C. D. Michel — SBN 144258
Jason A. Davis — SBN 224250
TRUTANICH • MICHEL, LLP
180 E. Ocean Avenue, Suite 200
Long Beach, CA 90802
Tel: (562) 216-4445

Stephen P. Halbrook
LAW OFFICES OF STEPHEN P. HALBROOK
10560 Main Street, Suite 404
Fairfax, Virginia 22030
Tel: (703) 352-7276

Don B. Kates — SBN 039193
BENENSON & KATES
22608 North East 269th Avenue
Battleground, Washington 98604
Tel: (360) 666-2688

Attorneys for Plaintiffs

FILED
SEP 29 2006
FRESNO COUNTY SUPERIOR COURT
By _____ SXG - DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

| | |
|---|---|
| EDWARD W. HUNT, in his official capacity as District Attorney of Fresno County, and in his personal capacity as a citizen and taxpayer, et. al.,<br><br>Plaintiffs,<br><br>v.<br><br>STATE OF CALIFORNIA; WILLIAM LOCKYER, Attorney General of the State of California, et. al.,<br><br>Defendants. | CASE NO. 01CECG03182<br><br>**NOTICE OF LODGMENT IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE AND PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE MOTION FOR SUMMARY ADJUDICATION VOLUME 9 OF 11, EXHIBIT AAAA-JJJJ-1**<br><br>Date: December 14, 2006<br>Time: 3:30 p.m.<br>Dept.: 72 |

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**TO EACH PARTY AND THEIR ATTORNEYS OF RECORD IN THIS ACTION:**

PLEASE TAKE NOTICE THAT Plaintiffs Edward W. Hunt, et. al., hereby lodge the following exhibits in support of Plaintiffs' Motion for Summary Judgment or in the Alternative Motion for Summary Adjudication.

**RULE MAKING FILE**:

Attached hereto as Exhibits "C" through "T" are the California Department of Justice's Rule Making File Exhibit's for California Code of Regulations sections 978.10 through 978.44 of Title 11, Division 1. The Exhibits from the Rule Making File are produced in groups of documents described as "Parts" as categorized by the Department of Justice. Each Exhibit is given the originally provided by the Department of Justice even though it may contain more than the demarcated documents within the Exhibits. Thus, when necessary, Plaintiffs will refer to certain documents by its Bates number. The Rule Making File was provided in response to Plaintiffs' Requests for Production.

Plaintiffs request judicial notice of Exhibits A through U, BB through UU, WW through OOOO on the basis that they fall within Evidence Code section 452 (c) as they are demonstrative of official acts of the legislative, executive, or judicial departments of the United States and of California and (d) as they constitute records of the State of California.

Plaintiffs request judicial notice of exhibits V through AA on the basis that they fall within the rubric of Evidence Code section 451(e) and the true significance of the english word is judicially noticeable.

Plaintiffs request judicial notice of Exhibits VV and ZZ as they are

Plaintiffs request judicial notice of Exhibits A through OOOO pursuant to Evidence Code 452 (h) as they constitute facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

## EXHIBITS

| | |
|---|---|
| Exhibit A: | California Attorney General's Assault Weapons Identification Guide, 3rd ed — 2001. |
| Exhibit B: | Senate Bill 23 (1999) |
| Exhibit C: | Part "A" — Notice of Publication/Regulations Submission. |
| Exhibit D: | Part "B" — Text of Regulations Originally Noticed to the Public. |
| Exhibit E: | Part "C" — Initial Statement of Reasons. |
| Exhibit F: | Part "D" — Written Comments Submitted During 45-Day Comment Period. |
| Exhibit G: | Part "E" — Public Hearing Record. |
| Exhibit H: | Part "F" — Notice of Modifications to Text / Modified Text of Regulations. |
| Exhibit I: | Part "G" — Written Comments Submitted During First 15-Day Comment Period. |
| Exhibit J: | Part "H" — Second Notice of Modifications to Text / Modified Text of Regulations. |
| Exhibit K: | Part "I" — Written Comments Submitted During Second 15-Day Comment Period |
| Exhibit L: | Part "J" — Comment Identification Key. |
| Exhibit M: | Part "K" — Updated Informative Digest. |
| Exhibit N: | Part "L" — DOJ's Final Statement of Reasons. |
| Exhibit O: | Part "M" — Statements Regarding Mailing and Plain English Requirement. |
| Exhibit P: | Part "N" — Supportive Reference Material Originally Noticed to the Public — including Glossary of the Association of Firearm and Toolmark Examiners — AFTE Committee (1969) (Bates Nos. 3047 through 3051). |
| Exhibit Q: | Part "O" — Notice of Additional Supportive Reference Material / Additional Material. |

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|---|---|
| Exhibit R: | Part "P" — Economic and Fiscal Impact Statement (Form 399). |
| Exhibit S: | Part "Q" — Other Written Comments in Connection with Proposed Regulations. |
| Exhibit T: | Part "R" — Table of Exhibits. |
| Exhibit U: | DOJ's Assault Weapon Registration Daily Report for December 31, 2001. |
| Exhibit V: | Glossary of the Association of Firearm and Toolmark Examiners by the AFTE Standardization Committee (2nd ed., 1985). |
| Exhibit W: | Non-Fiction Writer's Guide: A writer's resource to firearms and ammunition |
| Exhibit X: | Firearms Encyclopedia. |
| Exhibit Y: | The Book of Rifles. |
| Exhibit Z: | U.S. Army Special Forces Foreign Weapons Handbook |
| Exhibit AA: | The Firearms Dictionary. |
| Exhibit BB: | February 23, 2000, letter from Jim Pope to Debbie Coffin, Analyst for the Department of Justice — Firearms Division. |
| Exhibit CC: | May 23, 2000, letter from Orange County Sheriff Michael S. Carona to the Department of Justice. |
| Exhibit DD: | May 23, 2000, letter from Shasta County Sheriff Jim Pope to Debbie Coffin, Analyst for the Department of Justice — Firearms Division. |
| Exhibit EE: | June 16, 2000, letter from Sheriff Michael S. Carona to Debbie Coffin, Analyst for the Department of Justice — Firearms Division. |
| Exhibit FF: | July 24, 2000, letter from Shasta County Sheriff-Coroner Jim Pope to Debbie Coffin, Analyst for the Department of Justice — Firearms Division. |
| Exhibit GG: | November 2, 2000, letter from Chuck Michel of Trutanich•Michel, LLP, to David De Alba, Senior Assistant Attorney General. |
| Exhibit HH: | November 6, 2000, letter to Mr. Patton from Dale A. Ferranto, Assistant Director Firearms Division. |

| | |
|---|---|
| Exhibit II: | August 10, 2000, letter to George Getty from Pam Pauly, Field Representative for the DOJ Firearms Division. |
| Exhibit JJ: | October 31, 2000, letter to Steven Helsley, from Timothy Rieger, Deputy Attorney General — Firearms Division. |
| Exhibit KK: | January 25, 2001, letter to Paul Gasparelli from Randy Rossi, Director of California Department of Justice — Firearms Division. |
| Exhibit LL: | March 4, 2003, letter to Director Randy Rossi — California Department of Justice — Firearms Division. |
| Exhibit MM: | March 17, 2003, letter to Timothy Rieger, Deputy Attorney General to Chuck Michel (of Trutanich•Michel, LLP). |
| Exhibit NN: | Defendants' Amended Responses to Plaintiffs' Request for Admissions, Set One, dated May 18, 2005. |
| Exhibit OO: | Defendants' Responses to Plaintiffs' Request for Admissions, Set One, dated November 7, 2003. |
| Exhibit: PP: | Defendants' Responses to Plaintiffs' Special Interrogatories, Set One, dated November 7, 2003. |
| Exhibit QQ: | Defendants' Amended Responses to Plaintiffs Special Interrogatories, Set One, dated May 18, 2005. |
| Exhibit RR: | February 28, 1999, letter to Debbie Coffin, Analyst for the DOJ — Firearms Division, from Assemblyman Howard Kaloogian. |
| Exhibit SS: | February 8, 2000, letter from Virginia R. Black, Sheriff-Coroner of Yuba County, to Debbie Coffin, Analyst for the Department of Justice — Firearms Division. |
| Exhibit TT: | February 17, 2000, letter from Sonoma County Sheriff-Coroner Jim Piccinini, to Debbie Coffin, Analyst for the Department of Justice — Firearms Division. |
| Exhibit UU: | February 23, 2000, letter from Stanislaus County Sheriff Les Weidman to Debbie Coffin, Analyst for the Department of Justice — Firearms Division. |

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|---|---|
| Exhibit VV: | Browning BOSS Web page. |
| Exhibit WW: | December 15, 2000, letter from Special Assistant Attorney General David De Alba, to C.D, Michel of Trutanich•Michel, LLP. |
| Exhibit XX: | Printout from webpage of Springfield Armory (www.springfield-armory.com/prod-rifles-mla.shtml) dated 9/05/01. |
| Exhibit ZZ: | Article — *Long Guns for End of Trail*, Cowboy Chronicle (Mar. 2001). |
| Exhibit AAA: | March 16, 2000, letter to Boyd Davis (SASS) from Director Randy Rossi Department of Justice — Firearms Division. |
| Exhibit BBB | November 1, 2000, letter to Boyd Davis (SASS) from Director Randy Rossi Department of Justice — Firearms Division. |
| Exhibit CCC: | California DOJ Testing Program Compliance Report for Walther P22 dated April 11, 2002 — provided in response to a Public Records Act Request. |
| Exhibit DDD: | April 29, 2002, DOJ memorandum re: Compliance Tests. |
| Exhibit EEE: | DOJ Handgun Roster Listing Fee Request and Payment dated May 6, 2002. |
| Exhibit FFF: | DOJ Walther Timeline — provided by DOJ on November 5, 2004, in response to a Public Records Act Request ("PRAR"). |
| Exhibit GGG: | July 22, 2002, e-mail from Ron Borgio of Smith & Wesson to Lesa Saville, of DOJ. |
| Exhibit HHH: | March 18, 2003, (filed) Court Order regarding Defendants' Demurrer to Plaintiffs' First Amended Complaint. |
| Exhibit III: | May 6, 2004, letter from Ron Borgio to Randy Rossi of DOJ regarding Walther P22; May 24, 2004, letter for Director Randy Rossi of Cal DOJ, to Ron Barge of Smith & Wesson re" the "Walter P-22 Retrofit solution" — provided in response to a PAR. |
| Exhibit JJ: | Handwritten notes relating to the Walter P22 provided by the California Department of Justice on November 5, 2004. |
| Exhibit KKK: | June 2, 2004, memorandum from Kurt Hindle to all Walter dealers. |
| Exhibit LLL: | June 2, 2004, letter from Robert L. Scott of Smith & Wesson to Director |

| | |
|---|---|
| | Randy of Rossi of DOJ Firearms Division. |
| Exhibit MMM: | BATFE Ruling 73-19. |
| Exhibit NNN: | BATFE Industry Circulars. |
| Exhibit OOO: | U.S. Treasury Department, Rev. Rule 69-248. |
| Exhibit PPP: | Analysis as amended of Senate Bill 824 (2003). |
| Exhibit QQQ: | June 20, 2003, letter from Jason Davis of Trutanich•Michel, LLP, to Director Randy Rossi and Public Records Coordinator James Ching of the California Department of Justice Firearms Division, regarding firearm retailer employee conduct; July 7, 2003, letter from Tim Rieger, Deputy Attorney General, to J.A. Davis of Trutanich•Michel, LLP. |
| Exhibit RRR: | July 22, 2003, letter from J.A. Davis of Trutanich•Michel, LLP, to James Ching, Public Records Coordinator, DOJ and Randy Rossi, Director of Firearms Director, DOJ. |
| Exhibit SSS: | August 22, 2003, letter from Tim Rieger of DOJ to J.A. Davis of Trutanich • Michel, LLP. |
| Exhibit TTT: | May 5, 2004, letter from C.D. Michel of Trutanich•Michel, LLP, to Randy Rossi and Tim Rieger of the DOJ. |
| Exhibit UUU: | DOJ FAQ Web page — http://ag.ca.gov.firearms/regagunfaqs.htm ; December 17, 2003,letter from Tim Rieger of DOJ to C.D. Michel regarding PAR. Request CALDOJ - 072103-PG. |
| Exhibit VVV: | March 21, 2001, letter from Robinson Armanent to Randy Rossi of the DOJ re: Determination of Suitability of M96 Rifle for Unrestricted Sale in California. |
| Exhibit WWW: | April 25, 2001, letter from Nancy Palmieri of DOJ, to Alex J. Robinson of Robinson Armanent Co., regarding Determination of Suitability of M96 Rifle for Unrestricted Sale in California. |
| Exhibit XXX: | California Rifle and Pistol Association Media Release dated February 6, 2004, and Attorney General's Press Release dated November 25, 2003. |

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|---|---|
| Exhibit YYY: | May 1, 2003, letter from Deputy Attorney General Timothy Rieger of the California Department of Justice to Chuck Michel of Trutanich•Michel, LLP, regarding "assault weapon" characteristics. |
| Exhibit ZZZ: | April 15, 2004, letter from Deputy Attorney General Timothy Rieger of the California Department of Justice Firearms Division, to Alex J. Robinson, President of Robinson Armament, Co., regarding legality of Robinson Armament, Co. model M-96 rifle. |
| Exhibit AAAA: | January 29, 2001, inquiry letter from Trutanich•Michel, LLP to the DOJ regarding SB-23 "Detachable" Magazine Restrictions. |
| Exhibit BBBB: | February 22, 2001, response letter from Tim Rieger of the DOJ to C.D. Michel of Trutanich • Michel, LLP, regarding SB-23 "Detachable" Magazine Restrictions. |
| Exhibit CCCC: | December 21, 2005, letter from Alison Merrilees, Deputy Attorney General — Firearms Division of the DOJ, to an unknown consumer. |
| Exhibit DDDD: | August 30, 2006, e-mail from Alison Merrilees, Deputy Attorney General — Firearms Division of the DOJ to Jason A. Davis of Trutanich•Michel, LLP. |
| Exhibit EEEE: | April 28, 2006, e-mail from Sally Carney to "Mr. Kastelic." re SKS permanently affixed magazine. |
| Exhibit FFFF: | March 22, 2006, letter from Ignatius H. Chinn of DOJ to Robert Hesse of Vulcan Arms re Vulcan Model V 15 and V 55 lower receivers. |
| Exhibit GGGG: | May 24, 2006, letter from Alison Merrilees to Gene Hoffman, Jr. Regarding a PAR. |
| Exhibit HHHH: | E-mail correspondence between Alison Merrilees of DOJ and Luis Tolley of Project Concern International and Brian Siebel of The Brady Center. |
| Exhibit IIII: | Text of proposed regulations defining "capacity to accept a detachable magazine." |
| Exhibit JJJJ: | August 15, 2006, letter from C.D. Michel of Trutanich•Michel, LLP, to Jeff |

| | |
|---|---|
| | Amador of Cal DOJ in opposition to proposed regulations and exhibits thereto. |
| Exhibit KKKK: | August 15, 2006, letter from the Fifty Caliber Institute to Jeff Amador of the DOJ in opposition to proposed definition of "capacity to accept detachable magazines legislation. |
| Exhibit LLLL: | August 15, 2006, letter from the California Association of Firearms Retailers to Jeff Amador of DOJ regarding their opposition to the proposed regulations, and attachment thereto. |
| Exhibit MMMM: | August 16, 2006, transcript of public comments regarding the definition of terms used to identify assault weapons. |
| Exhibit NNNN: | September 28, 2006, printout of DOJ website identifying the May 9, 2006, "Important Notice" as an active link. |
| Exhibit OOOO: | Various letters from the DOJ in response to inquiries from the general public. |

Date: September 28, 2006

TRUTANICH • MICHEL, LLP:

C. D. Michel
Attorney for Plaintiffs

# EXHIBIT AAAA

OF COUNSEL:
ROBERT C. MOEST
JOHN F. MACHTINGER
MICHAEL ALLEN
LOS ANGELES, CA

TRUTANICH • MICHEL, LLP
ATTORNEYS AT LAW
PORT OF LOS ANGELES OFFICE
407 NORTH HARBOR BOULEVARD
SAN PEDRO, CALIFORNIA 90731-3356
TELEPHONE: (310) 548-0410 • FAX: (310) 548-4813

DON B. KATES
SAN FRANCISCO, CA
MARK R. BENENSON
NEW YORK, N.Y.
DAVID T. HARDY
TUCSON, AZ

January 29, 2001

Via Fax & U.S. Mail
Mr. David DeAlba
Mr. Tim Rieger
Department of Justice
1300 "I" Street
Sacramento, CA 95814

Re: SB-23 "Detachable" Magazine Regulations

Dear Messrs. DeAlba & Rieger:

Many members of my associational clients have been inquiring about what qualifies as a "non-detachable" magazine. The DOJ regulations define a "detachable" magazine as "any ammunition feeding device that can be removed readily from a firearm with *neither* disassembly of the firearm action *nor* use of a tool being required." (Emphasis added).

It would seem in reading the regulation that, conversely, a "non-detachable" magazine would be any magazine that requires *either* disassembly of the firearm action *or* the use of a tool to remove the magazine being required. In other words, for a magazine to be non-detachable it is not necessary that *both* disassembly of the firearm action *and* use of a tool be necessary, only one or the other.

I'd appreciate it if you could clarify this. I look forward to hearing from you shortly.

Sincerely,
**TRUTANICH • MICHEL, LLP**

C. D. Michel

CDM/hv

# EXHIBIT BBBB

*BILL LOCKYER*
*Attorney General*

*State of California*
*DEPARTMENT OF JUSTICE*

P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0802

February 22, 2001

C.D. Michel
TRUTANICH - MICHEL, LLP
407 North Harbor Boulevard
San Pedro, CA 90731-3356

Re: SB 23 "Detachable" Magazine Regulations

Dear Mr. Michel:

Thank you for your letter of January 29, 2001, requesting clarification of the SB-23 "detachable" magazine regulations. The regulation states, in pertinent part, that a detachable magazine is "any ammunition feeding device that can be readily removed from a firearm with neither disassembly of the firearm action nor use of a tool being required."

The Attorney General's office agrees that your interpretation is reasonable regarding the converse of the wording of the statute. A non-detachable magazine could mean a magazine that requires either disassembly of the firearm action or the use of a tool to remove the magazine, but not both disassembly and the use of a tool.

However, this office once again cautions that attempts to circumvent the law could lead to litigation of the kind seen in *People v. Dingman*. You and your clients presented the hypothetical of a 10-round magazine with a screw drilled through the receiver into the magazine as an example of a conversion which would require a tool for removal, thus exempting such a firearm from the definition of an assault weapon. A modification maneuver of this type is viewed with scepticism by this office and violates the spirit, if not the letter of the law within the meaning of Penal Code section 12276.1. The fifty-eight district attorneys within this state are likely to share such scepticism and proceed with a prosecution pursuant to Penal Code section 12280 in a case of this nature.

I trust this response is in someway helpful to you and your clients.

Sincerely,

TIMOTHY L. RIEGER
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General

TLR:ls

# EXHIBIT CCCC

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE

P.O. BOX 160487
SACRAMENTO, CA 95816-0487

Facsimile: (916) 263-0676
(916) 263-0802

December 21, 2005

RE: The Legality of Certain AR-15 Series Receivers

Dear

I am writing in response to your letter dated October 14, 2005. In your letter, you posed a number of questions about the legality in California of certain AR-15 series receivers in California.

