at the law firm Michel & Associates, P.C., attorneys of record for
4 Plaintiffs in this action. I am an attorney licensed to practice law before the courts of the state of
5 California. I am also licensed to practice before the Supreme Court of the United States, the
6 Fourth, Ninth, and Tenth Circuit Courts of Appeals, and the United States District Courts for the
7 Eastern and Northern Districts of California. I have personal knowledge of the facts set forth
8 herein and, if called and sworn as a witness, could and would testify competently thereto.

9 **Plaintiffs' Counsel's Experience**

10 2. In 2009, I graduated magna cum laude from Whittier Law School, earning my Juris
11 Doctor and a Certificate in Legal Research and Writing. During law school, I served as Executive
12 Editor of the Whittier Law Review and my student-written article, *When Hysteria and Good*
13 *Intentions Collide: Constitutional Considerations of California's Sexual Predator Punishment*
14 *and Control Act*, 29 Whittier L. Rev. 679 (2008), was selected for publication. Upon graduation, I
15 received the Whittier Law School Dean's Citation Award for Outstanding Leadership and Service
16 to the Law School Community.

17 3. I have been admitted to practice law before the courts of California since January
18 2010, and I began my full-time legal career in the summer of 2010 as an attorney law clerk for
19 Michel & Associates, P.C. In February 2012, I took an associate position with Michel &
20 Associates, and I have served in that capacity continuously since that time.

21 4. My practice for the past five years has focused primarily on matters involving local,
22 state, and federal firearm laws. I regularly advise individuals and firearm businesses regarding
23 statutory and regulatory compliance matters, provide legal analyses of proposed firearm-related
24 legislation to state and local government officials, and litigate legal challenges to firearm laws that
25 offend the First and Second Amendments, violate due process and equal protection, or are
26 preempted by state or federal law.

27 5. Prior to joining Michel & Associates, P.C., I clerked for the Honorable Judge
28 William M. Monroe of the Superior Court of California, County of Orange. I also clerked for the

1 Orange County District Attorney and the Los Angeles Gay & Lesbian Center's Legal Services
2 Department, gaining proficiency in the areas of elder abuse, domestic violence, and bias-motivated
3 crimes.

4 **Authentication of Billing**

5 6. Plaintiffs' billing records, attached to the Declaration of Haydee Villegas filed
6 simultaneously herewith, include true and accurate copies of my billing records for which fee
7 recovery is sought in this matter. The records include detailed descriptions of the work I
8 performed on this case and the time spent on each task between December 1, 2014, and June 1,
9 2015.

10 7. In the regular course and scope of my daily business activities, I prepared the
11 descriptions contained in each billing record that shows my name as the "Timekeeper," and I did
12 so at or near the time of the occurrence of the work that I performed on this matter.

13 8. The descriptions contained within my billing records are a fair and accurate
14 description of the work I performed on this matter and time spent on each task. In my professional
15 judgment, the amount of time indicated for each task described in my billing records is a
16 reasonable amount of time for me to have spent on the type of work described therein.

17 9. Attached hereto as Exhibit F is a true and correct copy of Michel & Associates,
18 P.C.'s 2015 hourly rate schedule for civil matters like this one. These rates are consistent with, if
19 not lower than, the rates charged by comparable attorneys in or around Fresno, California.

20 10. Attached hereto as Exhibit G, is a true and correct chart reflecting the total hours
21 billed, broken down by billing professional and project reference. The chart also indicates the title
22 and billing rate of each professional, the total number of hours billed, and the total fees billed.

23 11. Attached hereto as Exhibit H is a true and correct copy of the California State Bar
24 Attorney Profile of Defendants' attorney, Mr. Jeffrey A. Rich, which I viewed and printed from
25 the official website of the State Bar of California "Attorney Search," <http://www.calbar.ca.gov>, on
26 or about August 21, 2015.

27 **Factual and Procedural History of the Case**

28 12. Senate Bill 683 (2013) ("SB 683"), was signed into law by Governor Edmund

1 “Jerry” Brown on October 11, 2013. The bill created the Firearm Safety Certificate Program
2 (“FSC Program”), an expansion and replacement of the now-defunct Handgun Safety Certificate
3 Program. It also amended the Penal Code to require that long-gun purchasers successfully perform
4 a “long-gun safe-handling demonstration” before taking possession of the firearm. Finally, SB 683
5 directed Defendant Department of Justice to adopt regulations establishing the “long-gun
6 safe-handling demonstrations” before the laws were set to take effect on January 1, 2015.
7 Subsequent to Senate Bill 683’s passage, several clients and potential clients of Michel and
8 Associates, P.C., inquired about the details of the bill, including inquiries as to how best comply
9 with the new laws. These inquiries came from individual certified instructors,¹ firearm retailers,
10 and Second Amendment civil rights organizations, including Plaintiffs in this litigation.

11 13. On or about October 2, 2014, Defendants sent a letter to “California Firearms
12 Dealers, DOJ Certified Instructors, and Comparable Entities” explaining the impact of SB 683 and
13 informing that the law would take effect on January 1, 2015. It also described several requirements
14 for the implementation and administration of the newly enacted FSC Program and long-gun safe-
15 handling demonstrations. My office obtained a copy of Defendants’ October 2, 2014 letter when
16 we began to receive further inquiries about the implementation of SB 683 in light of that letter’s
17 content. Individual certified instructors, firearm retailers, and Second Amendment civil rights
18 organizations contacted Michel & Associates, P.C., requesting information as to how best comply
19 with the Department’s newly announced requirements for the administration of the FSC Program
20 and safe-handling demonstrations. Attached hereto as Exhibit I is a true and correct copy of
21 Defendants’ October 2, 2014 letter to licensed firearm retailers, certified instructors, and
22 comparable entities in California regarding the Firearm Safety Certificate Program.

23 14. On or about October 14, 2014, my office sent the California Attorney General’s
24 Office a request for documents pursuant to the California Public Records Act. This letter
25 specifically requested, among other things: “[e]ach and every Writing or Government Record
26 drafted, created after January 1, 2011, as a California Code of Regulations provision regarding the
27

28 ¹ A “certified instructor” refers to an individual who has been certified by the
Department of Justice to issue Firearm Safety Certificates.

1 FSC program’s implementation, requirements, and enforcement.” Attached as Exhibit J is a true
2 and correct copy of the October 14, 2014 request for public records sent by my office to the
3 California Attorney General.

4 15. On December 18, 2014, Defendants sent a letter addressed to “DOJ Certified
5 Instructors” stating, again, that effective January 1, 2015, the existing Handgun Safety Certificate
6 (“HSC”) Program would be changed to the FSC Program. And, again, it described several
7 requirements for the implementation and administration of the newly enacted FSC Program and
8 long-gun safe-handling demonstrations. My office obtained a copy of Defendants’ December 18,
9 2014 letter when we received further inquiries from Michel & Associates, P.C. clients regarding
10 the content of that letter. Attached hereto as Exhibit K is a true and correct copy of Defendants’
11 December 18 letter to “DOJ Certified Instructors” regarding the Firearm Safety Certificate
12 Program - Online Access.

13 16. On December 29, 2014, my office submitted a petition to the Office of
14 Administrative Law (“OAL”) on behalf of Plaintiff *FFLGuard*, Inc., complaining of Defendants’
15 failure to adhere to the Administrative Procedure Act when adopting the implementing regulations
16 laid out in letters sent by Defendants to firearm dealers and Department-certified instructors on
17 October 2 and December 18, 2014. On behalf of Plaintiff *FFLGuard*, we simultaneously
18 submitted a copy of the OAL complaint to Defendants Harris and Lindley. Attached hereto as
19 Exhibit L is a true and correct copy of the December 29, 2014 petition my office submitted to the
20 OAL, showing that the same had been copied to Defendants Harris and Lindley.

21 17. Defendants did not respond to *FFLGuard*’s petition; they instead began enforcing
22 the challenged rules on January 1, 2015, when the FSC Program took effect.

23 18. On January 2, 2015, I received an e-mail from my colleague, Mr. Silvos, informing Ms. Kimberly Granger and Mr. Rich that Mr. Brady and I would be assuming
24 representation of Plaintiffs in this case. (Ex. D, attached to the Declaration of Sean A. Brady filed
25 simultaneously herewith.)
26

27 19. On January 2, 2015, I was copied on an e-mail from Mr. Brady addressed to Mr.
28 Rich and Ms. Granger, wherein he asked whether it was Defendants’ position that Plaintiffs must

1 provide the TRO/OSC papers they intended to file before the hearing. He also informed them that
2 our office was working diligently to complete the draft complaint and writ of mandate that
3 afternoon, but could not guarantee that Plaintiffs' TRO/OSC papers would be available until the
4 day of the hearing. (Ex. D, attached to the Declaration of Sean A. Brady filed simultaneously
5 herewith.)

6 20. On January 6, 2015, I caused a suit to be filed on behalf of Plaintiffs challenging
7 the four underground regulations adopted and enforced by Defendants. Plaintiffs also brought a
8 writ of mandate to compel Defendants to adopt formal regulations implementing the long-gun
9 safe-handling demonstrations as mandated by state law.

10 21. On January 6, 2015, Mr. Brady e-mailed Mr. Rich, and copied others including
11 myself. Mr. Brady's communication provided notice to Defendants of Plaintiffs' ex parte
12 TRO/OSC hearing. Attached to that email were courtesy copies of the documents to be filed with
13 the court. In response, Mr. Rich requested copies of Plaintiffs' papers after their submission to the
14 court. Mr. Brady responded asking if Mr. Rich would accept Plaintiffs' papers via e-mail as proper
15 service. Mr. Rich responded in the affirmative. Shortly thereafter, Mr. Brady again e-mailed Mr.
16 Rich, requesting to fax the papers instead due to the size of the documents. Mr. Rich asked
17 whether my office could instead either send the documents through multiple emails or create a zip
18 file. Mr. Brady agreed that he would send the documents through email if Defendants agreed to
19 serve notice on all the parties and file with the court a notice that Mr. Rich was accepting
20 electronic service, per California Rules of Court, Rule 2.25.1. The parties ultimately agreed such
21 was unnecessary as Defendants did not intend to accept e-mail service for all case-related
22 documents. Some time later, Mr. Rich e-mailed Mr. Brady again, demanding to know when to
23 expect the papers through email. Shortly thereafter, Mr. Brady sent Mr. Rich Plaintiffs' ex parte
24 TRO/OSC papers and requested confirmation of receipt and satisfaction of California Rules of
25 Court, Rule 3.1206. Mr. Rich then confirmed receipt and satisfaction of the rules. (Ex. D, attached
26 to the Declaration of Sean A. Brady filed simultaneously herewith.)

27 22. On January 7, 2015, I caused to be filed an ex parte application for an order to
28 show cause and temporary restraining order. The application was heard on the same date. Attached

1 hereto as Exhibit M is a true and correct copy of the Reporter's Transcript of the January 7, 2015
2 hearing. I, along with Mr. Brady, personally appeared. Mr. Rich filed opposition papers and
3 appeared on behalf of all Defendants. Neither in the papers nor during oral argument did
4 Defendants claim that Plaintiffs would not prevail for lack of controversy because the Defendants
5 were in the process of complying with the Administrative Procedure Act or that they ever intended
6 to. In fact, Mr. Rich instead stated that it was his clients' "position that there may be some
7 problems that need to be worked out, maybe the Department of Justice can work these problems
8 out." (Ex. M, at p. 4:6-8.) Plaintiffs' application was ultimately denied for lack of sufficient
9 showing of irreparable harm to justify such extraordinary relief. (Ex. M, at pp. 3:18-4:5, 9:3-8,
10 9:21-10:9, 10:22-11:3, 14:6-9.)

11 23. On January 8, 2015, I received an email from Mr. Brady primarily addressed to Mr.
12 Rich, asking if Mr. Rich was available to discuss whether Defendants might be open to settlement,
13 including Defendants' voluntary suspension of the underground regulations until formal
14 regulations could be adopted, because my colleagues and I believed the Court's handling of the
15 TRO/OSC application strongly suggested it would ultimately rule in Plaintiffs' favor. (Ex. E,
16 attached to the Declaration of Sean A. Brady filed simultaneously herewith.)

17 24. Later that day, Mr. Rich responded to Mr. Brady's email, raising a number of
18 issues, but not addressing our office's request to open settlement discussions. Mr. Rich and Mr.
19 Brady thereafter engaged in a chain of back-and-forth email communications, on which I was cc'd,
20 regarding the parties' disagreement over whether Plaintiffs had been authorized by the Court to re-
21 file their TRO/OSC application, the statutory authority for Plaintiffs' attorney's fees request, and
22 Plaintiffs' duty to provide evidence of irreparable harm to obtain preliminary relief. Not once
23 during any of these many exchanges did Mr. Rich disclose that Defendants were in the process of
24 drafting, considering, or adopting permanent or emergency regulations in compliance with the
25 Administrative Procedure Act—or that they ever intended to. (Ex. E, attached to the Declaration
26 of Sean A. Brady filed simultaneously herewith.)

27 25. On January 9, 2015, I received an email from Mr. Rich, addressed to Mr. Brady,
28 me, and others. Attached to that email was a letter that notified Plaintiffs for the first time that

1 Defendants were “in the process of preparing emergency regulations and final regulations,
2 pursuant to the Administrative Procedures [sic] Act. . . .” Attached hereto as Exhibit N is a true
3 and correct copy of Mr Rich’s January 9, 2015 email and letter attachment.

4 26. On January 26, 2015, in an attempt to gauge whether Plaintiffs could settle this
5 dispute without resort to further litigation, I contacted Mr. Rich via email to ask if and when
6 Defendants intended to begin the emergency rule-making process. Defendants’ counsel responded
7 on January 27, 2015, informing me that he would send me a status report on January 28, 2015.
8 Attached as Exhibit O is a true and correct copy of my email correspondence with Mr. Rich
9 regarding the anticipated emergency regulation timeline.

10 27. On January 28, 2015, Mr. Rich emailed me an update on the status of Defendants’
11 emergency regulations. However, he told me only that “[t]he emergency regulation draft has been
12 completed and is presently undergoing DOJ internal review. DOJ seeks to submit the emergency
13 regulation package to OAL by the first week of March.” (Ex. O.)

14 28. Defendants mailed to my office an Advance Notice of Intent to File Emergency
15 Regulations with the OAL, which included the proposed emergency regulations, on or around,
16 February 17, 2015. Attached hereto as Exhibit P is a true and correct copy of Defendants’
17 Advance Notice of Intent to File Emergency Regulations dated February 17, 2015.

18 29. On March 4, 2014, before the OAL had ruled on Defendants’ proposed
19 “emergency” regulation package, Defendants filed a demurrer to Plaintiffs’ First Amended
20 Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate.

21 30. Five days later, OAL adopted Defendants’ proposed package of emergency
22 regulations for the implementation and maintenance of the FSC Program and safe-handling
23 demonstrations. Attached hereto as Exhibit Q is a true and correct copy of OAL’s approval of
24 Defendants’ emergency regulation package for the administration of the FSC Program and safe-
25 handling demonstrations, which I viewed and printed from the official website of the Office of
26 Administrative Law for “Recent Actions Taken on Emergency Regulations,” [http://oal.ca.gov/
27 Recent_Actions_Taken_on_Emergency_Regulations.htm](http://oal.ca.gov/Recent_Actions_Taken_on_Emergency_Regulations.htm).

28 31. On or about March 10, 2015, my office submitted a request for public records to

1 the OAL, requesting all documents regarding File No. 2015-0225-02E, the OAL file regarding
2 Defendants' emergency FSC regulations. Mr. Kevin Hull, Senior Attorney for the OAL, responded
3 via letter on or about March 20, 2015, indicating that his office had identified approximately 9,400
4 pages of responsive documents, including approximately 9,100 pages of public comments
5 received in connection with that rule-making file. Attached hereto as Exhibit R is a true and
6 correct copy of the OAL's March 20, 2015 RESPONSE TO Public Records Act Request Dated
7 March No, 2015 PRAR #308044 - OAL File No. 2015-0225-02E.

8 32. Since the initiation of this lawsuit, Plaintiff Matthew Pimentel requested to be
9 removed from the lawsuit and that my office cease communication with him. Out of respect for his
10 wishes, our firm no longer represents Mr. Pimentel and he will not submitting a declaration in
11 support of this motion.

12 **Reasonableness of Time Spent and Fees Requested**

13 33. Plaintiffs' fee claim is based on sworn declarations that describe every activity for
14 which compensation is claimed and on the actual billing "slips" created for this matter. (Ex. B,
15 attached to the Declaration of Haydee Villegas filed simultaneously herewith.)

16 34. I am familiar with the manner in which Michel & Associates attorneys record their
17 time and prepare client invoices in the normal course and scope of business. These billing records
18 are initially prepared at or around the time of the billing event and recorded under specific
19 numbers assigned to each client and matter. As the Michel & Associates attorney designated as
20 "Responsible Attorney" in this matter, I directed my staff to set up a unique billing matter number
21 in order to accurately capture time spent on this case. The fees sought in this case were recorded
22 under that matter number to capture only that time at issue in this case. In preparing this fee
23 motion, I personally reviewed every entry that was billed on this matter since Michel & Associates
24 began work on this case, and I verified that the time was correctly billed to this matter.

25 35. The limited activities for which recovery is sought reflect considerable professional
26 "billing judgment." As the attorney directly responsible for the management of this case and most
27 knowledgeable regarding the work performed in furtherance of it, I personally reviewed the time
28 records and made significant reductions (or "no charged") for:

- 1 (1) work that appeared duplicative or excessive;
- 2 (2) secretarial work and mixed secretarial/paralegal work, regardless of who performed it;
- 3 (3) public relations activity related to the case and its subject matter; and
- 4 (4) entries that were vague or unclear as to the task performed.

5 In short, I approached the task as if I were preparing a bill for a paying client, recognizing that in
6 this case the paying client is ultimately the taxpayer. Ultimately, our office does not seek attorneys
7 fees for 574.2 hours expended by the attorneys, law clerks, and paralegal assigned to this case,
8 totaling approximately \$96,553.50. We also seek no recovery for hours billed preparing Plaintiffs’
9 Motion for Attorneys’ Fees and supporting documents.

10 36. As the “Responsible Attorney” in this matter, I determined, directed, and advanced
11 the litigation strategy pursued by Plaintiffs, I handled or directly supervised the bulk of the legal
12 research and writing performed, I directed communications with Plaintiffs and opposing counsel,
13 and I prepared for and made all court appearances on behalf of Plaintiffs. My \$250 hourly rate is
14 well within the hourly rates charged by attorneys of similar skill, experience, and expertise in the
15 Fresno area

16 37. My work was supervised by the firm’s principal, C.D. Michel, a firearms law
17 attorney and civil rights litigator with over twenty years of experience. Mr. Michel’s qualifications
18 and significance to the representation in this case are set forth more fully in the Declaration of
19 C.D. Michel, filed concurrently herewith. Mr. Michel’s \$395 hourly rate is well within the hourly
20 rates charged by attorneys of similar skill, experience, and expertise in the Fresno area.

21 38. Early in the litigation, I was assisted by Mr. Joseph A. Silvos, a firearms and
22 criminal law attorney, skilled in handling regulatory compliance issues for firearm businesses. Mr.
23 Silvos’s qualifications and significance to the representation in this case are set forth more fully
24 in the Declaration of Joseph A. Silvos, filed concurrently herewith. Mr. Silvos’s \$300 hourly
25 rate is well within the hourly rates charged by attorneys of similar skill, experience, and expertise
26 in the Fresno area.

27 39. During the TRO/OSC phase of this litigation, I was assisted by Sean A. Brady, a
28 firearms law attorney and civil rights litigator with seven years of experience. Mr. Brady’s

1 qualifications and significance to the representation in this case are set forth more fully in the
2 Declaration of Sean A. Brady, filed concurrently herewith. Mr. Brady's \$275 hourly rate is well
3 within the hourly rates charged by attorneys of similar skill, experience, and expertise in the
4 Fresno area.

