

# FFLGUARD®

PROGRAM OFFERED BY:

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November 18, 2015

**Via U.S. and Electronic Mail**

Jeff Amador  
Department of Justice  
P.O. Box 160487  
Sacramento, CA 95816-0487  
[jeff.amador@doj.ca.gov](mailto:jeff.amador@doj.ca.gov)

**RE: Public Comment for Regulations Regarding Firearm Safety Certificates and Safe Handling Demonstrations**

Dear Mr. Amador:

We write on behalf of our clients, FFLGuard, as well the hundreds of their respective members in California, our clients throughout California, among them firearm dealers, distributors, certified instructors, and firearm owners.

We've heard countless complaints concerning the Firearm Safety Certificate (FSC) program since its inception. Below we detail a number of the problems we've witnessed with the current FSC emergency regulations and with the proposed permanent regulations. We write to express our clients' concerns regarding the apparently unintended and deleterious effects the Regulations will have on firearm dealers, distributors, instructors, and owners. We propose several changes to the Regulations that would effectuate the enabling statutes without exceeding their scope or unreasonably burdening firearm dealers, instructors, and owners. Attached as Exhibit 1 is a redline version of the permanent regulations addressing those changes.

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## **I. CONCERNS RELATING TO THE PROPOSED REGULATIONS**

### **A. The Certificate of Eligibility Requirement for Certified Instructors Is Inconsistent with the Enabling Statute and Is Not Reasonably Necessary to Effectuate the Purpose of the Statute**

Proposed section 4250 of the Regulations imposes two requirements on CI applicants, a training requirement and a COE requirement. The Regulations cite to California Penal Code sections 26710 and 31635 as authority for proposed section 4250.

Penal Code section 26710 simply describes the COE program and its administration; other than providing that a person may request a COE from the Department, section 26710 does not suggest who is required to obtain a COE. It does not give the Department any express or implied authority to make this determination on its own.

Penal Code section 31635 contains the heading: "Instructors; minimum skill, knowledge, and competency; entities from whom instructor applicants may receive training certification." And indeed these are the only requirements of this section. Subsection (a) states, in its entirety, that "[t]he department shall prescribe a minimum level of skill, knowledge, and competency to be required of all firearm safety certificate instructors." Clearly neither "skill" nor "knowledge" imply a requirement of moral character. Applying the doctrine of *ejusdem generis*, as well as the overall context and heading of the statute, it seems clear that the meaning of "competency" as used in this section also has nothing to do with background checks or the COE, but rather the technical ability of the CI applicant to perform his duties. This is further made clear by the remaining subsection (b), which gives a list of organizations suitable to provide training to CI applicants, gives the Department authority to determine suitable equivalent organizations, and requires CI applicants to be certified by one of these organizations. Again, there is no mention whatsoever in section 26710 or section 31635 of any background check, COE or even eligibility to possess a firearm.<sup>1</sup>

The Penal Code does not mandate that firearms dealers require employees to obtain a COE absent local regulation, the Penal Code expressly states that a COE may be required at the option of the dealer. Cal. Penal Code, § 26915(a) ("A firearms dealer may require..."). The Penal Code also clearly contemplates that an agent or employee of the dealer, with or without the optional COE, would have contact with firearms as part of her employment. See Cal. Pen. Code, § 26915(a) (dealing with employees of the dealer who are prohibited persons and have access to firearms). Furthermore, the COE being optional was clearly the intent of the legislature, as the legislature saw fit to make the COE a requirement for licensed firearms manufacturers, and used express language to make this clear. Cal. Penal Code, § 29120(a) ("A licensee shall require..."). The requirement for a COE is entirely outside the scope of the code sections given as authority for this regulation by the Department and is in conflict with other provisions of the Penal Code.

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<sup>1</sup> No firearm is required to administer the FSC test.

The current Penal Code section 31635 contains the same requirements for FSC CIs as the former section did for HSC certified instructors. The legislative intent of S.B. 683 was to expand the HSC requirements of the former section, as they existed, to all firearms.<sup>2</sup> For years the Department enforced this code section without a COE requirement. Evidently the Department did not find it reasonably necessary to impose an annual COE requirement on CIs then, and there is nothing to suggest that one is needed to effectuate a nearly identical statute now. The only statutory function of a CI is to perform safe handling demonstrations and administer FSC tests. These duties do not require a COE to be performed. A licensed dealer who undergoes substantial background checks and is obligated to maintain a COE is still ultimately required to process the firearms transfer. A CI is usually an employee of a firearms dealer or firearm instructor.