First, you inquired about whether you could modify an AR-15 series receiver so that it would have more than "minor differences" from the original banned receiver. Specifically, you inquired about obtaining an AR-15 receiver with a fixed magazine from an out-of-state manufacturer or distributor and having that receiver delivered to a federally licensed firearms dealer (FFL) in California. Whether such a receiver would be legal to buy and own in California depends upon the manner in which the magazine is affixed. We cannot offer an opinion about a receiver we have not examined. You might consider importing an AR-15 receiver that we have already approved, such as the FAB-10, Hess or the Vulcan Arms.

You also asked about manufacturing a "homebuilt rifle receiver," by attaching a magazine that would not be readily detachable and would accept no more than ten rounds of ammunition. Whether such a receiver would be legal to build and own in California depends on the manner in which the magazine is affixed. While we would be happy to offer our opinion about such a modification, we can only do so after examining the modified receiver itself. If you would like to submit a sample for examination, please contact me for instructions about how to do so.

Also, you should be aware that a local district attorney who believed you were manufacturing an assault weapon could file charges against you for violating Penal Code 12280(a). Finally, you should consult with our office and the federal Bureau of Alcohol, Tobacco, Firearms and Explosives to ensure that you are in compliance with all state and federal laws regarding the manufacture of firearms, before you begin any manufacturing operations.

You asked about a number of specific ways to attach a magazine to a lower receiver. While we would be happy to offer our opinion about such a modification, we can only do so after examining the modified lower receiver. Again, please contact me for instructions, if you would like to submit a sample for examination.

Finally, you asked about whether a "receiver that is neither a Category 1 nor a Category 2 weapon...is also not subject to Category 3 compliance." A receiver with a magazine that is not "readily detachable" is not subject to the ban on generic characteristic set forth in section 12276.1(a)(1).

I hope that this information is helpful. Please feel free to contact me again if you have any additional questions.

Sincerely,

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General

# EXHIBIT DDDD

[redacted]

**From:** [redacted]
**Sent:** Wednesday, August 30, 2006 11:45 PM
**To:** Jason Davis; Jason A. Davis
**Subject:** Fwd: confirming our conversation yesterday re: my PRA request

[redacted]

---------- Forwarded message ----------

[redacted] wrote:

> No problem on the email, I do that myself sometimes!
>
> I appreciate the additional information:
>
> Do you have photo exemplars or other information relating to the
> approved methods of affixing a magazine to an IMBEL/DSA FAL rifle?
>
> Do you also have photo exemplars or other infomation relating to
> IMBEL/DSA FALs that have been converted to remove the pistol grip.
>
> If so, I would like to make a PRA request for them, assuming they were
> not in the documents that you have already provided to me, and which I
> have not fully reviewed.
>
> It is my intention and desire to stay fully legal, and the above
> documents will help.
>
>
> On 8/30/06, *Alison Merrilees* < Alison.Merrilees@doj.ca.gov
> <mailto:Alison.Merrilees@doj.ca.gov>> wrote:
>
> I'm sorry, Mr. Thomason. I was having trouble with my computer
> and inadvertantly sent the incomprehensible message below.
>
> This is what I intended to convey to you:
>
> If you build such a firearm, you do so at your legal peril. We
> have approved commercially manufactured firearms, such as the
> FAB-10, the Vulcan and the California legal FN-FAL. We have also

> approved a commercial method of modifying a firearm with an open
> magazine well performed by Evans Manufacturing. But we have never
> approved a non-commercial modification of a firearm with an open
> magazine well, such as the methods you described. Whether or not
> your firearm were permanently incapable of accepting a detachable
> magazine could be up to local law enforcement, and ultimately a
> jury of twelve citizens.
>
> Good luck.
>
> >>> [redacted]
> <mailto:[redacted]>> 8/30/2006 3:34 PM >>>
>
> Thank you Alison for the information. Have a good day.
>
> On 8/30/06, *Alison Merrilees* <Alison.Merrilees@doj.ca.gov
> <mailto: Alison.Merrilees@doj.ca.gov>> wrote:
>
> Mr. [redacted]
>
> I am replying to your email because it appears that you are
> under the misimpression that do so at your legal peril. We
> have only approved one after-market method of permanently
> affixing a detachable magazine and that is performed by a
> commercial
>
> >>> [redacted]
> <mailto:[redacted]>> 8/30/2006 1:02:03 PM >>>
>
> Dear Ms. Merrilees,
>
> Thank you for returning my call. I did in fact speak with Mr
> Chin yesterday regarding the legality of the Imbel
> flash-hider. Mr. Chin was quite cordial and helpful.
> However, at no point did I say to you or Mr. Chin that it was
> my intention to build anything with a *detachable* magazine.
>
> In fact, I recall telling you that I was planning to possibly
> build a "Cali-legal pinned magazine rifle." I am not certain
> where you got the idea that I intended to do anything else.
>
> Your voicemail indicates that you may have made this erroneous
> assumption, and I thus am correcting it via this email. . .
>
> If I do build my FAL, I fully intend to permantly affix the
> magazine, either with epoxy or via welding, and thus comply
> with current California law.
>
> k
>
> ----------

> [redacted]
> H[redacted]
> [redacted]<mailto:[redacted]
> Give Amos a snuggle @ http://www.dogster.com/?792
>
> We are alone, absolutely alone on this chance planet: and,
> amid all the forms of life that surround us, not one,
> excepting the dog, has made an alliance with us.
> Maurice Maeterlinck
>
>
>
> CONFIDENTIALITY NOTICE: This communication with its contents
> may contain
> confidential and/or legally privileged information. It is
> solely for the
> use of the intended recipient(s). Unauthorized interception,
> review, use
> or disclosure is prohibited and may violate applicable laws
> including
> the Electronic Communications Privacy Act. If you are not the
> intended
> recipient, please contact the sender and destroy all copies of the
> communication.
>
>
>
>
> --
> ---
> K[redacted]
> E[redacted]
> [redacted]
> Give Amos a snuggle @ http://www.dogster.com/?792
>
> We are alone, absolutely alone on this chance planet: and, amid
> all the forms of life that surround us, not one, excepting the
> dog, has made an alliance with us.
> Maurice Maeterlinck
>
> Visit my eBay Store!
>
> http://stores.ebay.com/Scrappys-Military-Collectables
> <http://stores.ebay.com/Scrappys-Military-Collectables>
>
>
> CONFIDENTIALITY NOTICE: This communication with its contents may
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> or disclosure is prohibited and may violate applicable laws including
> the Electronic Communications Privacy Act. If you are not the intended
> recipient, please contact the sender and destroy all copies of the
> communication.
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>
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> ----------
> [redacted]
> [redacted]
> [redacted]
> Give Amos a snuggle @ http://www.dogster.com/?792
>
> We are alone, absolutely alone on this chance planet: and, amid all
> the forms of life that surround us, not one, excepting the dog, has
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> Maurice Maeterlinck
>
> Visit my eBay Store!
>
> http://stores.ebay.com/Scrappys-Military-Collectables

--
---
[redacted]
Give Amos a snuggle @ http://www.dogster.com/?792

We are alone, absolutely alone on this chance planet: and, amid all the forms of life that surround us, not one, excepting the dog, has made an alliance with us.
Maurice Maeterlinck

Visit my eBay Store!

http://stores.ebay.com/Scrappys-Military-Collectables

# EXHIBIT EEEE

From: Sally Carney
To: [redacted]
Date: 4/28/2006 4:53:20 PM
Subject: SKS permanently affixed magazine

Dear Mr. Kastelic:

Based on the information you have provided, as long as the fixed magazine is permanent in nature and not one that can be removed with the use of a tool, an SKS with a permanenetly affixed magazine, and a pistol grip, does not meet the definition of assault weapon rifle. However, if the fixed mag can be removed with the use of a tool, then it is not permanently affixed and would be considered detachable, for purposes of assault weapon definition. Examples of permanently affixed are riveting and/or welded in place. A semiautomatic centerfire rifle with the capacity of accepting a detachable magazine and a pistol grip (one of the offending characteristics), is an assault weapon and cannot be manufactured nor imported into the state of CA, unless it is for law enforcement. (See 12280(a) PC)

As to whether or not an individual seller on ebay and from another state, would be criminally liable for selling in California, that is a legal question that is not specifically addressed in the firearm laws, that I can see (I am not a lawyer). When it is a gray area of the law, it is subsequent court action, if successfully prosecuted, that clarifies the boundaries, or limits, of the law. An FFL could be added to any prosecution because federal law requires FFL's to comply with the laws of the states they deal in.

You ask a question about a lockarm stock. If, when folded, the rifle cannot be fired, then it is probably not an offending characteristic. If it can be fired when folded, then it would most likely be a characteristic that would make a semiautomatic centerfire rifle with the capacity of accepting a detachable magazine, be deemed an assault weapon. Also, CA law measures a rifle when folded so even if it cannot be fired when folded, its overall length would have to be at least 30 inches pursuant to Penal Code 12276.1(a)(3). And the barrel would have to be at least 16 inches, otherwise it would be deemed a short barrelled rifle and conflict with our Penal Code 12020.

I have copied some portions of pertinent code sections for your referral. To read the firearm laws in their entirety, please visit our website at www.ag.ca.gov/firearms and open the online publication, DANGEROUS WEAPONS CONTROL LAWS.

12276.1. (a) Notwithstanding Section 12276, "assault weapon" shall also mean any of the following:
(1) A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following:
(A) A pistol grip that protrudes conspicuously beneath the action of the weapon.
(B) A thumbhole stock.
(C) A folding or telescoping stock.
(D) A grenade launcher or flare launcher.
(E) A flash suppressor.
(F) A forward pistol grip.
(2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.
(3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.
. . .

12280. (a)(1) Any person who, within this state, manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon or any .50 BMG rifle, except as provided by this chapter, is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for four, six, or eight years.
. . .

# EXHIBIT FFFF

*BILL LOCKYER*
*Attorney General*

*State of California*
*DEPARTMENT OF JUSTICE*

**FIREARMS DIVISION**
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

March 22, 2006

Mr. Robert Hesse
c/o Vulcan Arms
P.O. Box 2473
SSP, MN 55076-8473

RE: Vulcan model V 15 and V 55 lower receivers

Dear Mr Hesse:

We have received the two aforementioned exemplars for our approval. However, we will not offer an opinion about the legality of the lower receivers until you comply with the modifications we demanded to the original V 15 lowers, (a rivet holding the magazine and lower receiver together at the front of the magazine area of the lower receiver) in letters from Deputy Attorney General Alison Merrilees on January 19, 2006, and February 8, 2006 (attached). Considering that you have been uncooperative with our previous request for compliance, we cannot offer any opinion on the new modifications of your lower receivers.

Sincerely,

IGNATIUS H. CHINN
Special Agent Supervisor

For BILL LOCKYER
Attorney General

# EXHIBIT GGGG

*BILL LOCKYER*
*Attorney General*

*State of California*
*DEPARTMENT OF JUSTICE*

FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

May 24, 2006

Mr. Gene Hoffman Jr.
[redacted]

Re: Public Records Act Request

Dear Mr. Hoffman:

I am writing in response to your letter dated May 11, 2006 requesting "copies of records relating to the various iterations of the memoranda or "Important Notices" regarding sales or possession of Unnamed AR-15/AK 47 "Series" Firearms." You requested "copies of all of the revisions of this memo/notice since December 1, 2005." You also requested "any meeting notices, emails, internal memoranda or other written or electronic records directly relating to the analysis in the various versions of these notices."

According to our records, we have posted three notices on our website regarding series-style assault weapons since December 1, 2005. The first notice was posted on February 6, 2006. The February 6, 2006 contained two typographical errors regarding the year of the *Harrott* decision and an error regarding the closing date for registration of SB 23 assault weapons. I have enclosed a copy of the February 6, 2006 notice, which is labeled as "Attachment A." That document was edited to correct the errors and to add the DOJ seal on February 7, 2006. I have enclosed a copy of the February 7, 2006 notice, which is labeled as "Attachment B."

On May 1, 2006, we removed the February 7, 2006 notice from the Firearms Division website. On May 9, 2006, we posted a revised notice regarding series-style weapons that was prepared in consultation with attorneys within the Department. It represents the Department's final policy regarding series-style weapons that have not been identified as assault weapons by the Department. I have enclosed a copy of the May 9th notice, which is labeled as "Attachment C."

None of the other documents that you requested are subject to public disclosure because they are privileged under the Evidence Code. (California Government Code §6245(k)). Therefore, we will not comply with the portion of your Public Records Act request in which you request those documents.

Sincerely,

ALISON Y. MERRILEES
Deputy Attorney General

For: BILL LOCKYER
Attorney General

Attachments

Attachment A

BILL LOCKYER
California
Attorney General
JUSTICE

State of
DEPARTMENT OF

FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487

Public: 916-263-4887

# IMPORTANT NOTICE

## California Department of Justice
## Information Regarding the Sale/Possession of Newly Identified AR-15/AK 47 "Series" Firearms

The Department of Justice (hereafter "the Department") has received numerous contacts from the public and firearms industry personnel regarding the legality of various AR-15/AK 47 "series" style firearms that have not yet been identified as "series" assault weapons by the Department. The Department is also aware of the recent high volume of sales of these firearms.

The Department has the statutory authority to identify "series" assault weapons. In 2000, the California Supreme Court upheld that authority in *Kasler v. Lockyer* (2000) 23 Cal. 4th 472. The Department updated the list of "series" weapons in 2000 (as "Category 2" assault weapons), shortly after the *Kasler* decision.

The California Supreme Court reiterated in 2003 that "the Attorney General has the authority to determine that certain semiautomatic firearms are assault weapons by simply identifying them as such in the list published by the Attorney General in the California Code of Regulations...two types of firearms defined in Penal Code (PC) section 12276 by the use of the term series, namely the AK-47 series and the Colt AR-15 series." *Harrott v. County of Kings* (2003) 25 Cal. 4th 1138, 1155.

Accordingly, the Department is currently in the process of identifying those firearms in the state that are variations, with minor differences, of AR-15/AK 47 "series" weapons. Once this process is complete, the Department will promulgate a list and file it with the Secretary of State's office. Concurrently, the Department will begin updating the Assault Weapon Identification Guide which is currently available via the Department's website at http://ag.ca.gov/firearms/forms/index.html. Once the list of newly identified "series" weapons is filed with the Secretary of State, citizens who possess those weapons will have 90 days to register them with the Department of Justice.

Newly identified "series" weapons cannot legally have the features listed

2/2006

The registration period for assault weapons with those characteristics (Category 3 assault weapons) ended on December 31, 2000. Because *non-"series"* assault weapons with PC section 12276.1 features may not be offered for sale, manufactured, imported, or possessed in California, it follows that newly registered *"series"* weapons may not have the features listed in PC section 12276.1, either.

The prohibition on the features listed in PC section 12276.1 is consistent with current DOJ policy that named "series" weapons are illegal, unless registered, regardless of whether they have the PC section 12276.1 features. It is also consistent with the intent of the California state legislature to ban assault weapons, expressed in 1991 when PC section 12276(f) was enacted.

> This section is declaratory of existing law, as amended, and a clarification of the law and the Legislature's intent which bans the weapons enumerated in this section, the weapons included in Section 12276.5, and any other models which are only minor variations of those weapons with minor differences, regardless of the manufacturer [emphasis added].

It should be noted that individuals who timely registered "Category 1" and "Category 2" assault weapons were allowed to keep or add the PC section 12276.1 features on their firearms. Those generic features were not illegal during the registration period for Category 1 assault weapons. In August of 2000, when the Department identified the Category 2 "series" weapons, it was legal to register weapons with those characteristics as Category 3 assault weapons. Firearms with those features could no longer be registered as of January 1, 2001. Therefore, newly identified "series" (Category 4) weapons likewise cannot have those features.

**Registrants of newly identified series weapons cannot legally add PC section 12276.1 features to those firearms.** The Department intends to enforce this restriction through the assault weapon registration process. Registration acknowledgment letters will include an admonition to registrants that adding prohibited features to newly registered assault weapons will invalidate the registration. The basis for valid registration will rest solely on the fact that the Department identifies the receivers for these firearms as variations, with minor differences, of already controlled AR-15/AK 47 "series" weapons. All additional features of the newly identified "series" weapons must conform with current California law.

Firearm manufacturers, wholesalers and dealers who misinform the public about the ability to legally add prohibited features to these newly listed firearms risk criminal prosecution. They could also face civil penalties of up to $2,500 per violation under the state's Unfair Practices Act (California Business & Professions Code section 17000 et seq.).

This information will be distributed to criminal justice agencies throughout the state, as well as to firearm dealers listed on the Department's Centralized List, via the formal Information Bulletin process.

in PC section 12276.1 [illegible]n they are registered. Those features cannot legally be added after the firearms are registered as assault weapons. The PC section 12276.1 features have been banned since January 1, 2000, when Senate Bill 23 went into effect. The public was notified of the prohibition on the specified features many years ago.

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE

FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487

Public: 916-263-4887

# IMPORTANT NOTICE

## California Department of Justice
## Information Regarding the Sale/Possession of Newly Identified AR-15/AK 47 "Series" Firearms

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The Department has the statutory authority to identify "series" assault weapons. In 2000, the California Supreme Court upheld that authority in *Kasler v. Lockyer* (2000) 23 Cal. 4th 472. The Department updated the list of "series" weapons in 2000 (as "Category 2" assault weapons), shortly after the *Kasler* decision.

The California Supreme Court reiterated in 2001 that "the Attorney General has the authority to determine that certain semiautomatic firearms are assault weapons by simply identifying them as such in the list published by the Attorney General in the California Code of Regulations...two types of firearms defined in Penal Code (PC) section 12276 by the use of the term series, namely the AK-47 series and the Colt AR-15 series." *Harrott v. County of Kings* (2001) 25 Cal. 4th 1138, 1155.

Accordingly, the Department is currently in the process of identifying those firearms in the state that are variations, with minor differences, of AR-15/AK 47 "series" weapons. Once this process is complete, the Department will promulgate a list and file it with the Secretary of State's office. Concurrently, the Department will begin updating the Assault Weapon Identification Guide which is currently available via the Department's website at http://ag.ca.gov/firearms/forms/index.html. Once the list of newly identified "series" weapons is filed with the Secretary of State, citizens who possess those weapons will have 90 days to register them with the Department of Justice.

**Newly identified "series" weapons cannot legally have the features listed in PC section 12276.1 when they are registered. Those features cannot legally be added after the firearms are registered as assault weapons.** The PC section 12276.1 features have been banned since January 1, 2000, when Senate Bill 23 went into effect. The public was notified of the prohibition on the specified features many years ago.

The registration period for assault weapons with those characteristics (Category 3 assault weapons) ended on December 31, 2000. Because *non-"series"* assault weapons with PC section 12276.1 features may not be offered for sale, manufactured, imported, or possessed in California, it follows that newly registered *"series"* weapons may not have the features listed in PC section 12276.1, either.

The prohibition on the features listed in PC section 12276.1 is consistent with current DOJ policy that named "series" weapons are illegal, unless registered, regardless of whether they have the PC section 12276.1 features. It is also consistent with the intent of the California state legislature to ban assault weapons, expressed in 1991 when PC section 12276(f) was enacted.