5 40. I was also assisted extensively throughout the course of this litigation by two law
6 clerks, Margaret E. Leidy and Matthew D. Cubeiro. Law clerks were primarily responsible for
7 assisting with legal research, preparing initial drafts of case-related documents, and
8 communicating with Plaintiffs. Ms. Leidy and Mr. Cubeiros's qualifications and significance to
9 the representation in this case are set forth more fully in the their respective declarations, filed
10 concurrently herewith. Michel & Associates, P.C.'s law hourly clerk rate of \$125 is well within
11 the rates charged by private firms for post-graduate law clerks of similar experience, skill, and
12 expertise who are members of the California Bar.

13 41. Finally, I was assisted by my paralegal, Laura L. Quesada, who has approximately
14 13 years of experience as a legal secretary and paralegal. Ms. Quesada's hourly rate of \$100 is
15 well within the rates charged by private firms for paralegals of similar skill and experience.

16 42. To assist the Court in weighing the reasonableness of Plaintiffs' fee request, all
17 recoverable time incurred preparing and litigating this case has been broken down into six
18 categories and further broken down by the number of hours billed by each billing professional for
19 whom fee recovery is sought. Detailed descriptions are provided below, describing the tasks
20 performed for each category of time spent and for each individual who billed time during that
21 phase of the litigation.

22 *Preliminary Research, Case Preparation, and Complaint*

23 43. Our office spent approximately 126 hours in pre-litigation research, case analysis,
24 and preparation efforts prior to filing Plaintiffs' Complaint for Injunctive and Declaratory Relief
25 and First Amended Complaint for Injunctive and Declaratory Relief. (Ex. G; see also Ex. B,
26 attached to the Declaration of Haydee Villegas filed simultaneously herewith.)

27 44. I billed approximately 53.3 hours during the pre-litigation phase. That time breaks
28 down as follows: 3.7 hours conducting legal research and analyzing research memoranda

1 regarding potential causes of action; 40.8 hours drafting and revising the Plaintiffs' Complaint and
2 Plaintiffs' First Amended Complaint; 1.7 hours communicating with Plaintiffs, co-counsel, my
3 law clerks, and opposing counsel via e-mail; and 7.1 hours engaging in litigation strategy and
4 status discussions with Mr. Michel, Mr. Brady, Mr. Silvos, and my law clerks. (Ex. G; see also
5 Ex. B, attached to the Declaration of Haydee Villegas filed simultaneously herewith.)

6 45. Mr. Michel billed approximately 4.8 hours during this pre-litigation phase, during
7 which time he corresponded with me, co-counsel, and our clients regarding the implementation of
8 the FSC Program, litigation strategies, and the status of the case. (Ex. G; see also Ex. B, attached
9 to the Declaration of Haydee Villegas filed simultaneously herewith.)

10 46. Mr. Silvos billed approximately 31.5 hours during the pre-litigation phase. That
11 time breaks down as follows: 6.6 hours conducting legal research and analyzing research
12 memoranda regarding the validity of Defendants' enforcement of the FSC Program and safe-
13 handling regulations; 16.6 hours drafting, reviewing, and revising Plaintiff *FFLGuard*'s petition to
14 OAL, Plaintiffs' notice to Defendants, and early drafts of the complaint; 6.1 hours communicating
15 with Plaintiffs, clients, opposing counsel, law clerks, and co-counsel via e-mail and telephone; and
16 2.2 hours participating in meetings to discuss litigation strategy and status discussions with Mr.
17 Brady, me, and law clerks. (Ex. G; see also Ex. B, attached to the Declaration of Haydee Villegas
18 filed simultaneously herewith.)

19 47. Mr. Brady billed approximately 8.9 hours during this pre-litigation phase, engaging
20 in litigation strategy and status discussions with me, Mr. Michel, and Mr. Silvos, communicating
21 with opposing counsel, and reviewing and revising drafts of Plaintiffs' Verified Complaint. (Ex.
22 G; see also Ex. B, attached to the Declaration of Haydee Villegas filed simultaneously herewith.)

23 48. My law clerk, Ms. Leidy spent approximately 14.3 hours during this pre-litigation
24 phase, conducting legal research and drafting legal memoranda regarding the causes of action to
25 include in Plaintiffs' Complaint and Plaintiffs' First Amended Complaint. (Ex. G; see also Ex. B,
26 attached to the Declaration of Haydee Villegas filed simultaneously herewith.)

27 49. My other law clerk, Mr. Cubeiro spent approximately 11.1 hours during this pre-
28 litigation phase, communicating with Plaintiffs, conducting legal research and drafting legal

1 memoranda regarding the writ of mandate, interviewing Plaintiffs, and drafting applicable
2 statements of interest and membership standing for Plaintiffs to be included in the Verified
3 Complaint. (Ex. G; see also Ex. B, attached to the Declaration of Haydee Villegas filed
4 simultaneously herewith.)

5 50. My paralegal, Ms. Quesada, billed approximately 2.1 hours preparing, revising, and
6 formatting documents for filing, coordinating communications with Plaintiffs, and filing
7 Plaintiff's Complaint and supporting exhibits. (Ex. G; see also Ex. B, attached to the Declaration
8 of Haydee Villegas filed simultaneously herewith.)

9 *Application for Temporary Restraining Order and Order to Show Cause*

10 51. Plaintiffs spent 106.3 hours researching, drafting, and preparing Plaintiffs' Ex Parte
11 Application for Order to Show Cause and Temporary Restraining Order ("TRO/OSC"). (Ex. G;
12 see also Ex. B, attached to the Declaration of Haydee Villegas filed simultaneously herewith.)

13 52. I billed approximately 58.2 hours during the TRO/OSC phase. That time breaks
14 down as follows: 5.2 hours participating in meetings to discuss litigation status and strategies with
15 Mr. Michel, Mr. Brady, Mr. Silvoso, and my law clerks; 30.6 hours conducting legal research,
16 drafting, and revising Plaintiffs' Ex Parte Application for Order to Show Cause and Temporary
17 Restraining Order and associated documents; 2.4 hours reviewing and analyzing the draft
18 transcript of the TRO/OSC hearing and Defendants' Proposed Order; 14.8 hours preparing for,
19 traveling to, and appearing at the TRO/OSC hearing; and 5.2 hours corresponding with co-
20 counsel, my law clerks, and opposing counsel regarding notice requirements, the Court's ruling on
21 Plaintiffs' Application for TRO/OSC, and Defendants' Proposed Order. (Ex. G; see also Ex. B,
22 attached to the Declaration of Haydee Villegas filed simultaneously herewith.)

23 53. Mr. Michel billed approximately 1.9 hours during the TRO/OSC phase,
24 participating in meetings to discuss litigation strategy with Mr. Brady and me, and engaging in
25 correspondence with co-counsel and opposing counsel regarding the status of case and potential
26 settlement. (Ex. G; see also Ex. B, attached to the Declaration of Haydee Villegas filed
27 simultaneously herewith.)

28 54. Mr. Brady billed approximately 29.2 hours during the TRO/OSC phase. That time

1 breaks down as follows: 2.8 hours preparing for and participating in meetings analyzing
2 TRO/OSC issues and discussing litigation strategies; 6.9 hours drafting, reviewing, and revising
3 Plaintiffs' Ex Parte TRO/OSC application and associated documents; 14 hours assisting me with
4 preparation for, travel to, and appearance at the hearing; and 5.5 hours corresponding with co-
5 counsel and opposing counsel regarding notice and the Court's ruling via e-mail. (Ex. G; see also
6 Ex. B, attached to the Declaration of Haydee Villegas filed simultaneously herewith.)

7 55. My law clerk, Ms. Leidy spent approximately 13.8 hours during the TRO/OSC
8 phase, conducting legal research on applicable case law to use in support of Plaintiffs' Ex Parte
9 TRO/OSC application and revising Plaintiffs' TRO/OSC application and Plaintiffs' letter
10 opposing Defendants' Proposed Order. (Ex. G; see also Ex. B, attached to the Declaration of
11 Haydee Villegas filed simultaneously herewith.)

12 56. My paralegal, Ms. Quesada, billed 3.2 hours during the TRO/OSC phase,
13 reviewing and revising formatting Plaintiffs' documents for filing and preparing tables, evidence,
14 and exhibits submitted in support of Plaintiffs' TRO/OSC application. (Ex. G; see also Ex. B,
15 attached to the Declaration of Haydee Villegas filed simultaneously herewith.)

16 *Motion for Preliminary Injunction*

17 57. Plaintiffs spent 69.9 hours researching, drafting, and preparing a motion for
18 preliminary injunction to halt the enforcement of the illegal underground regulations that had been
19 enforced by Defendants since January 1, 2015. Plaintiffs' decision to proceed with drafting a
20 Motion for Preliminary Injunction was more than reasonable under the circumstances. At the time
21 Plaintiffs incurred the fees, Defendants had not made public any intention to adopt emergency
22 regulations, nor had they submitted such to the OAL for consideration and approval. And,
23 naturally, OAL had not yet determined the Challenged Provisions were valid and enforceable
24 emergency regulations. Once Defendants submitted the emergency regulation package to OAL and
25 Plaintiffs were informed that they would have the opportunity to provide public comment, all
26 work on the preliminary injunction motion ceased. (Ex. G; see also Ex. B, attached to the
27 Declaration of Haydee Villegas filed simultaneously herewith.)

28 58. I spent approximately 27.6 hours researching, drafting, and otherwise preparing

1 Plaintiffs' anticipated Motion for Preliminary Injunction. That time breaks down as follows: 18.3
2 hours drafting, reviewing, and revising Plaintiffs' Motion for Preliminary Injunction and Mr.
3 Cubeiro's draft witness declarations in support; 0.8 hours corresponding with Plaintiffs, co-
4 counsel, my law clerks and opposing counsel via e-mail; 5.9 hours meeting with co-counsel and
5 my law clerks, regarding litigation strategy and assignments relating to Plaintiffs' Motion for
6 Preliminary Injunction; and 2.6 hours corresponding via telephone with clients and co-counsel
7 regarding litigation status and evidence to use in support of Plaintiffs' Motion for Preliminary
8 Injunction. (Ex. G; see also Ex. B, attached to the Declaration of Haydee Villegas filed
9 simultaneously herewith.)

10 59. Mr. Brady spent approximately 3.7 hours during the Motion for Preliminary
11 Injunction phase. In that time, Mr. Brady coordinated, reviewed, and revised the declarations that
12 were to be submitted in support of Plaintiffs' Motion for Preliminary Injunction. He also met with
13 me to discuss litigation strategies relating to and preparing evidence in support of Plaintiffs'
14 Motion for Preliminary Injunction. (Ex. G; see also Ex. B, attached to the Declaration of Haydee
15 Villegas filed simultaneously herewith.)

16 60. Mr. Silvosio spent approximately 0.9 hours during the Motion for Preliminary
17 Injunction phase, corresponding with me and a client via a telephone conference to discuss the
18 with implementation of the FSC underground regulations and potential declarants to contact in
19 support of Plaintiffs' Motion for Preliminary Injunction. (Ex. G; see also Ex. B, attached to the
20 Declaration of Haydee Villegas filed simultaneously herewith.)

21 61. My law clerk, Ms. Leidy, spent approximately 11.0 hours during the Motion for
22 Preliminary Injunction phase. That time breaks down as follows: 2.6 hours conducting legal
23 research to support arguments regarding Plaintiffs' declaratory relief cause of action; 6.8 hours
24 drafting, reviewing, and revising discrete sections of Plaintiffs' Motion for Preliminary Injunction;
25 and 1.6 hours meeting with me regarding Ms. Leidy's drafted sections of Plaintiffs' Motion for
26 Preliminary Injunction. (Ex. G; see also Ex. B, attached to the Declaration of Haydee Villegas
27 filed simultaneously herewith.)

28 62. My law clerk, Mr. Cubeiro, spent approximately 26.7 hours during the Motion for

1 Preliminary Injunction phase. That time breaks down as follows: 3.2 hours conducting plaintiff
2 and witness interviews via telephone and e-mail; 16.9 hours drafting, reviewing, and revising
3 declarations in support of Plaintiffs' Motion for Preliminary Injunction based on witness
4 interviews; 2.2 hours conducting legal research regarding case law to support potential substantive
5 arguments to be made in the motion; and 4.4 hours meeting with me to discuss the content of and
6 revisions to all Plaintiff and witness declarations. (Ex. G; see also Ex. B, attached to the
7 Declaration of Haydee Villegas filed simultaneously herewith.)

8 *Analysis of Defendants' Emergency Regulations & Determining Impact on Litigation*

9 63. Subsequent to the filing of Plaintiffs' Complaint and Ex Parte TRO/OSC
10 application, Defendants began complying with Administrative Procedure Act's emergency
11 regulation rulemaking procedure. Because the OAL does not automatically find regulations to
12 qualify as emergency regulations, Plaintiffs were required to monitor the progress and status of the
13 regulations to determine whether the lawsuit would be mooted or whether it would be necessary
14 for Plaintiffs to proceed with the litigation. Plaintiffs spent a total of 33.3 hours tracking,
15 reviewing, conducting research regarding, and analyzing the impact of Defendants' proposed
16 emergency regulations. (Ex. G; see also Ex. B, attached to the Declaration of Haydee Villegas
17 filed simultaneously herewith.)

18 64. During this phase, I spent 13.5 hours corresponding and meeting with co-counsel
19 and law clerks regarding the status of the emergency regulations, conducting legal research
20 regarding the OAL's previous findings of emergencies, and reviewing and analyzing
21 correspondence with opposing counsel regarding the emergency regulations, Defendants'
22 proposed emergency regulations submitted to the OAL, and Defendants' statement of emergency.
23 (Ex. G; see also Ex. B, attached to the Declaration of Haydee Villegas filed simultaneously
24 herewith.)

25 65. During this phase, Mr. Michel spent 0.7 hours, participating in meetings with me
26 and Mr. Brady regarding the status of the case and litigation strategy in light of the proposed
27 emergency regulations. (Ex. G; see also Ex. B, attached to the Declaration of Haydee Villegas
28 filed simultaneously herewith.)

1 66. During this phase, Mr. Brady spent 5.4 hours, corresponding via e-mail and
2 participating in meetings with co-counsel regarding correspondence with opposing counsel
3 regarding the emergency regulations, the impact of the proposed emergency regulations, litigation
4 strategy in light of the emergency regulations. (Ex. G; see also Ex. B, attached to the Declaration
5 of Haydee Villegas filed simultaneously herewith.)

6 67. During this phase, Ms. Leidy spent 11.4 hours conducting legal research regarding
7 rules and rulemaking procedures for emergency regulations, drafting and submitting a request to
8 the OAL for the FSC Program's rulemaking file, reviewing and analyzing the Defendants'
9 regulations submitted to the OAL and the Defendants' responsive documents regarding the FSC
10 Program file, and meeting with me and Mr. Brady regarding OAL's approval of the regulations.
11 (Ex. G; see also Ex. B, attached to the Declaration of Haydee Villegas filed simultaneously
12 herewith.)

13 68. During this phase, Mr. Cubeiro spent 1.4 hours conducting legal research and
14 analyzing the proposed emergency regulations, and contacting declarants regarding their training
15 requirements and notifying them of the proposed emergency regulations via e-mail. (Ex. G; see
16 also Ex. B, attached to the Declaration of Haydee Villegas filed simultaneously herewith.)

17 69. During this phase, Mr. Silvoso spent 0.9 hours conducting research regarding the
18 status of the FSC emergency regulations, and corresponding with me regarding the same. (Ex. G;
19 see also Ex. B, attached to the Declaration of Haydee Villegas filed simultaneously herewith.)

20 *Demurrer*

21 70. Plaintiffs' counsel spent approximately 57.3 hours researching, drafting, and
22 preparing for Plaintiffs' Non-Opposition to Demurrer to First Amended Complaint for
23 Declaratory and Injunctive Relief and Petition for Writ of Mandate. Plaintiffs' time was spent
24 analyzing Defendants' demurrer and supporting papers, conducting legal research, drafting
25 Plaintiffs' supporting memorandum of points and authorities, analyzing and developing litigation
26 strategies, and consulting with Plaintiffs. This time also accounts for Plaintiffs' objections to
27 Defendants' Proposed Judgment. (Ex. G; see also Ex. B, attached to the Declaration of Haydee
28 Villegas filed simultaneously herewith.)

1 71. I spent approximately 35.3 hours during the demurrer phase. That time breaks
2 down as follows: 3.7 hours receiving, reviewing and analyzing Defendants' demurrer,
3 Defendants' Proposed Judgment and Ms. Leidy's legal research memoranda; 24.0 hours drafting,
4 reviewing, and revising Plaintiffs' Non-Opposition to Demurrer to First Amended Complaint for
5 Declaratory and Injunctive Relief and Petition for Writ of Mandate, Plaintiffs' Request for
6 Judicial Notice, and Plaintiffs' Objections to Defendants' Proposed Judgment; 1.2 hours
7 exchanging e-mails with Plaintiffs, co-counsel, my law clerks, and opposing counsel; 1.6 hours
8 conducting legal research and other research in support of Plaintiffs' claims and to address
9 Defendants' various legal and factual defenses and claims; 3.8 hours meeting with co-counsel and
10 law clerks regarding litigation strategies; and 1.0 hours communicating with law clerks regarding
11 preparation of Plaintiffs' Request for Judicial Notice in Support of Plaintiffs' Non-opposition to
12 Demurrer, Plaintiffs' Non-opposition to the Demurrer, and my declaration in support of Plaintiffs'
13 Non-opposition to the Demurrer. (Ex. G; see also Ex. B, attached to the Declaration of Haydee
14 Villegas filed simultaneously herewith.)

15 72. Mr. Michel spent approximately 0.2 hours during the demurrer phase, meeting with
16 me and Mr. Brady to discuss, analyze, and develop litigation strategies. (Ex. G; see also Ex. B,
17 attached to the Declaration of Haydee Villegas filed simultaneously herewith.)

18 73. Mr. Brady spent approximately 1.8 hours during the demurrer phase, analyzing and
19 developing litigation strategies, meeting with co-counsel to discuss litigation strategy, and
20 reviewing, revising, and suggesting edits to Plaintiffs' Non-Opposition to Defendants' Demurrer.
21 (Ex. G; see also Ex. B, attached to the Declaration of Haydee Villegas filed simultaneously
22 herewith.)

23 74. My law clerk, Ms. Leidy, spent approximately 18.4 hours during the demurrer
24 phase. That time breaks down as follows: 5.1 hours conducting legal research and other research
25 in support of Plaintiffs' recovering attorney's fees under catalyst theory if the case results in
26 dismissal from mootness; and 8.9 hours drafting, reviewing, and revising my declaration in
27 support of Plaintiffs' Non-opposition to Defendants' Demurrer, Plaintiffs' draft Non-Opposition
28 to Defendants' Demurrer, and Plaintiffs' Objections to Proposed Judgment, including cite

1 checking for accuracy and formatting; and 4.4 hours participating in meetings and telephone
2 conferences with me regarding litigation strategies, legal research findings, and revisions to
3 Plaintiffs' Non-opposition to Defendants' Demurrer and supporting documents. (Ex. G; see also
4 Ex. B, attached to the Declaration of Haydee Villegas filed simultaneously herewith.)

5 75. My paralegal, Ms. Quesada billed 1.6 hours during the demurrer phase, revising
6 and formatting Plaintiffs' documents for filing and preparing tables, evidence, and exhibits
7 submitted in support of Plaintiffs' Non-Opposition to Demurrer to First Amended Complaint for
8 Declaratory and Injunctive Relief and Petition for Writ of Mandate. (Ex. G; see also Ex. B,
9 attached to the Declaration of Haydee Villegas filed simultaneously herewith.)

10 *Post-Dismissal Activity*

11 76. Our office spent approximately 135.4 hours on "post-dismissal work," including
12 time spent preparing Plaintiffs' Request for Delay of Entry of Judgment to Allow Plaintiffs to
13 Engage in Limited Discovery, responding and objecting to Defendants' Proposed Judgment,
14 preparing anticipated discovery requests, and developing and analyzing litigation strategies. This
15 fee request does not include time spent researching, drafting, reviewing, and revising Plaintiffs'
16 Motion for Attorneys' Fees and supporting documents. (Ex. G; see also Ex. B, attached to the
17 Declaration of Haydee Villegas filed simultaneously herewith.)