**B. The Requirements that all CIs Must Have Access to a Personal Computer, Printer, Internet Connection and Only Accept a Major Credit Card in Order to Issue FSCs Is Not Reasonably Necessary to Effectuate the Purpose of the Enabling Statute and Is in Conflict with the Penal Code**

Proposed sections 4251 and 4254 of the Regulations require that CIs use an online system to issue FSCs. There is no requirement in the Penal Code or any other statute that CIs use such an online system. In contrast, the legislature has made it clear that FFLs must have a computer and internet, and did so by specifically including requirements in the enabling statute.<sup>3</sup> For CIs, the internet requirement hinders the purpose of the statute. The Penal Code requires that "[a]ny person receiving a passing grade on the objective test shall immediately be issued a firearm safety certificate by the instructor." Cal. Penal Code § 31645. But a CI who is dependent on an online system cannot comply with Penal Code section 31645 if his internet connection fails, if his credit card is deactivated,<sup>4</sup> the FSC recipient only possesses cash, or the FSC is issued at any location where there is no computer or internet access. And the Regulations give no offline alternative.

The current Penal Code section 31655 contains the same requirements for FSCs as the former section did for HSCs. The former section was implemented by the Department via regulation which did not require a personal computer, printer, major credit card and internet connection in order to issue FSCs. For years the Department enforced this code section by selling packs of blank serialized HSCs which could be ordered by mail and paid for by check. These were filled out and issued by CIs to persons who met the requirements to obtain an HSC, substantially the same requirements as are needed now to obtain an FSC. Evidently the Department did not find it reasonably necessary to impose an online issuance and credit card requirement then, and there is nothing to suggest that one is needed to effectuate a nearly

<sup>2</sup> Stats.2013, c. 761 (S.B.683), § 24, operative Jan. 1, 2015 (LEGISLATIVE COUNSEL'S DIGEST).

<sup>3</sup> See Cal. Penal Code § 28205.

<sup>4</sup> This could be the case without the CI even knowing it when he begins the FSC test, for example because of a security issue.

identical statute now. The only statutory function of the HSC certificate is to provide evidence that a person has met requirements to receive an FSC. This does not require mediation through an online website or the use of credit cards, the CI is the only person required and responsible for making this determination. There is no reason not to use the same or similar system the Department implemented for years with the HSC program, without the additional burdensome requirements of the new online only FSC system.

**C. The Requirement That Individual CIs Must Retain Completed FSC Test Answer Sheets and Make Them Available Upon Request Is Inconsistent with the Enabling Statute and Is Not Reasonably Necessary to Effectuate the Purpose of the Statute and Violates the Fourth and Fourteenth Amendments of the Constitution**

Section 4253 of the Regulations requires that CIs retain all completed FSC test answer sheets for five years from the test date, and make them available to law enforcement upon request. There is nothing in the Penal Code or any other statute that requires CIs store these answer sheets. The Department has authority only to "develop a written objective test, in English and in Spanish, and prescribe its content, form, and manner." Cal. Penal Code, § 31640. The requirement for a CI to store records, even after he has left the employ of the dealer-or even left the state altogether-is not a part of the " content, form, [or] manner" of the test. It is a post-test requirement on the CI that is unsupported by the enabling statute and exceeds its scope.

The Penal Code sections cited by the Department as authority for this requirement, sections 31640 and 31645; deal entirely with the content of the FSC test and the minimum standards for passing. The Department can develop content, and CIs can administer the test, without a record storage requirement. This requirement is not reasonably required to effectuate the underlying statute.

Moreover, the regulation allowing for warrantless administrative searches of CI records, even if it were supported by statute, is facially unconstitutional. The U.S. Supreme Court has held that "absent consent, exigent circumstances, or the like, in order for an administrative search to be constitutional, the subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decision maker." *City of Los Angeles v. Patel*, - U.S. - , 135 S.Ct. 2443, 2452 (2015). Even where the subject of the search is "pervasively regulated," which firearms dealers may be but CIs are not, the regulations would need to satisfy three additional criteria to be reasonable under the Fourth Amendment: (1) There must be a substantial government interest that informs the regulatory scheme pursuant to which the inspection is made; (2) the warrantless inspections must be 'necessary' to further the regulatory scheme; and (3) the statute's inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant." *Id.* at 2456. These criteria are not met by the regulation or any statute which might support it.

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**D. The Requirement That Individual CIs Who Issued the Original FSC May Issue a Replacement FSC via the Firearms Certification System to the Original FSC Holder Is Not Reasonably Necessary to Effectuate the Purpose of the Statute**

Section 4255 of the Regulations requires that only Individual CIs who issued the original FSC may issue a replacement FSC via the Firearms Certification System to the original FSC holder. While the Penal Code does require that the original CI re-issue the FSC, there is no reason the Regulations cannot treat a dealer who is both a CI and employer of the original CI as the issuing CI. Limiting the "issuing" CI to the dealer's employee who may leave his employment or leave the state altogether is not reasonably necessary to effectuate the purpose of the statute. Similarly, the regulation limiting re-prints without charge to just 24 hours after payment for the FSC is made serves no purpose and exceeds the scope of the statute.