> This section is declaratory of existing law, as amended, and a clarification of the law and the Legislature's intent which bans the weapons enumerated in this section, the weapons included in Section 12276.5, and any other models which are only minor variations of those weapons with minor differences, regardless of the manufacturer. [emphasis added].

It should be noted that individuals who timely registered "Category 1" and "Category 2" assault weapons were allowed to keep or add the PC section 12276.1 features on their firearms. Those generic features were not illegal during the registration period for Category 1 assault weapons. In August of 2000, when the Department identified the Category 2 "series" weapons, it was legal to register weapons with those characteristics as Category 3 assault weapons. Firearms with those features could no longer be registered as of January 1, 2001. Therefore, newly identified "series" (Category 4) weapons likewise cannot have those features.

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This information will be distributed to criminal justice agencies throughout the state, as well as to firearm dealers listed on the Department's Centralized List, via the formal Information Bulletin process.

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE

FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487

Public: 916-263-4887

# IMPORTANT NOTICE

## California Department of Justice Information Regarding the Sale/Possession of Unnamed AR-15/AK 47 "Series" Firearms

The Department of Justice (hereafter "the Department") has received numerous inquiries from the public and firearms industry personnel about the legality of various AR-15/AK 47 "series" style firearms that have not been named by the Department as "series" assault weapons. The Department believes that the public and law enforcement are best served by reference to the generic definition of assault weapons set forth in SB 23, rather than reliance upon a scheme of identifying assault weapons by name. Therefore, the Department will not update the list of "series" assault weapons.

SB 23 has banned the possession, sale and manufacture of firearms with the characteristics of assault weapons as defined in California Penal Code §12276.1 since January 1, 2000. A semiautomatic centerfire rifle with the capacity to accept a detachable magazine and any of the generic features listed in Penal Code §12276.1(a)(1) is contraband unless it was registered prior to January 1, 2001. It is illegal to manufacture, cause to be manufactured, distribute, transport, import, keep for sale, offer or expose for sale, give or lend such a weapon, except as permitted by law.

Law enforcement officials, firearm dealers and the public should be aware that semiautomatic centerfire rifles that are modified to be temporarily incapable of accepting detachable magazines, but can be restored to accommodate detachable magazines, are assault weapons if they have any of the features listed in §12276.1(a)(1). The Department intends to exercise its power pursuant to Penal Code section 12276.5(i) to adopt regulations as "necessary or proper to carry out the purposes and intent" of California law to ban assault weapons in the state.

Individuals who own firearms that meet the generic definition of assault weapons banned by SB 23 must do one of the following in order to comply with existing law: remove the features, sell the firearm (without the features), or permanently alter the firearm so that it cannot accept a detachable magazine.

It remains illegal to possess assault weapons banned by name (either in statute or regulation), unless those assault weapons are registered and possessed in accordance with state law. The time limits for registration, which depend on the make and model of the assault weapon, are set forth in Penal Code §12285.

# EXHIBIT HHHH

# Alison Merrilees - Re: Detachable magazine letters?

**From:** Alison Merrilees
**To:** Brian Siebel
**Date:** 5/15/2006 11:22 AM
**Subject:** Re: Detachable magazine letters?

Although I am tempted to do something that would take the whole "series" thing back to the courts (because the Harrott decision was so bad), I think it's too late. The cat is out of the bag. We cannot buy back all of the series clones. We do not want to allow registration, so I think we're stuck with SB 23 being the vehicle to regulate them.

As for the *Kasler* list that was promulgated pursuant to 12276.5, we think it will remain in place. I will send you our draft of amends. We think the amendments would remove the ability to add on in the future, but keep the Kasler list in place so that the named weapons are illegal to own if not registered.

>>> Brian Siebel <[redacted] 05/15/06 11:11 AM >>>
On the receiver issue, that would work for the named weapons of 12276. If you repeal 12276.5, it would not enable DOJ to add other guns (and other receivers) to the list, however. It would be interesting to see what would happen if 12276.5 were repealed and you tried to apply the "series" language of 12276(e) to AK and AR "series" guns in light of Kasler's language that all citizens have to do is consult the AG's list. ("[W] need not and do not reach the question whether it would be unconstitutionally vague if ordinary citizens were required to apply it." Kasler at 353.] Perhaps the courts would be forced to decide what "series" guns really are, thereby banning the receivers of those weapons at the same time.

>>> "Alison Merrilees" <Alison.Merrilees@doj.ca.gov> 5/15/2006 12:43:53 PM >>>
Brian,

The only letters that fit your description have been sent to manufacturers of fixed-magazine AR-clones, such as the FAB-10 and the Vulcan. I will look for them and either email or fax them to you.

As far as the receiver issue, we are probably just going to amend PC 12001 (definitions of terms in the dangerous weapons chapter, including
"firearm"). It refers to specific sections in which "receiver" means "firearm," but does not refer to any of the AW laws. We would add 12276
and 12276.5 to the list. That way, there is no question that possession
of an unregistered AW that is listed either in statute or regulation can
be prosecuted as possession of an AW.

>>> Brian Siebel [redacted] 05/15/06 9:19 AM >>>

Alison,

Luis Tolley suggested I ask you for copies of any letters that DOJ may have sent out over the last couple of years on whether specific firearms
did NOT violate SB23 because they weren't considered to have the "capacity to accept detachable magazines." I am in agreement on DOJ's approach on this issue but wonder if there are letters out there that may be construed as in conflict with the new regulations.

As for a new law on AW receivers, I'd need to know more clearly what you are proposing before I can comment. On this issue, the devil is probably in the details. Without the details, you don't know what is covered and what isn't. It is the same overinclusive/underinclusive challenge that we always face with assault weapons.

Sincerely,

Brian J. Siebel
Brady Center to Prevent Gun Violence
Legal Action Project
1225 Eye Street, N.W.
Suite 1100
Washington, D.C. 20005
(202) 218-4642
(202) 898-0059 fax
[redacted]

In addition to our website at www.gunlawsuits.org, please visit our new
websites at www.stopthenra.com and www.nrablacklist.com
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From: Luis Tolley <[redacted]
To: Alison Merrilees <Alison.Merrilees@doj.ca.gov>
Date: 5/10/2006 9:15:58 PM
Subject: Re: CA assault weapons - SKS question

Thanks Alison. Interesting distinction between "capacity to accept" and "detachable magazine." I appreciate all you are doing to settle this issue and make sure the gun guys don't open up a big hole in the law.

Luis Tolley
Project Concern International
Phone: 62-21-739-9708
Handphone: 0812-100-5685
Fax: 62-21-722-1136
----- Original Message -----
From: "Alison Merrilees" <Alison.Merrilees@doj.ca.gov>
To: [redacted]
Sent: Thursday, May 11, 2006 10:45 AM
Subject: Re: CA assault weapons - SKS question

> Luis,
>
> Our intent is not to affect the SKS issue in any way. I think we can do
> that because the definition of a "detachable magazine" (a magazine that
> can be removed without the use of a tool) can be distinguished from the
> definiton of "capacity to accept" which we intend to define as being
> able to accommodate a magazine (versus being permanently altered not to
> accommodate a magazine). We'll run the language past you before we
> publish it as a proposed reg.
>
> Alison Y. Merrilees
> Deputy Attorney General
> Counsel, Firearms Division
> California Department of Justice
> (916)263-0802
> Fax- (916)263-0676
>>>> Luis Tolley <[redacted] 05/10/06 6:41 PM >>>
> Thanks Alison.
>
> I assume this also means that any new regulation defining "capacity to
> accept a detachable magazine" won't impact on the Roberti-Roos laws ban
> on "SKS with detachable magazine" because the SKS with fixed magazines
> have been legal since 1989 (no pistol grip). Are the "fixed" magazines
> on the SKS different from what the gunners are now trying to do with the
> AW receiver clones?
>
> Luis Tolley
> Project Concern International
> [redacted]
> ----- Original Message -----
> From: Alison Merrilees
> To: Luis Tolley
> Sent: Wednesday, May 10, 2006 11:43 PM

> Subject: Re: CA assault weapons - Introduction
>
>
> Luis,
>
> Hi Luis,
>
> We don't think there is any "taking" issue that would require
> compensation/registration. We believe that our interpretation of
> "capacity to accept" is consistent with current law and regulations. We
> have never given our blessing to any of the temporary fixes that these
> guys now ASSUME are legal. We are eagerly awaiting a test case on this,
> because we think we'll win.
>
> The gun guys bragged repeatedly that they could restore their
> "California legal AR's" to fully functional AW's in a matter of seconds.
> I don't think a judge or jury would find that such a configuration
> complies with the letter or the intent of the law.
>
> A few of them clearly are on our side, but I expect them to get worn
> down and stop speaking up. That does not bother me. They are never
> going to be happy as long as we say they can't have what they want :
> AW's that are legal. Our current position is pretty easy to defend.
> I'm not worried.
>
> >>> Luis Tolley [redacted] 05/09/06 6:46 PM >>>
>
> Hi Alison:
>
> Oh my, I just read through part of the CalGuns thread. The gun guys
> are upset aren't they. Sounds like you did good.
>
> They may have a point in the question of how a revised definition of
> "capacity to accept a detachable magazine" impacts weapons that were
> formerly approved by DOJ. We would not want anything that opens up a
> new registration process if that process enables them to add features
> prohibited by SB 23. I'm not quite sure how that all works out.
>
> Luis Tolley
> Project Concern International
> [redacted]
> [redacted]
> [redacted]
> ----- Original Message -----
> From: Alison Merrilees
> To: Brian Siebel
> Cc: Ellyne Bell ; [redacted]
> Sent: Wednesday, May 10, 2006 6:41 AM
> Subject: Re: CA assault weapons - Introduction
>
>
> FYI -
>
> We posted an updated memo on our website today.
> http://caag.state.ca.us/firearms/forms/pdf/AWpolicyrev4.pdf
>

> Of course, the gun guys are going nuts about it,
> http://www.calguns.net/calgunforum/showthread.php?t=33601
>
> We feel confident that our plan will hold up to any legal
> challenges.
>
> >>> Brian Siebel <[redacted]> 05/09/06 12:39 PM >>>
>
> Friday may work better for all concerned. Ellyne is going to try to
> set
> up a call.
>
> In advance of that, did LCAV prepare a memo for the Attorney General
> on
> the AW receivers and detachable magazine issues? I'd appreciate
> reading
> anything you can share with me in advance of our call.
>
> Thank you,
>
> BJS
>
> >>> "Alison Merrilees" <Alison.Merrilees@doj.ca.gov> 5/9/2006
> 2:43:42
> PM >>>
> Thanks, Brian. I look forward to speaking with you. I am available
> on
> Friday at 1 p.m.
>
> I regularly check in with the calguns guys, but had not seen the one
> you sent me. I get a lot of useful information from them, at least
> to
> the extent that I can tolerate their rantings!
>
> By the way, I am also available today until 1 p.m. our time if you
> want
> to try and catch me today.
>
> Thanks.
>
> Alison
>
> Alison Y. Merrilees
> Deputy Attorney General
> Counsel, Firearms Division
> California Department of Justice
> (916)263-0802
> Fax- (916)263-0676
>
> >>> Brian Siebel <[redacted]> 05/09/06 11:20 AM >>>
>
> Alison:
>
> I am sending this e-mail by way of introduction. I have been
> receiving

> information from your office by way of Luis Tolley and Ellyne Bell.
> I
> am a Senior Attorney with the Brady Center, and have been here
> almost
> ten years. During my tenure, I have been involved extensively with
> the
> assault weapons issue In California. For example, I was involved in
> the
> Kasler v. Lungren, Harrott v. County of Kings, and People v. Dingman
> cases, the 101 California Street lawsuit, and other issues. I also
> represented the 12 city and county plaintiffs in the municipal gun
> suit.
>
>
> You should be aware of some of what is being said on various gun-nut
> message boards about DOJ's plans. Here is a sample of one such
> discussion.
> http://www.calguns.net/calgunforum/showthread.php?t=33533
>
>
>
> My direct contact information is below. I understand Ellyne is
> trying
> to set up a conference call for Friday of this week (I'm traveling
> tomorrow and Thursday). I look forward to speaking with you on the
> phone and offering my expertise to the Attorney General.
>
> Sincerely,
>
>
>
>
>
>
>
> Brian J. Siebel
> Brady Center to Prevent Gun Violence
> Legal Action Project
> 1225 Eye Street, N.W.
> Suite 1100
> Washington, D.C. 20005
> (202) 218-4642
> (202) 898-0059 fax
> [redacted]
>
> In addition to our website at www.gunlawsuits.org, please visit our
> new
> websites at www.stopthenra.com and www.nrablacklist.com
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From: Alison Merrilees
To: Brian Siebel
Date: 5/9/2006 1:13:32 PM
Subject: Re: CA assault weapons - introduction

Brian,

A memo was prepared. It was written by attorneys from Gibson Dunn. We did not get a copy, however. We were concerned about it being subject to disclosure pursuant to the California Public Records Act. You may be able to get a copy from LCAV. The memo concluded that we could list receivers and adopt regulations to prevent registrants from configuring newly registered assault weapons as assault weapons.

I don't really have anything else in writing that I can share. Our office has concluded that we may not have the authority to list bare receivers. Penal Code section 12001 lists some sections of the Penal Code for which the term "firearm" includes the frame or receiver of the firearm. The assault weapon sections are not listed. Also, the Roberti-Roos list includes only assembled AW's, not receivers.

At the same time, we believe that SB 23 supercedes our ability to list fully assembled assault weapons. SB 23 required that assault weapons meeting its generic criteria had to be registered before 1/1/01. If we were to list newly identified AW's, we would have to open a registration period, which seems to conflict with SB 23's provisions and its intent. And of course, there is the ongoing problem of new models with slightly different names. We will never win that name game.

The *Harrott* decision really put us in a bind, as the dissent in that case predicted it would. As a result, the best approach seems to be to consider the add-on provisions to be outdated and superceded by SB 23.

Thanks,

Alison

>>> Brian Siebel <[redacted] 05/09/06 12:39 PM >>>

Friday may work better for all concerned. Ellyne is going to try to set up a call.

In advance of that, did LCAV prepare a memo for the Attorney General on the AW receivers and detachable magazine issues? I'd appreciate reading anything you can share with me in advance of our call.

Thank you,

BJS

>>> "Alison Merrilees" <Alison.Merrilees@doj.ca.gov> 5/9/2006 2:43:42 PM >>>
Thanks, Brian. I look forward to speaking with you. I am available on
Friday at 1 p.m.

I regularly check in with the calguns guys, but had not seen the one you sent me. I get a lot of useful information from them, at least to the extent that I can tolerate their rantings!

By the way, I am also available today until 1 p.m. our time if you want
to try and catch me today.

Thanks.

Alison

Alison Y. Merrilees
Deputy Attorney General
Counsel, Firearms Division
California Department of Justice
(916)263-0802
Fax- (916)263-0676

>>> Brian Siebel [redacted] 05/09/06 11:20 AM >>>

Alison:

I am sending this e-mail by way of introduction. I have been receiving information from your office by way of Luis Tolley and Ellyne Bell. I am a Senior Attorney with the Brady Center, and have been here almost ten years. During my tenure, I have been involved extensively with the assault weapons issue in California. For example, I was involved in the Kasler v. Lungren, Harrott v. County of Kings, and People v. Dingman cases, the 101 California Street lawsuit, and other issues. I also represented the 12 city and county plaintiffs in the municipal gun suit.

You should be aware of some of what is being said on various gun-nut message boards about DOJ's plans. Here is a sample of one such discussion. http://www.calguns.net/calgunforum/showthread.php?t=33533

My direct contact information is below. I understand Ellyne is trying to set up a conference call for Friday of this week (I'm traveling tomorrow and Thursday). I look forward to speaking with you on the phone and offering my expertise to the Attorney General.

Sincerely,

Brian J. Siebel
Brady Center to Prevent Gun Violence
Legal Action Project
1225 Eye Street, N.W.
Suite 1100
Washington, D.C. 20005
(202) 218-4642
(202) 898-0059 fax

[redacted]

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websites at www.stopthenra.com and www.nrablacklist.com
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From: Brian Siebel [redacted]
To: <Alison.Merrilees@doj.ca.gov>
Date: 5/9/2006 12:40:15 PM
Subject: Re: CA assault weapons - introduction

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Thanks.

Alison

Alison Y. Merrilees
Deputy Attorney General
Counsel, Firearms Division
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(916)263-0802
Fax- (916)263-0676

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Sincerely,

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Legal Action Project
1225 Eye Street, N.W.
Suite 1100
Washington, D.C. 20005
(202) 218-4642
(202) 898-0059 fax
[redacted]

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websites at www.stopthenra.com and www.nrablacklist.com
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communication.

CC: Ellyne Bell [redacted]

# EXHIBIT IIII

## Chapter 12.8

## Department of Justice Regulations for Assault Weapons and Large Capacity Magazines

### Article 2. Definitions of Terms Used to Identify Assault Weapons

978.20 Definitions

The following definitions apply to terms used in the identification of assault weapons pursuant to Penal Code section 12276.1:

(a) "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 bloc clips, or stripper clips that load cartridges into the magazine.

(b) "flash suppressor" means any device designed, intended, or that functions to perceptibly reduce or redirect muzzle flash from the shooter's field of vision.

(c) "forward pistol grip" means a grip that allows for a pistol style grasp forward of the trigger.

(d) "pistol grip that protrudes conspicuously beneath the action of the weapon" means a grip that allows for a pistol style grasp in which the web of the trigger hand (between the thumb and index finger) can be placed below the top of the exposed portion of the trigger while firing.

(e) "thumbhole stock" means a stock with a hole that allows the thumb of the trigger hand to penetrate into or through the stock while firing.

(f) "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.

NOTE: Authority cited: Section 12276.5(i), Penal Code.
Reference: Sections 12276.1, 12276.5, 12280, 12285, and ~~12285~~ 12289, Penal Code.

# EXHIBIT JJJJ-1

CARMEN A. TRUTANICH
C. D. MICHEL
LOS ANGELES, CA

GLENN S. MCROBERTS
SAN DIEGO, CA

TRUTANICH·MICHEL, LLP
Attorneys At Law
LOS ANGELES - SAN DIEGO

OF COUNSEL:
CURT LIVESAY
JOHN F. MACHTINGER
LOS ANGELES, CA

DON B. KATES
SAN FRANCISCO, CA

MARK K. BENENSON
NEW YORK, N.Y.

DAVID T. HARDY
TUCSON, AZ

Writer's Direct Contact:
(562) 216-4444
cmichel@tmllp.com

August 15, 2006

Mr. Jeff Amador
California Department of Justice
4949 Broadway Rm. G321
Sacramento, CA 95820

California Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487

VIA HAND DELIVERY

**Re: Proposed Regulation 12.8 C.C.R. 978.20(f)**

Dear Mr. Amador:

We write on behalf of our clients the National Rifle Association to submit objections to the Department of Justice's (DOJ) proposed regulations defining terms used to identify "assault weapons" by adding 12.8 C.C.R. 978.20(f).

## I. INTRODUCTION

Owners of firearms newly deemed to be "assault weapons" by SB 23 in 1999 had until December 31, 2000 to register these firearms. During the registration period before the cut-off date, gun owners had to decide whether their firearms came under the new SB23 definition of "assault weapon" such that registration was required.