18 77. I spent approximately 71.8 hours during this phase. The time I spent post-
19 dismissal, and not including attorneys' fees work, breaks down as follows: 9.0 hours reviewing,
20 analyzing, and developing litigation strategies; 39.0 hours conducting legal research, drafting,
21 reviewing, and revising Plaintiffs' Notice and Motion to Delay Entry of Judgment and supporting
22 documents, Plaintiffs' discovery, Plaintiffs' Reply to Defendants' Opposition to Motion to Delay
23 Entry of Judgment, Plaintiffs' Objections to Defendants' Proposed Judgment, and Plaintiffs'
24 Reply to Defendants' Opposition to Motion to Delay Entry of Judgment and supporting
25 documents; 10.0 hours participating in meetings with co-counsel and law clerks regarding case
26 status, hearing preparation, litigation strategy, and discovery; 11.8 hours preparing for, traveling to
27 and from, and representing Plaintiffs at the hearing on Plaintiffs' Motion to Delay Entry of
28 Judgment. (Ex. G; see also Ex. B, attached to the Declaration of Haydee Villegas filed

1 simultaneously herewith.)

2 78. Mr. Michel spent 0.6 hours during this phase, meeting with me to discuss and
3 analyze litigation strategies. (Ex. G; see also Ex. B, attached to the Declaration of Haydee
4 Villegas filed simultaneously herewith.)

5 79. Mr. Brady spent 0.6 hours during this phase, meeting with me to discuss and
6 analyze litigation strategies. (Ex. G; see also Ex. B, attached to the Declaration of Haydee
7 Villegas filed simultaneously herewith.)

8 80. My law clerk, Ms. Leidy, spent 55.3 hours during this phase. The time she spent
9 post-dismissal, and not including attorneys' fees work, breaks down as follows: 16.2 hours
10 drafting, reviewing, and revising Plaintiffs' Request for Extension of Time to File Motion for
11 Attorney Fees, Plaintiffs' Request for Production of Documents, Plaintiffs' Reply to Defendants'
12 Opposition to Plaintiffs' Motion to Delay Judgment, and Plaintiffs' Objections to Defendants'
13 Proposed Judgment of Dismissal; 13.0 hours conducting legal research regarding applicable
14 discovery rules, limited discovery, evidentiary hearings, and motions for reconsideration; 13.1
15 hours participating in meetings with me to discuss legal research findings and litigation strategy;
16 and 13.0 hours assisting, preparing, traveling to and from the hearing on Plaintiffs' Motion to
17 Delay Entry of Judgment. (Ex. G; see also Ex. B, attached to the Declaration of Haydee Villegas
18 filed simultaneously herewith.)

19 81. My paralegal, Ms. Quesada, billed 7.1 hours revising and formatting Plaintiffs'
20 documents for filing and preparing tables, evidence, and exhibits submitted in support of
21 Plaintiffs' Motion to Delay Entry of Judgment and Plaintiffs' Objections to Defendants' Proposed
22 Judgment. (Ex. G; see also Ex. B, attached to the Declaration of Haydee Villegas filed
23 simultaneously herewith.)

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

26 Executed August 25, 2015 at Long Beach, California.

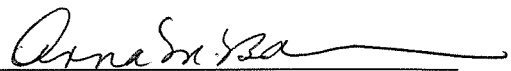
27 
28 Anna M. Barvir
Declarant

EXHIBIT F

SENIOR COUNSEL
C. D. MICHEL*

SPECIAL COUNSEL
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ERIC M. NAKASU
W. LEE SMITH

ASSOCIATES
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SEAN A. BRADY
SCOTT M. FRANKLIN
BEN A. MACHIDA
CLINT B. MONFORT
JOSEPH A. SILVOSO, III
LOS ANGELES, CA

* ALSO ADMITTED IN TEXAS AND THE
DISTRICT OF COLUMBIA



OF COUNSEL
DON B. KATES
BATTLEGROUND, WA

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

ATTORNEY FEE / RATE SCHEDULE

Timekeeper:	Hourly Rate
Partner	\$ 450
Of Counsel	\$ 400
Special Counsel	\$ 375
Associate 6	\$ 350
Associate 5	\$ 325
Associate 4	\$ 300
Associate 3	\$ 275
Associate 2	\$ 250
Associate 1 / Staff Attorney	\$ 225
Senior Paralegal	\$ 140
Paralegal	\$ 100
Law Clerk	\$ 125
Legal Assistant	\$ 95

Partner in Charge: C. D. Michel

Responsible Attorney: Anna M. Barvir

EXHIBIT G

SUMMARY OF PLAINTIFFS' FEE CLAIM*

TIMEKEEPER	RATE	COMP	TRO	MPI	EMERG	DEMUR	POST	TOTAL HRS	TOTAL FEES
BARVIR	\$ 250.00	53.3	58.2	27.6	13.5	35.3	71.8	259.7 \$	64,925.00
BRADY	\$ 275.00	8.9	29.2	3.7	5.4	1.8	0.6	49.6 \$	13,640.00
CUBEIRO	\$ 125.00	11.1	0.0	26.7	1.4	0.0	0.0	39.2 \$	4,900.00
LEIDY	\$ 125.00	14.3	13.8	11.0	11.4	18.4	55.3	124.2 \$	15,525.00
MICHEL	\$ 395.00	4.8	1.9	0.0	0.7	0.2	0.6	8.2 \$	3,239.00
QUESADA	\$ 100.00	2.1	3.2	0.0	0.0	1.6	7.1	14.0 \$	1,400.00
SILVOSO	\$ 300.00	31.5	0.0	0.9	0.9	0.0	0.0	33.3 \$	9,990.00
TOTALS		126	106.3	69.9	33.3	57.3	135.4	528.2 \$	113,619.00

ABBREVIATIONS

COMP	Pre-Litigation Work, Drafting Complaint, Building the Case
TRO	Drafting TRO/OSC Papers, Attending Hearing
MPI	Motion for Preliminary Injunction
EMER	Tracking and Analysis of Proposed Emergency Regulations
DEMUR	Researching and Drafting Response to Demurrer
POST	Post-Dismissal Activity

SUMMARY OF HOURS/FEES WAIVED

T/K	RATE	HOURS	FEES
BARVIR	\$ 250.00	172.7 \$	43,175.00
BRADY	\$ 275.00	16.7 \$	4,592.50
CUBEIRO	\$ 125.00	89.6 \$	11,200.00
LEIDY	\$ 125.00	241.1 \$	30,137.50
MICHEL	\$ 395.00	2.3 \$	908.50
QUESADA	\$ 100.00	45.3 \$	4,530.00
SILVOSO	\$ 300.00	6.7 \$	2,010.00
		574.4 \$	96,553.50

*A further breakdown of Plaintiffs' fee claim can be found at paragraphs 43 - 81 of the Declaration of Anna M. Barvir in Support of Plaintiffs' Motion for Attorneys Fees. Ms. Barvir's declaration includes a detailed description of the tasks that required counsel's time, the total hours expended on each task and/or project, and the billing professionals who were primarily responsible for each task.

EXHIBIT H

Friday, August 21, 2015

THE STATE BAR OF CALIFORNIA

ATTORNEY SEARCH

Jeffrey Allen Rich - #108589

Current Status: Active

This member is active and may practice law in California.

See below for more details.

Profile Information

The following information is from the official records of The State Bar of California.

Bar Number:	108589		
Address:	Ofc Attorney General P O Box 944255 Sacramento, CA 94244-2550 Map it	Phone Number:	(916) 324-5154
County:	Sacramento	Fax Number:	Not Available
District:	District 3	e-mail:	jeffrey.rich@doj.ca.gov
Sections:	Public Law	Undergraduate School:	Univ of Miami; Coral Gables FL
		Law School:	Univ of Miami SOL; Coral Gables FL

Status History

Effective Date	Status Change
Present	Active
6/3/1983	Admitted to The State Bar of California

Explanation of member status

Actions Affecting Eligibility to Practice Law

Disciplinary and Related Actions

Overview of the attorney discipline system.

This member has no public record of discipline.

Administrative Actions

This member has no public record of administrative actions.

Start New Search »

EXHIBIT I

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

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.

California Firearms Dealers, DOJ Certified Instructors, and Comparable Entities

October 2, 2014

Page 3

- 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 J

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W. LEE SMITH

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* ALSO ADMITTED IN TEXAS AND THE
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SAN DIEGO, CA

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

DAVID T. HARDY
TUCSON, AZ

October 14, 2014

Attorney General's Office
Public Records Coordinator
P.O. Box 944255-2550
VIA U. S. MAIL

Re: Public Records Act Request
PRAR # 292020

To whom it may concern:

This letter constitutes a request under the Public Records Act, California Government Code Section 6250, et seq. (the "Act"), and seeks the information listed below, regardless of the medium upon which it is kept.

This request is directed *individually* (1) to each person/entity identified in the addressee section above and (2) to the Public Records Act Clerk for each entity identified in the addressee section above. One or several of the above may respond on behalf of any number of the others; however, each person/entity responding on behalf of another must so state in the response. To the extent that an aggregate responding person/entity fails to identify that such person/entity is responding on behalf of another, we do not waive the right to require a response from each such person/entity from whom we have not received a specific response.

All references to standards for compliance are pursuant to California Government Code Section 6250, et seq., as amended by California Assembly Bill 2799, effective January 1, 2001, and further informed by the heightened right to information as provided by the California Constitution, article 1, section 3, as amended by Proposition 59.

Please review this request in its entirety and include the above reference number in all future correspondence regarding this request. If the items listed below are under the control of another department or agency, please forward this letter accordingly. The Act directs that you provide a response within ten (10) days of your receipt of this letter. Thank you for your assistance in responding to this matter.

Please provide the following:

- a) Each and every Writing¹ or Government Record² drafted, created after January 1, 2011, as a FSC manual, FSC summary, Firearm Safety Certificate, FSC study guide, FSC manual, and/or plan regarding the Firearm Safety Certificate program's or FSC program³ implementation and enforcement. This request includes but is not limited to audio/visual materials.
- b) Each and every Writing or Government Record drafted, created after January 1, 2011, as a California Code of Regulations provision regarding the FSC program's implementation, requirements, and enforcement.
- d) Each and every Writing or Government Record drafted, created after January 1, 2011, regarding the FSC program web-based application including but not limited to "screenshots" for the web-based FSC program.
- e) Each and every Writing or Government Record drafted, created after January 1, 2011, referencing the requirement for "DOJ Certified Instructors" to possess a Certificate of Eligibility (COE). This request includes but is to limited to any references to Penal Code and/or California Code of Regulations authority for this requirement.

¹ Writing, whether singular or plural, draft and incomplete versions, and includes for purposes of this letter those items listed in any and of the paragraphs above, as well as those items described in the definition provided by Evidence Code section 250, which provides as follows:

"Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

² Government Record, whether singular or plural, for purposes of this letter those items listed in any and of the paragraphs above, as well as those items described in the definition provided by Evidence Code section 250, which provides as follows:

"Record" means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained, or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultive, or deliberative material.

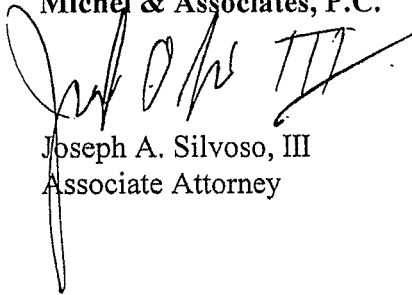
³ All forgoing and further references to FSC or FSC program include "Firearm Safety Certificate" and "Firearm Safety Certificate program."

- f) Each and every Writing or Government Record drafted, created after January 1, 2011, referencing a "comparable entity" to those entities in Penal Code section 31635.
- g) Each and every Writing or Government Record drafted, created after January 1, 2011, concerning "DOJ firearms warning tags," including, but not limited to draft/template tags.

Pursuant to Government Code section 6253(b), we ask that you make the records promptly available by copying and forwarding those records to us. We are willing to pay reasonable costs to reimburse you for direct costs of duplication, or statutory fees. If you estimate that the direct copying costs will exceed fifty dollars (\$50.00), please do not begin the process of copying; rather, notify us first of the cost estimate so that we may determine how best to proceed.

Thank you for your cooperation. We are extremely willing to help provide assistance in this matter. Please do not hesitate to call if you have questions regarding the foregoing.

Sincerely,
Michel & Associates, P.C.



Joseph A. Silvoso, III
Associate Attorney

EXHIBIT K

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 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.

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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. Effective January 1, 2015, the FSC Program email address will be boffscprogram@doj.ca.gov.

Sincerely,



STACY HEINSEN, Manager
Bureau of Firearms

For KAMALA D. HARRIS
Attorney General

EXHIBIT L

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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 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/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,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 Certificates 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* 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

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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/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,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 Instructors 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* 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.

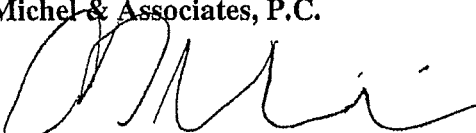
Without any statutory or regulatory authority, DOJ's October 2, 2014 letter requires **all** FSC payment be done using only major credit cards.

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

EXHIBIT 1

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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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.

California Firearms Dealers, DOJ Certified Instructors, and Comparable Entities

October 2, 2014

Page 3

- 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

DO NOT 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))

Importer

Wholesaler / Distributor

Store Manager

Collector

Pawnbroker

Gunsmith

Firearms Dealer

Manufacturer

Explosive Permit

Gun Show Promoter

Shooting Range

Certified Instructor

Employee*

Prop Master

Other

Record dealership information below

*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

EXHIBIT M

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

CENTRAL DIVISION

Before the Honorable Jeffrey Y. Hamilton, Jr., Judge

Department 402

-oOo-

KIM BELEMJIAN; JONATHAN)
FAIRFIELD; T.J. JOHNSTON;)
MATTHEW PIMENTEL; STANLEY ROY;)
FFLGUARD, INC.; CALIFORNIA)
RIFLE AND PISTOL ASSOCIATION,)
) Case No. 15CECG020029
Plaintiffs,)
)
-vs-) REPORTER'S TRANSCRIPT
)
KAMALA D. HARRIS, in her)
official capacity as Attorney)
General for the State of)
California; STEPHEN LINDLEY, in)
his capacity as CHIEF OF THE)
CALIFORNIA DEPARTMENT OF)
JUSTICE BUREAU OF FIREARMS;)
CALIFORNIA DEPARTMENT OF)
JUSTICE; and DOES 1-10,)
)
Defendants.)
_____)

Fresno, California

January 7, 2015

-oOo-

Reported by:
MIRANDA K. ANTHONY, CSR
Certificate No. 13453

A P P E A R A N C E S:

FOR THE PLAINTIFFS:

MICHEL & ASSOCIATES, PC
BY: ANNA M. BARVIR
SEAN BRADY
180 East Ocean Blvd., Ste. 200
Long Beach, California 90802

FOR THE DEFENDANTS:

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
BY: JEFFREY A. RICH
1300 I Street, Ste. 1101
Sacramento, California 94244

1 WEDNESDAY, JANUARY 7, 2015 -- AFTERNOON SESSION

2 (The following proceedings were had in
3 open court, in the presence of the Court
4 and Counsel, to wit:)

5 THE COURT: All right. The ex parte matter of
6 Kim Belemjian, et al., versus the State of California
7 and the Attorney General, et al.

8 MS. BARVIR: Good afternoon, your Honor. Anna
9 Barvir for plaintiffs Belemjian, et al.

10 MR. BRADY: Sean Brady for the plaintiffs,
11 your Honor.

12 MR. RICH: Good afternoon. Jeffrey Rich
13 appearing on behalf of defendants.

14 THE COURT: Good afternoon. Okay. I received
15 and read the plaintiffs' moving ex parte papers and
16 declarations, and, although I didn't expect it, I did
17 receive a written opposition this afternoon from
18 defendants. So that was very well done in a short,
19 short period of time. And I read that, as well.

20 Let me -- in order to, I guess, get us to the
21 neck of the funnel, let me just say a few things. I
22 tend to agree with Mr. Rich. In fact, one of the
23 callouts I had on my notes to plaintiffs was: Where is
24 the eminent harm?

25 It's certainly not that you have to have a
26 computer and be able to have e-mail. I mean, that's

1 understanding the shotgun approach that didn't hit the
2 mark. I think the only place that the Court would find
3 any reason to have any conversation, beyond denying the
4 request for T.R.O., would be the, in the Court's view,
5 potential large problem, in 26860 subdivision (b), where
6 it requires a vendor, firearm vendor, to execute an
7 affidavit stating that they have given this long gun
8 training or safety. I may be using the improper
9 terminology. But long gun safety training, much akin to
10 the present handgun requirement, the training you have
11 to go through in order to have a handgun.

12 I guess where the Court is a little concerned
13 is that, if you go to a sporting good store, Big 5 or
14 whatever one you want to pick, tomorrow, and you want to
15 buy the long gun, the shotgun, or rifle, or what have
16 you, and this vendor has to sign an affidavit saying
17 he's -- he or she has performed this training but there
18 is no defined training, and then they are subject to
19 criminal penalty, that seems, to the Court, to put them
20 in somewhat of an untenable situation, such that they
21 wouldn't have an adequate remedy of law. Because
22 what's, then, their option?

23 You're Joe Blow, working for ten bucks an hour
24 at Big 5, and you have to sign this affidavit, and you
25 have to sign it knowing you're potentially putting
26 yourself at risk.

1 I'd ask the State to answer that, if they
2 could.

3 MR. RICH: Your Honor, that is a practical
4 consideration, but the question is: Is it important
5 enough to deal with it at this stage of the litigation?
6 And, also, I'd like to invite the Court's attention to
7 the fact that the fifth cause of action, which is the
8 predicate for the injunction against defendants for
9 forcing the Penal Code section, is not a cause of
10 action; it's a request for relief.

11 THE COURT: I agree with you. I read that
12 portion.

13 MR. RICH: And so, I understand the Court's
14 concern. But, once again, is it proper to grant interim
15 or provisional relief, based on the issue that the Court
16 raised? I don't think it is. I think it is, maybe, a
17 problem that needs to be resolved when this case is
18 fully litigated. And -- but not now, because I don't
19 believe -- the Court has raised an issue, but I don't
20 believe that plaintiffs, who have the burden to produce
21 evidence, have raised this issue or have supported
22 irreparable harm.

23 I know the Court has made an observation, but,
24 once again, it was plaintiffs' burden, and I don't see
25 any of that within their -- plaintiffs' declaration
26 supporting their application. So I think there's a

1 deficiency, in terms of lack of evidence.

2 And so I would submit that the Court really
3 cannot or should not grant the application, any part of
4 it, because it's going to be the same evidence that
5 would support a preliminary injunction.

6 So it would be our position that there may be
7 some problems that need to be worked out, maybe the
8 Department of Justice can work these problems out. But
9 sitting here right now, as provisional relief,
10 plaintiffs have not met their burden.

11 THE COURT: Okay. And he does bring up a good
12 point, I think.

13 MS. BARVIR: I think I have a few responses.

14 THE COURT: Okay.

15 MS. BARVIR: First, I would like to say, the
16 point of the A.P.A. is to work those problems out before
17 the regulations are adopted, promulgated, and forced
18 upon people.

19 The problem, I think, your Honor, that you
20 were suggesting that maybe using credit cards or having
21 access to a personal computer or having an annual
22 renewal with C.O.E. isn't really irreparable harm. That
23 really, I think, sideswipes the heart of the matter.

24 The irreparable harm that is very clear is
25 that all plaintiffs are statutorily entitled to a right
26 to be heard before law regulations are enforced against

1 them. They never had an opportunity to be heard. That
2 irreparable harm happened when the Department of Justice
3 and defendants enacted the law and new regulation when
4 it went into effect on January 1st, 2015. And every
5 second that plaintiffs are required, as handgun safety
6 -- firearm safety certificate instructors to abide by
7 each of those underground regulations, that irreparable
8 harm continues.