**E. The Requirement That CIs Waive or Assert Liability Is Inconsistent with the Enabling Statute and Is Not Reasonably Necessary to Effectuate the Purpose of the Statute and Has No Legal Basis**

Section 4251 of the Regulations require CIs to agree that: "[i]n no event shall either party be liable to the other or any third party, under any theory of liability..." and that "the Department shall not be liable for transaction charges fraudulently incurred. It will be the cardholder's responsibility to pay any charges." Not only is this exculpatory clause unenforceable against the CI, see Civ. Code, § 1668; *Tunkl v. Regents of University of Cal.*, 60 Cal. 2d 92 (1963), the CI is in no position to be making assertions about third party liability or responsibility. The Department has no authority to force the CI to make such assertions, and this regulation is entirely inconsistent with the enabling statute.

**II. THE REGULATIONS PRESENT SIGNIFICANT PROBLEMS FOR LICENSED FIREARM RETAILERS, CERTIFIED FSC INSTRUCTORS, INDIVIDUAL GUN OWNERS, AND LAW ENFORCEMENT**

**A. California Licensed Firearm Retailers and Their Employees**

The regulations have a significant impact on licensed California firearm retailers. FFLs often employ CIs to administer the program for customers who do not already possess an FSC when making a firearm purchase. Many FFLs have several employees who are FSC instructors, allowing the FFL to have on staff at least one FSC instructor at all times during business hours. Because the Regulations require FSC instructors to acquire and maintain a valid COE, some FFLs must spend tens of thousands of dollars annually to obtain and maintain COEs for each of their certified instructors. This cost is particularly burdensome for retail chain FFLs with multiple locations throughout the State.

Imposing these burdens on FFLs serves no purpose or goal, especially in light of the requirements under the former HSC Program. Under that program, an instructor was required simply to pay \$14 for a background check or provide proof of a valid COE at the time of his or her application. There was no requirement to maintain or renew the COE each year to continue

administering the Program. As a result, for the many years the HSC program was in effect, the Department had served its goal of ensuring instructors were not prohibited from possessing or handling firearms without incurring and passing along the costs of acquiring and maintaining COEs to FFLs.

FFLs will also have to bear the cost and difficulties associated with maintaining a personal computer, printer, major credit card and internet connection at all times during business hours in order to process FSCs. Under the previous HSC program they were able to pre-purchase HSCs and pay by check, eliminating many potential problems.

Furthermore, the Regulations appear to treat CIs who work for FFLs as independent contractors. But as the California Supreme Court has held, "the fact that one is performing work and labor for another is prima facie evidence of employment and such person is presumed to be a servant in the absence of evidence to the contrary." *Robinson v. George*, 16 Cal. 2d 238, 242 (1940). In practice almost all CIs who work at FFLs are employees. Treating them as independent contractors and requiring them to provide equipment and perform duties (up to 5 years after they leave their employment position) for which they are not compensated creates numerous legal problems for the Regulation and FFLs. The Department in one instance has opined that a CI, even one who works for an FFL as an employee, is a "private business," (See attached letter from Bureau of Firearms Chief Lindley to Assemblymember Jones, Exhibit 2)

However, becoming a private business or sole proprietorship carries with it a number of requirements unanticipated by the typical employee CI. California requires the sole proprietor to adhere to several procedural mandates before operating as a business entity. Thus, requiring individuals to operate as a sole proprietor leads to several unforeseen consequences as detailed below.

Operating as a sole proprietor forces an individual to apply for and obtain a business license from the specific city or county where the business is to be established. Because these individuals will be required to become sole proprietors they will also likely need to purchase insurance to cover the risks of running such a business, which will insulate themselves from any potential liability.

Should a sole proprietor operate without a business license, he or she can be in violation of the city or county's municipal code, which typically provides that such a violation is a misdemeanor punishable by fine or imprisonment in the county jail for a period not exceeding six months, or both. Additionally, a sole proprietor operating without a license may also be enjoined from operating as a business until a proper license is obtained.

Moreover, there are additional tax implications for individuals operating as a sole proprietor, which include completing separate forms for Federal and State taxes. As a sole proprietor, one is required to report business income and expenses by filing with the IRS Form 1040 (Individual Income Tax Return), Schedule C (Profit or Loss from Business) or Schedule C-EZ (Net Profit from Business), and Schedule SE (Self Employment Tax). For State tax purposes, a sole proprietor is required to file with the Franchise Tax Board Form 540 (California Resident Income Tax Return) or Form 540NR (California Nonresident or Part-Year Resident Income Tax Return), and Form 540 Schedule CA (California Adjustments).