To assist in making this determination, certain definitions were published as regulations by DOJ in 2000. One primary regulation was designed to aid owners in determining whether their rifles had "fixed" vs. "detachable" magazines. DOJ defined a "fixed magazine" as *"a magazine which remains affixed to the firearm during loading."* The DOJ adopted the "readily removable" standard to define the term "detachable magazine," which DOJ defined as follows: *[A]ny ammunition feeding device that can be readily removed from the firearm with neither the disassembly of the firearm action* ***nor the use of a tool being required."***

Via these 2000 regulations, the DOJ officially informed rifle owners that their firearm had a fixed magazine, and so was not covered by the Assault Weapon Control Act ("AWCA"), if

the magazine was fixed to the firearm, and could not be removed without disassembling the rifle or using a tool.[1] So for example, owners of rifles whose magazines were affixed to the rifle by screws were not required to register them as "assault weapons" under the AWCA. In reliance on these regulations, gun owners decided whether they needed to register their firearms.

The new proposed regulation affects the way firearms are deemed "assault weapons" under SB 23 and Penal Code section 12276.1 by defining "capacity to accept a detachable magazine" as "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."

DOJ's intention behind this new regulation was laid out by DOJ in a May 2006 DOJ bulletin:

> Semiautomatic centerfire rifles that are modified to be temporarily incapable of accepting detachable magazines, but can be restored to accommodate detachable magazines, are assault weapons if they have any of the features listed in section 12276.1(a)(1). The Department intends to exercise its power pursuant to Penal Code section 12276.5(I) to adopt regulations as "necessary and proper to carry out the purpose and intent" of California law to ban assault weapons in the state.

In essence, DOJ is saying that a firearm is an "assault weapon," even if presently equipped with a fixed magazine, if it could "accommodate" a "detachable magazine" *in the future*. This regulatory approach would result in a situation that DOJ personnel involved have emphatically assured our clients and the general public they do not intend. It would mean that any fixed magazine rifle with a section 12276.1 feature, that could be retrofitted with a detachable magazine, is an "assault weapon." The most obvious examples would be SKS type rifles, DSArms FN-FAL series rifles, and any rifle for which an after market detachable magazine retrofit kit is available.

When the SB 23 registration deadline passed, those who had failed to register rifles that SB 23 covered became felons, and their rifles became contraband and forfeit. Many SKS and similarly convertible magazine rifles were not registered, because the DOJ's previous regulations lead owners to believe they did not need to be registered as they had a fixed magazine and so were not "assault weapons." DOJ is well aware of the statutory provisions and legislative history indicating that the Legislature was excluding fixed magazine SKS type fixed magazine rifles from the AWCA, even though they can easily be retrofitted with a detachable magazine. Although DOJ insists that these and similar rifles would not be covered, it refuses to explain why. Why is it that an SKS rifle with a SB 23 feature which is easily convertible from fixed magazine to detached *not* thereby covered under the new bulletin-cum-proposed regulation, but other rifles that are equally convertible *are* covered by the AWCA? What about similarly

[1] At all times in this discussion it should be understood that we are describing a semi-automatic center fire rifle whose magazine was limited to ten or fewer rounds.

convertible rifles? The Springfield 1903 accepts the Pederson device. Recently registered Barrett 50 BMG rifles are easily convertible to detachable magazine. Where is the line drawn?

Tellingly, the DOJ Firearms Division has refused to explain how they would avoid this consequence. In fact, apparently the DOJ's regulatory advisors have been instructed not to assist callers in determining their obligations under DOJ's interpretation of the law. This is particularly troubling. Some six years later after defining these terms and after the registration cut off date, DOJ's new proposed regulation puts all these gun owners at risk of becoming accidental felons, and DOJ is turning its back on gun owners and gun retailers when they need help most.

Sadly, this is not the first time a politically motivated DOJ policy change has put gun owners at risk. The refusal of the DOJ Firearms Division to make a distinction speaks for itself.

## II. "FIXED" VS. "DETACHABLE" MAGAZINE

Senate Bill 23, effective January 1, 2000, modifies the 1989 AWCA by adding Penal Code section 12276.1 to classify certain firearms as "assault weapons" based on their characteristics or features. Previously, the AWCA had used a make and model approach, naming specific firearms by make and model either in Penal Code section 12276, or in a supplemental make-and-model list promulgated by the DOJ in the California Code of Regulations that named additional makes and models of firearms.

In general, SB 23 applies to rifles that have certain features (i.e., pistol grip, collapsible stock, etc.), and with the capacity to accept a "detachable" magazine. But SB 23 does not apply to rifles with "fixed" magazines having capacities of ten or fewer rounds.

Under SB 23 there are three general types of firearms that are classified as "assault weapons" based on characteristics the firearm may or may not possess. These types include semiautomatic center-fire rifles, semiautomatic pistols, and semiautomatic or revolving cylinder shotguns.[2] The SB 23 "generic characteristic" standard examines the firearms, *as they are*

---

[2] SB 23 "assault weapons" as defined in Penal Code §12276.1 are described in the *Department of Justice Assault Weapons Guide* attached, in part, as Exhibit A.

RIFLES – DETACHABLE MAGAZINES

A semiautomatic, centerfire rifle that ***has*** the ***capacity to accept a detachable magazine*** and any one of the following:

(A) A pistol grip that protrudes conspicuously beneath the action of the weapon.
(B) A thumbhole stock.
(C) A folding or telescoping stock.
(D) A grenade launcher or flare launcher.
(E) A flash suppressor.
(F) A forward pistol grip.

RIFLES – FIXED MAGAZINES

A semiautomatic, centerfire rifle that ***has*** a ***fixed magazine*** with the capacity to accept more than 10 rounds.

PISTOLS – DETACHABLE MAGAZINES

*configured,* to determine whether they possess characteristics that make them "assault weapons." If the offending features listed in 12276.1 are taken off the firearm, the firearm is no longer an "assault weapon."

But preliminarily, in order to determine whether a firearm is an SB 23 "assault weapon," a determination must first be made as to whether the firearm has a "fixed magazine" or the "capacity to accept a detachable magazine."

A "fixed magazine" is defined in the Department of Justice Assault Weapons Identification Guide as *"a magazine which remains affixed to the firearm during loading."* The proposed regulation seeks to adopt a definition for "capacity to accept a detachable magazine." In promulgating the SB 23 regulations, however, the Department of Justice already adopted the "readily removable" standard to define the term "detachable magazine:"

> any ammunition feeding device that can be ***readily removed from the firearm with neither disassembly of the firearm 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 stripper clips that load cartridges into the magazine. (12.8 C.C.R. 988.20(a).)

Thus, the distinction between the two types of magazines is - a fixed magazine requires a tool to be removed, while the "detachable magazine" is readily detachable, without the use of a tool.

---

A semiautomatic pistol that ***has*** the capacity ***to accept a detachable magazine*** and any one of the following:

(A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.

(B) A second handgrip.

(C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning his or her hand, except a slide that encloses the barrel.

(D) The ***capacity to accept a detachable magazine*** at some location outside of the pistol grip.

PISTOLS – FIXED MAGAZINES

A semiautomatic pistol ***with a fixed magazine*** that has the capacity to accept more than 10 rounds.

SHOTGUNS – FIXED MAGAZINE

A semiautomatic shotgun that has both of the following:

(A) A folding or telescoping stock.

(B) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.

SHOTGUNS – DETACHABLE MAGAZINES

A semiautomatic shotgun that has the ability to accept a detachable magazine.

Significantly, in general a firearm with a "fixed magazine" can be modified or retrofitted to accept a detachable magazine. Such conversions require machining and work; some require no machining at all and very little effort. Likewise a firearm "capable of accepting a detachable magazine" can be modified so that the firearm is equipped with a magazine that is fixed.

**It is the convertible nature of these magazine types, and the refusal of DOJ to say how much work must be involved before a change is "permanent," or to draw a distinction between firearms that might be covered by the regulation, that makes the bulletin and proposed regulation ambiguous and inappropriate.**

## III. BACKGROUND ON, THE PROPOSED REGULATION

In *Harrott v. County of Kings* (2001) 25 Cal.4th 1138, the California Supreme Court held that firearms must first be included in the list of series type "assault weapons" promulgated by the Attorney General pursuant to section 12276.5(h) before they are considered "assault weapons" under California law. In early 2005 some firearm manufacturers, relying on the *Harrott* opinion and DOJ letters confirming that their actions were legal, began importing "receivers" (the frame on which the firearm is built) for firearms that are not listed as "assault weapons" either in Penal Code §12276 or in the supplemental list promulgated in the C.C.R. by the Department of Justice, and that do not possess any of the SB 23 "assault weapon" features.

As it became more commonly known that such firearm receivers were legal in California, many California residents began contacting the Department of Justice to get confirmation that such firearms were legal to buy and possess. (Exhibit C. See also Exhibit D – Department of Justices Commission Notes Re: Adding Firearms to Series Lists.)[3].

In response to this attention the DOJ threatened to add such firearms to the list of "assault weapons" in the C.C.R. (*Id.*) This action, however, caused a run on the products, and resulted in an estimated 30,000 receivers being purchased by California residents within a short period of time – each presumably desiring to register the firearm as an "assault weapon" if declared as such by the Department of Justice.

In an effort to further address the importation of these legal firearm receivers, on or about February 3, 2006, the Department of Justice issued an "Important Notice" stating:

> The Department has the statutory authority to identify series assault weapons. . . . Firearms with . . . [Category 3] features could no longer be registered as of January 1, 2001. Therefore, newly identified series (Category 4) weapons likewise

[3] Randy Rossi, Director of the Firearms Division at the Department of Justice publicly stated that "Gun owners who purchase off list receivers – so called because they are not on the list of guns banned by the state – are not in violation of the law as long as they don't add the illegal components to the guns." (Exhibit B.) The San Joaquin County District Attorney's Office and the Stockton Police Department both have said owners of off-list receivers are not breaking the law as long as they don't add illegal features as specified in the assault-weapons ban. (*Id.*)

> cannot have those features. . . . Newly identified series weapons cannot legally have the features listed into the PC section 12276.1 when they are registered. Those features cannot be legally added after the firearms are registered as assault weapons. . . . The Department intends to enforce this restriction through the assault weapon registration process. (Exhibit E.)

Responding to the February 3, 2006 Important Notice, this law firm informed the Department of Justice that it had no authority to issue such a memorandum. (Exhibit F). When it was pointed out to DOJ that the law did not provide for two classes of "assault weapon" registration, and that if these guns were registered the addition of SB 23 features would have to be allowed, DOJ decided not to add the series receivers to the C.C.R. list after all, and quietly removed the "Important Notice" from the DOJ website.[4]

Realizing that they were not going to be able to register their new receivers, and so would not be able to add the otherwise prohibited SB 23 features to those receivers, gun owners began looking closely at the DOJ regulations to see what else might be done to keep their new firearms legal even if features were added. It became widely understood that a receiver could be modified to render the magazine "fixed" or non-"detachable, as DOJ has already defined those terms. So various devices were developed that would make it so a firearm was not capable of accepting a "detachable magazine" by adding modifications that render the magazine"fixed."

In response, on or about May 9, 2006 the Department of Justice issued a second "Important Notice" that deviated from previously held position, stating that:

> Law enforcement officials, firearm dealers and the public should be aware that semiautomatic centerfire rifles that are modified to be temporarily incapable of accepting detachable magazines, but can be restored to accommodate detachable magazines, are assault weapons if they have any of the features listed in section 12276.1(a)(1). The Department intends to exercise its power pursuant to section 12276.5(i) "necessary and proper to carryout the purposes and intent" of California law to ban assault weapons in the state. (Exhibit H.)

---

[4] This "Important Notice" functioned as an illegal regulation, both in the sense that it was not in compliance with the APA, and in the sense that it threatened conduct that the Department of Justice knew was unlawful. For instance, the memorandum threatened to add firearms to the list. The DOJ Firearms Division has long recognized that there is no authority to list firearms as "assault weapons" in light of Penal Code §12276.1. Note DOJ's response to Comment A.18.67 made nearly five years earlier during the implementation of the SB 23 regulations, in which the DOJ expressly acknowledged its lack of authority to promulgate a list of assault weapons by model and manufacturer by stating:

> ***Because the Legislature defined assault weapons by characteristic, the Department does not have the authority to promulgate a list of assault weapons by model and manufacturer.*** (See attached Exhibit G.)

On May 31, 2006, the Department of Justice reiterated its new position, stating in a letter that:

> Because of recent developments, it appears that further clarification of the law is necessary. The division intends to adopt regulations regarding the meaning of "capacity to accept a detachable magazine" in Penal Code §12276.1(a) in order to clarify the current assault weapon law.
>
> ***
>
> [I]ndividuals who alter firearms designed and intended to accept detachable magazines in an attempt to make them incapable of accepting detachable magazines do so at their legal peril. Whether or not such firearms remains [sic] capable of accepting detachable magazines is a question for law enforcement agencies, district attorneys, and ultimately juries, not for the DOJ. We cannot anticipate how any or all of the above entities will view the conversion of such firearms. (Exhibit I.)[5]

The DOJ's letter admits that the proposed regulation is made in light of "recent developments." It is clear, however, that the proposed definition will in effect enlarge the scope of the AWCA without providing an opportunity to register the firearms. Given the legislative history, the Department of Justice's own comments, letters, regulations, and public statements, unlawful regulations, and historical applicability of the "readily removed" standard, the proposed definition is neither necessary, proper, nor intended to carry out the purposes and intent of AWCA.

## IV. ANALYSIS AND OBJECTIONS

The Administrative Procedures Act requires that regulations be necessary, easily understandable, authorized, have a rationale, and be the least burdensome, effective alternative. A regulation cannot alter, amend, enlarge, or restrict a statute. Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute. (Gov't Code §11342.2.)

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[5] The preceding paragraph was at once dishonest and irresponsible. Our Constitution, Art. V, § 12 makes it the duty of the Attorney General "to see that the laws of the state are *uniformly* and adequately enforced" (emphasis added) -- pursuant to which the Attorney General is to exercise "direct supervision over every district attorney... in all matters pertaining to the duties of their ... office." And, of course, DOJ's responsibility under the AWCA is to issue clarifying regulations wherever needed. So the responsibility for clarifying the Act in this respect rests squarely with the DOJ, not with the 58 D.A.s in the state to decide these matters on their own with no consistency between the counties. The Attorney General's duty under Constitution, Art. V, § 12 was to clarify the issue, not to leave it up to D.A.s to decide it without uniformity.

As explained in its "Important Bulletin," the DOJ seeks to clarify that: "Semiautomatic centerfire rifles that are modified to be temporarily incapable of accepting detachable magazines, but can be restored to accommodate detachable magazines, are "assault weapons" if they have any of the features listed in section 12276.1(a)(1)."

But instead of directly addressing this issue by proposing a regulation that would clarify when a rifle is only "temporarily incapable of accepting a detachable magazine" or when a rifle can be "restored to accommodate a detachable magazine" the regulation instead proposes to define "capacity to accept" as "capable of accommodating a detachable magazine." What is the difference?

And what does"permanent alteration" mean? Practically any rifle can be machined and so "altered" to accept a detachable magazine. So does the proposed regulation alter the existing standard since no rifle can be permanently altered? The ambiguous wording leaves that possibility open, and the proposed regulation does not resolve the matter by giving any definition of how "permanent" a change must be.

Considering the issue that DOJ seeks to address, the regulation fails to clarify the law, and is in fact counterproductive because, to the extent it addresses the relevant issue at all, it further confuses it.

### A. CONFLICT: THE PHRASE "PERMANENTLY ALTERED" APPLIES TO MODIFICATIONS TO "LARGE CAPACITY" MAGAZINES ONLY, NOT TO "DETACHABLE" MAGAZINES.

When adopting Senate Bill 23, the Legislature expressly applied the "permanently altered" standard to modifications of the ammunition feeding devices capable of accepting 10 rounds or more" within Penal Code §12020(c)(25)(A):

> large-capacity magazine" means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include . . . a feeding device that **has been permanently altered so that it cannot accommodate** more than 10 rounds. (Exhibit J.)

**But unlike the definition of "large-capacity magazine," the legislature did not apply the permanently altered" provision to the definition to "capacity to accept a detachable magazine."**

A basic rule of statutory construction is that every word and phrase of a statute should be given significance in order to effectuate the legislative intent because all words in a statute have meaning. (*People v. Black* (1982) 32 Cal.3d 1,5.) "The maxim of statutory construction, expressio unius est exclusio alterius," is the expression of one thing (exception) implies the exclusion of others. (*Rojas and Sierra Club* (2004) 33 Cal.4th 407, 424.) An enactment's mention of some exceptions necessarily excludes the existence of unmentioned ones. (*Lake v. Reed* (1997) 16 C. 4th 448, 466 and cases there cited.. See also, *People v. Woodhead* (1987) 43

C.3d 1002, 1010 ("It is an equally settled axiom that when the drafters of a statute have employed a term in one place and omitted it in another it should not be inferred where it has been excluded."); *BP Alaska Exploration, Inc. v. Superior Court* (1988) 199 Cal.App.3d 1240, 1251, 245 Cal.Rptr. 682 (The absence of a parallel fraud exception to the work product rule strongly suggests the Legislature did not intend any exceptions.).) Where "the statute is clear, the Legislature is presumed to have meant what it said and the plain meaning of the language governs." (*Id.* citing *Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal.3d 152, 155, 137 Cal.Rptr. 154, 561 P.2d 244, *Lesher Communications, Inc. v. City of Walnut Creek*(1990) 52 C.3d 531, 543 ("Absent ambiguity, we presume that the voters intended the meaning apparent on the face of an initiative measure.") and *People v. Zamudio* (2000) 23 C.4th 183, 192 ("If there is no ambiguity in the language of the statute "then the Legislature is presumed to have meant what it said....").)

To enact the proposed regulation would exceed the scope of Penal Code section 12276.5(i), which limits the DOJ's regulatory authority to clarifications that are "necessary," through the creation of an expressly omitted standard. "In construing a statute the function of the judge is simply to ascertain what in terms or substance is already there and not to insert what has been omitted or omit what has been inserted. (Code Civ.Proc., § 1858.) Under the guise of construction the court will not rewrite a law [citation]; it will not supply an omission [Emphasis added]. Compare *People v. Guzman* (2005) 35 Cal.4th 577, 587, 25 Cal.Rptr.3d 761 ("as we have often explained, "insert[ing]" additional language into a statute "violate[s] the cardinal rule of statutory construction that courts must not add provisions to statutes.[Citations.].).

In fact, the **DOJ's own prior interpretations of the applicability of the "permanently altered" standard demonstrate it does not apply to detachable magazines.** For example, in the 45-day comment period spreadsheet relating to the regulations originally promulgated in connection with SB 23, the DOJ identifies regulatory comment A4.23, made in response to the definition of "permanently altered." The comment claimed that the definition of "permanently altered" is purposefully broad and would include alterations made to firearms such as lengthening or shortening the stock to fit the shooter, or the addition of swivels for accuracy. The Department of Justice responded by stating that:

> The Department disagrees with the comment. The comment references firearms and firearms accessories, while **the term "permanently altered" refers solely to the capacity of feeding devices."** (Exhibit G.)

The "permanently altered" standard was intentionally applied to "large capacity" magazines, and intentionally omitted from applicability to "detachable" magazines by the Legislature. Nonetheless, the proposed regulation purports to apply the "permanently altered" standard to cover "detachable"magazines, in direct conflict with the statutory intent.