9 Really, if there are kinks, as the Department
10 of Justice calls -- or suggested they were problems they
11 might be able to work out in the future, if plaintiffs
12 had had the opportunity, as the Administrative Procedure
13 Act required them to have before the regulations were
14 promulgated, because the point of it, the entire act,
15 the whole situation, is to let people, including
16 plaintiffs, who are stakeholders in this program, in
17 this regulatory regime, give them an opportunity to
18 clearly point out those problems before they go into
19 effect.

20 The irreparable harm was that they were not
21 given -- were not given the opportunity to weigh in, as
22 the Department of Justice was required to give them, and
23 they're now continuing to have to live under the
24 regulatory regime.

25 As we're talking a little bit about --

26 THE COURT: Well, let me stop you there and

1 make this observation -- and I appreciate that argument,
2 and I think your application was well-written. However,
3 in your papers, page 13, to be particular, lines about
4 11 through 13, I think you don't contend that the
5 requirements are unconstitutional, per se. You do
6 bicker with the manner in which they did or didn't
7 promulgate regulations; that's clear.

8 But asking this Court to issue an unusual
9 injunction, in the sense that, as Mr. Rich stated, these
10 are extraordinary measures for the Court. And the Court
11 doesn't do it very often. It seems like you're asking
12 me to order the DM -- the DMV? Too many three-letter
13 acronyms for the government; right? -- the D.O.J. to
14 immediately promulgate regulations. That's what it
15 seems like you're doing. Or at least that's what it
16 seems that's what the subtext is. And that's okay,
17 except I don't think this is the vehicle to do it.

18 Perhaps, the writ process is the right
19 vehicle. But a mandatory injunction -- I guess I'm just
20 having a hard time wrapping my mind around it, because
21 it seems that's what you want them to do.

22 MS. BARVIR: Thank you, your Honor. I see
23 that we are at a difference in understanding what we're
24 asking for.

25 The plaintiffs are not seeking a mandatory
26 injunction at this stage. Plaintiffs are seeking a writ

1 of mandate that was filed with our verified Complaint.
2 But at this stage, we're not seeking a mandatory
3 injunction asking, right now, for the defendants to
4 start to engage in the regulatory rule-making process
5 for the Long Gun Safe Handling Act.

6 Instead, a prohibitory injunction, keeping
7 subsection c, at the very least; regulation b, a, and d,
8 we believe, is something that cannot be complied with
9 without regulation.

10 But those laws, those Penal Code statutes
11 subdivision, they cannot be complied with at this time.
12 So the problem is we're subjecting people to civil and
13 criminal penalties, including FFLs, who can lose their
14 dealers license in California, if they cannot comply
15 with this law.

16 So if they cannot comply with this law, and
17 they risk losing their -- they risk losing their
18 licenses and criminal penalties. So at the end, and on
19 top of that, people cannot, then, acquire long guns,
20 which is a second amendment violation. We're not yet
21 seeking that, because we want to save this law.

22 Our plaintiffs, our clients, are mostly F.S.C.
23 instructors or -- they're certified safety instructors.
24 They are proponents, strong proponents, of this program.
25 They want to save it. But at this point, they cannot
26 comply with it, and they risk criminal penalties every

1 minute that this law is enforced against them.

2 So if the Court could issue a prohibitory
3 injunction prohibiting the enforcing of it until --
4 unless and until the D.O.J. decides it's going to pass
5 regulations that is required to -- it doesn't have to,
6 we're not asking that yet. But until it does, this law
7 cannot be enforced.

8 THE COURT: Isn't that what I just said?
9 Isn't that what I just said that you were asking for?
10 You were more artful about it.

11 MR. BRADY: Your Honor, --

12 THE COURT: Here's -- I think Mr. Rich --
13 well, in a lot of ways, I think we're all saying the
14 same thing. But I think one of the things he said was
15 important. And that is, while the Court expressed its
16 concern with our mythical Big 5 gun salesman and how he
17 or she could get himself or herself into trouble by
18 signing this affidavit saying they've given the
19 appropriate training of which there's no regulation for
20 the training, we don't have anything in the declarations
21 of your various affiants.

22 You have this Ms. Belemjian, -- if I'm saying
23 her name correctly -- she wants to buy a gun;
24 Mr. Fairfield, I think he's the one that's the big time
25 instructor. They kind of went down, as I read them.
26 This Ms. Belemjian wants to buy a gun; the next guy is a

1 very well-trained, very seasoned, thousands of
2 certificates; the next guy was less, and less, and less.

3 Nobody, though -- nowhere in the verifications
4 do I see anybody say, "I'm planning to issue a
5 certificate, and if I do so, I'm going to subject myself
6 to x, y, z." I don't see that in any of the affidavits.
7 So I think that Mr. Rich is correct that that's your
8 burden to show.

9 MS. BARVIR: I think our verified Complaint,
10 which was verified by the California Rifle and Pistol
11 Association, does go into the irreparable harm. And
12 like I was explaining, the Complaint goes into the type
13 of harm, which is the violation of the A.P.A., which
14 harms our democratic processes and takes away the
15 statutory right of people -- of the people to engage in
16 the rule-making process.

17 THE COURT: I don't disagree with that
18 proposition as stated. I don't disagree with that. But
19 the manner in which you get there, I don't know that
20 we're necessarily on the same page with.

21 I think that, in terms of the California Rifle
22 and Pistol Association, taking that entity as an
23 example, where is the immediate, irreparable, "Court,
24 you have to do something that you rarely do, issue this
25 T.R.O. now or the California Rifle and Pistol
26 Association will suffer harm" -- I don't think you get

1 there.

2 Now, let's say it's Mr. Fairfield, and he
3 says, "I've got -- in fact, Ms. Belemjian is in my shop
4 tomorrow, and she wants to buy a long gun or a shotgun,
5 and I'm going to sell it to her," or, "I'm going to
6 issue the training," et cetera, "and if I sign this
7 document tomorrow, I'm in big trouble, because
8 Mr. Rich's boys are going to come and get me." That's
9 different. But I don't see that in the declarations.

10 MR. BRADY: Your Honor, if I may, I don't
11 believe the declarations -- declaration require that the
12 law and statutes provide for that.

13 THE COURT: Evidence is required. And that's
14 how you get evidence in front of me is through
15 declarations.

16 MR. BRADY: I agree. But I believe the
17 statutes themselves say they must issue these F.S.C.
18 cards.

19 THE COURT: Okay. So what?

20 MR. BRADY: The Court can take judicial notice
21 of a statute.

22 THE COURT: I can't make up evidence, not for
23 this process. Well, not for any, frankly, but certainly
24 not this. You have to show me evidence that the law
25 you're talking about is going to cause immediate and
26 irreparable harm to something or someone.

1 So who is that vendor who is going to
2 potentially suffer immediate and irreparable harm by
3 signing his or her name to that affidavit? Which one?

4 MR. BRADY: I believe all of them would.

5 MS. BARVIR: And on top of that, I think the
6 harm is to -- like Ms. Belemjian, who intends to buy a
7 firearm, a long gun, and cannot, because she cannot take
8 acquisition of it until she performs the Long Gun Safe
9 Handling demonstration that the D.O.J. did not recreate,
10 she cannot take acceptance of that firearm, no one can,
11 including members of the California Rifle and Pistol
12 Association who all want to buy firearms, who want to
13 buy a long gun maybe tomorrow. That harm is in
14 violation of their second amendment right to acquire
15 firearms for use in lawful purposes. And I think that
16 that is pretty clear, from both the verified Complaint
17 and even Ms. Belemjian's declaration.

18 But I think that if we are at an impasse on
19 whether or not that is sufficient, I think we'll have to
20 move for a preliminary injunction.

21 MR. RICH: Your Honor, there's somewhat of
22 apples and oranges thing going on here, in terms of
23 plaintiffs' counsel. There's two components to the
24 relief they seek. One is underground reg, prohibitory
25 injunction enjoin D.O.J. from enforcing that underground
26 right. The other component is enjoined D.O.J., the

1 defendants, from enforcing a statute.

2 There is express statutory authority that
3 stands for the proposition that the Court cannot issue
4 injunction enjoining a public official from doing that
5 official's duties, including enforcing a statute.

6 The statutory authority I referred to -- or I
7 refer to is Code of Civil Procedure section 5.6
8 subdivision (b)(4) and Civil Code section 3423
9 subdivisions d, e, and/or f. And we mentioned that in
10 our opposition.

11 So if we look at the statute, in terms of an
12 injunction, in terms of enforcing the statute, the Court
13 would be, in effect, I believe, saying, if this was to
14 be -- if the application was to be granted as to the
15 component, that statute is unconstitutional, because
16 that's the only way we can get to enjoining the D.O.J.
17 from enforcing that statute.

18 THE COURT: I agree with you.

19 MR. RICH: Okay. I just wanted --

20 THE COURT: No. I agree with you. Because
21 the Court -- I think that's why I keep going back to: I
22 think we're all saying the same thing, just in a
23 slightly different way.

24 The Court has to operate from the position
25 that the statutes before it, the appellate decisions
26 that it has to follow, et cetera, are constitutional

1 unless shown otherwise. So I don't have a facial
2 challenge to this particular statute saying, in fact,
3 the opposite. Say it is probably constitutional. I
4 don't think the Court, essentially, -- I don't get a
5 flavor that this statute is unconstitutional and should
6 not be enforced.

7 So I'm really in a position, in doing the
8 Court's job, to give credence to the statute. Now, if
9 someone is harmed by the operation of the statute, as
10 Mr. Rich suggested, that's a different question for
11 which I need more evidence, is what I'm saying.

12 Here's my suggestion, I could do a couple of
13 different things: One, I could just deny the T.R.O.;
14 two, I could deny the T.R.O. without prejudice for you
15 to refile, now having the benefit of this conversation
16 and knowing the evidence that you would need to muster,
17 if you are able. And, then, it also gives Mr. Rich more
18 time, because he was -- not to use bad, stale puns, but
19 he was under the gun somewhat to get this in; right? So
20 that's probably the better of the two options.

21 MR. RICH: May I offer what defendants think
22 is an appropriate disposition? And that is deny the
23 application in its entirety. And, then, if plaintiffs
24 want to bring on a noticed motion for preliminary
25 injunction -- maybe that is what your Honor is saying --
26 then they can go ahead and do that. But we would ask

1 that the O.S.C. also be denied along with the T.R.O.

2 THE COURT: Okay.

3 MS. BARVIR: Plaintiffs would like to -- like
4 to see the Court deny without prejudice, as it suggested
5 in its second option.

6 THE COURT: Okay. I'm going to deny the
7 application, as before the Court, with the O.S.C.
8 without prejudice to it being refiled. Although -- and
9 that's the Court's ruling.

10 This is just now a friendly conversation. It
11 doesn't sound like, you know, in many instances in
12 litigation, the parties are polarly opposed; right?
13 Very, very different positions looking at the same
14 thing.

15 So it sounds like we have the opportunity, as
16 litigants, both on the State side and plaintiffs side
17 here, to maybe get things worked out. If you give
18 Mr. Rich a little bit of time -- these are very
19 difficult, these short cause matters. I mean, for you,
20 also, you did a great job, by the way, in your drafting
21 of it. You work with him and give him a little more
22 time, I think maybe things can work out well for
23 everyone --

24 MR. BRADY: We did submit an --

25 THE COURT: -- for -- what's that?

26 MR. BRADY: We did submit on O.R.L.

1 petition -- the Department is well aware; we let them
2 know a week --

3 THE COURT: I know. I saw your letter. I'm
4 not faulting you guys. I think you did a great job.

5 Okay?

6 MS. BARVIR: Thank you, your Honor.

7 THE COURT: You bet.

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1 State of California)
2 County of Fresno) ss.
3)

4 I, MIRANDA ANTHONY, Pro Tempore Certified Shorthand
5 Reporter of the State of California, County of Fresno, do
6 hereby certify that the foregoing pages numbered 1 to 15,
7 inclusive, contains a full, true and correct transcript of my
8 shorthand notes, and a full, true and correct statement of
9 the proceedings had and testimony given as reflected herein.

10 Dated: _____

11
12 _____
13 MIRANDA K. ANTHONY, CSR
14 Certificate No. 13453
15
16
17
18
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21
22
23
24
25
26

EXHIBIT N

Attachments: Ltr to Brady.pdf

From: Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]
Sent: Friday, January 09, 2015 3:15 PM
To: Sean Brady
Cc: Kimberly Granger; C.D. Michel; Anna M. Barvir; Stepan Haytayan
Subject: RE: Belemjian v. Harris

Please see attached letter.

From: Sean Brady [<mailto:SBrady@michellawyers.com>]
Sent: Thursday, January 08, 2015 5:54 PM
To: Jeffrey Rich
Cc: Kimberly Granger; C.D. Michel; Anna M. Barvir; Stepan Haytayan
Subject: RE: Belemjian v. Harris

Mr. Rich,

First, there was no written order. Second, I copied and pasted from the transcript verbatim, albeit limited to the relevant sections. But I am happy to consider your position on what the Court said, if you would like to provide it with support. I have provided the relevant part of the transcript in full below so you can do so.

Sincerely,

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 324-5154
Facsimile: (916) 324-8835
E-Mail: Jeffrey.Rich@doj.ca.gov

January 9, 2015

VIA E-MAIL (SBrady@michellawyers.com)

Sean A. Brady
Michel & Associates, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802

RE: Belemjian v. Harris
Fresno County Superior Court, Case No. 15-CE-CG-020029

Dear Mr. Brady:

I write to respond to your January 8 e-mails.

Defendants are presently in the process of preparing emergency regulations and final regulations, pursuant to the Administrative Procedures Act, for the Firearm Safety Certificate Program. Accordingly, there is no need for discussions or mediation as you have suggested. In fact, when the emergency regulations are adopted (to be followed by the adoption of final regulations), plaintiffs' action will be rendered entirely moot.

If plaintiffs do decide to seek a temporary restraining order on Wednesday, such action would be outside the scope of the Court's January 7 ruling, denying plaintiffs' ex parte application in its entirety "without prejudice." More precisely, "without prejudice" must be construed in the context of the Court's and counsel's statements made during the hearing. In context, "without prejudice" reasonably means that plaintiffs may bring a noticed motion for preliminary injunction if and when plaintiffs have evidence showing imminent irreparable harm. The context I refer to is the following excerpt from the rough draft hearing transcript:

[THE COURT:] Here's my suggestion: I could do a couple of different things. One I could just deny the T.R.O. Two, I could deny the T.R.O. without prejudice for you to refile now having the benefit of this conversation and knowing the evidence that you would need to muster, if you are able. *And then it also gives Mr. Rich more*

Sean A. Brady
January 9, 2015
Page 2

time -RBG because he was -- not to use bad stale PUPBZ, but he was under the gun somewhat to get this in; right? So that's probably the better of the two options.

MR. RICH: May I offer what defendants think is an appropriate disposition, and that is deny the application in it's entirety. *And then if plaintiffs' want to bring on a noticed motion for preliminary injunction, maybe that is what your Honor is saying, then they can go ahead and do that. But we would ask that the O.S.C. also be denied along with the T.R.O.*

THE COURT: *Okay.*

MS. BARVIR: Plaintiffs would like to -- like to see the court deny without prejudice has it suggested in its second option.

THE COURT: Okay. 50EU78 going to deny the application as before the court without O.S.C. without prejudice although -- he and that's the courts ruling. This is just now a friendly conversation. It doesn't sounds like, you know, in many instances in litigation the parties are pole arrestly opposed; right? Very very different positions looking at the same thing. So it sounds like we have the tunnel as litigants both on the *states side and plaintiffs' side here to maybe get things worked out. If you give Mr. Rich a little bit of time, these are very difficult, these short cause matters.* I mean for you, also, you did a great job, by the weigh, in your drafting it of it. *You work with him and give him a little more time I think maybe things can work out well for everyone.*

MR. BRADY: We did submit.

THE COURT: -- for -- what's that.

MR. BRADY: We did submit on O.R. L. we let them know a week.

THE COURT: I know I saw your letter. I'm not faulting you guys I think you did a great job. Okay?

Sean A. Brady
January 9, 2015
Page 3

MS. BARVIR: Thank you, your Honor.

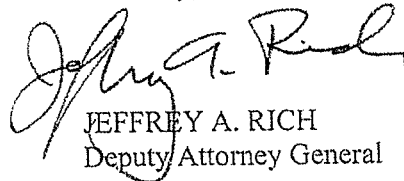
THE COURT: You bet.

(Rough draft of January 7, 2015 hearing transcript at 12:6-13:22, emphasis added.)

Based upon the above hearing transcript excerpt, it is manifest that the Court did not intend for “without prejudice” to mean that plaintiffs may, one week after the ex parte hearing, make another ex parte application for a TRO/OSC as a litigation tactic.

Further, if plaintiffs were to seek a temporary restraining order on Wednesday, such action would arguably result in a violation of Code of Civil Procedure section 128.7, subdivision (b), paragraphs (1) (“[The ex parte application] is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation”) and (3) (“The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery”).

Sincerely,



JEFFREY A. RICH
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

EXHIBIT O

From: Jeffrey Rich [mailto:Jeffrey.Rich@doj.ca.gov]
Sent: Wednesday, January 28, 2015 3:16 PM
To: Anna M. Barvir
Cc: C.D. Michel; Sean Brady; Kimberly Granger; Stepan Haytayan
Subject: RE: Belemjian v. Harris [MA-Interwoven.FID60394]

Ms. Barvir,

The update is as follows.

The emergency regulation draft has been completed and is presently undergoing DOJ internal review. DOJ seeks to submit the emergency regulation package to OAL by the first week of March.

From: Anna M. Barvir [mailto:ABarvir@michellawyers.com]
Sent: Tuesday, January 27, 2015 2:37 PM
To: Jeffrey Rich
Cc: C.D. Michel; Sean Brady; Kimberly Granger; Stepan Haytayan
Subject: RE: Belemjian v. Harris [MA-Interwoven.FID60394]

Thank you, Mr. Rich. I appreciate your response and look forward to your update.

Anna Barvir

Sent on the new Sprint Network from my Samsung Galaxy S4

----- Original message -----

From: Jeffrey Rich
Date: 01/27/2015 2:31 PM (GMT-08:00)
To: "Anna M. Barvir"
Cc: "C.D. Michel", Sean Brady, Kimberly Granger, Stepan Haytayan
Subject: RE: Belemjian v. Harris [MA-Interwoven.FID60394]

Ms. Barvir,

I will be sending you a status report tomorrow.

From: Anna M. Barvir [mailto:ABarvir@michellawyers.com]
Sent: Monday, January 26, 2015 5:39 PM
To: Jeffrey Rich
Cc: C.D. Michel; Sean Brady; Kimberly Granger; Stepan Haytayan
Subject: Belemjian v. Harris [MA-Interwoven.FID60394]

Mr. Rich,

Plaintiffs have refrained from seeking further preliminary relief because of your representation to our office in a letter dated January, 9, 2015, that the Department "is in the process of preparing emergency regulations." To the extent it is possible, Plaintiffs prefer to avoid unnecessary costs to both sides and to further judicial economy by handling these matters outside of court. But Plaintiffs cannot wait much longer on the Department to begin the emergency rulemaking process, as Plaintiffs and others like them continue to be harmed by the absence of proper regulations every day.

More than two weeks have now passed since you indicated that the Department would be adopting emergency regulations, and we are unaware of any movement on that front. I write to ask whether the Department has a date certain in the near future to begin the official emergency process under the APA? If so, please let us know what date that is. If not, please expect that Plaintiffs will need to move forward with litigation in *Belemjian* this week.

We again remind you that Plaintiffs, if they prevail, will seek fees and costs for the work they are required to engage in over this matter. Naturally, the more work we are required to do to protect our clients' interests and the interests of all Californians in seeing that proper rulemaking procedures are followed, the higher the costs of litigation will be. As such, if the Department intends to open the rulemaking process soon, it would be helpful for you to let us know as soon as possible, so that we are not forced to seek preliminary relief.

As always, please let me know if you have any questions or concerns.

