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Department of Justice  
Firearms Licensing and Permits Section  
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**RE: OPPOSITION TO PROPOSED DEFINITION OF CAPACITY TO  
ACCEPT DETACHABLE MAGAZINES 27 C.C.R. 978.20(f)**

I write on behalf of the Fifty Caliber Institute (FCI) in opposition to proposed regulation defining the phrase "capacity to accept a detachable magazine" in 27 C.C.R. 978.20(f). 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. 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 of Section 978.20(f), which defines "capacity to accept a detachable magazine."

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.<sup>1</sup> 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 rifles that have been modified to prevent their ammunition feeding device from being "readily removed." Attached is a prior

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<sup>1</sup> See National Rifle Association's letter of opposition to the proposed regulation.

written determination by the Department of Justice that a screw set swing magazine on a Barrett 82A1 receiver is a fixed magazine receiver, thereby removing it from being classified as a Section 12276.1 assault weapon. ” Such a modification is not permanent. ”As you know, such letters have been and continue to be relied upon since the Department of Justice is the agency that supported the legislation, promulgates the firearms related regulations, in addition to enforcing all firearms laws.

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 ” standard to a permanently altered/cannot accommodate standard:

Capacity to accept a detachable magazine means capable of accommodating a detachable magazine, but shall not be construed to include a firearm that has been *permanently altered so that it cannot accommodate* a detachable magazine.

As outlined in the National Rifle Association and the California Rifle and Pistol Association letter, the Department had an opportunity to define capacity to accept ” during the initial regulatory period but found that such a regulation was unnecessary.

Now, only after attempting to prohibit the sale of lawful firearm receivers without providing a registration period via illegal regulations promulgated as Important Notices, such as the one published in February 2006, is the proposed and *allegedly necessary* regulation defining capacity to accept.

Unfortunately, the proposed regulation will have a criminalizing effect on .50 BMG rifle owners who have purchased, possess, and registered firearms 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 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.

This proposed regulation, if passed, subjects thousands California residents to criminal prosecution for possession of firearms that the Department has expressly approved.

### **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 conduct that the Department has expressly condoned. FCI also joins in the National Rifle Associations and California Rifle and Pistol Associations opposition to the proposed regulations.

FCI proposes that the Department of Justice not promulgate the proposed regulations, that it cease distribution of its illegal Information Bulletin, and refrain from engaging in activities designed to circumvent the registration requirements of the Roberti-Roos Act.

Chairman,

John Burt  
FCI