### B. CONFLICT: "PERMANENT ALTERATION," TO THE EXTENT IT APPLIES TO DETACHABLE MAGAZINES AT ALL, IS NOT THE ONLY WAY A RIFLE MAGAZINE IS DEEMED "FIXED."

The DOJ's bulletin indicates that unless a rifle magazine is permanently rendered fixed the rifle is still considered capable of accepting a detachable magazine, and thus is an "assault weapon" if it has an SB 23 feature. But the statute itself, when referring to large capacity magazines, does not make "permanent alteration" the sole means of rendering a magazine to not be large capacity. Magazines are manufactured to accept a certain number of rounds, and are not altered at all. If manufactured to accept 10 rounds or less, these magazines are not large capacity, despite the fact that they were never altered, permanently or otherwise.

And nothing in the proposed regulation confirms whether the DOJ contends that "permanent alteration" of a detachable magazine is the *only* way for a magazine to be deemed non-detachable. What about rifles that are originally manufactured with a fixed magazine, but that can be retrofitted with an after market detachable magazine? These rifles were never "altered" at all. If these rifles have an SB 23 feature and can be retrofitted with a detachable magazine, are they "assault weapons?"

Even if permanent alteration of a "detachable magazine" was *one* way for a magazine to be deemed to be fixed, it is not the only way for a rifle to be equipped with a fixed magazine. Contrary to the statute, the regulation suggests otherwise.

### C. THE PROPOSED REGULATION CONFLICTS WITH THE LEGISLATIVE INTENT BEHIND THE PHRASE "CAPACITY TO ACCEPT."

The "capacity to accept a detachable magazine" language was included in Senate Bill 23 to avoid the complications incurred as a result of the prior AWCA usage of the phrase "*with a* detachable magazine" – not to restrict all semi-automatic firearms that can be modified to accommodate "detachable magazines"

The Legislative intent behind the use of the phrase "capacity to accept" lies in the historical application of the initial Legislative attempt to identify certain SKS rifles in the 1989 AWCA. The 1989 AWCA originally addressed only those firearms listed by make and model in either Penal Code §12276 or in regulations promulgated by the Department of Justice. Penal Code §12276(a)(11) included in its list of "assault weapons," any "semiautomatic SKS with a detachable magazine." (Exhibit K.)

The SKS rifle was originally manufactured with a fixed 10 round magazine. A version manufactured by Norinco, however, accepts detachable AK type magazines. It was clear that the "fixed magazine" version was not an "assault weapon" by definition. What was unclear, however, was whether an SKS rifle manufactured with a "fixed magazine" was an "assault weapon," since the AWCA was intended identified the firearms by make and model, not characteristics. The "with a detachable magazine" language used in Penal Code §12276(a)(11) created confusion as to whether "with a detachable magazine" meant that a "detachable

magazine" had to actually be physically inserted in gun, or whether the firearm merely had to be a firearm that was configured to be capable of accepting a "detachable magazine" (i.e. not a fixed magazine firearm) at the time of possession regardless of whether a "detachable magazine" was actually inserted in the firearm.

This mis-impression was compounded by the fact that the Department of Justice's own *Assault Weapons Identification Guide*, which is used for law enforcement training, depicted an SKS model "with a detachable magazine" (actually installed), but also identified other firearms that had their "detachable magazines" removed, but still retained the "capacity to accept detachable magazines" as being depicted "without the detachable magazine." This gave the impression that a firearm with the capacity to accept a detachable magazine was not "with a detachable magazine."[6]

The confusion lead to litigation. In *People v. Dingman* (1996) 47 Cal.App.4th 1068 (attached as Exhibit L.), the Court of Appeal for the Sixth District addressed this confusion, holding that:

> [T]he legislative analysis prepared by the Senate Committee on Criminal Procedure explained in part why the confusion [surrounding the AWCA restrictions on SKS rifles] exists: the SKS with the fixed 10-round magazine was considered a war souvenir or collector's piece and there was no need or desire to regulate it. However, **if it "was converted to a detachable magazine**, whatever relic collectors status it had would have been destroyed by alteration and that **in the configuration with a detachable magazine, the firearm would be the kind**

---

[6] For example, the following are descriptions of firearms depicted in the Assault Weapon Identification Guide:
SKS WITH DETACHABLE MAGAZINE
The SKS rifle was originally manufactured with a fixed 10 round magazine. A modified version by Norinco, however, ***accepts detachable AK type magazines.***
SPRINGFIELD ARMORY BM 59
Shown here ***without the detachable magazine.***
STEYR AUG
The firearm is in a bullpup configuration and is shown here with a muzzle cap and ***without the detachable magazine.***
VALMET M71S
Shown here ***without the detachable magazine.***
VALMET M78ST
No firearm marked M78S has been located. However, the firearm pictured may be the M78S. It is shown here ***without the detachable magazine.***
INTERTEC
Shown here ***without the detachable magazine.***
SITES SPECTRE
Shown here ***without the detachable magazine.***

> **of 'assault weapon' which the authors of the two bills were trying to regulate.** (See Sen. Com. On Criminal Procedure Analysis of Assem. Bill No.132 (1995-1996 Reg. Sess.) [Exhibit M.]
>
> ***
>
> In any event, we note that the rifle was initially purchased with a fixed magazine; **the detachable magazine which the defendant had attached brought the rifle within the purview** of the AWCA.

Thus, the court in *Dingman* explains that a firearm with a fixed magazine was not within the scope of the AWCA until it was converted to [accept] a detachable magazine. As a result of the court's ruling in *People v. Dingman*, the Legislature passed unprecedented emergency legislation (Penal Code section 12281) immunizing persons found in possession of those SKS rifles which were thought by the general public to be exempt from the "assault weapon" restrictions, and authorizing these firearms to be repurchased with state money. (Exhibit N.)

Having the "with a detachable magazine" language resulted in the Department of Justice not understanding how to enforce the SKS restrictions within the AWCA, the criminal prosecution of a California citizen that the AWCA was not intended to prosecute, and the ultimate need to adopt an emergency immunity bill. The SB 23, phrase "capacity to accept" was used instead, to indicate a ***current configuration*** of design that would permit a firearm to use a detachable magazine (even if the detachable magazine was not contemporaneously present).

### D. THE PROPOSED REGULATION CONFLICTS WITH DOJ's OWN PRIOR DETERMINATIONS OF THE MEANING OF "CAPACITY TO ACCEPT."

In its attempt to promulgate the proposed regulation, the DOJ is ignoring its own prior written determinations. In an August 7, 1996 letter to the Honorable Christopher Cottle, Presiding Justice of the Sixth Appellate District Court of Appeal, sent prior to the *Dingman* ruling, the Department of Justice stated that the AWCA defined "assault weapons" as meaning, among others, an "SKS *with detachable magazine*." The DOJ advised the Sixth District Appellate Court that:

> Such a literal reading of Section 12276(a)(11) would result in a finding that the Legislature did not intend for any model of the SKS rifle to be restricted unless it had a detachable magazine [physically] attached to it. Accordingly, the manufacture, importation, transportation, sale or possession of any SKS rifle, regardless of its primary design, would not be prosecutable without evidence that the particular SKS in question actually had a detachable magazine attached to it when it came to law enforcements attention. Furthermore, such an interpretation raises a serious question as to whether any SKS rifle could ever be properly registered with the Department of Justice. (Exhibit O.)

To clarify, the DOJ interpreted the intent of the legislature in enacting the "SKS with a detachable magazine" language:

> At the time the AWCA was enacted, there were two models of the SKS rifle being sold in California. Although both models were simply marked "SKS," they were different in that **one was designed to use a detachable magazine** while the **other was designed with a magazine which was an integral part of the firearm.** The AWCA, when read as a whole, was intended to restrict and ban a particular model of SKS rather than to prohibit use of an SKS with a detachable magazine. Accordingly, this office concluded that when the Legislature specified the "SKS with detachable magazine," it was intending to distinguish between those two models and identify **only the one designed to be used with a detachable magazine.** (Exhibit O.)

Nevertheless, as discussed above, the *Dingman* ruling examined the current configuration. It is important to note, however, that the court in *Dingman* held that the "fixed magazine" SKS rifle was not an "assault weapon until it was modified to have a "detachable magazine" attached to it, thereby demonstrating that the "fixed magazine" firearm was not "permanently altered" or designed so that it cannot accommodate a detachable magazine. Rather, it is current configuration that determines the applicability of the AWCA. The proposed regulation contradicts the Department of Justices own opinions by requiring the firearm be "permanently altered" so that it cannot accommodate a detachable magazine.

Even at the time *Dingman* was decided, the Department of Justice had already determined that it was, and still is, impossible to manufacture a semi-automatic firearm that is incapable of accommodating a detachable magazine:

> It is apparent that a firearm and a detachable magazine for a firearm are two separate items. Accordingly, in the literal sense, **it is not possible to manufacture a firearm without a detachable magazine. It is only possible to manufacture a semi-automatic firearm that is either designed to accept a detachable magazine or one that has a magazine which is an integral part of the firearm.**
>
> It is submitted that the design of certain semi-automatic firearms was the focus of the AWCA. **It was not directed at after market attachments which might alter the use of those firearms.** (Exhibit O.)

Thus, by requiring a firearm to be "permanently altered" so that it cannot accommodate a "detachable magazine," the Department of Justice is broadening the scope to include fixed magazine rifles that can be modified to accept a "detachable magazine," which the Department of Justice admits is impossible.

That this was not the legislature's intention is further supported by DOJ's responses to comments during the adoption of the initial SB 23 regulations. In comment B1.01 to the initial regulations addressing SB 23, it states that "a simple crimped lanyard hanging from the gun and permanently attached to the gun so as to require tools to remove will make any magazine or

feeding device a permanent fixture of the weapon." (Exhibit P.) The Department correctly determines that such a modification is insufficient to render the "capacity to accept" provision null, since the proposed modification would not require a tool to remove the magazine from the magazine chamber. Such a modification would permit the use of additional "detachable magazines." (*Id.*)

But, in comment B1.25, the Department of Justice states that it "believes the term 'readily removable' is understood by reasonable people when used in the context of 'with neither disassembly of the firearm action nor the use of a tool (s) being required." (*Id.*)

And, in comment B1.19, the Department determined that "any device that can be removed without disassembly of the firearm action" appropriately distinguishes between fixed magazines from detachable magazines, and is consistent with legislative intent." (*Id.*)

In response to comment C1.07 to the initial regulations addressing SB 23, the Department's own definitions adopted the "readily removed" standard within the definition of "detachable magazine" to alter a firearm from being deemed a firearm with the "capacity to accept a detachable magazine" to a firearm with a "fixed magazine:"

> Certain firearms have fixed magazines that can be removed utilizing a bullet or cartridge. **Identifying a bullet as a tool allows these types of magazines to appropriately remain fixed by definition.** (Exhibit Q.) (See also C1.14 and C1.21

The Department of Justice, having refused to define the phrase "capacity to accept" at the time the initial SB 23 regulations were published, has already declared that there is no necessity for the proposed amendment.

Further demonstrating the Department of Justice's understanding and belief that the intent of the legislature in adding the "capacity to accept" was to address the current configuration of the firearm ("i.e. readily detachable"), not irreversible configurations of a firearm, are presentations by the Department of Justice used to educate the public and law enforcement on the provisions of SB 23's requirements, one of which is attached as Exhibit R, which states:

> SB 23 – Assault Weapons (con't)
>
> ***
>
> SEMI-AUTO CENTERFIRE RIFLE ***WITH A DETACHABLE MAGAZINE***
> AND ONE OF THE FOLLOWING: ...

Absent from this presentation is the phrase "capacity to accept" because, as discussed above, it is understood that the phrase "capacity to accept a detachable magazine" means a current configuration capable of accepting a detachable magazine.

In fact, in a December 21, 2005 letter to Mr. Richard Garvey, the Department of Justice

stated:

> You asked about a number of specific ways to attach a magazine to a lower receiver. While we would be happy to offer our opinion about such a modification, we can only do so after examining the modified lower receiver. Again, please contact me for instructions, if you would like to submit a sample for examination.
>
> Finally, you asked about whether a "receiver that is neither a Category 1 nor a Category 2 ["assault weapon" as defined in Penal Code sections 12276 and 12276.5] is also not subject to Category 3 compliance." **A receiver with a magazine that is not "readily detachable" is not subject to the ban on generic characteristic set forth in section 12276.1(a)(1).** (Exhibit S.)

The Department of Justice has, historically, permitted firearms to be *temporarily* modified to render them non-assault weapons. On April 26, 2005 Mr. Robert Hesse provided the Department of Justice a receiver requesting clarification as to whether or not it was an "assault weapon." This letter specifically identifies that the issue they are requesting clarification on is whether their firearm has the capacity to accept a detachable magazine despite the fact that the changes are reversible:

> As you can see by the enclosed sample, the receiver does not have a detachable magazine, nor does the fixed magazine that it does have, hold more than 10 rounds. Also the magazine has the floorplate welded to the magazine body and the "tabs that hold the floorplate on have been removed.
>
> While **it may be possible to remove the fixed magazine with machine tools** (ie. A milling machine or other large machining center) it is at least as difficult to do as it is to convert a "FAB10" type receiver, which has already been approved for sale in California. In the clarifications published on the California DOJ website, it states that in order to be considered removable, the magazine must be able to be removed from the gun without the use of tools, that is not the case with this receiver. (Exhibit T.)

On May 5, 2005 the Department of Justice responded to Mr. Hesse's request, stating that "Your exemplar I received on May 2, 2005, has been examined by our staff and has been classified as a non-series design firearm. **Your fixed magazine removes your exemplar from any prohibitions . . . prohibited by 12280(a)(1) & (2).** (Exhibit U.)

The HAR25 was not the first firearm modified to comply with Penal Code section 12276.1 that is reversible. In response to a written request for clarification as to whether the model FAB10 receiver with a rivet installed was an assault weapon, the Department of Justice wrote:

> Our office has received, inspected, and retained your FAB 10 receiver for the purpose of determining whether or not we consider your FAB 10 Receiver is a firearm that would be restricted under the California characteristics law. . . After inspecting your receiver, we have determined that our department does not consider your receiver to be controlled under Penal Code section 12276.5 [sic]. . . I appreciate your willingness and responsiveness in providing us with a sample and the installation of the rivet to better assess their opinion of your receiver." (Exhibit V.)

On January 19, 2006, the Department of Justice wrote a letter to Mr. Robert Hesse stating that:

> It has come to our attention that several of your California customers have removed fixed magazines, and reinstalled detachable AR-15 magazines . . . In order to fully comply with California law, you need to secure your magazines with a rivet affixed to the front of the magazine housing all the way through the magazine body. (Exhibit W.)

Additionally, on March 24, 2006, the Department of Justice wrote Blain Bunting of Red Jacket Firearms and informed him that:

> We have reviewed your model CAK 47R for California sales. The fixed magazine of this firearm takes it well out of the design characteristics of the Kalashnikov rifle. Therefore we do not consider your CAK 47R to be an assault weapon. In our opinion it is not prohibited for sale in this state. (Exhibit X.)

These previous DOJ opinions are contrary to the proposed regulation defining "capacity to accept a detachable magazine" as an irreversible alteration and demonstrate that the Department of Justice has, for the past six years, adopted, implemented, and advised the public that the standard is the "readily detachable" standard – not permanently altered."

### E. THE PROPOSED DEFINITION CONFLICTS WITH THE PLAIN MEANING OF "CAPACITY TO ACCEPT"

In effect, the proposed regulation seeks to redefine "detachable magazine" by masking the already defined term within a broader term – "capacity to accept a detachable magazine."[7] But this proposed "permanently alter" standard is directly contrary to the "readily detachable" standard currently in place within 12.8 C.C.R. 978.20(a).

If, as cited above and stated by the DOJ in their letter to the Sixth District Appellate Court, "it is not possible to manufacture a firearm without a detachable magazine, it is only

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[7] Again, the proposed regulation provides: "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**."

possible to manufacture a semi-automatic firearm that is either designed to accept a detachable magazine or one that has a magazine which is an integral part of the firearm," then Penal Code §12276.1 would prohibit all semi-automatic firearms from ever having the features identified in its subsections under the proposed regulation's use of the term "capable of accommodating a detachable magazine" which ignores current configuration.

Such an interpretation is clearly not the intent of the Legislature, since the Legislature placed different restrictions on firearms "capable of accepting a detachable magazine" versus those with "fixed magazines." i.e. the inclusion of "fixed magazines" demonstrates the legislative intent to consider the existing configuration, not what is possible after modification.

DOJ's own letter to the Sixth District Court of Appeals demonstrates that the reason the use of the phrase "capacity to accept" was to avoid a court ruling that the firearm had to actually have a detachable magazine attached to it, as was the potential with the "with a detachable magazine" language. Also, the letter demonstrates that the "capacity to accept" language is intended to apply to the current state of design, since all semi-automatic firearms can "accommodate a detachable magazine" after modification.

Also, in that instance, each person in possession of such a firearm is in possession of an "assault weapon." Such persons could not transfer their firearms without risking an even higher criminal penalty for transferring their firearm retroactively deemed an "assault weapon" under the proposed definition. Furthermore, each of those persons will be denied their right to register such firearms – as is currently required for any additional firearms that the Department of Justice deems an "assault weapon."

Thus, adoption of the proposed regulation would conflict with the intent of the legislature by broadening the scope of the "assault weapon" laws far beyond what is reasonable or necessary to enforce the AWCA.

Even if the Department of Justice is incorrect, and such firearms can be "permanently altered" so as to not accommodate a "detachable magazine, it subjects those persons who have relied upon the plain letter meaning of the law as it applies to "fixed magazines," existing interpretation of the AWCA (usually promulgated by the Department of Justice) by not registering their firearm because it was reconfigured with a "fixed magazine" or a magazine that necessitates the use of a tool, and therefore the characteristics of the "detachable magazine" provisions do not apply. If such a firearm can be altered to accept a "detachable magazine," then each person in possession of such a firearm is in possession of an illegal "assault weapon" and is subject to criminal prosecution. Such persons could not transfer their firearms without risking an even higher criminal penalty for transferring an "assault weapon." Furthermore, each of those persons will be denied their right to register such firearms – as is currently required for any additional firearms that the Department of Justice deems an "assault weapon." In every instance where a firearm has been declared to be an "assault weapon," the Legislature has provided an opportunity to register such a firearm and/or immunity. Here, no such provision exists. Nor can the Department of Justice circumvent the law and expand the definition of "assault weapon"

through the regulatory process.

## F. IT IS NOT NECESSARY TO (RE)DEFINE "CAPACITY TO ACCEPT A DETACHABLE MAGAZINE" TO EFFECTUATE THE PURPOSE OF THE STATUTE

The proposed amendment seeks to adopt a definition for "capacity to accept a detachable magazine." But again, the DOJ has already defined the term "detachable magazine" as meaning:

> any ammunition feeding device that can be **readily removed from the firearm with neither disassembly of the firearm 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 stripper clips that load cartridges into the magazine. (12.8 C.C.R. 988.20(a).)

In other words, if an ammunition feeding device requires a tool to be removed, it is not a "detachable magazine." Rather it is a fixed magazine. So no provision of the AWCA that is applicable only to detachable magazine firearms applies to a firearm whose ammunition feeding device requires a tool to be removed. Thus, contrary to DOJ's current position, owners of fixed ammunition firearms are free to add whatever other "assault weapon" features identified in Penal Code section 12276.1 they wish because their gun is not an SB 23 "assault weapon."