Lastly, a sole proprietor may also be required to withhold earnings and remit payments to the IRS and Franchise Tax Board if the sole proprietor is considered a "withholding agent." A sole proprietor is considered a withholding agent if they control, receive, have custody of, dispose of, or pay California source income. If a sole proprietor is required to withhold and remit backup withholding to the Internal Revenue Service, the sole proprietor is also required to withhold and remit to the Franchise Tax Board, except for instances that are specifically excluded for California purposes. As a result, sole proprietors are required to withhold and remit 7% of reportable income payments when performing federal backup withholding, except for income payments of interest or dividends.

## **B. Individual FSC Instructors**

Also seriously affected by the Regulations are individual firearm instructors, not associated with an FFL, who are also CIs. Many individual instructors were teaching for decades and were involved in the FSC Program since its first iteration, the Basic Firearm Safety Certificate Program, was in effect over a decade ago. These individuals are critical to the success of the FSC Program, providing training in countless venues, including shooting ranges, classrooms, gun shows, and individuals' homes, and relieving FFLs of some of the burden of administering the Program.

Although the costs associated with obtaining a COE for one individual (\$78 application fee plus fees for Livescan service) may seem minor, consider that it means the FSC instructor must issue over a dozen certificates a year simply to pay for his or her COE. California law only allows an instructor to charge up to \$25 to administer the Program, \$15 of which must be sent to the Department as a processing fee. The remaining \$10 may be kept by the instructor.

What's more, the Regulations also require each instructor to utilize the Department's automated, web-based system when issuing certificates. The FSC fee must be paid using only a major credit card, and the system requires the instructor to enter the FSC recipient's personal information into the System, preview the entered information, making changes as needed, and electronically submit the completed form to the Department. Once submitted, the instructor must immediately print, sign, and issue the automatically generated certificate. This process requires each instructor to possess a computer, a printer, a credit card reader, and a stable internet connection. Individual instructors must thus obtain these items prior to administering the Program, adding further costs and making it economically infeasible for many individual instructors to continue to provide the service to those seeking to acquire firearms.

Finally, many firearm instructors are required to travel to various locations throughout California to gun ranges, usually located well outside of urban areas with little or no cell phone reception, power, or internet connection that could be utilized by the instructor. As such, the proposed regulations effectively prohibit instructors from administering the Program unless and until they acquire the necessary equipment, if that is even possible. Although there is a potential benefit to having an automated system, the Department must have a manual, pre-paid alternative in place for instructors whose business takes them to areas with intermittent or non-existent internet service and those unable to accept credit card payments.



### **C. Members of the Public**

Of the different stakeholders in the Program, perhaps most important of all are individual members of the public themselves, who are required to obtain an FSC in order to purchase a firearm.

Disabled purchasers who cannot perform the safe handling demonstration must also be given an exemption, as stated on the Department website but omitted from the Regulations.

FFL customers expect to be able to return to the same FFL where they were issued their FSC to obtain a replacement, but if a CI employee is no longer at the store the FFL CI will be unable to re-issue the FSC because under the Regulations the FFL CI is unable to enter the Firearms Certification System for customer records issued by the FFL's employee CIs. This is a particular problem for large chain stores with many CI employees.

Finally, because of the costs of obtaining and maintaining COEs, coupled with the costs for the equipment necessary to administer the FSC Program, we are aware of some FFLs that have stopped offering the service to their customers and countless individual instructors have ceased administering the Program altogether. If the proposed regulations are adopted, the situation will only get worse, and those interested in purchasing a firearm will find themselves unable to do so in many instances or with very limited options for doing so.

### **D. Law Enforcement and the Department**

The Regulation requirement that individual CIs retain all completed FSC test answer sheets in order to be available for inspection upon request by any peace officer, or authorized DOJ personnel indicates that the Department believes law enforcement would benefit from access to these completed FSC test answer sheets. But if individual CIs retain them, it may be very difficult for law enforcement to track down CIs who are no longer at or employed by the FFL where the FSC was issued. Inevitably these answer sheets will be damaged or misplaced as these CIs travel through the state, country, and internationally, or pass away. It makes much more sense to have the FFL itself, which is a more permanent operation with facilities already set up to track and maintain records, retain these answer sheets with its other transactional records.

## **III. PROPOSED CHANGES TO THE REGULATIONS WHICH WOULD MITIGATE PROBLEMS FOR LICENSED FIREARM RETAILERS, CERTIFIED FSC INSTRUCTORS, INDIVIDUAL GUN OWNERS, AND LAW ENFORCEMENT**

### **A. Changes to Section 4250, DOJ Certified Instructor Qualifications and Application Information**

This change deletes the expensive and time consuming annual COE which is outside the scope of the enabling act. It also clarifies the distinction between independent CIs and those who work for dealers which are themselves CIs.



**B. Changes to Section 4251, Firearms Certification System "Conditions of Use" and User Accounts**

This change would remove the liability language which exceeds the scope of the statute, is void as a matter of public policy per state law, and is unenforceable against any third party. It also states there will be no DOJ fee for replacement FSCs reissued within 30 days of initial issuance. For reasons discussed below, it allows dealers to provide copies of (but not replacement) FSCs.

