

STATE OF CALIFORNIA

OFFICE OF ADMINISTRATIVE LAW

2026 OAL Determination NUMBER 3

(OAL MATTER number CTU2025-0912-01)

REQUESTED BY: Micah Stubbs

CONCERNING: Memorandums regarding the California Firearms Application Reporting System (CFARS) Certificate of Eligibility (COE), titled “CFARS COE Cheat Sheet,” issued by the California Department of Justice, Bureau of Firearms (the Department)

DETERMINATION ISSUED PURSUANT TO GOVERNMENT CODE SECTION 11340.5.

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. OAL review is limited to the sole issue of whether the challenged rule meets the definition of “regulation” as defined in Government Code section 11342.600 and is subject to the Administrative Procedure Act (APA).

If a rule meets the definition of “regulation,” but was not adopted pursuant to the APA and should have been, it is an underground regulation as defined in California Code of Regulations (CCR), title 1, section 250.¹ Nothing in this analysis evaluates the advisability or wisdom of the underlying action or enactment.

¹ “Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA. (Cal. Code Regs., tit. 1, § 250, subd. (a)(1).)

CHALLENGED RULE

At issue is whether the memorandums regarding the California Firearms Application Reporting System (CFARS) Certificate of Eligibility (COE), titled "CFARS COE Cheat Sheet," issued by the California Department of Justice, Bureau of Firearms (the Department) contain underground regulations.

Two versions of the "CFARS COE Cheat Sheet," one undated and the other dated August 30, 2024, are specifically challenged and attached hereto as Exhibits A and B, respectively. The challenged memorandums will be referred to collectively as the "Cheat Sheets."

The challenged portion of the undated Cheat Sheet (attached hereto as Exhibit A) reads:

***If they update application and only select business type "Collector", send the below:**

Please provide your Federal Firearm License (FFL) Type 03 Collector of Curios and Relics FFL Number via email to the COE Unit at: COE@doj.ca.gov. If you do not have an FFL-03, please indicate the reason for wanting a COE in the email. Also be sure to include your first and last name and California Driver's License/Identification Card number in your email response, thank you!

The challenged portion of the August 30, 2024, Cheat Sheet (attached hereto as Exhibit B) reads:

***If they update application and only select business type "Collector", send the below:**

Pursuant to Penal Code section 27966, you must have a federal firearm license. If your FFL-03 is in progress with the ATF, *wait until you've received it to upload it, then re-submit the existing CFARS COE application.* The FFL-03 should be uploaded using any available file type. Do not email, fax or mail it to the COE Unit. [Italics added.]

DETERMINATION

OAL determines that the Cheat Sheets contain rules meeting the definition of "regulation" that the Department should have adopted pursuant to the APA but did not. The Cheat Sheets, therefore, contain underground regulations.

FACTUAL BACKGROUND

On September 12, 2025, OAL received a petition from Micah Stubbs (Petitioner) challenging the Cheat Sheets issued by the Department.

On November 12, 2025, OAL accepted the petition for consideration.

On November 28, 2025, OAL published a summary of the petition in the California Regulatory Notice Register and solicited comments from the public until December 29, 2025. OAL received one public comment on this petition on December 29, 2025.

On January 12, 2026, OAL received the Department's response to the petition, which was due no later than January 12, 2026. The Department's timely response indicated that the Department simultaneously provided a copy of the response to Petitioner.

On January 26, 2026, OAL received a rebuttal from Petitioner, which was due no later than January 27, 2026. The Petitioner's timely reply indicated that the Petitioner simultaneously provided a copy of the reply to the Department.

THE DEPARTMENT'S RESPONSE TO THE PETITION

In its response, the Department does not dispute that the challenged portions of the Cheat Sheets are regulations but contends that those regulations are exempt from the APA as the only legally tenable interpretation of law.² The Department's response did not identify any other potentially applicable exemptions from the APA.

UNDERGROUND REGULATIONS

Government Code section 11340.5, subdivision (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 [Government Code] 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 [the APA].

² Department Response to the Petition, p. 4; Gov. Code, § 11340.9, subd. (f).

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of Government Code section 11340.5 that is not exempt from the APA, it creates an underground regulation as defined in section 250 of title 1 of the CCR.

OAL may issue a determination as to whether an agency has issued, utilized, enforced, or attempted to enforce a rule that meets the definition of a "regulation" as defined in Government Code section 11342.600 and should have been adopted pursuant to the APA.³ An OAL determination is not enforceable against the agency through any formal administrative means, but it is entitled to due deference in any subsequent litigation of the issue.⁴

ANALYSIS

OAL's authority to issue a determination extends only to the limited question of whether the challenged rule is a regulation subject to the APA. This analysis will determine (1) whether the challenged rule is a regulation within the meaning of Government Code section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

I. The Cheat Sheets Contain Regulations.

"Regulation" is defined in Government Code section 11342.600 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.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw*, the California Supreme Court found that:

A regulation subject to the [APA] 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

³ Gov. Code, § 11340.5, subd. (b).