Since "detachable magazine" has already been defined the proposed definition of "capacity to accept a detachable magazine" actually seeks to define the term "capacity to accept." The phrase "capacity to accept" is a self-executing provision that is so specific that no implementing or interpreting regulation is necessary to give it effect.

"Capacity" is defined as: The ability to receive, hold, or absorb.[1] "Accept" is defined as: To be able to hold (something applied or inserted).[2] Thus, in context, the phrase "capacity to accept a detachable magazine" means the ability to receive or hold a "detachable magazine." Such a definition was intended to include a firearm with the ability to hold or receive a "detachable magazine," regardless of whether a "detachable magazine" was physically attached to the firearm or recovered with the firearm.

The proposed regulation uses the phrase "accommodate," which is defined as the ability to "make suitable; adapt."[3] The distinction between the proposed regulation definition and the statutory language is the former does not limit itself to the current configuration of the firearm – thereby encompassing firearms not configured with the "capacity to accept" a "detachable magazine," but able to "accommodate" a "detachable magazine" after modification *in the future*.

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[1] The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company. Published by Houghton Mifflin Company. All rights reserved.
[2] *Id.*
[3] *Id.*

In fact, the Department of Justice has previously stated that there is no necessity to define "capacity to accept." In comment A18.64 to the 45-day Comment Period Comment/Response Spreadsheet from the rulemaking file for the regulations addressing SB 23, the Department of Justice was requested to define the term "capacity to accept" because "the broad term in PC section 12276.1 'has the capacity to accept' is not addressed in the proposed regulation, and needs to be to eliminate multiple interpretations by law enforcement, prosecutors, and courts. (Exhibit G.) The Department of Justice responded by stating that:

> **The Department disagrees with this comment. The Department believes the phrase "has the capacity to accept" is sufficiently understood by reasonable people.** (*Id.*)

Thus, not only did the Department of Justice acknowledge that there is no necessity for a regulation defining "capacity to accept," but it admits that the phrase is understood by reasonable people.

## CONCLUSION

As discussed above, the proposed regulation is not necessary, consistent, or in harmony with the intent of the AWCA. In fact, as demonstrated by writings from the Department of Justice, the proposed regulation actually conflicts with the AWCA by expanding the definition of "assault weapons" to include firearms not currently deemed "assault weapons" without providing the California resident owners an opportunity to register their firearms – thereby subjecting the current owners of such firearms to criminal penalties for possession of the firearms and even greater criminal penalties for attempting to transfer such firearms in order to not be in possession.

In short, our clients agree with the Department of Justice's own responses to comments A4.23 and A18.64: **The comment references firearms and firearms accessories, while the term "permanently altered" refers solely to the capacity of feeding devices."**

***

**The Department believes the phrase "has the capacity to accept" is sufficiently understood by reasonable people.** (Exhibit G.)

The proposed regulation should not be adopted.

Sincerely,
TRUTANICH • MICHEL, LLP

C. D. Michel

CDM/ca
Enc.

# EXHIBIT A

California Attorney General

# Assault Weapons Identification Guide

as listed or described in Penal Code Sections 12276, 12276.1, and 12276.5

(Includes selected recent legislation)

3rd EDITION - November 2001

## CATEGORY 3

### Assault Weapon Generic Characteristics (Penal Code Section 12276.1)

The Roberti-Roos Assault Weapons Control Act of 1989 (Penal Code section 12276) regulates specific assault weapons by makes and models. Since its passage in 1989, many manufacturers created new firearm models that have very similar characteristics to controlled assault weapons. In response, the Legislature passed and the governor signed SB 23 (Chapter 129, Statutes of 1999), which created Penal Code section 12276.1 to define assault weapons by generic characteristics. It is important to understand that the Roberti-Roos Assault Weapons Control Act of 1989 (Penal Code section 12276), which lists assault weapons by make and model, is still the law and those weapons were required to be registered on or before March 31, 1992 (with the exception of certain AK series and AR-15 series weapons, which were required to be registered on or before January 23, 2001). (Penal Code §§ 12276.1)

Penal Code section 12276.1 complements rather than supersedes the Roberti-Roos Assault Weapons Control Act of 1989. A firearm that is of a type specified in Penal Code Section 12276.1 that has any of the specified characteristics listed for that type of firearm is considered a Category 3 (generic characteristics) assault weapon. Under Penal Code section 12276.1, a firearm's make, model, or markings have no bearing on whether it is an assault weapon. A firearm's status as an assault weapon under this category is determined solely by its characteristics. There are three general types of firearms that are controlled by the generic characteristics assault weapons laws. These types include semiautomatic centerfire rifles, semiautomatic pistols, and semiautomatic or revolving cylinder shotguns.

### Generic Characteristics Defining Assault Weapons:

**12276.1 (a) Notwithstanding Penal Code section 12276, "assault weapon" shall also mean the following:**

**Rifles**

(1) A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following:
- (A) A pistol grip that protrudes conspicuously beneath the action of the weapon.
- (B) A thumbhole stock.
- (C) A folding or telescoping stock.
- (D) A grenade launcher or flare launcher.
- (E) A flash suppressor.
- (F) A forward pistol grip.

(2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.

(3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

**Note: Bayonets and bayonet lugs are not assault weapon characteristics under California law.**

CATEGORY 3

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- (A) A pistol grip that protrudes conspicuously beneath the action of the weapon.
- (B) A thumbhole stock.
- (C) A folding or telescoping stock.
- (D) A grenade launcher or flare launcher.
- (E) A flash suppressor.
- (F) A forward pistol grip.

(2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.

(3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

Note: **Bayonets and bayonet lugs are not assault weapon characteristics under California law.**

Pistols

(4) A semiautomatic pistol that has the capacity to accept a detachable magazine and any one of the following:

(A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.

(B) A second handgrip.

(C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning his or her hand, except a slide that encloses the barrel.

(D) The capacity to accept a detachable magazine at some location outside of the pistol grip.

(5) A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.

Shotguns

(6) A semiautomatic shotgun that has both of the following:

(A) A folding or telescoping stock.

(B) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.

(7) A semiautomatic shotgun that has the ability to accept a detachable magazine.

(8) Any shotgun with a revolving cylinder.

**Automatic firearm** - An automatic firearm continues to self-load and fire as long as the trigger is held back and a supply of ammunition is present. In an automatic firearm, one pull on the trigger may result in multiple shots being fired.

**Caliber** - The caliber of a firearm is the approximate diameter of the bore measured before rifling (or the diameter of a circle formed by the tops of the rifling lands).

**Flash suppressor** - Any device designed, intended, or that functions to perceptibly reduce or redirect muzzle flash from the shooter's field of vision.

**Forearm** - The forward portion of a two-part stock which is usually under the barrel.

**Magazine** - Any ammunition feeding device.

**Magazine, fixed** - A magazine which remains affixed to the firearm during loading. Frequently a fixed magazine is charged (loaded) from a clip (en bloc or stripper) of cartridges inserted through the open breech into the magazine.

**Magazine, detachable** - An 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 bloc clips, or stripper clips that load cartridges into the magazine.

**Pistol Grip, conspicuously protruding** - A grip that allows for a pistol style grasp in which the web of the trigger hand (between the thumb and index finger) can be placed below the top of the exposed portion of the trigger while firing.

**Pistol Grip, forward** - A grip that allows for a pistol style grasp forward of the trigger.

**Receiver** - The basic unit of a firearm which houses the firing and breech mechanism and to which the barrel and stock are assembled. The receiver may consist of two sections. In some autoloading pistols and other firearms, the terms receiver and frame are used interchangeably.

**Receiver, lower** - In a receiver composed of two parts, the lower receiver usually contains the trigger and firing mechanism.

**Receiver, upper** - In a receiver composed of two parts, the upper receiver usually contains the barrel and breech mechanism.

**Semiautomatic firearm** - The refers to a firearm which is self loading but not self firing. A single pull on the trigger results in a single shot being fired.

**Stock** - The part of a rifle, carbine or shotgun to which the barrel assembly is attached and which provides a means for holding the weapon to the shoulder.

**Stock, collapsing** - A stock which is shortened by allowing one section to telescope into another.

**Stock, folding** - A stock which is hinged to the receiver to allow the stock to be folded next to the receiver to reduce the overall length of the firearm.

**Stock, thumbhole** - A stock with a hole that allows the thumb of the trigger hand to penetrate into or through the stock while firing.

# EXHIBIT B

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Article published Apr 10, 2006
Assault weapons

# Glitch in assault weapon law triggers rush to beat ban

STOCKTON - Gun components that can be used to build assault weapons have flooded into California under a loophole in state law. The glitch has delighted some gun owners, who hope to register the weapons before any state legislation is passed barring their possession.

Frames of more than 30,000 AR- and AK-series guns have entered California, according to estimates from some gun advocates, and can be purchased from many weapons dealers in the state and online.

Assault weapons were banned across the country in 1994 and continue to be illegal in California, even though the federal ban expired in 2004. State legislation passed in 2000 expanded the definition of banned assault weapons to include any semiautomatic rifle that can accept a detachable magazine if it has a pistol grip, flash suppressor or grenade launcher; and any semiautomatic pistol that can accept a detachable magazine if it also can accept a flash suppressor, forward hand grip or silencer. But nothing banned assault-weapon receivers - essentially the frame of a gun.
That created a gray area that many gun owners say is confusing. Gun owners who purchase off-list receivers - so called because they are not on the list of guns banned by the state - are not in violation of the law as long as they don't add the illegal components to the guns, said Randy Rossi, director of the Firearms Division of the attorney general's office. But they could be prosecuted by local courts that consider the weapons to be in violation of the ban, Rossi said.

The San Joaquin County District Attorney's Office and the Stockton Police Department both have said owners of off-list receivers are not breaking the law as long as they don't add illegal features as specified in the assault-weapon ban.

Receivers that technically could be built into assault weapons are legal in the state. Anti-gun groups fear that such receivers easily could be used to build weapons like the ones legislators banned. True assault weapons, such as fully automatic Uzis and AK47s, can fire up to 30 bullets in five seconds.

Four years ago, Stockton resident Darlene Berendt lost her 21-year-old daughter, Frances Corral, in a shooting on La Jolla Drive in central Stockton. Corral was dropping off a friend when a car drove by and one of its occupants peppered the home with more than 50 bullets from what Berendt believes was a semiautomatic gun. Corral, seated in her 1981 Buick, was struck and died immediately. The case remains unsolved.

"We don't need assault weapons. (It's) a trophy to put on your wall," Berendt said. "They are not for hunting but for killing people. They are for war."

The federal campaign to ban assault weapons was spurred by the 1989 Cleveland Elementary School shooting, in which Patrick Purdy walked onto the Stockton campus with an AK47 that held

75 rounds of ammunition. Purdy killed five children and injured 29 others and a teacher. Five years later, assault weapons were banned across the country, which gun-safety advocates lauded as a victory.

"It's really their killing potential," Alison Merrilees, legal counsel for the Firearms Division of the attorney general's office, said in explaining why assault weapons were banned. "The pistol grip allows them to be sprayed randomly. You can kill lots of people without having to reload."

A pistol grip gives a weapon more support and better positioning.
The receivers were first discovered by firearms agents at a Northern California gun show in November. Since then, lawyers for Attorney General Bill Lockyer have been studying legal options and expect to decide this week what to recommend to the Legislature.

"It's an uncertain legal situation," Merrilees said, adding that victims' rights groups have not pressured the state to update the law. "The only legitimate problem right now is confusion among gun owners about what is legal and what isn't legal."

The Brady Campaign, a national organization that advocates more-stringent gun laws, has not taken a position on the issue but is waiting to see what the attorney general's office decides, spokesman Peter Hamm said.

"Lockyer is extremely good on the gun issue, and we generally trust his office," Hamm said.

Gun owners are eager for the state to make a decision about the weapons, saying those who own the receivers are in a legal limbo. But the attorney general's office says gun laws are clear in spelling out what is and isn't legal and don't need to be updated.

Despite the quandary, gun owners are using the quirk in the law to their advantage, stocking up on the guns in anticipation of an eventual ban. Mike, a 21-year-old Stockton man who declined to give his last name for fear of being robbed, said he has two guns on AR15 receivers at home and recently ordered two more AK47 receivers from an out-of-state manufacturer.

"This is the cream of the crop," Mike said, adding that he uses the rifles to hunt squirrels and the occasional boar with his friends.

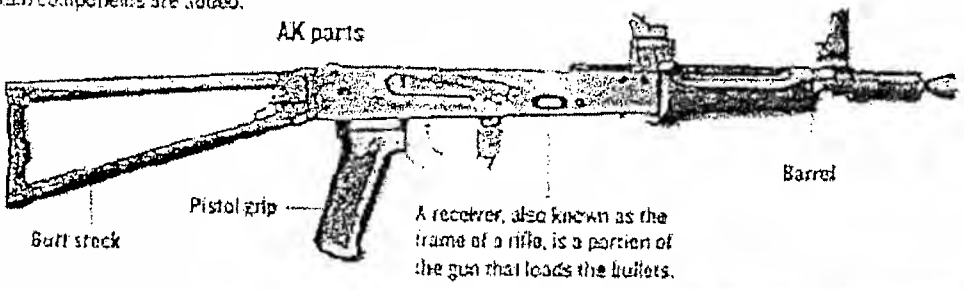
"If they were to do away with all guns, it would be better," he said. "But since they are not going to, I would prefer to be the one with the gun. I think I am responsible enough to own this gun and just feel safer knowing that I have it."

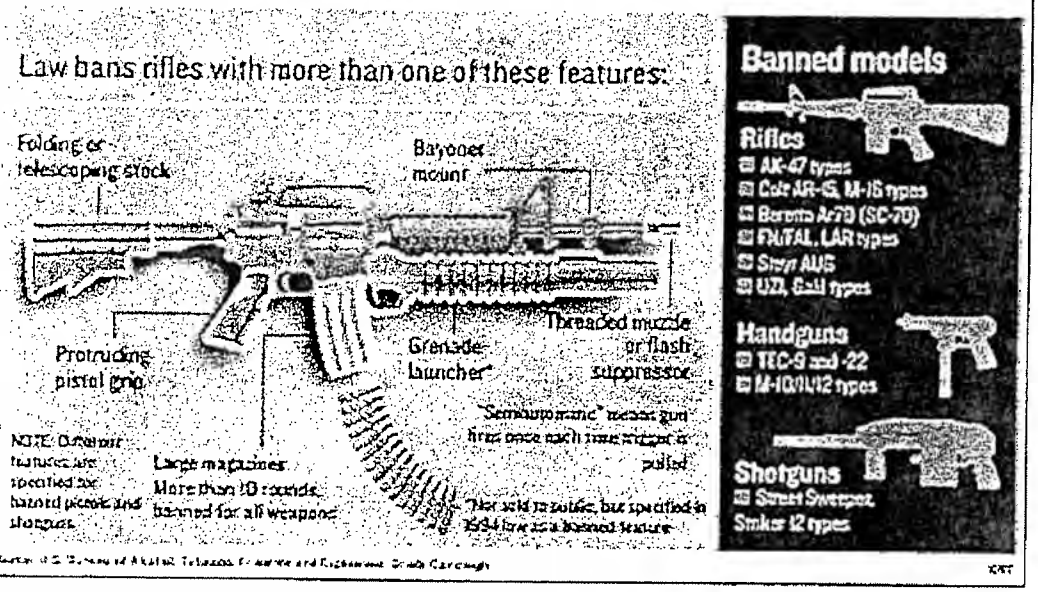
Berendt disagrees and thinks the way to deal with the recent dilemma is to update the legislation.

"You can't have one rule forever," she said. "You need to change laws with new technology."
Contact reporter Karina Ioffee at (209) 546-8279 or kioffee@recordnet.com

# What is an assault weapon?

Since 2000, all AK series rifles, seven specific pistols and three shotguns have been declared illegal in California. The AR and AK series frames entering the state are not in themselves illegal but could be built into assault weapons if certain components are added.



# EXHIBIT C

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE

P.O. BOX 160487
SACRAMENTO, CA 95816-0487

Facsimile: (916) 263-0676
(916) 263-0802

December 21, 2005

Mr. Carlos Lopez
237 Grayson Way, Unit A
Upland, CA 91786

RE: Assault Weapons

Dear Mr. Lopez:

This correspondence is in response to your letter (undated) in which you posed a number of questions regarding the regulation of assault weapons in California under the Roberti-Roos Assault Weapons Control Act of 1989 and subsequent legislation.

Your first question was about the effect of *Kasler v. Lockyer* (2000) 23 Cal. 4th 472 on California assault weapons law. *Kasler* upheld the original Roberti-Roos Assault Weapons Control Act of 1989, including the add-on provisions in Penal Code (PC) section 12276.5 that were amended into the law in 1999 by Senate Bill 23. The court in *Kasler* ruled that none of the assault weapons provisions violated constitutional guarantees of equal protection, separation of powers, or due process.

You asked "whether receivers that are not on the Roberti-Roos list, or are not "ak" and "ar" series are legal to buy and own in California." Receivers that are not listed in Penal Code section 12276 are still illegal to buy and own in California if they are listed in the Assault Weapons Identification Guide published by the California Department of Justice (DOJ), or if they have certain generic characteristics listed in Penal Code 12276.1. Also, a local prosecutor in one of California's 58 counties could file charges under 12276(e) for possession of an assault weapon because the firearm that is virtually identical to a listed assault weapon, even if the firearm is not identified by DOJ, and does not have any of the banned characteristics.

Specifically, you asked about the PTR-91 receiver, which is not listed in Penal Code 12276. The PTR-91 is illegal in California under Penal Code 12276.1 because it has a pistol grip. You are correct that it would not be considered by DOJ to be a Category One or Two Assault Weapon. However, as mentioned above, a local prosecutor could file charges under 12276(e), even if the firearm was not identified by DOJ, and did not have any of the banned characteristics.

Finally, you asked whether the PTR-91 receiver would comply with California law if it had a fixed magazine "or no pistol grip or flash-hider." Subject to local

prosecutorial discretion to file charges under Penal Code 12276(e), the PTR-91 may be legal for sale in California if it lacks all of the generic characteristics listed in Penal Code 12276.1.

I hope that this information was helpful. If you have any additional questions regarding this issue, please feel free to contact me at (916) 263-0802.

Sincerely,

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General

*BILL LOCKYER*
*Attorney General*

*State of California*
*DEPARTMENT OF JUSTICE*

FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487

Public: 916-263-0802
Facsimile: 916-263-0676

January 19, 2006

William Whitaker
P.O. Box #1
Moorpark, CA 93021

Re: Importation of Unlisted Lower Receivers into California: Ameetec Arms, Mega Machine Shop

Dear Mr. Whitaker:

I am writing in response to your inquiry about whether it is legal to send the unlisted AR-15 lower receivers listed above, into California.

The receivers about which you inquired are not listed as Category One assault rifles in California Penal Code 12276, and are not yet named as Category Two assault rifles. Although technically the receivers are legal to purchase and possess in California at this time (assuming they do not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that they are virtually identical to assault weapons that are now illegal in California. You should also be aware that we may add them soon to the DOJ Assault Weapons Identification Guide. Therefore, the lower receivers may soon be classified as assault weapons.