**C. Changes to Section 4251.5, DOJ Certified Instructor Suspensions and Revocations**

This change narrows DOJ's ability to suspend or revoke a CI's certification. The phrase "for conduct deemed by the Department to be contrary to the best interests of public safety" is impermissibly vague, over broad, and provides DOJ far too much discretion.

**D. Addition of Section 4251.7, DOJ Certified Instructor Cancellation and Termination**

While the proposed regulations cover the issuance of the CI's certification, the duration of the certification, and the suspension and revocation, it provides no guidance or coverage for those who wish to cease being CIs. This section allows an individual to give up their CI status and allows those CIs who do not work for an FFL to turn their records over to DOJ and allows those CIs employed by dealers to turn their records over to the dealer. The DOJ will be required to dispose of a CI's records when the time period to retain the documents has passed.

**E. Changes to Section 4252, FSC Test Applicant Qualifications and Fee**

This clarifies that if a CI who works for a dealer collects an administration fee, the fee shall be retained by and paid through the dealer. This protects against the CI employee from being considered a sole proprietor as discussed above.

**F. Changes to Section 4253, FSC Test Topics, Guidelines, Scoring, and Recordkeeping**

This change reduces the time CIs must retain answer sheets from five years to one year. The statute of limitations for all violations of the statutes covering FSC is one year. It is difficult to imagine any investigative benefit retaining these answer sheets could have beyond that time. The change also clarifies that if the CI works for a dealer/CI, the dealer/CI may retain the records instead of the CI. This also removes the unconstitutional requirement, which also exceeded the scope of the statute, that answer sheets must be made available for inspection upon request by any peace officer, or authorized DOJ personnel.

**G. Changes to Section 4254, FSC Issuance**

This change allows CIs to purchase FSCs in advance, allowing them to both pay by an

alternative method than just a credit card and issue the FSCs from a location away from their computer.

In allowing CIs to issue FSCs this way, the CIs would fill out the FSC by hand and enter the FSC recipient's information into the FSC system when the CI returns to his or her computer.

The FSCs provided by CI employees of FFLs would be issued by the FFL or manager. As discussed above the Penal Code does not require the FSC to be issued by the CI who administered the FSC test. This will allow a dealer to issue, keep records, and issue replacement FSCs. Procedures like these have been in place since the Basic Firearm Safety Certificate was required in the 1990s.

These changes would fulfill all the goals of the FSC program, while significantly reducing the undue burden on FFLs, CIs, and members of the public.

#### **H. Changes to Section 4255, FSC Replacement**

This change will allow FFLs who are also CIs to provide replacement FSCs to the original holders when the FSC was issued by an employee, solving problems that arise when the original issuing CI was an employee of the FFL, but is no longer available. This would fulfill all the goals of the FSC program, while significantly reducing the undue burden on FFLs and CIs.

This section will also allow an FSC recipient to copy his or her FSC and allow a CI to copy the FSC for the recipient. DOJ no longer issues safety certificates on card stock. The paper used in issuing the FSC is standard computer paper. It's nonsensical to think that an FSC can't be copied and spare copies can't be kept by the CI recipient. State law does not prohibit this practice. The restrictions cover the "altering, counterfeiting, or falsifying" of the FSC. Nothing prevents the copying provided the person does not alter the FSC or do so for purposes of fraud.

#### **I. Changes to Section 4256, Safe Handling Demonstration Steps Applicability and Definitions**

This change expands the list of "firearms" exempt from the safe handling requirement to include items that are still considered "firearms" but do not cycle ammunition. It removes a provision allowing for use of cartridge casings in safe handling demonstrations by CI, which is very unsafe and exposes dealers to significant potential liability. Finally, it adds language concomitant with the Department's own website which provides for a disabled person's exemption from the safe handling demonstration.

### **IV. CONCLUSION**

The very purpose of the FSC program is to "require that persons who obtain firearms have a basic familiarity with those firearms, including, but not limited to, the safe handling and storage of those firearms." Cal. Penal Code § 31610. The adoption of the Regulations as they are currently proposed would, in many cases, frustrate this purpose rather than further it. Several of

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*Department of Justice*  
*November 18, 2015*

its provisions simply have nothing to do with this purpose at all. The proposed changes would mitigate the problems for firearm dealers, distributors, instructors, and owners, as well as law enforcement and promote the intent and goals of the legislature and the Department.