Regards,

<p>Anna M. Barvir Attorney</p> <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law</p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4453 Main: (562) 216-4444 Fax: (562) 216-4445 Email: ABarvir@michellawyers.com Web: www.michellawyers.com 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
--	--

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EXHIBIT P



Bureau of Firearms
P.O. Box 160487
SACRAMENTO, CA.95816-0487

February 17, 2015

**ADVANCE NOTICE OF INTENT TO FILE EMERGENCY REGULATIONS
TITLE 11, DIVISION 5, CHAPTER 9.
Firearm Safety Certificate Program and Safe Handling Demonstrations**

This notice is being sent pursuant to Government Code section 11346.1, subdivision (a)(2), which requires that State of California agencies give a five working day advance notice of intent to file emergency regulations with the Office of Administrative Law (OAL). The California Department of Justice (DOJ) intends to file an Emergency Rulemaking package with OAL establishing the Firearm Safety Certificate Program and Safe Handling Demonstrations.

DOJ plans to file the Emergency Rulemaking package with OAL at least five working days from the date of this notice. If you would like to make comments on the enclosed Finding of Emergency or the proposed regulations, they must be received by both DOJ and OAL within five calendar days after OAL posts the filing on its website. Comments should be sent simultaneously to:

Jeff Amador
California Department of Justice
Bureau of Firearms
P.O. Box 160487
Sacramento, CA 95816-0487

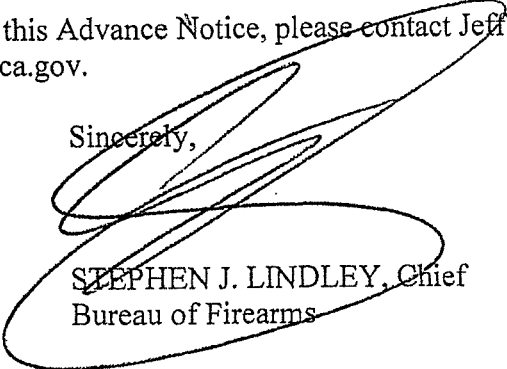
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Upon filing, OAL will have ten (10) calendar days within which to review and make a decision on the proposed emergency rulemaking file. If approved, OAL will file the regulations with the Secretary of State, and the emergency regulations will become effective for a minimum of 180 days.

You may also view the proposed regulatory text and Finding of Emergency on the following website:
<http://oag.ca.gov/firearms/regs>.

If you have any questions concerning this Advance Notice, please contact Jeff Amador at (916) 227-4217 or Jeff.Amador@doj.ca.gov.

Sincerely,



STEPHEN J. LINDLEY, Chief
Bureau of Firearms

For KAMALA D. HARRIS
Attorney General

February 17, 2015

Notice of Proposed Emergency Action

Pursuant to the requirements of Government Code section 11346.1, subdivision (a)(1), the Department of Justice (Department) is providing notice of proposed emergency adoption of regulations regarding Firearm Safety Certificates and Safe Handling Demonstrations.

Submission of Comments

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

The text of the proposed emergency regulations, all documents incorporated by reference, and the "Finding of Emergency" are posted on the Department's website at <http://oag.ca.gov/firearms>.

The Department plans to file the emergency rulemaking package with OAL at least five working days from the date at the top of this notice. If you would like to comment on the proposed emergency regulations or the Finding of Emergency, your comments must be received by both the Department and the OAL within five days of the Department's filing with OAL. Responding to comments is strictly at the Department's discretion. Send comments simultaneously to:

Department of Justice
Bureau of Firearms
Attn: Jeff Amador
P.O. Box 160487
Sacramento, CA 95816

and

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Finding of Emergency

The Department of Justice (Department or DOJ) finds that an emergency exists, and that the immediate adoption of Chapter 9, of Division 5, of Title 11 is necessary to avoid serious harm to the public peace, health, safety, or general welfare.

Specific Facts Demonstrating The Need For Immediate Action

Pursuant to Penal Code section 26840, effective January 1, 2015, a firearms dealer shall not deliver a firearm unless the recipient presents a valid Firearm Safety Certificate (FSC) that was acquired by passing a written test on firearm safety. Additionally, Penal Code sections 26850 and 26860 state a firearms dealer shall not deliver a firearm unless the recipient performs a safe handling demonstration with the handgun or long gun being delivered.

These emergency regulations are necessary for the implementation and on-going management of the FSC program and the establishment of safe handling demonstrations for long guns and for handguns with an alternative design.

Because California law generally requires the recipient of a firearm to have an FSC, without these emergency regulations the retail sale of firearms would have essentially stopped as of January 1, 2015. The negative financial impact on over 2000 firearms dealers and their employees throughout the state would be immediate and severe. Absent the revenue from retail gun sales, within a few weeks hundreds of dealerships will be forced into bankruptcy. The negative fiscal impact will not be limited to the firearms industry. Because the general public would no longer be able to lawfully acquire firearms, the state will undoubtedly face civil lawsuits claiming California firearm laws violate an individual's second amendment right to bear arms. The cost of defending such lawsuits could be hundreds of thousands of dollars.

Explanation of Failure to Adopt Nonemergency Regulations

The Department originally intended to develop a manual, pre-paid, process for the issuance of FSCs. In addition to being generally inefficient for the Department and the firearms industry, a manual process would create an unreasonable financial burden for certified instructors who would have to purchase FSCs in blocks of ten in advance of issuing them to persons who pass the written test. Many low volume dealers who are also certified instructors would not issue ten FSCs in an entire year. In response to input received from stakeholders within the California firearms industry, the Department developed an automated, web-based application (Firearms Certification System) by which certified instructors are able to submit payment for and issue FSCs on demand. The increased efficiency (versus a manual process) of the automated Firearms Certification System will benefit firearms dealers, certified instructors, gun purchasers, and the Department. However, its development necessitated an 8 to 10 month delay in drafting the accompanying FSC regulations that establish the business rules of the Firearms Certification System. In fact, the design, development, and implementation of the Firearms Certification System remained on-going through January 1, 2015. Additionally, several months of extensive

research were needed to identify and determine the appropriate safe handling demonstration steps for six types of long guns and eight types of handguns with alternative designs.

Authority and Reference Citations

Authority: Penal Code sections 26710, 26850, 26853, 26856, 26859, 26860, 31625, 31635, 31640, 31645, 31650, 31655, 31660, and 31665.

Reference: Penal Code sections 16400, 26710, 26840, 26850, 26853, 26856, 26859, 26860, 29800-29825, 31625, 31635, 31640, 31645, 31650, 31655, 31660, and 31665; 18 U.S.C. § 922(d) and (g); Code of Federal Regulations, Title 27, Part 178.32.

Informative Digest/Policy Statement Overview

Prior to taking delivery of a firearm from a licensed firearms dealer, Penal Code sections 26840, 26850, and 26860 require the recipient to present a valid FSC and perform a safe handling demonstration with the firearm being delivered. To obtain an FSC, an individual must pass a written objective test on firearms safety developed by the Department and administered by certified instructors. As detailed below, the regulations create a comprehensive program for the issuance of FSCs and establish safe handling demonstrations for long guns and for handguns with alternative designs as statutorily mandated by the Penal Code sections specified above.

§4250. DOJ Certified Instructor Qualifications and Application Information

This section establishes the qualifications required to become a DOJ Certified Instructor. Applicants must have prior certification to provide training from one of the specified organizations specified in Penal Code section 31635. Applicants must also have and maintain a valid Certificate of Eligibility to ensure he or she is not prohibited from lawfully possessing firearms. This section also specifies that a DOJ Certified Instructor's certification is valid for five years provided he or she maintains a valid COE.

§4251. Firearms Certification System "Conditions of Use" and User Accounts

This section establishes the "Conditions of Use" to which DOJ Certified Instructors must agree to establish a user account for access to the Firearms Certification System. This section also specifies the information that must be provided to create a user account.

§4252. FSC Test Applicant Qualifications and Fee

This section requires FSC test applicants to present a valid California driver license or identification card issued by the Department of Motor Vehicles showing the applicant to be at least 18 years old. This section also identifies the FSC fee for taking the written test (twice if failed the first time) and being issued an FSC as twenty five dollars (\$25), fifteen dollars (\$15) of which is forwarded to the Department pursuant to Penal Code section 31650.

§4253. FSC Test Topics, Guidelines, Scoring, and Recordkeeping

This section specifies the FSC test consists of 30 questions (10 true/false, 20 multiple choice) covering, but not limited to, the following topics specified in Penal Code section 31640:

- The laws applicable to carrying and handling firearms, particularly handguns

- The responsibilities of ownership of firearms, particularly handguns
- Current law as it relates to the private sale and transfer of firearms
- Current law as it relates to the permissible use of lethal force
- What constitutes safe firearm storage
- Issues associated with bringing a firearm into the home
- Prevention strategies to address issues associated with bringing firearms into the home

The applicant must correctly answer at least 23 of the 30 questions to pass the test and receive an FSC.

This section also specifies additional requirements regarding the testing process such as the allowed use of a translator and retaking the FSC test if the applicant fails on the first attempt.

§4254. FSC Issuance

This section establishes the process by which FSCs are issued via the Firearms Certification System including:

Payment of the fifteen dollar (\$15) DOJ fee must be made with a major credit/debit card prior to issuance of an FSC. Payment by cash or check is not accepted.

The FSC recipient's complete name, California identification type, California driver license or identification card number, and date of birth must be entered to create the FSC record. The FSC issue and expiration dates and the DOJ Certified Instructor's first name and first initial of his or her last name will be generated by the Firearms Certification System and printed on the FSC.

DOJ Certified Instructors are able to preview the information and make changes if needed, prior to submission into the Firearms Certification System. Changes cannot be made after the information has been submitted.

Each FSC will be available for reprint, without any additional fee, for 24 hours from the date and time payment is received.

The DOJ Certified Instructor and the recipient must sign the FSC once it is printed.

§4255. FSC Replacement

This section establishes that if an FSC is lost or destroyed, the DOJ Certified Instructor who issued the original FSC is authorized to issue a replacement FSC via the Firearms Certification System to the original FSC holder. A five dollar (\$5) fee, collected from the FSC holder, must be paid to the Department for issuance of the replacement FSC.

§4256. Safe Handling Demonstration Steps Applicability and Definitions

This section establishes the following requirements and definitions applicable to safe handling demonstrations:

- The safe handling demonstration steps specified are generally applicable to the various models of each firearm "type" (e.g. pump action long gun, break-top revolver, etc.). However, they may not be appropriate for a particular firearm model. If necessary, the

DOJ Certified Instructor will inform the firearm recipient of the safe handling demonstration steps for the firearm being delivered.

- If only the serialized or finished frame or receiver of a weapon is being delivered, no safe handling demonstration is required.
- If the DOJ Certified Instructor determines the firearm being delivered uses a cartridge size/type for which no dummy round is available on the retail market, the safe handling demonstration may be performed without using a dummy round.
- The firearm recipient must safely perform each step of the safe handling demonstration from start to finish without error. If an error is made at any time during the demonstration, the firearm recipient must start over from step number one.
- The DOJ Certified Instructor must provide instruction regarding how to render the firearm safe in the event of a jam (malfunction).
- Upon successful completion of the safe handling demonstration, the DOJ Certified Instructor, firearm recipient, and firearms dealer (or dealer authorized employee) must sign and date a Safe Handling Demonstration Affidavit, BOF 039 (Rev. 01/2015). If the DOJ Certified Instructor is also the licensed firearms dealer or an employee of the dealer, he or she is authorized to sign the affidavit as both the DOJ Certified Instructor and as the dealer/employee delivering the firearm.
- A “dummy round” must be brightly colored orange, red, or otherwise readily identifiable. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.
- “Muzzle awareness” means the firearm is pointed in a safe direction, preferably down at the ground.
- “Trigger discipline” means the trigger finger is outside of the trigger guard and alongside the frame or receiver, at all times.

§4257. Safe Handling Demonstration Steps for Conventional Long Guns

This section establishes the steps that comprise a safe handling demonstration for the following types of long guns:

- Pump Action Long Gun
- Break-Top Long Gun
- Bolt Action Long Gun
- Lever Action Long Gun
- Semiautomatic Long Gun with a Detachable Magazine
- Semiautomatic Long Gun with a Fixed Magazine

§4258. Safe Handling Demonstration Steps for Handguns with Alternative Designs

This section establishes the steps that comprise a safe handling demonstration for the following types of handguns with alternative designs:

- Semiautomatic Pistol with a Non-Locking Slide
- Semiautomatic Pistol with a Fixed Magazine
- Semiautomatic Pistol with a Magazine Operated Toggle Lock
- Semiautomatic Pistol with a Top-Feeding Magazine
- Semiautomatic Pistol with a Tip-Up Barrel
- Break-Top Revolver

- Single Shot Pistol
- Derringer

§4259. Comparable Training Qualifications, Course Content, and Certificates of Completion

This section establishes the requirement for an entity to be recognized by the Department as providing comparable firearm training pursuant to Penal Code section 31635. The requirements include the following:

- Applications must be submitted on DOJ form BOF 946 (Rev. 01/2015)
- Comparable training entity must be staffed with at least one DOJ Certified Instructor who has a minimum of 100 hours of verifiable experience teaching firearms safety
- Training course must include instruction on the safe handling demonstration steps for specified types of handguns and long guns and instruction on how to render a firearm safe in the event of a malfunction
- All students to successfully perform the safe handling demonstration with the conventional firearms provided by the DOJ Certified Instructor
- Upon successful completion of the comparable training course, each student must be issued a Certificate of Completion

Forms Incorporated by Reference

Comparable Training Entity Application, BOF 946 (Rev. 01/2015)
 DOJ Certified Instructor Application, BOF 037 (Rev. 01/2015)
 Firearm Safety Certificate, BOF 034 (Rev. 01/2015)
 Safe Handling Demonstration Affidavit, BOF 039 (Rev. 01/2015)

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations

None.

Mandate on Local Agencies or School Districts

The Department has determined the proposed emergency regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed emergency regulations.

Technical, Theoretical, and Empirical Study, Report, or Similar Document, if any, Upon Which the Department Relied

None.

Cost Estimates

The Department has assessed the potential for significant adverse impact that might result from the proposed emergency action and has determined:

- There will be no non-discretionary costs or savings to local agencies
- There will be no costs to school districts
- There will be no costs or savings in federal funding to the State

As detailed on the attachment to the Economic and Fiscal Impact Statement (STD. 399), the Department estimates its costs (state agency) directly related to the Firearm Safety Certificate program will be approximately \$8,900,000 over the three year period from 7/1/2014 through 6/30/2017. During that same period, the Department anticipates statutorily authorized fee revenue of \$12,000,000 from the issuance of an estimated 800,000 FSCs. Specifically, subdivision (b) of section 31650 of the Penal Code authorizes “a fee of twenty-five dollars (\$25), fifteen dollars (\$15) of which is to be forwarded to the department...” Subdivisions (c) and (d) of section 31650 of the Penal Code authorize use of surplus revenue from those fees to be used to cover the Department’s cost of conducting various firearms related enforcement activities unrelated to the FSC program.

Text of Emergency Regulations

Title 11, Division 5

Chapter 9. Firearm Safety Certificate Program and Safe Handling Demonstrations

Article 1. DOJ Certified Instructors

§4250. DOJ Certified Instructor Qualifications and Application Information

- (a) Department of Justice (“the Department” or DOJ) Certified Instructor applicants must have a valid Certificate of Eligibility (COE) issued pursuant to Penal Code section 26710. Initial applicants must also submit a copy of their training certification from one of the following:
- (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 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.
 - (9) Training deemed equivalent by the Department pursuant to section 4259 of these regulations.
- (b) Initial and renewal applications must be submitted on a DOJ Certified Instructor Application, BOF 037 (Rev. 01/2015), which is incorporated by reference.
- (c) A DOJ Certified Instructor’s certification is valid for five years provided he or she maintains a valid COE. To remain valid, a COE must be renewed annually.

Note: Authority cited: Sections 26710, and 31635, Penal Code.
Reference: Sections 26710, 29800-29825 and 31635, Penal Code; Sections 8100 and 8103, Welfare and Institutions Code; 18 U.S.C. § 922(d) and (g); and Title 27, Part 178.32, Code of Federal Regulations.

§4251. Firearms Certification System “Conditions of Use” and User Accounts

- (a) To establish a user account for access to the Firearms Certification System, DOJ Certified Instructors must agree to the following “Conditions of Use:”

(1) NON-LIABILITY

The Department is not responsible for and will have no liability for hardware, software, information, or other items or any services provided by any persons other than the Department. In no event shall either party be liable to the other or any third party, under any theory of liability, including but not limited to any contract or tort claim for any cause whatsoever, for any indirect, incidental, special or consequential damages, including loss of revenue or profits, even if aware of the possibility thereof.

(2) AUTHORIZATION

I am a DOJ Certified Instructor and am authorized to use the Firearms Certification System for participation in the Firearm Safety Certificate (FSC) program.

It is my responsibility, as a DOJ Certified Instructor, to protect the confidentiality of the password I select to access the Firearms Certification System. If I become aware of an unauthorized person obtaining access to the Firearms Certification System, I will notify the Customer Support Center immediately at (916) 227-3750 or via email at boffscprogram@doj.ca.gov. Notwithstanding such notification, the Department shall not be liable for transaction charges fraudulently incurred. It will be the cardholder’s responsibility to pay any charges.

(3) FEES

The FSC fee is fifteen dollars (\$15) per issuance for new FSCs and five dollars (\$5) for replacement FSCs. Multiple FSCs can be paid for in a single transaction. The Department will not provide refunds after issuance of an FSC.

(4) TRUE AND ACCURATE INFORMATION

All of the information I submit to the Department through the Firearms Certification System shall be true, accurate, and complete to the best of my knowledge.

- (b) The following information is required to establish a user account for access to the Firearms Certification System:

- (1) Complete name of DOJ Certified Instructor.
(2) COE number.

- (3) DOJ Certified Instructor number.
- (4) User Name (assigned by DOJ).
- (5) Email address.
- (6) Answers to three identity verification questions (selected from a choice of ten).
- (7) User selected password.
- (c) The acquisition and maintenance of the device and software used to access the internet and interface with the Firearms Certification System shall be the responsibility of each DOJ Certified Instructor. For optimal performance, DOJ Certified Instructors must utilize a web browser compatible with the Firearms Certification System.

Note: Authority cited: Section 31625, 31650, 31655, and 31665, Penal Code.
Reference: Section 31625, 31650, 31655, and 31665, Penal Code.

Article 2. FSC Test

§4252. FSC Test Applicant Qualifications and Fee

- (a) Applicants for the FSC test must be at least 18 years old and must present clear evidence of identity and age in the form of a valid California driver license or identification card issued by the Department of Motor Vehicles.
- (b) The fee for taking the FSC test (twice if failed the first time) and being issued an FSC is twenty five dollars (\$25), fifteen dollars (\$15) of which is forwarded to the Department pursuant to Penal Code section 31650.

Note: Authority cited: Sections 31625, 31640, 31645, and 31650, Penal Code.
Reference: Sections 16400, 31625, 31640, 31645, 31650, and 31655, Penal Code.

§4253. FSC Test Topics, Guidelines, Scoring, and Recordkeeping

- (a) The FSC test consists of 30 questions (10 true/false, 20 multiple choice) covering, but not limited to, the following topics specified in Penal Code section 31640:
 - (1) The laws applicable to carrying and handling firearms, particularly handguns.
 - (2) The responsibilities of ownership of firearms, particularly handguns.
 - (3) Current law as it relates to the private sale and transfer of firearms.
 - (4) Current law as it relates to the permissible use of lethal force.