⁴ *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 428.

procedure.⁵

As stated in *Tidewater*, the first element used to identify a “regulation” is whether the rule applies generally. As *Tidewater* points out, a rule need not apply to all persons in the State of California. It is sufficient if the rule applies to a clearly defined class of persons or situations.⁶ Here, the Cheat Sheets are used by Department staff as a compilation of email templates with fill in the blank areas for responding to different COE application issues. The Department responded to the Petitioner’s emails several times with the default response from the Cheat Sheet dated August 30, 2024.⁷ Accordingly, the Cheat Sheets’ rules apply generally to Department staff and to all members of the public applying for a curio and relic COE.

The second element of a regulation under *Tidewater* is that the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency’s procedure.

The challenged rules contained in the Cheat Sheets implement, interpret, and make specific the Penal Code sections enforced or administered by the Department and govern the Department’s procedure in at least the following ways:

1. The challenged rules implement, interpret, and make specific section 26710 of the Penal Code to carry out the Department’s duty to regulate the Certificate of Eligibility program. Section 26710(d) provides, “The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.” As discussed *infra*, the Department implements this requirement in title 11, sections 4035 and 4037 of the CCR. However, the requirement that curio and relic COE applicants submit their federal collectors license (FFL-03) as part of the COE application process is not contained in the Department’s duly adopted regulations.
2. The challenged rules implement, interpret, and make specific sections 26585, 26970(a), 27535(b)(10), 27670, 27966, 31700(a)(6), and 33700(g)(5) of the Penal Code by outlining the requirements a licensed and certified collector must meet to use the exemptions allotted to them by statute. Generally, these statutes provide exemptions from the usual gun transfer laws for sale of curio or relic firearms to individuals who are both a federally licensed collector and possess a curio and

⁵ *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571.

⁶ *Roth v. Department of Veterans Affairs* (1980) 110 Cal.App.3d 622, 630.

⁷ Petition, p. 18, 20, and 23; Ex. A.

relic COE from the Department. The statutes require that the buyer must have both a federal license and Department issued COE to use the exemption, but do not state that a federal license must be provided to the Department at the time of application or prior to the Department issuing the COE.

The rules contained in the Cheat Sheets also further implement, interpret, and make specific CCR sections enforced or administered by the Department and govern the Department's procedure in at least the following ways:

1. The challenged rules implement, interpret, and make specific title 11, section 4035 of the CCR by expanding the list of application requirements for issuance of a new COE. Section 4035, subparagraph (b)(1), provides a list of information that must be provided by the applicant to complete the COE application. That list includes items like the applicant's driver license number, address, and applicant transaction identifier. But it does not include a copy of the applicant's federal collector license.
2. The challenged rules implement, interpret, and make specific title 11, section 4037 of the CCR by expanding the list of application requirements for renewal of an existing COE. Similarly to section 4035 above, section 4037, subparagraph (b)(1), provides a list of information that must be provided by an applicant to renew their COE. That list includes the applicant's driver license number, address, and date of birth. But it again does not include a copy of the applicant's federal collector license.

As these examples illustrate, the Cheat Sheets further implement, interpret, and make specific the Penal Code and title 11 of the CCR and therefore meet the definition of a "regulation" under *Tidewater*.⁸

II. The Cheat Sheets are Not APA Exempt as the Only Legally Tenable Interpretation of Law.

The final issue to examine is whether an express statutory exemption applies to the challenged rule. Exemptions from the APA can be general exemptions that apply to all state rulemaking agencies. Exemptions may also be specific to a particular rulemaking agency or a specific program. In any event, the rulemaking requirements of the APA apply "to the exercise of any quasi-legislative power conferred by any statute heretofore or hereafter enacted"

⁸ Moreover, the Department does not contest that the challenged rule is regulatory. (Department Response to the Petition, p. 4.)

and “shall not be superseded or modified by any subsequent legislation except to the extent that the legislation shall do so expressly.”⁹

Generally, a rule is excepted from the APA if it is the only legally tenable interpretation of a provision of law.