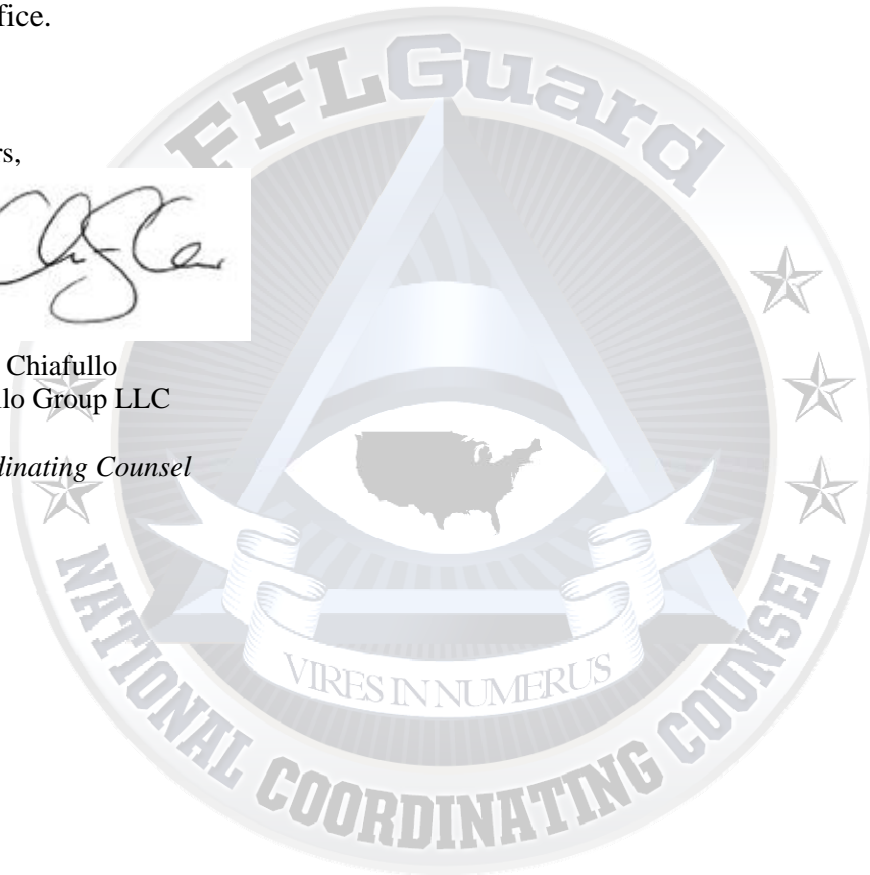
For the foregoing reasons, we respectfully request that the Department make the proposed changes to the regulations. The DOJ currently sought a final extension of the "emergency" regulations for the FSC and safe handling requirements. The extension of the emergency regulations should allow the DOJ to implement the above changes and allow an additional public comment period for the FSC and safe handling regulations.

Should you have any questions or concerns regarding the content of this letter, please contact my office.

Very truly yours,



Christopher M. Chiafullo  
for The Chiafullo Group LLC  
**FFLGuard**  
*National Coordinating Counsel*





## **EXHIBIT 1**

# PROPOSED FSC 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 *Department of Justice (“the Department” or DOJ) Certified Instructor* 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) The Department shall consider the circumstances of any prior suspension or revocation of an Instructor Certificate in determining whether the applicant meets the minimum level of skill, knowledge, and competency required by Penal Code section 31635.

(c) Initial and renewal applications must be completed and submitted either:

- (1) Manually on a DOJ Certified Instructor Application, BOF 037 (Rev. 01/2015), which is incorporated by reference; or
- (2) Electronically via the Internet through the Firearms Certification System.

(d) 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.~~

(e) *A DOJ Certified Instructor who is also a firearms dealer licensed pursuant to Penal Code Sections 26700 to 26915, his or her designee, managing officer, or partner, who is also a DOJ Certified Instructor, may be considered a “Managing Dealer” for the purposes of this Chapter. A DOJ Certified Instructor who acts as an employee or agent of a Managing Dealer may be considered an “Employee Certified Instructor” for the purposes of this Chapter while acting in that capacity.*

*(f) Upon application and confirmation by the Managing Dealer, a DOJ Certified Instructor may designate a Managing Dealer for whom he or she is employed or acts as an agent. Upon termination of employment the Employee Certified Instructor may remove the Managing Dealer through the Firearm Certification System. An Employee Certified Instructor may add a Managing Dealer at a later date after application.*

Note: Authority cited: Sections 26710, and 31635, Penal Code. Reference: Sections 26710, 29800, 29805, 29810, 29815, 29820, and 29825, 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 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 Instructor applicants 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)~~ (1) AUTHORIZATION

*Unless the DOJ Certified Instructor is also an Employee Certified Instructor wherein his or her Managing Dealer has access to his or her account, it* is the responsibility of the DOJ Certified Instructor, *in all other instances,* to protect the confidentiality of the password selected to access the Firearms Certification System. If the DOJ Certified Instructor becomes aware of an unauthorized person obtaining access to the Firearms Certification System, he or she will notify the Customer Support Center immediately at (916) 227-3750 or via email at [boffscprogram@doj.ca.gov](mailto: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)~~ (2) FEES