- (5) What constitutes safe firearm storage.
- (6) Issues associated with bringing a firearm into the home.
- (7) Prevention strategies to address issues associated with bringing firearms into the home.
- (b) Only DOJ Certified Instructors are authorized to administer the FSC test.
- (c) DOJ Certified Instructors may give only administrative instructions to an FSC test applicant while he or she is taking the test.
- (d) FSC test applicants may not use any notes, review materials, or obtain assistance from any person once he/she begins the FSC test. DOJ Certified Instructors must maintain adequate supervision at all times to ensure the applicant does not receive outside assistance.
- (e) If an FSC test applicant is unable to read, a translator may be used to administer the test orally. The DOJ Certified Instructor must inform the translator that only the language of an FSC test may be read or interpreted. No further explanation of the questions or answers to the questions may be provided.
- (f) FSC test applicants are not permitted to keep a copy of their test or answer sheet.
- (g) FSC test applicants must correctly answer at least 23 of the 30 questions to pass the test and receive an FSC.
- (h) If an applicant fails the FSC test, after 24 hours have elapsed, he or she may take a different version of the FSC test without any additional fee (one free retest). The retest must be taken from the same DOJ Certified Instructor except upon permission by the Department, which shall be granted only for good cause shown.
- (i) If the DOJ Certified Instructor observes a test applicant using reference materials or receiving unauthorized assistance while taking the FSC test, the applicant is automatically disqualified.
- (1) The DOJ Certified Instructor must note their observations and reasons for the disqualification on the back of the applicant's test answer sheet and sign & date the answer sheet.
- (2) Fifteen dollars (\$15) must be returned to the applicant because no FSC will have been issued. The applicant may retake the test after 24 hours have elapsed but he or she will be required to pay the entire twenty five dollar (\$25) fee regardless of whether the disqualification occurred on the first or second attempt at taking the FSC test.
- (j) DOJ Certified Instructors must retain all completed FSC test answer sheets for five years from the test date. The completed answer sheets must be made available for inspection upon request by any peace officer, or authorized DOJ personnel upon presentation of

proper identification.

Note: Authority cited: Sections 31640 and 31645, Penal Code.
Reference: Sections 31625, 31635, 31640, and 31645, Penal Code.

Article 3. FSC Issuance and Replacement

§4254. FSC Issuance

- (a) If an applicant passes the FSC test, the DOJ Certified Instructor shall immediately issue a Firearm Safety Certificate, BOF 034 (Rev. 01/2015), which is incorporated by reference, to the successful applicant.
- (b) FSCs are issued via the Firearms Certification System.
- (c) Payment of the fifteen dollar (\$15) DOJ fee must be made prior to issuance of an FSC. Payment options are limited to major credit/debit cards (e.g. MasterCard, Visa, American Express, and Discover cards). Payment by cash or check is not accepted.
- (d) The FSC recipient's complete name, California identification type, California driver license or identification card number, and date of birth must be entered to create the FSC record. The FSC issue date, expiration date, and the DOJ Certified Instructor's first name and first initial of his or her last name will be generated by the Firearms Certification System and printed on the FSC.
- (e) DOJ Certified Instructors can preview the information and make changes if needed, prior to submission into the Firearms Certification System. Changes cannot be made after the information has been submitted.
- (f) Each FSC will be available for reprint, without any additional fee, for 24 hours from the date and time payment is received.
- (g) The DOJ Certified Instructor and the recipient must sign the FSC once it is printed.

Note: Authority cited: Sections 31625, 31645, 31650, and 31655, Penal Code.
Reference: Sections 26840, 31625, 31640, 31645, 31650, and 31655, Penal Code.

§4255. FSC Replacement

- (a) If an FSC is lost or destroyed, upon request and proof of identification, the DOJ Certified Instructor who issued the original FSC is authorized to issue a replacement FSC via the Firearms Certification System to the original FSC holder.
- (b) DOJ Certified Instructors may search the Firearms Certification System for specific FSC records; however, only records of FSCs issued by the DOJ Certified Instructor conducting the search will be displayed.

- (c) A replacement FSC can be issued via the Firearms Certification System upon the DOJ Certified Instructor's payment of a five dollar (\$5) fee to DOJ.
- (d) DOJ Certified Instructors are authorized to charge the FSC holder a five dollar (\$5) fee to recover the fee paid to the Department.

Note: Authority cited: Section 31660, Penal Code.
Reference: Sections 31655 and 31660, Penal Code.

Article 4. Safe Handling Demonstration Steps

§4256. Safe Handling Demonstration Steps Applicability and Definitions

- (a) The safe handling demonstration steps specified in this article are generally applicable to the various models of each firearm "type" (e.g. pump action long gun, break-top revolver, etc.). However, they may not be appropriate for a particular firearm model. If necessary, the DOJ Certified Instructor will inform the firearm recipient of the safe handling demonstration steps for the firearm being delivered.
- (b) If only the serialized or finished frame or receiver of a weapon is being delivered, no safe handling demonstration is required.
- (c) If the DOJ Certified Instructor determines the firearm being delivered uses a cartridge size/type for which no dummy round is available on the retail market, the safe handling demonstration may be performed without using a dummy round.
- (d) The firearm recipient must safely perform each step of the safe handling demonstration from start to finish without error. If an error is made at any time during the demonstration, the firearm recipient must start over from step number one.
- (e) The DOJ Certified Instructor must provide instruction regarding how to render the firearm safe in the event of a jam (malfunction).
- (f) Upon successful completion of the safe handling demonstration, the DOJ Certified Instructor, firearm recipient, and firearms dealer (or dealer authorized employee) must sign and date a Safe Handling Demonstration Affidavit, BOF 039 (Rev. 01/2015), which is hereby incorporated by reference. If the DOJ Certified Instructor is also the licensed firearms dealer or an employee of the dealer, he or she is authorized to sign the affidavit as both the DOJ Certified Instructor and as the dealer/employee delivering the firearm.
- (g) As used in this article, a "dummy round" must be brightly colored orange, red, or otherwise readily identifiable. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.
- (h) As used in this article, "muzzle awareness" means the firearm is pointed in a safe direction, preferably down at the ground.

- (i) As used in this article, “trigger discipline” means the trigger finger is outside of the trigger guard and alongside the frame or receiver, at all times.

Note: Authority cited: Sections 26850, 26853, 26856, 26859, and 26860, Penal Code.
Reference: Sections 26850, 26853, 26856, 26859, and 26860, Penal Code.

§4257. Safe Handling Demonstration Steps for Conventional Long Guns

(a) Pump Action Long Gun

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Open the ejection port.
- (2) To ensure the firearm is unloaded, visually and physically inspect the chamber/barrel and the magazine follower. If the magazine follower is not visible, there could be cartridges still in the tubular magazine.
- (3) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (4) While maintaining muzzle awareness and trigger discipline, load one dummy round into the magazine loading port.
- (5) Pull the forend (or forearm) rearward toward the receiver causing the dummy round to enter the breech. Push the forend forward to chamber the round. The dummy round should have moved from the tubular magazine into the chamber.
- (6) Push the action (carrier) release button and again pull the forend toward the receiver causing the action to open. The dummy round should extract from the chamber and be ejected through the ejection port.
- (7) Engage the safety.
- (8) Apply the firearm safety device, if applicable.

(b) Break-Top Long Gun

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Open the breech.

- (2) To ensure the firearm is unloaded, visually and physically inspect the chamber/barrel.
- (3) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (4) While maintaining muzzle awareness and trigger discipline, load one dummy round into a barrel.
- (5) Close and lock the action.
- (6) Unlock and open the action.
- (7) Remove the dummy round.
- (8) Apply the firearm safety device, if applicable.

(c) Bolt Action Long Gun

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) To ensure the firearm is unloaded, visually and physically inspect the chamber/barrel and the internal magazine.
- (2) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (3) While maintaining muzzle awareness and trigger discipline, load one dummy round into the chamber/barrel.
- (4) Close and lock the action.
- (5) Unlock and open the action.
- (6) Remove the dummy round.
- (7) Apply the firearm safety device, if applicable.

(d) Lever Action Long Gun

When handling a lever action firearm with an exposed hammer, use caution and consult your DOJ Certified Instructor for the proper safe handling steps. Use only flat point, hollow point, round nose flat point or similar rounds. Never use pointed or conical point

rounds in a centerfire rifle with a tubular magazine. Failure to follow these instructions may result in injury to yourself or others, or cause damage to your firearm.

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Open the breech.
- (2) To ensure the firearm is unloaded, visually and physically inspect the chamber/barrel and the magazine follower. If the magazine follower is not visible, there could be cartridges still in the tubular magazine.
- (3) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (4) While maintaining muzzle awareness and trigger discipline, load one dummy round into the chamber/barrel.
- (5) Close and lock the action.
- (6) Unlock and open the action.
- (7) Remove the dummy round.
- (8) Apply the firearm safety device, if applicable.

(e) Semiautomatic Long Gun with a Detachable Magazine

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Remove the magazine.
- (2) Pull the bolt back and lock it open if possible.
- (3) To ensure the firearm is unloaded, visually and physically inspect the chamber/barrel.
- (4) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (5) While maintaining muzzle awareness and trigger discipline, load one dummy round into the magazine.

- (6) Insert the magazine into the magazine well.
- (7) Close and lock the action.
- (8) Unlock and open the action.
- (9) Remove the dummy round.
- (10) Apply the firearm safety device, if applicable.

(f) Semiautomatic Long Gun with a Fixed Magazine

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Pull the bolt back and lock it open if possible.
- (2) To ensure the firearm is unloaded, visually and physically inspect the chamber/barrel and the internal magazine.
- (3) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (4) While maintaining muzzle awareness and trigger discipline, load one dummy round into the magazine.
- (5) Close and lock the action.
- (6) Unlock and open the action.
- (7) Remove the dummy round (the dummy round should have extracted from the chamber and ejected from the breech).
- (8) Apply the firearm safety device, if applicable.

Note: Authority cited: Section 26860, Penal Code.
Reference: Section 26860, Penal Code.

§4258. Safe Handling Demonstration Steps for Handguns with Alternative Designs

(a) Semiautomatic Pistol with a Non-Locking Slide

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining

muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Remove the magazine.
- (2) Because this type of firearm does not allow the slide to be locked back, pull the slide back, visually and physically check the chamber to ensure it is clear.
- (3) Remove the firearm safety device, if applicable. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (4) Load one dummy round into the magazine.
- (5) Insert the magazine into the magazine well of the firearm.
- (6) Manipulate the slide release or pull back and release the slide.
- (7) Remove the magazine.
- (8) Visually inspect the chamber to reveal a round can be chambered with the magazine removed.
- (9) Lock the slide back to eject the dummy round. If the firearm is of a model that does not allow the slide to be locked back, pull the slide back and physically check the chamber to ensure the chamber is clear.
- (10) Apply the safety, if applicable.
- (11) Apply the firearm safety device, if applicable.

(b) Semiautomatic Pistol with a Fixed Magazine

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Lock the slide back.
- (2) Load one dummy round into the stripper clip.
- (3) Insert the stripper clip into the magazine slot of the firearm.
- (4) Pull the stripper slip out of the slot to allow the slide to go forward.
- (5) Visually inspect the chamber to reveal a round is chambered.

(6) Lock the slide back to eject the dummy round.

(7) Apply the safety, if applicable.

(8) Apply the firearm safety device, if applicable.

(c) Semiautomatic Pistol with a Magazine Operated Toggle Lock

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

(1) Remove the magazine.

(2) Visually and physically inspect the chamber, to ensure the firearm is unloaded.

(3) Insert the magazine into the magazine well of the firearm.

(4) Lock the toggle back.

(5) Remove the magazine.

(6) Remove the firearm safety device, if applicable. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(7) Load one dummy round into the magazine.

(8) Insert the magazine into the magazine well of the firearm.

(9) Manipulate the toggle release or pull back and release the toggle.

(10) Remove the magazine.

(11) Visually inspect the chamber to reveal a round can be chambered with the magazine removed.

(12) Insert the magazine into the magazine well of the firearm.

(13) Lock the toggle back to eject the dummy round. If the firearm is of a model that does not allow the toggle to be locked back, pull the toggle back and physically check the chamber to ensure the chamber is clear.

(14) Apply the safety, if applicable.

(15) Apply the firearm safety device, if applicable.

(d) Semiautomatic Pistol with a Top-Feeding Magazine

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Open the slide.
- (2) Visually and physically inspect the chamber, to ensure the firearm is unloaded.
- (3) Load one dummy round into the stripper clip.
- (4) Insert the stripper clip into the magazine slot of the firearm.
- (5) Pull the stripper clip out of the slot to allow the slide to go forward.
- (6) Visually inspect the chamber to see it is loaded.
- (7) Lock open the slide to eject the dummy round.
- (8) Remove the magazine.
- (9) Apply the safety, if applicable.
- (10) Apply the firearm safety device, if applicable.

(e) Semiautomatic Pistol with a Tip-Up Barrel

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Remove the magazine.
- (2) Activate the barrel release to tip up the barrel.
- (3) Visually and physically inspect the chamber to ensure the firearm is unloaded.
- (4) Load one dummy round into the barrel.
- (5) Close the barrel.

- (6) Insert the magazine into the magazine well of the firearm.
- (7) Remove the magazine.
- (8) Activate the barrel release to tip up the barrel to reveal a round can be chambered with the magazine removed.
- (9) Tip up the barrel to remove the dummy round.
- (10) Apply the safety, if applicable.
- (11) Apply the firearm safety device, if applicable.

(f) Break-Top Revolver

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Open the revolver by unlocking the frame lock.
- (2) Visually and physically inspect each chamber to ensure the revolver is unloaded.
- (3) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (4) While maintaining muzzle awareness and trigger discipline, load one dummy round into a chamber of the cylinder and rotate the cylinder so the round is in the next-to-fire position.
- (5) Close the cylinder and the frame lock.
- (6) Open the revolver by unlocking the frame lock.
- (7) Tip the barrel forward from the frame, activating the ejection star, ejecting the dummy round.
- (8) Apply the firearm safety device, if applicable.

(g) Single Shot Pistol

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining

muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Open the breech.
- (2) Visually and physically inspect the chamber to ensure it is clear.
- (3) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (4) While maintaining muzzle awareness and trigger discipline, load one dummy round into the chamber.
- (5) Close the breech mechanism.
- (6) Open the breech to eject the dummy round from the barrel.
- (7) Apply the firearm safety device, if applicable.

(h) Derringer

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Open the breech.
- (2) Visually and physically inspect the barrels to ensure the firearm is unloaded.
- (3) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (4) While maintaining muzzle awareness and trigger discipline, load one dummy round into a barrel.
- (5) Close and lock the action.
- (6) Unlock and open the action.
- (7) Remove the dummy round.
- (8) Apply the firearm safety device, if applicable.

Note: Authority cited: Section 26850, Penal Code.
Reference: Section 26850, Penal Code.

Article 5. Comparable Training in Firearms Safety

§4259. Comparable Training Qualifications, Course Content, and Certificates of Completion

- (a) Applications for DOJ recognition of an entity that provides comparable training pursuant to Penal Code section 31635 must be submitted on a Comparable Training Entity Application, BOF 946 (Rev. 01/2015) which is incorporated by reference.
- (b) Every five years, the Department will send a notice to the comparable training entity that requires a reply confirming the entity wants to continue being recognized by the Department as providing comparable training pursuant to Penal Code section 31635. Failure to reply will result in DOJ recognition being discontinued.
- (c) The comparable training entity must be staffed with at least one DOJ Certified Instructor who has a minimum of 100 hours of verifiable experience teaching firearms safety. Within ten business days of the action, the comparable training entity must report the following on form BOF 946:
 - (1) The addition of a DOJ Certified Instructor.
 - (2) The removal of a DOJ Certified Instructor.
- (d) The comparable training must include all of the following:
 - (1) Instruction on Safe Handling Demonstration Steps for the following conventional firearm types:
 - (A) Semiautomatic pistol.
 - (B) Double action revolver.
 - (C) Single action revolver.
 - (D) Pump action long gun.
 - (E) Bolt action long gun.
 - (F) Semiautomatic long gun with a detachable magazine.
 - (G) Semiautomatic long gun with a fixed magazine.
 - (H) Break-top long gun.
 - (I) Lever action long gun.
 - (2) Instruction on Safe Handling Demonstration Steps for the following firearms with alternative designs:

- (A) Semiautomatic pistol with a non-locking slide.
- (B) Semiautomatic pistol with a fixed magazine.
- (C) Semiautomatic pistol with a magazine-operated toggle lock.
- (D) Semiautomatic pistol with a top-feeding magazine.
- (E) Semiautomatic pistol with a tip-up barrel.
- (F) Break-top revolver.
- (G) Single shot pistol.
- (H) Derringer.

(3) Instruction on how to render a firearm safe in the event of a malfunction.

(4) Requirement for all students to successfully perform the Safe Handling Demonstration with the conventional firearm types specified in paragraph (1). The firearms used for the Safe Handling Demonstration must be provided by the DOJ Certified Instructor.

(e) Upon successful completion of the comparable training course, each student must be issued a Certificate of Completion that includes the following:

(1) Name of the comparable training course.

(2) Name of the student.

(3) Signature of the DOJ Certified Instructor.

(4) Date the comparable training course was completed.

Note: Authority cited: Section 31635, Penal Code.
Reference: Section 31635, Penal Code.



**CALIFORNIA DEPARTMENT OF JUSTICE
BUREAU OF FIREARMS
Comparable Training Entity Application**
California Penal Code section 31635(b)



Type of Action Requested				
<input type="checkbox"/> New Application		<input type="checkbox"/> Revision to Entity/DOJ Certified Instructor Information		
(Sections A, B, C, and E must be completed)				
A. Training Entity Information				
Training Entity Name:				
Owner/Responsible Party Last Name:		First Name:		Middle Name:
Training Entity Address:			City:	State: Zip Code:
Telephone Number (include area code):			Email Address:	
B. Firearms Safety Training Course Information				
Firearms Safety Training Course Title:				
<input type="checkbox"/> YES <input type="checkbox"/> NO		Do you want your firearms safety training course and telephone number included on the Bureau of Firearms website listing of entities giving comparable firearms safety training?		
C. Department of Justice Certified Instructor Information: (100-hour teaching/training requirement)				
DOJ Certified Instructor Last Name:		First Name:	DOJ Certified Instructor Number:	Instructor Status: <input type="checkbox"/> Add <input type="checkbox"/> Remove
Instructor Signature (Not required for removal)			Date	
D. Additional Department of Justice Certified Instructors (if any)				
DOJ Certified Instructor Last Name:		First Name:	DOJ Certified Instructor Number:	Instructor Status: <input type="checkbox"/> Add <input type="checkbox"/> Remove
Instructor Signature (Not required for removal)			Date	
DOJ Certified Instructor Last Name:		First Name:	DOJ Certified Instructor Number:	Instructor Status: <input type="checkbox"/> Add <input type="checkbox"/> Remove
Instructor Signature (Not required for removal)			Date	
E. Declaration				
<p><i>I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. I understand the Department of Justice has no responsibility for insurance coverage for myself, my instructor(s), my student(s), or my course(s) on firearm training, use, and safety. I declare the Firearms Safety Certificate Training Course identified above will include the minimum requirements specified in CCR Section 4259 (d) in Division 5, Title II. I understand the Department of Justice's recognition as as comparable entity can be revoked for cause.</i></p>				
_____			_____	
Owner/Responsible Party Signature			Date	

**CALIFORNIA DEPARTMENT OF JUSTICE
BUREAU OF FIREARMS
Comparable Training Entity Application
Instructions**

Instructor Qualifications

A Department of Justice (DOJ) Certified Instructor number must be provided on the application for each proposed instructor. For each proposed instructor, the application must be accompanied by a resume/statement indicating a minimum of 100 hours of verifiable experience teaching/training firearms safety. The resume/statement must include contact information for experience verification.

Minimum Course Requirements

By signing this application, you declare the course provided at the training entity named on page 1 will include a minimum of the following:

1. Instruction on Safe Handling Demonstration Steps for the following conventional firearm types:
 - Semiautomatic pistol
 - Double action revolver
 - Single action revolver
 - Pump action long gun
 - Bolt action long gun
 - Semiautomatic long gun with detachable magazine
 - Semiautomatic long gun with fixed magazine
 - Break-top long gun
 - Lever action long gun
2. Instruction on Safe Handling Demonstration Steps for the following firearms with alternative designs:
 - Semiautomatic pistol with a non-locking slide
 - Semiautomatic pistol with a fixed magazine
 - Semiautomatic pistol with a magazine-operated toggle lock
 - Semiautomatic pistol with a top-feeding magazine
 - Semiautomatic pistol with a tip-up barrel
 - Break-top revolver
 - Single-shot pistol
 - Derringer
3. Instruction on how to render a firearm safe in the event of a malfunction.
4. Requirement for all students to successfully perform the Safe Handling Demonstration with the conventional firearm types.
The firearms used for the demonstration must be provided by the DOJ Certified Instructor.