Also, please realize that this opinion is not conclusive about the legality of the receivers. A local prosecutor in one of California's 58 counties could decide to prosecute you for illegal importation of assault weapons, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

ALISON MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

*BILL LOCKYER*
*Attorney General*

*State of California*
*DEPARTMENT OF JUSTICE*

FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

January 18, 2006

J.A. Cervantes
10450 Albertworth Lane
Los Altos Hills, CA 94024

Re: Importation of DSA ZM4 Lower Receiver into California

Dear J.A. Cervantes:

I am writing in response to your inquiry about whether it is legal to send a DSA ZM4 lower receiver to California.

The DSA ZM4 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the DSA ZM4 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the DSA ZM4 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the DSA ZM4 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General

*BILL LOCKYER*
*Attorney General*

*State of California*
*DEPARTMENT OF JUSTICE*

FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487

Public: 916-263-0802
Facsimile: 916-263-0676

January 18, 2006

BST Guns
A.J. Robello
1307 Scott Street, Suite D
Petaluma, CA 94954

Re: Importation of Unlisted Lower Receivers into California: Stag 15, Fulton Armory, Ameetec Mega Gator, Superior, Sun Devil

Dear Mr. Robello:

I am writing in response to your inquiry about whether it is legal to send the unlisted AR-15 lower receivers listed above, into California.

The receivers about which you inquired are not listed as Category One assault rifles in California Penal Code 12276, and are not yet named as Category Two assault rifles. Although technically the receivers are legal to purchase and possess in California at this time (assuming they do not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that they are virtually identical to assault weapons that are now illegal in California. You should also be aware that we may add them soon to the DOJ Assault Weapons Identification Guide. Therefore, the lower receivers may soon be classified as assault weapons.

Also, please realize that this opinion is not conclusive about the legality of the receivers. A local prosecutor in one of California's 58 counties could decide to prosecute you for illegal importation of assault weapons, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

ALISON MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

# EXHIBIT D

State of California

Department of Justice
P.O. Box 160487
Sacramento, CA 95816-0487

**Memorandum**

To : Randy Rossi, Director
Firearms Division

Date : December 20, 2005

Telephone: (916) 274-5990

From : Dale Ferranto, Assistant Director
Firearms Division

Subject : **Commission Changes**

(1) A change to the Olympic arms classification to read
CAR (all) take off the 97
add MFR (all).

(2) Add "FEG" Hungarian as a classification
Model SA 85M

(3) Add "Robinson Armament"
AK-47 series VEPR (all)

(4) Add "DOUBLESTAR"
DSC STAR-15 rifles (all)
DSC STARCAR Carbine (all)

(5) Add "DSA"
DS-AR (all)

(6) Add "Barrett"
AR-series (all)

(7) Add to Bushmaster - to go under model X M15E2S , Carbon 15 rifle and Carbon 15 pistol.

(8) Add "European American Armory (EAA)"
Saiga

(9) Add Century International Arms
WASR-10 (all)

(10) Add FAR-15 (all)

(11) Add STAG 15 (all)

(12) JP - (all)

(13) CMMG (all)

Please make the changes to the existing Series list as soon as possible.

# EXHIBIT E

*BILL LOCKYER*
*Attorney General*

*State of California*
*DEPARTMENT OF JUSTICE*

FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487

Public: 916-263-4887

# IMPORTANT NOTICE

## California Department of Justice
## Information Regarding the Sale/Possession of Newly Identified AR-15/AK 47 "Series" Firearms

The Department of Justice (hereafter "the Department") has received numerous contacts from the public and firearms industry personnel regarding the legality of various AR-15/AK 47 "series" style firearms that have not yet been identified as "series" assault weapons by the Department. The Department is also aware of the recent high volume of sales of these firearms.

The Department has the statutory authority to identify "series" assault weapons. In 2000, the California Supreme Court upheld that authority in *Kasler v. Lockyer* (2000) 23 Cal. 4th 472. The Department updated the list of "series" weapons in 2000 (as "Category 2" assault weapons), shortly after the *Kasler* decision.

The California Supreme Court reiterated in 2003 that "the Attorney General has the authority to determine that certain semiautomatic firearms are assault weapons by simply identifying them as such in the list published by the Attorney General in the California Code of Regulations...two types of firearms defined in Penal Code (PC) section 12276 by the use of the term series, namely the AK-47 series and the Colt AR-15 series." *Harrott v. County of Kings* (2003) 25 Cal. 4th 1138, 1155.

Accordingly, the Department is currently in the process of identifying those firearms in the state that are variations, with minor differences, of AR-15/AK 47 "series" weapons. Once this process is complete, the Department will promulgate a list and file it with the Secretary of State's office. Concurrently, the Department will begin updating the Assault Weapon Identification Guide which is currently available via the Department's website at http://ag.ca.gov/firearms/forms/index.html. Once the list of newly identified "series" weapons is filed with the Secretary of State, citizens who possess those weapons will have 90 days to register them with the Department of Justice.

**Newly identified "series" weapons cannot legally have the features listed in PC section 12276.1 when they are registered. Those features cannot legally be added after the firearms are registered as assault weapons.** The PC section 12276.1 features have been banned since January 1, 2000, when Senate Bill 23 went into effect. The public was notified of the prohibition on the specified features many years ago.

The registration period for assault weapons with those characteristics (Category 3 assault weapons) ended on December 31, 2000. Because *non-"series"* assault weapons with PC section 12276.1 features may not be offered for sale, manufactured, imported, or possessed in California, it follows that newly registered *"series"* weapons may not have the features listed in PC section 12276.1, either.

The prohibition on the features listed in PC section 12276.1 is consistent with current DOJ policy that named "series" weapons are illegal, unless registered, regardless of whether they have the PC section 12276.1 features. It is also consistent with the intent of the California state legislature to ban assault weapons, expressed in 1991 when PC section 12276(f) was enacted.

> This section is declaratory of existing law, as amended, and a clarification of the law and the Legislature's intent which bans the weapons enumerated in this section, the weapons included in Section 12276.5, and any other models which are only minor variations of those weapons with minor differences, regardless of the manufacturer [emphasis added].

It should be noted that individuals who timely registered "Category 1" and "Category 2" assault weapons were allowed to keep or add the PC section 12276.1 features on their firearms. Those generic features were not illegal during the registration period for Category 1 assault weapons. In August of 2000, when the Department identified the Category 2 "series" weapons, it was legal to register weapons with those characteristics as Category 3 assault weapons. Firearms with those features could no longer be registered as of January 1, 2001. Therefore, newly identified "series" (Category 4) weapons likewise cannot have those features.

**Registrants of newly identified series weapons cannot legally add PC section 12276.1 features to those firearms.** The Department intends to enforce this restriction through the assault weapon registration process. Registration acknowledgment letters will include an admonition to registrants that adding prohibited features to newly registered assault weapons will invalidate the registration. The basis for valid registration will rest solely on the fact that the Department identifies the receivers for these firearms as variations, with minor differences, of already controlled AR-15/AK 47 "series" weapons. All additional features of the newly identified "series" weapons must conform with current California law.

Firearm manufacturers, wholesalers and dealers who misinform the public about the ability to legally add prohibited features to these newly listed firearms risk criminal prosecution. They could also face civil penalties of up to $2,500 per violation under the state's Unfair Practices Act (California Business & Professions Code section 17000 et seq.).

This information will be distributed to criminal justice agencies throughout the state, as well as to firearm dealers listed on the Department's Centralized List, via the formal Information Bulletin process.

# EXHIBIT F

CARMEN A. TRUTANICH
C. D. MICHEL
LOS ANGELES, CA

GLENN S. MCROBERTS
SAN DIEGO, CA

TRUTANICH·MICHEL, LLP
Attorneys At Law
LOS ANGELES · SAN DIEGO

OF COUNSEL:
JOHN F. MACHTINGER
LOS ANGELES, CA

DON B. KATES
SAN FRANCISCO, CA

MARK K. BENENSON
NEW YORK, N.Y.

DAVID T. HARDY
TUCSON, AZ

Jason Davis' Direct Contact:
(562) 216-4458
JDavis@tmllp.com

February 22, 2006

Mr. Randy Rossi
Director of Firearms Division
CALIFORNIA DEPARTMENT OF JUSTICE
4949 Broadway, Rm. G321
Sacramento, CA 95820

**Re: California Department of Justice Notice Regarding the Sale/Possession of Newly Identified AR-15/AK47 "Series" Firearms**

Dear Mr. Rossi:

## I. INTRODUCTION

It has come to our attention that the Department of Justice – Firearms Division ("DOJ") has posted a "notice" on their website regarding the addition of AK/AR15 "series" type "assault weapons" to the list of firearms deemed "assault weapons." (http://ag.ca.gov/firearms/forms/pdf/ar15notice.pdf.) The notice was presumably issued in an attempt to thwart perfectly legal activities of Californians buying various "off-list" receivers.

In this "notice" the DOJ correctly asserts that it has "the statutory authority to identify "series" assault weapons." The notice further states that the DOJ:

> is currently in the process of identifying those firearms in the state that are variations, with minor differences, of AR-15/AK 47 "series" weapons. Once this process is complete, the Department will promulgate a list and file it with the Secretary of State's office. Concurrently, the Department will begin updating the Assault Weapon Identification Guide . . . . Once the list of newly identified "series" weapons is filed with the Secretary of State, citizens who posses those weapons will have 90 days to register them with the Department of Justice.

Of concern, however, is the statement that follows the above quoted paragraph. Specifically, the DOJ "notice" states:

> Newly identified "series" weapons *cannot legally have the features* listed in PC section 12276.1 *when they are registered.* These features cannot legally be added after the

firearms are registered as "assault weapons. The PC section 12276.1 features have been banned since January 1, 2001, when Senate Bill 23 went into effect. The public was notified of the prohibition on the specified features many years ago.

The notice further erroneously and baselessly makes the following allegations:

**Registrants of newly identified series weapons cannot legally add PC section 12276.1 features to those firearms.** The Department intends to enforce this restriction through the assault weapon registration process. Registration acknowledgment letters will include an admonition to registrants that adding prohibited features to newly registered assault weapons will invalidate the registration. The basis for valid registration will rest solely on the fact that the Department identifies the receivers for these firearms as variations, with minor differences, of already controlled AR-15/AK 47 "series" weapons. All additional features of the newly identified "series" weapons must conform with current California law.

Firearm manufacturers, wholesalers and dealers who misinform the public about the ability to legally add prohibited features to these newly listed firearms risk criminal prosecution. They could also face civil penalties of up to $2,500 per violation under the state's Unfair Practices Act (California Business & Professions Code section 17000 et seq.).[1]

This "notice" claims that Penal Code section 12276.1 features cannot be added legally when the newly added "series" firearms are registered because the "section 12276.1 features have been banned since December 31, 2000."

The DOJ is incorrect about this, and is misleading the general public by asserting that the possession of a *registered* "assault weapon" with 12276.1 features is unlawful.

In fact, the following analysis of the "notice" and the DOJ's actions demonstrates:

- Any addition of firearms which do not contain the SB23 features to the "series" list is likely to be overturned by a court because the DOJ cannot meet the burden of proof that the add-on firearms have not been modified sufficiently to render them non-assault weapons in light of Penal Code section 12276.1.
- There is no statutory distinction between any category "assault weapons" once the firearm is registered.
- Nothing in the Penal Code grant's the DOJ the authority to unilaterally issue regulations designating sub-classes of registration, or to prohibit "assault weapon" features from

[1] In light the erroneous nature of this "notice," and considering the DOJ's threat to sue Smith and Wesson for the distribution of the Walther P-22, which the DOJ approved for sale in the state of California, it appears that the DOJ is forming a pattern of threatening Unfair Business Practice Act lawsuits, where the DOJ is, at least, in part at fault for the practice.

being installed on registered "assault weapons."
- The Notice is in direct conflict with current regulations.
- The DOJ's "notice" is an "underground regulation."
- New Legislation Demonstrates the DOJ's knowledge of their lack of authority to prohibit the installation of "assault weapon" features on registered "assault weapons."

In essence, the DOJ's actions surrounding the "assault weapon" add-on provision for AR15/AK47 "series" type firearms will do no more than cause another 10,000 or so firearms to be deemed "assault weapons" that registered owners can possess and install "assault weapon" features on, and subject the DOJ to further needless litigation.

For the following reasons, we demand that the DOJ cease and desist the publication of the "notice" and issue a correction clarifying that the conduct specified in the "notice" is not a violation of law.

## II. ANALYSIS

### A. Legislative Intent of Add-On Provisions

A summary of the legislative history behind Roberti-Roos Assault Weapons Act is found in *Kasler v. Lockyer* (2000) 23 Cal.4th 472, 485-488. *Kasler* states that the original definition of "assault weapons," as proposed in Senate Bill 292 and Assembly Bill 357 was generic. Specifically, "assault weapon was originally defined as "any semiautomatic action, centerfire rifles, that accept detachable magazines with a capacity of 20 rounds or more:"

> The sponsors of the AWCA were Senator David A. Roberti and Assemblyman Mike Roos. Originally, both Senate Bill No. 292 (1989-1990 Reg. Sess.) (Senate Bill 292), introduced by Senator Roberti, and Assembly Bill No. 357 (1989-1990 Reg. Sess.) (Assembly Bill 357), introduced by Assemblyman Roos, defined assault weapons generically. As amended in the Senate on January 31, 1989, Senate Bill 292 defined "assault weapons" to include, for example, "*[a]ll semiautomatic action, centerfire rifles that accept detachable magazines with a capacity of 20 rounds or more.*" The parallel provision of Assembly Bill 357, as amended in the Assembly on February 27, 1989, was identical. (Emphasis Added.)

The definition of "assault weapon" was the foremost concern in the passage of the Roberti-Roos Assault Weapons Act:

> In seeking to address the grave threat to public safety posed by the possession and use of assault weapons *by criminals*, the Legislature was clearly walking a tightrope. Anti-gun-control groups like the National Rifle Association were adamantly opposed to an assault weapons ban, regardless of the approach taken--generic definition or list. (See, e.g., Matthews, Biggest Gun-Ban Shootout Remains: Combining Two Bills, Sacramento Bee (Mar. 27, 1989) p. A1.) On the other hand, a spokesman for the California Police Chiefs Association said neither bill went far enough. (Ibid.) Of the two approaches, many

> proponents of an assault weapons ban preferred a generic definition. Attorney General Van de Kamp, for example, warned that manufacturers could get around a list merely by renaming a firearm or making simple cosmetic changes in the weapon's design. (Ingram & Gillam, Assault Gun Ban Gains in Legislature, L.A. Times, supra, p. I21, cols. 4-5.) However, key figures like Governor Deukmejian and Assemblyman Quackenbush were concerned the proposed generic definition would sweep too broadly--that it would ban semiautomatic weapons used for legitimate sports and recreational purposes. The bottom line, apparently, was that an assault weapons ban would have died in the Assembly that session, had the proponents insisted on defining assault weapons generically.

(Emphasis added.) *Kasler v. Lockyer* (2000) 23 Cal.4th 472, 485-488.

Ultimately, the Legislature decided to define firearms that they deem "assault weapons" by their make and model, rather than the generic characteristic:

> Although a majority in the Senate favored the approach of defining assault weapons generically, that approach was not acceptable to a majority of the Assembly. In the Assembly Public Safety Committee, the fate of Assembly Bill 357 was expected to turn on the vote of Assemblyman Charles W. Quackenbush, who was quoted as saying, "As it stands right now, I am against [the legislation]. There would have to be major changes for me to support it." According to the Los Angeles Times, "Quackenbush and other opponents say the bills would ban some legitimate hunting rifles as well as assault weapons and say they could support a measure that contained a more exact definition of assault weapons." (Ingram, State Anti-Gun Measures Facing an Uncertain Fate, L.A. Times (Feb. 24, 1989) p. I32, cols. 3-4.)
>
> On February 28, 1989, Assembly Bill 357 was approved by the Assembly Public Safety Committee "with no votes to spare." (Ingram & Gillam, Assault Gun Ban Gains in Legislature, L.A. Times (Mar. 1, 1989) p. II, col. 1.) The committee's action "followed acceptance by Roos of amendments proposed by Quackenbush that eliminated a broad definition of what constituted an assault rifle. *Substituted in its place was a list of about 40 rifles, shotguns and pistols that would be specifically banned by manufacturer and model, including the AK-47 and Uzi.*" (*Id.* at p. I21, cols. 3-4.) Senate Bill 292, which retained the generic definition approach, was approved by the Senate Judiciary Committee the same day. (Ingram and Gillam, supra, at p. I1, col. 4; see Sample & Richardson, State Ban on Assault Weapons Gains, Sacramento Bee (Mar. 1, 1989) p. A1.)
>
> On March 9, 1999, Senate Bill 292 was approved by the Senate. Governor George Deukmejian expressed misgivings about the generic definition approach in the Senate bill, indicating that he favored the list approach taken by the Assembly. (Ingram, State Senate Votes to Ban Assault Guns, L.A. Times (Mar. 10, 1989) p. I1, col. 3; see Matthews, Gun Ban Breezes in Senate/NRA Predicts Ban Will Die in Assembly, Sacramento Bee (Mar. 10, 1989) p. A1.) On March 13, 1989, the Assembly passed

> Assembly Bill 357, with its list approach "on a 41-38 vote, the exact simple majority required in the 80-member chamber." (Ingram & Gillam, Assembly Passes Assault Gun Ban, L.A. Times (Mar. 14, 1989) p. I1, col. 5.) On April 4, 1989, Senate Bill 292 was amended by the *Assembly Public Safety Committee to substitute the list approach for the generic definition approach*, and as so amended, was approved by the committee. The same day the Senate Judiciary Committee approved Assembly Bill 357. (Ingram, Tougher of 2 Bills to Outlaw Assault Rifles Is Weakened by Panel, L.A. Times (Apr. 5, 1989) p. I3, col. 5; Sample, Panel Narrows, OKs Assault-Weapons Ban, Sacramento Bee (Apr. 5, 1989) p. A3.)

*Kasler v. Lockyer* (2000) 23 Cal.4th 472, 485-488.

The compromise between the generic definition and the list definition was the inclusion of an "assault weapon" add-on provision:

> The Legislature was, in short, confronted with two conflicting societal interests, both of which it recognized as legitimate--the interest of all citizens in being protected against the use of semiautomatic weapons by criminals, and the interest of some citizens in using semiautomatic weapons for hunting, target practice, or other legitimate sports or recreational activities. Seeking to accommodate these conflicting interests, the Legislature decided to list the models of semiautomatic weapons that were to be considered assault weapons. It chose the list approach, the Legislature declared, "because it was the most effective way to identify and restrict a specific class of semiautomatic weapons." (§ 12276, subd. (f).) The Legislature was not unmindful of the fact that the section 12276 list was not, and could not be, complete. In its uncodified findings and declarations, the Legislature explained that the add-on provision was intended to compensate for the inherent limitations of the list approach. "It is the intent, therefor[e], to ban the weapons enumerated in Section 12276 of the Penal Code and any other models which are only variations of these weapons, which are the same weapon but manufactured or sold by another company under a licensing agreement, or which are new models manufactured or sold by any company with just minor modifications or new model numbers *in order to circumvent the prohibitions of Chapter 2.3*[2] (commencing with Section 12275) of Title 2 of Part 4 of the Penal Code." (Stats.1989, ch. 18, § 6, p. 59.)
>
> On May 15, 1989, a Senate Assembly conference committee "ratified a compromise with Gov. George Deukmejian," one element of which was a provision "aimed at ridding from the marketplace *facsimile assault arms that are so close to being*

[2] The phrase "in order to circumvent the prohibitions of Chapter 2.3" was intended to prohibit modifications that would prevent the firearm from being a listed "assault weapon" if that firearm would still fall within the intent of Roberti Roos Assault Weapons Act. The originally proposed generic definition clearly defines the intent of the Roberty Roos Assault Weapons Act as defining "assault weapons" generically as any "semiautomatic action, centerfire rifle[] that accept[s] detachable magazines with a capacity of 20 rounds or more."