The exception for the lone ‘legally tenable’ reading of the law applies only in situations where the law ‘can reasonably be read only one way’ [citation], such that the agency’s actions or decisions in applying the law are essentially rote, ministerial, or otherwise patently compelled by, or repetitive of, the statute’s plain language.¹⁰

But to the extent any of the contents of the [statement of policy or procedure] depart from, or embellish upon, express statutory authorization, the [agency] will need to promulgate regulations.¹¹

[Agencies must show] that their interpretation follows directly and inescapably from the pertinent provisions of law.¹²

Here, the Department argues it “requires applicants seeking to obtain a firearms COE as a collector to provide evidence of an FFL-03 (Challenged Requirement) because that is the only legally tenable interpretation of the law.”¹³ In support of this contention, the Department explains that: first, a COE is not required for individuals to purchase firearms or ammunition in California and that a COE is only needed where required by law; second, that COEs are generally only needed for “professional/employment/commercial licensing purposes”¹⁴; and third, that the only other reason for issuance of a COE is for collectors of curios and relics and that both a federal license and collectors COE are required to engage in curio and relic exempt transactions.¹⁵ The Department goes on to conclude that because the Penal Code sections granting exemptions to the usual rules

⁹ Gov. Code, § 11346.

¹⁰ *Doe v. Becerra* (2018) 20 Cal.App.5th 330, 337 (internal citations omitted) (citing *Morning Star Co. v. State Board of Equalization* (2006) 38 Cal.4th 324, 336-337).

¹¹ *Engelmann v. State Board of Education* (1991) 2 Cal.App.4th 47, 62.

¹² *Doe v. Becerra* (2018) 20 Cal.App.5th 330, 339 (internal citations omitted) (citing *Morning Star Co. v. State Board of Equalization* (2006) 38 Cal.4th 324, 336-337).

¹³ Department Response to the Petition, p. 2.

¹⁴ Department Response to the Petition, p. 5.

¹⁵ Department Response to the Petition, p. 6.

for gun ownership transfer for curio and relic firearms all require the purchaser to have a federal curio and relic license and a collector COE issued by the Department to engage in these exemptions, that it is the only legally tenable interpretation of the law that the Department *must obtain* a copy of the federal license from the applicant when they apply for a COE with the Department.¹⁶

The Department has not established that their interpretation follows “directly and inescapably”¹⁷ from the pertinent provisions of the law for two reasons. First, the statutes permitting exemptions to the usual gun ownership transfer rules for curio and relic firearms can reasonably and logically be interpreted to allow different ways for the Department to ensure compliance with the requirement to have a federal collectors license when engaging in covered transactions other than requiring an applicant to provide the federal license at the time of application. Second, the Department’s own regulations contemplate alternative application requirements thus demonstrating that the applicable statutes can reasonably be read more than one way.

a. The Penal Code Does Not Require Applicants to Provide a Federal Collectors License to the Department at the Time of Application.

Although the Department contends that the Penal Code can only be interpreted to require that the Department obtain a copy of an applicant’s federal license prior to granting them a COE, nothing in the Penal Code explicitly requires the Department to obtain the federal collectors license at this stage in the process. Moreover, the statutes on which the Department relies for its only legally tenable interpretation argument expressly contemplate alternative methods and timelines for gathering this information.

Penal Code section 27966 permits individuals to avoid the usual requirement to transfer firearms through a licensed firearms dealer if the firearm is not a handgun, the firearm is a curio or relic, the person receiving the firearm has a Department issued COE, and the person receiving the firearm is federally licensed as a collector.¹⁸ If a collector wishes to use this exemption, then within 30 days of receiving the firearm the collector must “submit to the Department of Justice, run up in a form and manner prescribed by the department, a report that includes information concerning the individual taking possession of the firearm.”¹⁹ While Section 27966 requires a federal

¹⁶ Department Response to the Petition, p. 8.

¹⁷ *Doe v. Becerra* (2018) 20 Cal.App.5th 330, 339 (internal citations omitted) (citing *Morning Star Co. v. State Board of Equalization* (2006) 38 Cal.4th 324, 336-337).

¹⁸ Pen. Code, § 27966, subds. (a-d).

¹⁹ Pen. Code, § 27966, subd. (e).

license by the person receiving the curio or relic, it does not state if, how, or when the Department must verify that the individual engaging in the covered transaction has a federal curio and relic license, let alone require that the applicant wait to apply for a COE until the federal license has been obtained. Indeed, while the Department could adopt a regulation requiring applicants to provide the federal license at the time of application, the Department could ensure compliance with the federal licensure requirement in different ways. For example, the Department could adopt regulations making any COE approval contingent upon an applicant receiving their federal license. Section 27966 also contemplates that the Department promulgate a form via regulation to require the seller to provide information on the buyer to the Department. When promulgating regulations to implement the statutorily mandated form, the Department could require the collector to include a copy of their federal collector license in the report sent to the Department.

