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November 17th, 2006

**RE: OPPOSITION TO PROPOSED DEFINITION OF "CAPACITY TO
ACCEPT DETACHABLE MAGAZINES" -11 C.C.R. 5469**

I write on behalf of the Fifty Caliber Institute (FCI) in opposition to a proposed regulation defining the phrase "capacity to accept a detachable magazine" in 11 C.C.R. 5469.

The Fifty Caliber Institute is a national organization dedicated to the advancement of the .50 caliber shooting sports. FCI has a tradition of proud service to America's law enforcement and military services, helping to make our streets and nation safer.

In 2004, the California Legislature passed a law, Assembly Bill 50 (AB50) limiting the possession and sale of .50 BMG rifles. Persons possessing .50 BMG rifles were required to register their firearms or remove them from the state before June 1, 2006. Excluded from the definition of ".50 BMG rifles" were all "assault weapons." However, the proposed regulation substantially interferes with the registration requirements of AB50 by expanding the scope and definition of "assault weapons" to include firearms that are currently registered as ".50 BMG rifles," such as the Barrett 82A1-CA. Therefore, FCI joins in and incorporates by reference the arguments made by the National Rifle Association and the California Rifle and Pistol Association in opposition to the addition to Section 5469 as drafted and to the defining of "capacity to accept a detachable magazine" generally.

The proposed regulation defines the phrase "capacity to accept a detachable magazine" as it is used to define "assault weapons" within Penal Code section 12276.1 ("Section 12276.1"). Section 12276.1 "assault weapons" were required to be registered on or before December 31, 2000. And, during the initial regulation process, the Department of Justice denied a request to clarify the phrase "capacity to accept" on the grounds that such a definition was unnecessary.¹ We agree with that determination.

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Since then, the Department of Justice has promulgated and promoted the “readily removed” standard in its definition of “detachable magazine”:

“detachable magazine” means any ammunition feeding device that can be *removed readily* from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool. Ammunition feeding device includes any belted or linked ammunition, but does not include clips, en block clips, or strip clips that load cartridges into the magazine. [27 C.C.R. 978.20(a).]

This definition has been used by the Department of Justice to permit the sale and possession of firearms, such as the Barrett 82A1-CA rifles that have been modified to prevent their ammunition feeding device from being “readily removed.”


These proposed regulations, however, are a departure from the Department of Justice’s prior written opinions. The proposed regulation would shift from the “readily removed/detached” standard to a “readily modifiable” standard. Thus, the previously approved Barrett 82A1-CA modification does not satisfy the newly proposed regulation. As you know, such letters have been and continue to be relied upon by FCI and its members since the Department of Justice is the agency that supported the legislation and promulgates the firearms related regulations – in addition to enforcing all firearms laws.

The proposed regulation will have a criminalizing effect on .50 BMG rifle owners who have purchased, possess, and registered firearms as .50 BMG rifles that have been approved by the Department of Justice, but would become illegal under the proposed regulation.

Specifically, the proposed definition would directly affect the firearms that have been approved for sale by the Department of Justice, including the Barrett 82A1-CA rifles, which have been modified to prevent their ammunition feeding device from being “readily removed,” pursuant to the existing “readily removable” regulatory standards. Since Penal Code section 12278 (a) prohibits the registration of .50 BMG rifles that are Section 12276.1 type “assault weapons,” such a substantive change in regulations would nullify all .50 BMG rifle registrations where the rifle would have been an “assault weapon” due to the reversibility of the modification to the detachable magazine.

CONCLUSION

FCI opposes the proposed regulation on the grounds that it expands the current understanding of the term “assault weapon” as it has been used and applied by the Department of Justice and relied upon by California residents and law enforcement. This proposed regulation would substantially impact California residents by nullifying the registration of “.50 BMG rifles,” expanding the definition of “assault weapons,” and criminalizing.



John Burt, Chmn
Fifty Caliber Institute