Certificate of Completion

Upon successful completion of the training course, a Certificate of Completion must be issued to each student. A sample copy of the Certificate of Completion must accompany this application.

The Certificate must include the following:

- Name of the training course
- Name of the student
- Signature of the DOJ Certified Instructor
- Date course completed

Revisions

Any revisions to the comparable training entity or DOJ Certified Instructor information must be reported, through completion of this form, to the Department of Justice within 10 business days of the change of information.

Comparable Training Entity Recognition

A request to discontinue DOJ recognition as a comparable training entity must be submitted in writing to the Department of Justice within 10 business days of when the entity shall no longer be recognized as providing comparable training. The request can be sent to the address below or via email to boffscoprogram@doj.ca.gov.

The Department of Justice will send a notice to the comparable training entity every five (5) years confirming the entity's status as a comparable training entity. Failure to respond to the notice will result in being removed from the list of comparable training entities.

Mail the completed application and required documentation to the following address:

Department of Justice
Bureau of Firearms - FSC
P.O. Box 160367
Sacramento, CA 95816-0367

DOJ Use Only	
Date Received: _____	Date Processed: _____

Privacy Notice

As Required by Civil Code § 1798.17

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, subdivision (b). The Bureau of Firearms uses this information to establish the entity on this application as providing comparable training to those entities in Penal Code section 31635. In addition, any personal information collected by state agencies is subject to the limitations in the Information Practices Act and state policy. The Department of Justice's general privacy policy is available at <http://oag.ca.gov/privacy-policy>.

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 the entity on this application as providing comparable training to those entities in Penal Code section 31635, 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;
- 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 representative at P.O. Box 160367, Sacramento, CA 95816-0367 or (916) 227-3750.



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:
Mailing Address:			City:	State: Zip Code:
Business 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), Instructor Certification from the Department 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.

All applicants for Certified Instructor must have a valid Certificate of Eligibility (COE). An application for COE is accessible on the Attorney General's website at <http://oag.ca.gov/firearms/forms>.

COE Number: _____

B. Declaration	
<p><i>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 that my instructor certification will be valid for five years provided I maintain a current COE. 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.</i></p>	
Signature _____	Date _____
<p>NOTE: Only DOJ 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.)</p> <p><i>If you have any questions regarding the FSC Program, please contact the Bureau of Firearms at (916) 227-3750.</i></p> <p style="text-align: center;">Mail completed form and all required attachments to: California Department of Justice Bureau of Firearms - FSC P.O. Box 160367 Sacramento, CA 95816-0367</p>	

DOJ USE ONLY

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

Privacy Notice

As Required by Civil Code § 1798.17

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. In addition, any personal information collected by state agencies is subject to the limitations in the Information Practices Act and state policy. The Department of Justice's general privacy policy is available at <http://oag.ca.gov/privacy-policy>.

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;
- 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 P.O. Box 160367, Sacramento, CA 95816-0367 or (916) 227-3750.

**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

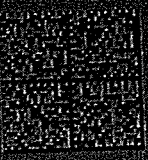
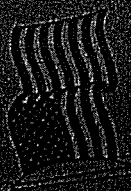
Firearm Purchaser/Recipient Signature Date

Dealer/Employee Signature Date

Printed Name of Dealer/Employee

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

Michel & Associates, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802-4079
Attn.: Chuck Michel and Sean Brady



3021034
FEB 17 2015
MAIL FROM ZIP CODE 95834

EXHIBIT Q

**State of California
Office of Administrative Law**

In re:
Department of Justice

Regulatory Action:

Title 11, California Code of Regulations

Adopt sections: 4250, 4251, 4252, 4253,
4254, 4255, 4256, 4257,
4258, 4259

Amend sections:

Repeal sections:

NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION

Government Code Sections 11346.1 and
11349.6

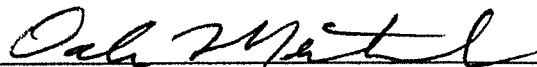
OAL File No. 2015-0225-02 E

This emergency rulemaking action implements Senate Bill 682, Chapter 761, Statutes of 2013, by adopting regulations establishing Department of Justice-Certified Instructor (Instructor) qualifications to administer Firearm Safety Certificate (FSC) testing and to observe safe firearm handling demonstrations by firearms purchasers. The adopted emergency regulations also require Instructors to use the Firearms Certification System for the issuance of FSCs and specify FSC test applicant qualifications and fees and FSC test topics and provisions concerning FSC test administration, FSC issuance, and FSC duplicates and replacements. In addition, the adopted emergency regulations establish rules for safe handling demonstrations generally and regarding categories of firearms. Finally, the regulations specify the training qualifications, course content, and specifications of certificates of completion of entities deemed by the Department of Justice to be similar or equivalent to statutorily listed firearm-safety organizations.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 3/9/2015 and will expire on 9/9/2015. The Certificate of Compliance for this action is due no later than 9/8/2015.

Date: 3/9/2015



Dale P. Mentink
Senior Attorney

For: DEBRA M. CORNEZ
Director

Original: Kamala Harris
Copy: Jeff Amador

EMERGENCY

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW
NOTICE PUBLICATION/REGULATIONS COMMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2015-0225-02E
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For use by Office of Administrative Law (OAL) only

2015 FEB 25 AM 11:17 OFFICE OF ADMINISTRATIVE LAW	ENDORSED - FILED in the office of the Secretary of State of the State of California MAR 9 2015 2:25 PM
NOTICE	REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY Department of Justice	AGENCY FILE NUMBER (if any) DOJ-15-002
---	---

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Firearm Safety Certificates and Safe Handling Demonstrations	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
--	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)						
<table border="1"> <tr> <td>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</td> <td>ADOPT 4250, 4251, 4252, 4253, 4254, 4255, 4256, 4257, 4258, and 4259</td> </tr> <tr> <td>TITLE(S) 11</td> <td>AMEND</td> </tr> <tr> <td></td> <td>REPEAL</td> </tr> </table>	SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 4250, 4251, 4252, 4253, 4254, 4255, 4256, 4257, 4258, and 4259	TITLE(S) 11	AMEND		REPEAL
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 4250, 4251, 4252, 4253, 4254, 4255, 4256, 4257, 4258, and 4259					
TITLE(S) 11	AMEND					
	REPEAL					

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Jeff Amador	TELEPHONE NUMBER (916) 227-4217	FAX NUMBER (Optional) (916) 227-1028	E-MAIL ADDRESS (Optional) jeff.amador@doj.ca.gov
----------------------------------	------------------------------------	---	---

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 2-11-15
TYPED NAME AND TITLE OF SIGNATORY Nathan R. Barankin, Chief Deputy Attorney General	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED
 MAR 09 2015
 Office of Administrative Law

Text of Emergency Regulations

Title 11, Division 5

Chapter 9. Firearm Safety Certificate Program and Safe Handling Demonstrations

Article 1. DOJ Certified Instructors

§4250. DOJ Certified Instructor Qualifications and Application Information

- (a) Department of Justice (“the Department” or DOJ) Certified Instructor applicants must have a valid Certificate of Eligibility (COE) issued pursuant to Penal Code section 26710. Initial applicants must also submit a copy of their training certification from one of the following:
- (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 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.
 - (9) Training deemed similar or equivalent by the Department pursuant to section 4259 of these regulations.
- (b) Initial and renewal applications must be submitted on a DOJ Certified Instructor Application, BOF 037 (Rev. 01/2015), which is incorporated by reference.
- (c) A DOJ Certified Instructor’s certification is valid for five years provided he or she maintains a valid COE. To remain valid, a COE must be renewed annually.

Note: Authority cited: Sections 26710, and 31635, Penal Code.
Reference: Sections 26710, 29800, 29805, 29810, 29815, 29820, 29825, and 31635, Penal Code; Sections 8100 and 8103, Welfare and Institutions Code; 18 U.S.C. § 922(d) and (g); and Title 27, Part 478.32, Code of

§4251. Firearms Certification System “Conditions of Use” and User Accounts

- (a) To establish a user account for access to the Firearms Certification System, DOJ Certified Instructors must agree to the following “Conditions of Use:”

(1) NON-LIABILITY

The Department is not responsible for and will have no liability for hardware, software, information, or other items or any services provided by any persons other than the Department. In no event shall either party be liable to the other or any third party, under any theory of liability, including but not limited to any contract or tort claim for any cause whatsoever, for any indirect, incidental, special or consequential damages, including loss of revenue or profits, even if aware of the possibility thereof.

(2) AUTHORIZATION

I am a DOJ Certified Instructor and am authorized to use the Firearms Certification System for participation in the Firearm Safety Certificate (FSC) program.

It is my responsibility, as a DOJ Certified Instructor, to protect the confidentiality of the password I select to access the Firearms Certification System. If I become aware of an unauthorized person obtaining access to the Firearms Certification System, I will notify the Customer Support Center immediately at (916) 227-3750 or via email at boffscprogram@doj.ca.gov. Notwithstanding such notification, the Department shall not be liable for transaction charges fraudulently incurred. It will be the cardholder’s responsibility to pay any charges.

(3) FEES

The FSC fee is fifteen dollars (\$15) per issuance for new FSCs and five dollars (\$5) for replacement FSCs. Multiple FSCs can be paid for in a single transaction. The Department will not provide refunds after issuance of an FSC.

(4) TRUE AND ACCURATE INFORMATION

All of the information I submit to the Department through the Firearms Certification System shall be true, accurate, and complete to the best of my knowledge.

- (b) The following information is required to establish a user account for access to the Firearms Certification System:

(1) Complete name of DOJ Certified Instructor.

(2) COE number.

- (3) DOJ Certified Instructor number.
- (4) User Name (assigned by DOJ).
- (5) Email address.
- (6) Answers to three identity verification questions (selected from a choice of ten).
- (7) User selected password.
- (c) The acquisition and maintenance of the device and software used to access the internet and interface with the Firearms Certification System shall be the responsibility of each DOJ Certified Instructor. For optimal performance, DOJ Certified Instructors must utilize a web browser compatible with the Firearms Certification System.

Note: Authority cited: Section 31625, 31650, and 31655, Penal Code.
Reference: Section 31625, 31650, 31655, and 31665, Penal Code.

Article 2. FSC Test

§4252. FSC Test Applicant Qualifications and Fee

- (a) Applicants for the FSC test must be at least 18 years old and must present clear evidence of identity and age in the form of a valid California driver license or identification card issued by the Department of Motor Vehicles.
- (b) The fee for taking the FSC test (twice if failed the first time) and being issued an FSC is a maximum of twenty five dollars (\$25), fifteen dollars (\$15) of which is forwarded to the Department pursuant to Penal Code section 31650.

Note: Authority cited: Sections 31625, 31640, 31645, and 31650, Penal Code.
Reference: Sections 16400, 31625, 31640, 31645, 31650, and 31655, Penal Code.

§4253. FSC Test Topics, Guidelines, Scoring, and Recordkeeping

- (a) The FSC test consists of 30 questions (10 true/false, 20 multiple choice) covering, but not limited to, the following topics specified in Penal Code section 31640:
 - (1) The laws applicable to carrying and handling firearms, particularly handguns.
 - (2) The responsibilities of ownership of firearms, particularly handguns.
 - (3) Current law as it relates to the private sale and transfer of firearms.
 - (4) Current law as it relates to the permissible use of lethal force.

- (5) What constitutes safe firearm storage.
- (6) Issues associated with bringing a firearm into the home.
- (7) Prevention strategies to address issues associated with bringing firearms into the home.
- (b) Only DOJ Certified Instructors are authorized to administer the FSC test.
- (c) DOJ Certified Instructors may give only administrative instructions to an FSC test applicant while he or she is taking the test.
- (d) FSC test applicants may not use any notes, review materials, or obtain assistance from any person once he/she begins the FSC test. DOJ Certified Instructors must maintain adequate supervision at all times to ensure the applicant does not receive outside assistance.
- (e) If an FSC test applicant is unable to read, a translator may be used to administer the test orally. The DOJ Certified Instructor must inform the translator that only the language of an FSC test may be read or interpreted. No further explanation of the questions or answers to the questions may be provided.
- (f) FSC test applicants are not permitted to keep a copy of their test or answer sheet.
- (g) FSC test applicants must correctly answer at least 23 of the 30 questions to pass the test and receive an FSC.
- (h) If an applicant fails the FSC test, after 24 hours have elapsed, he or she may take a different version of the FSC test without any additional fee (one free retest). The retest must be taken from the same DOJ Certified Instructor except upon permission by the Department, which shall be granted only for good cause shown.
- (i) If the DOJ Certified Instructor observes a test applicant using reference materials or receiving unauthorized assistance while taking the FSC test, the applicant is automatically disqualified.
- (1) The DOJ Certified Instructor must note their observations and reasons for the disqualification on the back of the applicant's test answer sheet and sign & date the answer sheet.
- (2) Fifteen dollars (\$15) must be returned to the applicant because no FSC will have been issued. The applicant may retake the test after 24 hours have elapsed but he or she will be required to pay the entire twenty five dollar (\$25) fee regardless of whether the disqualification occurred on the first or second attempt at taking the FSC test.
- (j) DOJ Certified Instructors must retain all completed FSC test answer sheets for five years from the test date. The completed answer sheets must be made available for inspection upon request by any peace officer, or authorized DOJ personnel upon presentation of

proper identification.

Note: Authority cited: Sections 31640 and 31645, Penal Code.
Reference: Sections 31625, 31635, 31640, and 31645, Penal Code.

Article 3. FSC Issuance and Replacement

§4254. FSC Issuance

- (a) If an applicant passes the FSC test, the DOJ Certified Instructor shall immediately issue a Firearm Safety Certificate, BOF 034 (Rev. 01/2015), which is incorporated by reference, to the successful applicant.
- (b) FSCs are issued via the Firearms Certification System.
- (c) Payment of the fifteen dollar (\$15) DOJ fee must be made prior to issuance of an FSC. Payment options are limited to major credit/debit cards (e.g. MasterCard, Visa, American Express, and Discover cards). Payment by cash or check is not accepted.
- (d) The FSC recipient's complete name, California identification type, California driver license or identification card number, and date of birth must be entered to create the FSC record. The FSC issue date, expiration date, and the DOJ Certified Instructor's first name and first initial of his or her last name will be generated by the Firearms Certification System and printed on the FSC.
- (e) DOJ Certified Instructors can preview the information and make changes prior to submission into the Firearms Certification System. Changes cannot be made after the information has been submitted.
- (f) Each FSC will be available for reprint, without any additional fee, for 24 hours from the date and time payment is received.
- (g) The DOJ Certified Instructor and the recipient must sign the FSC once it is printed.

Note: Authority cited: Sections 31625, 31645, 31650, and 31655, Penal Code.
Reference: Sections 26840, 31625, 31640, 31645, 31650, and 31655, Penal Code.

§4255. FSC Replacement

- (a) If an FSC is lost or destroyed, upon request and proof of identification, the DOJ Certified Instructor who issued the original FSC shall issue a replacement FSC via the Firearms Certification System to the original FSC holder.
- (b) DOJ Certified Instructors may search the Firearms Certification System for specific FSC records; however, only records of FSCs issued by the DOJ Certified Instructor conducting the search will be displayed.

- (c) A replacement FSC can be issued via the Firearms Certification System upon the DOJ Certified Instructor's payment of a five dollar (\$5) fee to DOJ.
- (d) DOJ Certified Instructors are authorized to charge the FSC holder a five dollar (\$5) fee to recover the fee paid to the Department.

Note: Authority cited: Section 31660, Penal Code.
Reference: Sections 31655 and 31660, Penal Code.

Article 4. Safe Handling Demonstration Steps

§4256. Safe Handling Demonstration Steps Applicability and Definitions

- (a) The safe handling demonstration steps specified in this article are generally applicable to the various models of each firearm "type" (e.g. pump action long gun, break-top revolver, etc.). However, they may not be appropriate for a particular firearm model. If necessary, the DOJ Certified Instructor will inform the firearm recipient of the safe handling demonstration steps for the firearm being delivered.
- (b) If only the serialized or finished frame or receiver of a weapon is being delivered, no safe handling demonstration is required.
- (c) If the DOJ Certified Instructor determines the firearm being delivered uses a cartridge size/type for which no dummy round is available on the retail market, the safe handling demonstration may be performed without using a dummy round.
- (d) The firearm recipient must safely perform each step of the safe handling demonstration from start to finish without error. If an error is made at any time during the demonstration, the firearm recipient must start over from step number one.
- (e) The DOJ Certified Instructor must provide instruction regarding how to render the firearm safe in the event of a jam (malfunction).
- (f) Upon successful completion of the safe handling demonstration, the DOJ Certified Instructor, firearm recipient, and firearms dealer (or dealer authorized employee) must sign and date a Safe Handling Demonstration Affidavit, BOF 039 (Rev. 01/2015), which is hereby incorporated by reference. If the DOJ Certified Instructor is also the licensed firearms dealer or an employee of the dealer, he or she is authorized to sign the affidavit as both the DOJ Certified Instructor and as the dealer/employee delivering the firearm.
- (g) As used in this article, a "dummy round" must be brightly colored orange, red, or otherwise readily identifiable. If no readily identifiable dummy round is available, an empty cartridge casing with an empty primer pocket may be used.
- (h) As used in this article, "muzzle awareness" means the firearm is pointed in a safe direction, preferably down at the ground.

- (i) As used in this article, "trigger discipline" means the trigger finger is outside of the trigger guard and alongside the frame or receiver, at all times. In the event the firearm doesn't have a trigger guard, the trigger finger should be kept in line with the barrel(s).

Note: Authority cited: Sections 26850, 26853, 26856, 26859, and 26860, Penal Code.
Reference: Sections 26850, 26853, 26856, 26859, 26860, 32000, and 32110, Penal Code.

§4257. Safe Handling Demonstration Steps for Conventional Long Guns

(a) Pump Action Long Gun

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Open the ejection port.
- (2) To ensure the firearm is unloaded, visually and physically inspect the chamber/barrel and the magazine follower. If the magazine follower is not visible, there could be cartridges still in the tubular magazine.
- (3) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (4) While maintaining muzzle awareness and trigger discipline, load one dummy round into the magazine loading port.
- (5) Pull the forend (or forearm) rearward toward the receiver causing the dummy round to enter the breech. Push the forend forward to chamber the round. The dummy round should have moved from the tubular magazine into the chamber.
- (6) Push the action (carrier) release button and again pull the forend toward the receiver causing the action to open. The dummy round should extract from the chamber and be ejected through the ejection port.

(7) Engage the safety.

(8) Apply the firearm safety device, if applicable.

(b) Break-Top Long Gun

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Open the breech.
- (2) To ensure the firearm is unloaded, visually and physically inspect the chamber/barrel.
- (3) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (4) While maintaining muzzle awareness and trigger discipline, load one dummy round into a barrel.
- (5) Close and lock the action.
- (6) Unlock and open the action.
- (7) Remove the dummy round.
- (8) Apply the firearm safety device, if applicable.

(c) Bolt Action Long Gun

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) To ensure the firearm is unloaded, visually and physically inspect the chamber/barrel and the internal magazine.
- (2) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (3) While maintaining muzzle awareness and trigger discipline, load one dummy round into the chamber/barrel.
- (4) Close and lock the action.
- (5) Unlock and open the action.
- (6) Remove the dummy round.
- (7) Apply the firearm safety device, if applicable.

(d) Lever Action Long Gun

When handling a lever action firearm with an exposed hammer, use caution and consult your DOJ Certified Instructor for the proper safe handling steps. Use only flat point.

hollow point, round nose flat point or similar rounds. Never use pointed or conical point rounds in a centerfire rifle with a tubular magazine. Failure to follow these instructions may result in injury to yourself or others, or cause damage to your firearm.