Other statutes containing exemptions for collectors also contemplate that the Department could collect this information at times other than just the initial COE application. Penal Code sections 26970 and 27670 both allow collectors to avoid firearm transfer waiting periods if the seller of the firearm is a licensed dealer, the buyer is a federally licensed collector, and the buyer has a Department issued collector COE.²⁰ If a transaction is made under these exemptions, the dealer must report the transaction to the Department and include in that report “any applicable waiting period exemption information.”²¹ Instead of requiring that the Department collect this information prior to issuance of a COE, these statutes permit an interpretation where dealers self-report information about their buyer’s federal collector license status to the Department.

The statutory requirement to have both the federal collector license and the Department issued COE to take advantage of certain exemptions, combined with the statutory requirement to report information to the Department, does not necessitate the interpretation that the Department must require submission of a copy of the federal collector license prior to issuance of a COE, let alone at the time of application. The statutes as drafted allow for an interpretation where the buyers/sellers self-report this information to the Department after sales occur. Therefore, it is not the only legally tenable interpretation of those statutes that the Department must require submission of the federal collector license as part of the application process for a curio and relic COE.

²⁰ Pen. Code, §§ 26970, subds. (a)(1-4), and 27670, subds. (a)(1-4).

²¹ Pen. Code, §§ 26970, subd. (b), and 27670, subd. (b); citing Pen. Code, § 28160, subd. (a)(4).

b. The Department's Prior Adoption of Regulations Governing the COE Program Demonstrates that the Department Has Discretion as to How the COE Application Process is Implemented.

Penal Code section 26710 authorizes the Department to implement a Certificate of Eligibility program and provides:

- (a) A person may request a certificate of eligibility from the Department of Justice.
- (b) The Department of Justice shall examine its records and records available to the department in the National Instant Criminal Background Check System in order to determine if the applicant is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.
- (c) The department shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited by state or federal law from possessing firearms.
- (d) **The department shall adopt regulations to administer the certificate of eligibility program** and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.²²

The Department has promulgated regulations pursuant to this section. CCR, title 11, division 5, chapter 3, "Certificates of Eligibility" regulates the Department's COE program. The existing regulations include definitions applicable to the chapter, qualifications for COE applicants, fingerprinting requirements, applicant online account requirements, service of notices, required applicant information, renewal of existing COEs, terms, fees, cancellation of a COE, denial of a COE, and revocation of a COE.²³

The Department's existing regulations set forth the qualifications to apply for a COE²⁴, the application information required for issuance of a new COE²⁵, and the application information required for renewal of an existing COE.²⁶ To qualify for a COE, an applicant must not be barred from possessing firearms pursuant to statutes and federal regulations.²⁷ If qualified, 11 CCR section

²² Pen. Code, § 26710 (emphasis added).

²³ Cal. Code Regs., tit. 11, §§ 4030 *et seq.*

²⁴ Cal. Code Regs., tit. 11, § 4032.

²⁵ Cal. Code Regs., tit. 11, § 4035.

²⁶ Cal. Code Regs., tit. 11, § 4037.

²⁷ Pen. Code, §§ 18205, 29800, 29805, 29815-29825, 29900; Welf. & Inst. Code, § 8100 or 8103; 18 U.S.C. §§ 921-922; 27 C.F.R. § 478.32.

4035, subparagraph (b)(1), requires the applicant to present the following information in their initial application:

Applicant's full name; driver license type and number or California identification number; date of birth; residence street address; phone number; gender; applicant transaction identifier (ATI) number; business type(s); United States citizenship; if not a United States citizen, the country of citizenship and the federal Citizenship and Immigration Services (USCIS) Number or federal I-94 number. The application shall also require additional information requesting responses to questions asking if the applicant: 1) is a current COE holder; and 2) has submitted COE fingerprint impressions through a live scan provider, as required by section 4032.5.²⁸

Several of the listed application requirements further implement the Penal Code. Those include driver license type and number, ATI, and United States citizenship and USCIS number. Accordingly, the Department has demonstrated that it has discretion when determining what information must be provided at the application stage. Clearly, the Department has authority to interpret the statutory framework to require a copy of the federal license upon application for a California COE, but has not exercised that discretion via a duly adopted regulation. Thus, the rules challenged in the Cheat Sheets are not exempt from the APA as the only legally tenable interpretation of the law pursuant to subdivision (f) of Government Code section 11340.9.

CONCLUSION

In accordance with the above analysis, OAL determines that the rules challenged in the Cheats Sheets meet the definition of a "regulation" that the Department should have adopted pursuant to the APA and are not otherwise exempt from the APA. Thus, the Cheat Sheets contain underground regulations.

Date: March 30, 2026



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²⁸ Cal. Code Regs., tit. 11, § 4035, subd. (b)(1).

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