The FSC fee is fifteen dollars (\$15) per issuance for new FSCs and five dollars (\$5) for replacement FSCs *when the FSC is lost or destroyed*. Multiple FSCs can be queued and paid for in a single transaction. The Department will not provide refunds after issuance of an FSC, *unless the DOJ Certified Instructor or FSC recipient can show proof of an error in billing. There will be no fee for replacement FSCs reissued within 30 days of initial issuance. And this section does not preclude a DOJ Certified Instructor from making copies of a FSC for the recipient or the FSC recipient from making copies of his or her FSC.*

### ~~(4)~~ (3) TRUE AND ACCURATE INFORMATION

All of the information submitted to the Department through the Firearms Certification System shall be true, accurate, and complete to the best of the DOJ Certified Instructor’s knowledge.

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

(1) User Name (assigned by DOJ).

(2) Answers to three identity verification questions (selected from a choice of ten).

(3) 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, and 31650, Penal Code. Reference: Section 31625, 31650, 31655, and 31665, Penal Code.

#### **§4251.5. DOJ Certified Instructor Suspensions and Revocations**

- (a) An instructor's DOJ certification may be suspended for a period of up to six months for a violation of these regulations ~~or for conduct deemed by the Department to be contrary to the best interests of public safety.~~
- (b) An instructor's DOJ certification may be revoked for a violation of Penal Code sections 27550, 31620, or 31625.
- (c) All hearings related to a suspension or revocation shall be conducted in accordance with Government Code section 11500 et. seq.
- (d) An instructor who has had his or her DOJ certification revoked may not re-apply for certification earlier than one year from the effective date of the revocation.
- (e) Documents possessed pursuant to Section 4253 by a DOJ Certified Instructor shall be disposed of pursuant to Section 4251.7.*

Note: Authority cited: Sections 31620, 31625, and 31635, Penal Code. Reference: Sections 27550, 31620, 31625, and 31635, Penal Code.

***§4251.7. DOJ Certified Instructor Cancellation and Termination***

- (a) A DOJ Certified Instructor may voluntarily cease being a DOJ Certified Instructor at any time.*
- (b) Upon notice and verifiable proof that a DOJ Certified Instructor wishes to cease being a DOJ Certified Instructor DOJ shall terminate the Instructor's login and access to the Firearm Certification System.*
- (c) The documents required to be kept by a DOJ Certified Instructor pursuant to Section 4253 of this chapter shall be forwarded to the Department immediately upon notice by the Department of the cancellation. The Department shall retain copies of the documents specified in 4253 for the duration provided in that section and upon expiration of that duration the DOJ shall destroy the document.*
- (d) A Managing Dealer shall maintain access to an Employee Certified Instructor's account in the Firearm Certification System for those entries created while the Employee Certified Instructor worked for the Managing Dealer.*



## 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 shall be forwarded to the Department pursuant to Penal Code section 31650. The DOJ certified instructor may charge a fee of ten dollars (\$10) for administering the test. *Fees charged by an Employee Certified Instructor may be received and disbursed to DOJ by the Employee Certified Instructor's Managing Dealer when applicable unless when the Employee Certified Instructor and Managing Dealer enter into an agreement stating otherwise.*

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. The instructor shall make himself or herself available to the applicant during regular business hours in order to retake the test.

(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 and 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~~ *one* 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.~~ *Managing Dealers may retain test answer sheets on behalf of Employee Certified Instructors while the Employee Certified Instructor is acting under the scope of his or her employment or acting as the Managing Dealer's agent.*

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. *DOJ Certified Instructors may pre-pay for Firearm Safety Certificates by cash, check, or credit card by sending payment directly to the Department or via the Firearms Certification System. This pre-payment will be credited for future FSCs.* Payment options *via the Firearms Certification System* 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) *A DOJ Certified Instructor may issue an FSC directly through the Firearms Certification System, a DOJ Certified Instructor shall fill in* ~~the~~ 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) *A DOJ Certified Instructor may pre-print a Firearm Safety Certificate, BOF 034 (Rev. 01/2015). Each pre-printed Firearm Safety Certificate will receive a unique FSC Number 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. Each pre-printed Firearms Safety Certificate may be completed by a DOJ Certified Instructor by filling in the issue date, expiration date, the name, California identification type, California driver license or identification card number, and date of birth. DOJ Certified Instructors providing pre-printed FSCs must enter the FSC recipient's information into the Firearm Certification System within seven (7) days of issuing the FSC.*
- (f) *FSCs provided by Employee Certified Instructors acting in the scope of their employment or as an agent of the Managing Dealer will be issued by and recorded in the Firearm Certification System under the name of the Managing Dealer.*
- ~~(e)~~(g) 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)~~(h) Each FSC will be available for reprint, without any additional fee, for ~~24 hours~~ *30 days* from the date and time *the information was submitted to the Firearm Certification System.* ~~payment is received.~~
- ~~(g)~~(i) The DOJ Certified Instructor and the recipient must sign the FSC ~~once it is printed.~~
- (j) *For purposes of this Article the DOJ Certified Instructor may sign FSCs electronically or by stamp. Employee Certified Instructors may sign FSCs on behalf and with the permission of their Managing Dealer.*
- (k) *The DOJ Certified Instructor is entitled to a refund of any unused pre-paid FSCs upon request and any funds credited to him or her in the Firearm Certification System.*