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Open the breech.
- (2) To ensure the firearm is unloaded, visually and physically inspect the chamber/barrel and the magazine follower. If the magazine follower is not visible, there could be cartridges still in the tubular magazine.
- (3) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (4) While maintaining muzzle awareness and trigger discipline, load one dummy round into the chamber/barrel.
- (5) Close and lock the action.
- (6) Unlock and open the action.
- (7) Remove the dummy round.
- (8) Apply the firearm safety device, if applicable.

(e) Semiautomatic Long Gun with a Detachable Magazine

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Remove the magazine.
- (2) Pull the bolt back and lock it open if possible.
- (3) To ensure the firearm is unloaded, visually and physically inspect the chamber/barrel.
- (4) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

- (5) While maintaining muzzle awareness and trigger discipline, load one dummy round into the magazine.
- (6) Insert the magazine into the magazine well.
- (7) Close and lock the action.
- (8) Unlock and open the action.
- (9) Remove the dummy round.
- (10) Apply the firearm safety device, if applicable.

(f) Semiautomatic Long Gun with a Fixed Magazine

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Pull the bolt back and lock it open if possible.
- (2) To ensure the firearm is unloaded, visually and physically inspect the chamber/barrel and the internal magazine.
- (3) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (4) While maintaining muzzle awareness and trigger discipline, load one dummy round into the magazine.
- (5) Close and lock the action.
- (6) Unlock and open the action.
- (7) Remove the dummy round (the dummy round should have extracted from the chamber and ejected from the breech).
- (8) Apply the firearm safety device, if applicable.

Note: Authority cited: Section 26860, Penal Code.
Reference: Section 26860, Penal Code.

§4258. Safe Handling Demonstration Steps for Handguns with Alternative Designs

(a) Semiautomatic Pistol with a Non-Locking Slide

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Remove the magazine.
- (2) Because this type of firearm does not allow the slide to be locked back, pull the slide back, visually and physically check the chamber to ensure it is clear.
- (3) Remove the firearm safety device, if applicable. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (4) Load one dummy round into the magazine.
- (5) Insert the magazine into the magazine well of the firearm.
- (6) Manipulate the slide release or pull back and release the slide.
- (7) Remove the magazine.
- (8) Visually inspect the chamber to reveal a round can be chambered with the magazine removed.
- (9) Lock the slide back to eject the dummy round. If the firearm is of a model that does not allow the slide to be locked back, pull the slide back and physically check the chamber to ensure the chamber is clear.
- (10) Apply the safety, if applicable.
- (11) Apply the firearm safety device, if applicable.

(b) Semiautomatic Pistol with a Fixed Magazine

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Lock the slide back.
- (2) Load one dummy round into the stripper clip.
- (3) Insert the stripper clip into the magazine slot of the firearm.
- (4) Pull the stripper slip out of the slot to allow the slide to go forward.

(5) Visually inspect the chamber to reveal a round is chambered.

(6) Lock the slide back to eject the dummy round.

(7) Apply the safety, if applicable.

(8) Apply the firearm safety device, if applicable.

(c) Semiautomatic Pistol with a Magazine Operated Toggle Lock

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

(1) Remove the magazine.

(2) Visually and physically inspect the chamber to ensure the firearm is unloaded.

(3) Insert the magazine into the magazine well of the firearm.

(4) Lock the toggle back.

(5) Remove the magazine.

(6) Remove the firearm safety device, if applicable. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(7) Load one dummy round into the magazine.

(8) Insert the magazine into the magazine well of the firearm.

(9) Manipulate the toggle release or pull back and release the toggle.

(10) Remove the magazine.

(11) Visually inspect the chamber to reveal a round can be chambered with the magazine removed.

(12) Insert the magazine into the magazine well of the firearm.

(13) Lock the toggle back to eject the dummy round. If the firearm is of a model that does not allow the toggle to be locked back, pull the toggle back and physically check the chamber to ensure the chamber is clear.

(14) Apply the safety, if applicable.

(15) Apply the firearm safety device, if applicable.

(d) Semiautomatic Pistol with a Top-Feeding Magazine

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

(1) Open the slide.

(2) Visually and physically inspect the chamber to ensure the firearm is unloaded.

(3) Load one dummy round into the stripper clip.

(4) Insert the stripper clip into the magazine slot of the firearm.

(5) Pull the stripper clip out of the slot to allow the slide to go forward.

(6) Visually inspect the chamber to see it is loaded.

(7) Lock open the slide to eject the dummy round.

(8) Remove the magazine.

(9) Apply the safety, if applicable.

(10) Apply the firearm safety device, if applicable.

(e) Semiautomatic Pistol with a Tip-Up Barrel

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

(1) Remove the magazine.

(2) Activate the barrel release to tip up the barrel.

(3) Visually and physically inspect the chamber to ensure the firearm is unloaded.

(4) Load one dummy round into the barrel.

- (5) Close the barrel.
- (6) Insert the magazine into the magazine well of the firearm.
- (7) Remove the magazine.
- (8) Activate the barrel release to tip up the barrel to reveal a round can be chambered with the magazine removed.
- (9) Tip up the barrel to remove the dummy round.
- (10) Apply the safety, if applicable.
- (11) Apply the firearm safety device, if applicable.

(f) Break-Top Revolver

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Open the revolver by unlocking the frame lock.
- (2) Visually and physically inspect each chamber to ensure the revolver is unloaded.
- (3) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (4) While maintaining muzzle awareness and trigger discipline, load one dummy round into a chamber of the cylinder and rotate the cylinder so the round is in the next-to-fire position.
- (5) Close the cylinder and the frame lock.
- (6) Open the revolver by unlocking the frame lock.
- (7) Tip the barrel forward from the frame, activating the ejection star, ejecting the dummy round.
- (8) Apply the firearm safety device, if applicable.

(g) Single Shot Pistol

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Open the breech.
- (2) Visually and physically inspect the chamber to ensure it is clear.
- (3) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (4) While maintaining muzzle awareness and trigger discipline, load one dummy round into the chamber.
- (5) Close the breech mechanism.
- (6) Open the breech to eject the dummy round from the barrel.
- (7) Apply the firearm safety device, if applicable.

(h) Derringer

The demonstration shall commence with the firearm unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness and trigger discipline at all times, the firearm recipient shall correctly and safely perform the following:

- (1) Open the breech.
- (2) Visually and physically inspect the barrels to ensure the firearm is unloaded.
- (3) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.
- (4) While maintaining muzzle awareness and trigger discipline, load one dummy round into a barrel.
- (5) Close and lock the action.
- (6) Unlock and open the action.
- (7) Remove the dummy round.
- (8) Apply the firearm safety device, if applicable.

Note: Authority cited: Section 26850, Penal Code.

Article 5. Comparable Training in Firearms Safety

§4259. Comparable Training Qualifications, Course Content, and Certificates of Completion

- (a) Applications for DOJ recognition of an entity that provides comparable training pursuant to Penal Code section 31635 must be submitted on a Comparable Training Entity Application, BOF 946 (Rev. 01/2015) which is incorporated by reference.
- (b) Every five years, the Department will send a notice to the comparable training entity that requires a reply confirming the entity wants to continue being recognized by the Department as providing comparable training pursuant to Penal Code section 31635. Failure to reply will result in DOJ recognition being discontinued.
- (c) The comparable training entity must be staffed with at least one DOJ Certified Instructor who has a minimum of 100 hours of verifiable experience teaching firearms safety. Within ten business days of the action, the comparable training entity must report the following on form BOF 946:
 - (1) The addition of a DOJ Certified Instructor.
 - (2) The removal of a DOJ Certified Instructor.
- (d) The comparable training must include all of the following:
 - (1) Instruction on Safe Handling Demonstration Steps for the following conventional firearm types:
 - (A) Semiautomatic pistol.
 - (B) Double action revolver.
 - (C) Single action revolver.
 - (D) Pump action long gun.
 - (E) Bolt action long gun.
 - (F) Semiautomatic long gun with a detachable magazine.
 - (G) Semiautomatic long gun with a fixed magazine.
 - (H) Break-top long gun.
 - (I) Lever action long gun.

(2) Instruction on Safe Handling Demonstration Steps for the following firearms with alternative designs:

- (A) Semiautomatic pistol with a non-locking slide.
- (B) Semiautomatic pistol with a fixed magazine.
- (C) Semiautomatic pistol with a magazine-operated toggle lock.
- (D) Semiautomatic pistol with a top-feeding magazine.
- (E) Semiautomatic pistol with a tip-up barrel.
- (F) Break-top revolver.
- (G) Single shot pistol.
- (H) Derringer.

(3) Instruction on how to render a firearm safe in the event of a malfunction.

(4) Requirement for all students to successfully perform the Safe Handling Demonstration with the conventional firearm types specified in paragraph (1). The firearms used for the Safe Handling Demonstration must be provided by the DOJ Certified Instructor.

(e) Upon successful completion of the comparable training course, each student must be issued a Certificate of Completion that includes the following:

- (1) Name of the comparable training course.
- (2) Name of the student.
- (3) Signature of the DOJ Certified Instructor.
- (4) Date the comparable training course was completed.

Note: Authority cited: Section 31635, Penal Code.
Reference: Section 31635, Penal Code.



ADOPT
CALIFORNIA DEPARTMENT OF JUSTICE
BUREAU OF FIREARMS
Comparable Training Entity Application
California Penal Code section 31635(b)



Type of Action Requested				
<input type="checkbox"/> New Application		<input type="checkbox"/> Revision to Entity/DOJ Certified Instructor Information		
(Sections A, B, C, and E must be completed)				
A. Training Entity Information				
Training Entity Name:				
Owner/Responsible Party Last Name:		First Name:		Middle Name:
Training Entity Address:			City:	State: Zip Code:
Telephone Number (include area code):			Email Address:	
B. Firearms Safety Training Course Information				
Firearms Safety Training Course Title:				
<input type="checkbox"/> YES <input type="checkbox"/> NO		Do you want your firearms safety training course and telephone number included on the Bureau of Firearms website listing of entities giving comparable firearms safety training?		
C. Department of Justice Certified Instructor Information (100 hour teaching/training requirement)				
DOJ Certified Instructor Last Name:		First Name:	DOJ Certified Instructor Number:	Instructor Status: <input type="checkbox"/> Add <input type="checkbox"/> Remove
Instructor Signature (Not required for removal)			Date	
D. Additional Department of Justice Certified Instructors (if any)				
DOJ Certified Instructor Last Name:		First Name:	DOJ Certified Instructor Number:	Instructor Status: <input type="checkbox"/> Add <input type="checkbox"/> Remove
Instructor Signature (Not required for removal)			Date	
DOJ Certified Instructor Last Name:		First Name:	DOJ Certified Instructor Number:	Instructor Status: <input type="checkbox"/> Add <input type="checkbox"/> Remove
Instructor Signature (Not required for removal)			Date	
E. Declaration				
<p><i>I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. I understand the Department of Justice has no responsibility for insurance coverage for myself, my instructor(s), my student(s), or my course(s) on firearm training, use, and safety. I declare the Firearms Safety Certificate Training Course identified above will include the minimum requirements specified in CCR Section 4259 (d) in Division 5, Title II. I understand the Department of Justice's recognition as a comparable entity can be revoked for cause.</i></p>				
_____			_____	
Owner/Responsible Party Signature			Date	

ADOPT
CALIFORNIA DEPARTMENT OF JUSTICE
BUREAU OF FIREARMS
Comparable Training Entity Application
Instructions

Instructor Qualifications

A Department of Justice (DOJ) Certified Instructor number must be provided on the application for each proposed instructor. For each proposed instructor, the application must be accompanied by a resume/statement indicating a minimum of 100 hours of verifiable experience teaching/training firearms safety. The resume/statement must include contact information for experience verification.

Minimum Course Requirements

By signing this application, you declare the course provided at the training entity named on page 1 will include a minimum of the following:

1. Instruction on Safe Handling Demonstration Steps for the following conventional firearm types:
 - Semiautomatic pistol
 - Double action revolver
 - Single action revolver
 - Pump action long gun
 - Bolt action long gun
 - Semiautomatic long gun with detachable magazine
 - Semiautomatic long gun with fixed magazine
 - Break-top long gun
 - Lever action long gun

2. Instruction on Safe Handling Demonstration Steps for the following firearms with alternative designs:
 - Semiautomatic pistol with a non-locking slide
 - Semiautomatic pistol with a fixed magazine
 - Semiautomatic pistol with a magazine-operated toggle lock
 - Semiautomatic pistol with a top-feeding magazine
 - Semiautomatic pistol with a tip-up barrel
 - Break-top revolver
 - Single-shot pistol
 - Derringer

3. Instruction on how to render a firearm safe in the event of a malfunction.

4. Requirement for all students to successfully perform the Safe Handling Demonstration with the conventional firearm types.
The firearms used for the demonstration must be provided by the DOJ Certified Instructor.

Certificate of Completion

Upon successful completion of the training course, a Certificate of Completion must be issued to each student. A sample copy of the Certificate of Completion must accompany this application.

The Certificate must include the following:

- Name of the training course
- Name of the student
- Signature of the DOJ Certified Instructor
- Date course completed

Revisions

Any revisions to the comparable training entity or DOJ Certified Instructor information must be reported, through completion of this form, to the Department of Justice within 10 business days of the change of information.

Comparable Training Entity Recognition

A request to discontinue DOJ recognition as a comparable training entity must be submitted in writing to the Department of Justice within 10 business days of when the entity shall no longer be recognized as providing comparable training. The request can be sent to the address below or via email to boffscprogram@doj.ca.gov.

The Department of Justice will send a notice to the comparable training entity every five (5) years confirming the entity's status as a comparable training entity. Failure to respond to the notice will result in being removed from the list of comparable training entities.

Mail the completed application and required documentation to the following address:

Department of Justice
Bureau of Firearms - FSC
P.O. Box 160367
Sacramento, CA 95816-0367

DOJ Use Only

Date Received _____

Date Processed _____

Privacy Notice

As Required by Civil Code § 1798.17

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, subdivision (b). The Bureau of Firearms uses this information to establish the entity on this application as providing comparable training to those entities in Penal Code section 31635. In addition, any personal information collected by state agencies is subject to the limitations in the Information Practices Act and state policy. The Department of Justice's general privacy policy is available at <http://oag.ca.gov/privacy-policy>.

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 the entity on this application as providing comparable training to those entities in Penal Code section 31635, 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;
- 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 representative at P.O. Box 160367, Sacramento, CA 95816-0367 or (916) 227-3750.



ADOPT
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:	
Mailing Address:			City:	State:	Zip Code:
Business 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), Instructor Certification from the Department 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.

All applicants for Certified Instructor must have a valid Certificate of Eligibility (COE). An application for COE is accessible on the Attorney General's website at <http://oag.ca.gov/firearms/forms>.

COE Number: _____

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 that my instructor certification will be valid for five years provided I maintain a current COE. 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 DOJ 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 Bureau of Firearms 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

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. In addition, any personal information collected by state agencies is subject to the limitations in the Information Practices Act and state policy. The Department of Justice's general privacy policy is available at <http://oag.ca.gov/privacy-policy>.

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;
- 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 P.O. Box 160367, Sacramento, CA 95816-0367 or (916) 227-3750.

ADOPT

California Department of Justice Firearm Safety Certificate OR ESC No.: 1679298	
Issue Date: <u>02/13/2015</u>	Expiration Date: <u>02/13/2020</u>
Issued To: <u>JOHN O PUBLIC</u>	
DOB: <u>07/04/1988</u>	ID No.: <u>B3216544</u>
Signature DOJ Certified Instructor: <u>STEVEN B.</u>	
DOJ Certified Instructor Signature	
BOF 034 (rev. 01/2015)	

California Department of Justice Firearm Safety Certificate OR ESC No.: 1679298	
Issue Date: <u>02/13/2015</u>	Expiration Date: <u>02/13/2020</u>
Issued To: <u>JOHN O PUBLIC</u>	
DOB: <u>07/04/1988</u>	ID No.: <u>B3216544</u>
Signature DOJ Certified Instructor: <u>STEVEN B.</u>	
DOJ Certified Instructor Signature	
BOF 034 (rev. 01/2015)	

Actual Size



**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/ or 26860, as applicable, 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 R

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ
Director

March 20, 2015

Anna M. Barvir
Mitchel & Associates, P.C.
180 East Ocean Boulevard, Suite 200
Long Beach, CA 90802
VIA U.S. MAIL & E-MAIL

**Re: RESPONSE TO Public Records Act Request Dated March 10, 2015
PRAR #308044 – OAL File No. 2015-0225-02E**

Dear Ms. Barvir:

As a follow-up to the message I left on your voicemail yesterday, March 19, 2015 at approximately 2:36 p.m., the following is the Office of Administrative Law's (OAL) response to your Public Records Act Request dated March 10, 2015.

Pursuant to your March 10, 2015 request, you are requesting: 1) All writings that make up OAL File No. 2015-0225-02E; 2) Any and all writings received by the Office of Administrative Law, any member of its staff or other agent, referencing OAL File No. 2015-0225-02E or Firearm Safety Certificates and Safe Handling Demonstrations; and 3) Any and all writings created by the Office of Administrative Law, any member of its staff or other agent, referencing OAL File No. 2015-0225-02E or Firearm Safety Certificates and Safe Handling Demonstrations.

OAL has identified approximately 9,400 pages of documents responsive to the above requests. These documents consist of approximately 300 pages of rulemaking documents, interagency communications and notices plus approximately 9,100 pages of public comments received in connection with OAL File No. 2015-0225-02E. Documents protected by privilege, including but not necessarily limited to the attorney-client privilege, work product protection or deliberative process privilege are excluded. OAL charges \$0.20 per page to cover the reasonable costs of copying documents. OAL therefore estimates that the total copying costs for these documents will be approximately \$1,880. This amount is greater than \$50.00 and therefore pursuant to your request, OAL is contacting you so that you may determine how best to proceed. Please note, however, that given the large number of responsive documents, it will be necessary for you to make arrangements to copy the documents.

Please let OAL know how you wish to proceed. OAL will take no additional action on this request until further instruction on how you wish to proceed is received. Of course, if you should have any questions, please do not hesitate to contact the undersigned.

Regards,

A handwritten signature in black ink, appearing to read "Kevin D. Hull".

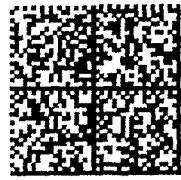
Kevin D. Hull,
Senior Attorney
Office of Administrative Law
(916) 323-8916

OFFICE OF ADMINISTRATIVE LAW
300 CAPITOL MALL, SUITE 1250
SACRAMENTO, CALIFORNIA 95814



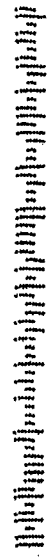
Anna M. Barvir
Mitchel & Associates, P.C.
180 East Ocean Boulevard, Suite 200
Long Beach, CA 90802

017H15524251
\$0.48
03/20/2015
Mailed From 95814



US POSTAGE

HASLER



9080234760 0005

1 **PROOF OF SERVICE**

2 I, Laura Quesada, am employed in the City of Long Beach, Los Angeles County,
3 California. I am over the age eighteen (18) years and am not a party to the within action. My
business address is 180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

4 On August 25, 2015, I served the foregoing document(s) described as:

5 **DECLARATION OF ANNA M. BARVIR IN SUPPORT OF**
6 **PLAINTIFFS' MOTION FOR ATTORNEYS' FEES**

7 on the interested parties in this action by placing

8 the original

9 a true and correct copy

10 thereof enclosed in sealed envelope(s) addressed as follows:

11 Mr. Jeffrey Rich
12 Deputy Attorney General
13 1300 I Street
14 Sacramento, CA 95814

15 (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the
16 addressee.

17 Executed on _____, 2015, at Long Beach, California.

18 X (OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of
19 collection and processing correspondence for overnight delivery by UPS/FED-EX. Under
20 the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for
21 receipt on the same day in the ordinary course of business. Such envelope was sealed and
22 placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for
23 in accordance.

24 Executed on August 25, 2015, at Long Beach, California.

25 X (STATE) I declare under penalty of perjury under the laws of the State of California that
26 the foregoing is true and correct.

27 (FEDERAL) I declare that I am employed in the office of the member of the bar of this
28 court at whose direction the service was made.

29 
30 _____
31 LAURAL. QUESADA