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, *or the Managing Dealer of the current or former Employee Certified Instructor who provided 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. *Managing Dealers will have access to FSCs issued by their current Employee Certified Instructors or former Employee Certified Instructors when the Employee Certified Instructor issued the FSC while acting in the scope of their employment or on behalf of the Managing Dealer.*
- (c) A replacement *for a lost or destroyed* FSC can be issued via the Firearms Certification System upon the DOJ Certified Instructor<sup>2</sup>~~s~~ or *Managing Dealer's* payment of a five dollar (\$5) fee to DOJ.
- (d) DOJ Certified Instructors *and Managing Dealers* are authorized to charge the FSC holder a five dollar (\$5) fee to recover the fee paid to the Department.
- (e) *Nothing in this Chapter shall prevent an individual or DOJ Certified Instructor from copying a true and correct copy of the individual's FSC. Nothing in this Chapter shall prevent a DOJ Certified Instructor from providing the recipient of the FSC an electronic copy of his or her FSC. A true and correct copy of an FSC may be used in lieu of the original FSC.*

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, *barreled action, or other non-functioning device meeting the definition of a “firearm” under State and Federal law* ~~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).
- (j) *If a physical disability (temporary or permanent) deprives the firearm recipient of the necessary agility to execute the safe handling demonstration, no safe handling demonstration is required. A signed, written letter from a licensed physician attesting that a physical disability (temporary or permanent) precludes an individual from being able to perform the safe handling demonstration is required for this exemption.*

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

## **EXHIBIT 2**



BUREAU OF FIREARMS  
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March 23, 2015

Brian Jones  
Assemblyman, 71st District  
State Capitol, Room #3141  
Sacramento, CA 94249-0071

Dear Assembly Member Jones:

The California Department of Justice (the Department) has reviewed your follow-up questions regarding the implementation of Senate Bill (SB) 683 concerning the particular issues regarding the Firearms Safety Certificate (FSC) Program.

The Federal Firearms License (FFL) holders and Handgun Safety Certificate Instructors (CI) in California requested the development of an online FSC alternative to issuing paper certificates. The FFLs and CIs have the ability to use any credit card in the Firearms Certification System. The FFL may elect to require a CI to use a company credit card; however, it is not a requirement by the Department or the Firearms Certification System. They are not limited to using only a company issued credit card, and in fact, may use the credit card of the FSC purchaser. In addition, the CI has the ability to issue several FSCs in one transaction utilizing a "shopping cart" type purchase. This enables the CI to only enter the credit card information one time.

The Department has elected not to take the liability of maintaining credit card information due to security risks. The current method of payment was the most viable solution for all parties involved in order to meet the system deployment date of January 1, 2015. At this time, due to other critical information technology priorities, we are not exploring changes to the payment options.

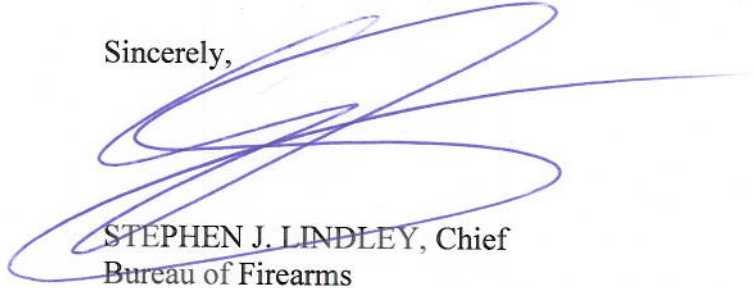
Penal Code Section 31660 states that in the case of loss or destruction "the issuing instructor shall issue a duplicate certificate upon request..." The "issuing instructor" has been interpreted to mean the instructor that originally issued the FSC. A CI is viewed as a private business and is therefore not specifically "tied" to a particular dealership. They have the ability to use their CI status independently, or as part of a dealership. The Department has no plans to seek a change in Penal Code Section 31660.



Brian Jones, Assemblyman  
March 23, 2015  
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Please contact me at the telephone number listed above if you require additional information or clarification.

Sincerely,

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

STEPHEN J. LINDLEY, Chief  
Bureau of Firearms

For KAMALA D. HARRIS  
Attorney General