> *the real thing that they constitute an assault weapon.* It would be up to the state attorney general to persuade a Superior Court judge that such was the case before the facsimile could be added to the list of banned guns." (Ingram, Panel Votes Compromise on Assault Weapons Ban, L.A. Times (May 16, 1989) p. I3, col. 5; see Sample, Conferees Approve Gun-Ban Compromise, Sacramento Bee (May 16, 1989) p. A3.) On May 18, 1989, both the Assembly and the Senate approved the bill and sent it to the Governor. In the Assembly, it had again obtained just 41 votes, the bare majority required for approval. (Ingram, Assault Gun Ban Wins Final Vote, L.A. Times (May 19, 1989) p. I1, col. 5.) On May 24, 1989, Governor Deukmejian signed the legislation."

*Kasler v. Lockyer* (2000) 23 Cal.4th 472, 485-488.

Throughout all of the iterations and amendments, the legislature maintained its clear and stated intent to exempt firearms designed for hunting, target practice, or other legitimate sports or recreational activities.

> The rough accommodations the Legislature made here are explained in its findings and declarations. "The Legislature has restricted the assault weapons specified in Section 12276 based upon finding that each firearm has such a high rate of fire and capacity for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings. It is the intent of the Legislature in enacting this chapter to place restrictions on the use of assault weapons and to establish a registration and permit procedure for their lawful sale and possession. *It is not, however, the intent of the Legislature by this chapter to place restrictions on the use of those weapons which are primarily designed and intended for hunting, target practice, or other legitimate sports or recreational activities.*" (§ 12275.5.)

*Kasler v. Lockyer* (2000) 23 Cal.4th 472, 485-488.

**B. Any Addition Of Firearms Without SB23 Features To The "Series" List Is Likely To Be Overturned By A Court.**

In the DOJ "notice," the DOJ states that they intend to add firearms to the "list" of "AR/AK-47" series "assault weapons."

**1. Limits To DOJ's Add-On Authority**

The original "Kasler list" of "series" weapons has not been updated since its inception in 2000. "Series" type "assault weapons" are those firearms that are deemed "assault weapons" (1) pursuant to Penal Code section 12276(a)(1) or Penal Code section(a)(5); or (2) added to the list of "series" "assault weapons" pursuant to Penal Code section 12276(e). *Harrott v. County of Kings* (2003) 25 Cal.4th 1138, 1155, which the DOJ cites in the "notice," states that firearms deemed "series" type "assault weapons" are defined by Penal Code section 12276, not Penal Code section 12276.1:

> The limits of our holding today warrant emphasis. Although we hold the Attorney

> General has the authority to determine that certain semiautomatic firearms are assault weapons by simply identifying them as such in the list published by the Attorney General in the California Code of Regulations, that authority applies only to the two types of firearms defined in section 12276 by the use of the term series, namely, the AK47 series and the Colt AR-15 series. . . . In order to have any other semiautomatic firearms declared assault weapons within the meaning of section 12276, the Attorney General must utilize the add-on procedure set forth in section 12276.5. *And, of course, the Attorney General's identification of a particular firearm as a series assault weapon would, in an appropriate case, be subject to challenge on the ground the firearm in question did not satisfy the standard set forth in section 12276, subdivision (e), namely that the variations between it and the AK47 series or the Colt AR-15 series were more than "minor."(Emphasis added.)*

Thus, in adding any firearm to the list of firearms deemed "assault weapons" the DOJ is held to a standard. For "AK/AR 15 series" type firearms, Penal Code section 12276(e) defines the term "series" to include all other models that are *only variations, with minor differences, of those models listed in subdivision (a)*, regardless of the manufacturer.

For other "add-ons" Penal Code section 12276.5(a)(1) defines the standard that is applied to add-on firearms other than AK/AR-15 series type "assault weapons:"

> Another model by the same manufacturer or a copy by another manufacturer of an assault weapon listed in subdivision (a), (b), or (c) of Section 12276 which is identical to one of the assault weapons listed in those subdivisions except for slight modifications or enhancements including, but not limited to: a folding or retractable stock; adjustable sight; case deflector for left-handed shooters; shorter barrel; wooden, plastic or metal stock; larger magazine size; different caliber provided that the caliber exceeds .22 rimfire; or bayonet mount. *The court shall strictly construe this paragraph so that a firearm which is merely similar in appearance but not a prototype or copy cannot be found to be within the meaning of this paragraph.*

**2. Burden of Proof**

It is the Attorney General's burden of proof to show by a preponderance of evidence that the firearm is an "assault weapon." (Pen. Code §12276.5(f).) In essence, the add-on provisions are designed to allow the DOJ to add "copycat" firearms to the list of "assault weapons" through a time consuming and cumbersome procedural process as outlined in Penal Code sections 12276.5 and 12285.

**3. Generic Assault Weapon Features Under SB23 Are Broader Than Features Intended By Roberti-Roos Assault Weapon Act**

As discussed above, the Legislature originally intended to define "assault weapons" generically, as "[a]ll semiautomatic action, centerfire rifles that accept detachable magazines with a capacity of 20 rounds or more." The Legislature, however, compromised and defined "assault weapons" more narrowly by specifically identifying them in a list, and gave the DOJ limited authority to prevent companies from changing the name of the company or model in an effort to avoid the law's prohibition against semi-automatic action, centerfire rifles that accept detachable magazines with a capacity of 20

rounds or more.

In 2000, the Legislature passed Senate Bill 23 (SB23), which defined "assault weapons" by generic characteristics. SB23 is even more restrictive than the original "generic characteristic" test proposed in the Roberti Roos Assault Weapons Act. Specifically, SB23 added Penal Code section 12276.1, which defines "assault weapons" as any of the following:

RIFLES:

- A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following:

  (A) A pistol grip that protrudes conspicuously beneath the action of the weapon.
  (B) A thumbhole stock.
  (C) A folding or telescoping stock.
  (D) A grenade launcher or flare launcher.
  (E) A flash suppressor.
  (F) A forward pistol grip.
- A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.
- A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

PISTOLS

- A semiautomatic pistol that has the capacity to accept a detachable magazine and any one of the following:

  (A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.
  (B) A second handgrip.
  (C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning his or her hand, except a slide that encloses the barrel.
  (D) The capacity to accept a detachable magazine at some location outside of the pistol grip.
- A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.

SHOTGUNS

- A semiautomatic shotgun that has both of the following:
  (A) A folding or telescoping stock.
  (B) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.
- A semiautomatic shotgun that has the ability to accept a detachable magazine.
- Any shotgun with a revolving cylinder.

**4. The DOJ Cannot Meet The Burden Required For Add-On Firearms**

The DOJ's burden of proof with regard to any future add-on "assault weapons" is unlikely to be met in light of the Legislative history of Penal Code 12276 and the addition of Penal Code section 12276.1. As discussed above, the DOJ must prove that the changes to the firearm are "minor." In light of the legislature identifying the specific features it deems to be indicative of "assault weapons," (i.e., *major*) that a firearm does not possess such features cannot be deemed "minor."

In fact, Senate Bill 23 (SB23), which added Penal Code section 12276.1, specifically based it's emphasis on the characteristics of an "assault weapon" as a means of curing the need to continually add firearms to the list. The Assembly Committee on Public Safety analysis states:

> Rationale. According to the author, copycat weapons have circumvented the Roberti-Roos Assault Weapons Control Act of 1989. This bill attempts to create a definition that treats owners *of identical weapons equally under the law and addresses legal concerns related to the current definitions*. "SB 23 takes weapons that are made, then modified, named and re-named off the market. *It fixes the loophole in current law that bans guns by name, not by capability, by providing a generic definition of the weapons.*"

Specifically, the author of SB23, Don Perata, stated in a November 10, 1998 letter to all Legislators:

> As you may be aware, current state law - based on a make-and-model list of assault weapons- has given rise to countless "knock-off" weapons that differ from the originally banned weapons only in name. Additionally, the law has been plagued by constitutional questions surrounding due process and equal protection. . . . The legislation I will again author will propose *a generic description of the weapons in an effort to remove the legal questions surrounding current law, and pre-empt the manufacture of "copycat" weapons."*

SB23 added Penal Code section 12276.1, which "pre-empt the manufacture of 'copycat' weapons."

Thus, Penal Code section 12276.1 served the same purpose of the "add-on" provisions by specifically identifying the "assault weapon" characteristics. And, a firearm is not deemed an "assault weapon" under Penal Code section 12276.1 if it lacks the express characteristics that he California Legislature identified as definitive of "copycat" "assault weapons."

Correspondingly, considering that the objective of SB23 was to be a "generic description of the "assault weapon" features in an effort to remove the legal questions surrounding the add-on provision, and preempt the manufacture of 'copycat' weapons," it defies logic to sustain the addition of a firearm under the "add-on" provisions if the firearm is not an "assault weapon" under Penal Code section 12276.1.

Any additions to the "series" lists of firearms without SB23 features is subject to challenge these grounds.

**C. There Is No Statutory Distinction Between Registered Assault Weapons.**

As you are well aware, California's "assault weapon" laws are structured into four areas: general provisions and definitions,[3] unlawful activities,[4] registration[5] and permit matters.[6]

**1. Penal Code section 12276.1 Is Merely A Definition Statute.**

The DOJ relies upon Penal Code section 12276.1 as it's basis for prohibiting the addition of "assault weapon" features on a firearm after the firearm has been registered as an "assault weapon." Penal Code section 12276.1, however, does not prohibit the possession of any firearms. Rather, it merely defines certain semi-automatic firearms as also being "assault weapons." The first sentence of Penal Code section 12276.1(a) indicates that this statute is merely a definition and related to "series" type firearms: "*[n]otwithstanding Section 12276*, "assault weapon" *shall also mean* any of the following:

**2. The DOJ Did Not Apply 12276.1 To Previous Series "Assault Weapons.**

The DOJ states in its "notice" that features cannot be added once registered because "PC section 12276.1 features have been banned since January 1, 2001, when Senate Bill 23 went into effect. The public was notified of the prohibition on the specified features many years ago."

The DOJ's argument, however, is in direct conflict with the DOJ's own previous conduct. The DOJ did not prohibit such conduct during the last registration period. The memo states that "Department updated the list of "series" weapons in 2000 (as "Category 2" assault weapons), shortly after the *Kasler* decision." The registration deadline for those firearms added to the series list in 2000 was January 23, 2001. (California Assault Weapons Identification Guide, p. 5.)

Thus, these "series" firearms were allowed to be registered 23 days after the January 1, 2001 registration deadline imposed for firearms deemed to be "assault weapons" pursuant to Penal Code section 12276.1. Yet, no prohibition against having Penal Code section 12276.1 features was imposed upon those "series" firearms."

Moreover, semi-automatic firearms listed in 12276 and registered by March 1, 1992 were not registered based on the features they possessed, but by the make and model. Not all of these firearms had the SB23 features. Since they were registered, the DOJ has never prohibited the addition (or removal and reattachment) of SB23 features.

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[3] Penal Code section 12275-12278.

[4] Penal Code section 12280-12281.

[5] Penal Code section 12285-12289.

[6] Penal Code section 12290.

### 3. Penal Code Section 12280 Regulates Possession of "Assault Weapons" and Exempts Registered Assault Weapons from It's Prohibition.

All *registered* "assault weapon" may have the features identified in Penal Code section 12276.1[7]. Nothing in the Penal Code prohibits the possession of registered "assault weapons" with Penal Code section 12276.1 features. To the contrary, once registered the Penal Code does not distinguish between Penal Code section 12276.1 "assault weapons" or Penal Code section 12276 type "assault weapons."

The Code regulating possession of "assault weapons" is Penal Code section 12280(b), which states:

> Any person who, within this state, possesses any "assault weapon," except as provided in this chapter, is guilty of a public offense and upon conviction shall be punished by imprisonment in the state prison, or in a county jail, not exceeding one year.

This "Chapter" specifically states in Penal Code section 12285(a)(1) that "any person who lawfully possessed an assault weapon prior to the date it was specified as an assault weapon pursuant to Section 12276.5 shall register the firearm within 90 days, with the DOJ pursuant to those procedures that the department may establish."[8]

Penal Code section 12285(c) provides a list of conditions that apply to "registered" assault weapons:

> A person who has registered an assault weapon or registered a .50 BMG rifle under this section may possess it only under any of the following conditions unless a permit allowing additional uses is first obtained under Section 12286:
>
> (1) At that person's residence, place of business, or other property owned by that person, or on property owned by another with the owner's express permission.
> (2) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.
> (3) While on a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.
> (4) While on the premises of a shooting club which is licensed pursuant to the Fish and Game Code.
> (5) While attending any exhibition, display, or educational project which is about firearms and which is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about,

[7] Such features include flash suppressors, forward pistol-grips, telescoping stocks, second handgrip, thumbhole stock, flare launcher, etc. See Section B above.

[8] See Section E below for a discussion on "procedures."

firearms.

(6) While on publicly owned land if the possession and use of a firearm described in Section 12276,12276.1, or 12278, is specifically permitted by the managing agency of the land.

(7) While transporting the assault weapon or .50 BMG rifle between any of the places mentioned in this subdivision, or to any licensed gun dealer, as defined in subdivision (c) of Section 12290, for servicing or repair pursuant to subdivision (b) of Section 12290, if the assault weapon is transported as required by Section 12026.1.

Nothing in the conditions cited above prohibits the addition of "assault weapon" features on a registered "assault weapon." A statute must be interpreted in a manner, consistent with the statute's language and purpose. . . . *Harrtot v. County of Kings* (2001) 25 Cal.4th 1138, 1151.

The DOJ tacitly acknowledges the fact that no provision in the Penal Code prohibits the addition of "assault weapon" features to a registered "assault weapon" by stating in its Notice that DOJ "intend[s] to enforce this restriction through the assault weapon registration process."

Any actions by the DOJ to enforce or even promote the statement that the Penal Code section 12276.1 features cannot be added to an "assault weapon" once registered is contrary to law.

**D. Nothing In the Penal Code Grant's The DOJ Authority To Unilaterally Issue Regulations Designating Sub-Classes of Registration, or to Prohibit "Assault Weapon" Features From Being Installed On Registered "Assault Weapons."**

The DOJ "notice" states that the DOJ will invalidate registrations if the possessor of the firearm installs "assault weapon" features after the firearm is registered:

> "Registrants of newly identified series weapons cannot legally add PC section 12276.1 features to those firearms. The Department intends to enforce this restriction through the assault weapon registration process. Registration acknowledgment letters will include an admonition to registrants that adding prohibited features to newly registered assault weapons will invalidate the registration. The basis for valid registration will rest solely on the fact that the Department identifies the receivers for these firearms as variations, with minor differences, of already controlled AR-15/AK 47 "series" weapons." All additional features of the newly identified "series" weapons must conform with current California law.

Not surprisingly, the DOJ "notice" cites no authority for invalidating the addition of generic "assault weapon" characteristics. It cannot.

**1. The Legislature Specifies What Acts The DOJ May Do and What It Must Do.**

**a. General Authority To Enforce "Assault Weapon" Act.**

When the Legislative wanted to ensure that the Attorney General issued regulations necessary to enforce the "assault weapon" laws, it added Penal Code section 12276(i), which states that "the Attorney

General shall adopt those rules and regulations that may be necessary and proper to carry out the purposes and intent of this chapter."

Penal Code section 12276(i) is limited rules and regulations "necessary" and "proper" to carryout the "purposes" and "intent" of Chapter 2.3. The stated purpose and intent of the Chapter 2.3 are enumerated in Penal Code section 12275.5.

Specifically, the legislature "*restricted* the assault weapons specified in Section 12276 based upon finding that each firearm has *such a high rate of fire and capacity for firepower* that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings." Penal Code section 12276.1 codified the combination of features that renders a firearm an "assault weapon."

The DOJ is attempting to regulate a firearm as an "assault weapon," while simultaneously prohibiting the installation of the features that make the firearm an "assault weapon" within the intent of the legislature. Penal Code section 12275.5(a).

Further, it is also the intent of the Legislature in enacting the Roberti Roos Assault Weapon Act to place *restrictions* on the use of "assault weapons" *and to establish a registration and permit procedure for their lawful sale and possession.* Id. Thus, through the registration process, the legislature intended the continuous lawful possession of registered "assault weapons.

The DOJ's attempt to create a sub-class of registered "assault weapons" that cannot have "assault weapon" features is neither necessary nor proper to carry out the intent of the "assault weapon" laws.

**b. Specific Grants of Authority**

The Attorney General shall adopt those rules and regulations that may be necessary or proper to carry out the purposes and intent of this chapter. When the Legislature wanted to allow the DOJ the authority to exempt competition pistols from the list, it added 12276(c)(3):

> The Department of Justice *shall create a program* that is consistent with the purposes stated in subdivision (b) *to exempt new models of competitive pistols* that would otherwise fall within the definition of "assault weapon" pursuant to this section from being classified as an assault weapon. The exempt competitive pistols may be based on recommendations by USA Shooting consistent with the regulations contained in the USA Shooting Official Rules or may be based on the recommendation or rules of any other organization that the department deems relevant.

When the Legislature wanted to ensure that the DOJ notify district attorneys of the SKS laws, it added Penal Code section 12281(e):

> The Department of Justice shall notify all district attorneys on or before January 31, 1999, of the provisions of this section. The department shall identify all criminal prosecutions in the state for conduct related to SKS rifles within 90 days of the effective date of this section. In all cases so identified by the Attorney General, the district attorneys shall

> inform defense counsel, or the defendant if the defendant is in propria persona, in writing, of the provisions of this section within 120 days of the effective date of this section.

When the Legislature wanted to allow the DOJ to prescribe the manner in which SKS firearms were relinquished, it added Penal Code section 12281(f)(3), which states "any SKS rifle relinquished to the department pursuant to this subdivision *shall be in a manner prescribed by the department.*"

When the Legislature wanted to mandate that the DOJ educate the public about the SKS buy back, it added Penal Code section 12281(f)(4), which states "the department *shall conduct a public education and notification program* as described in Section 12289, commencing no later than January 1, 1999."

When the Legislature wanted to require that the DOJ have the authority to issue regulations for the SKS purchase program, it added Penal Code section 12281(h)(1):

> The department *shall adopt regulations for this purchase program* that include, but are not limited to, the manner of delivery, the reimbursement to be paid, and the manner in which persons shall be informed of the state purchase program.

Similarly, when the legislature wanted to require the DOJ to issue regulations pertaining to the procedure for reimbursement under the SKS buyback program, it added Penal Code section 12281(h)(2), which states that "the *procedures for reimbursement* pursuant to this paragraph *shall be part of the regulations* adopted by the department pursuant to paragraph (1)."

When the legislature wanted to require that the DOJ have the authority to establish procedures for registration, it added Penal Code section 12285(a)(1) & 12285(a)(2):

> Any person who lawfully possesses an assault weapon, as defined in Section 12276, prior to June 1, 1989, shall register the firearm by January 1, 1991, and any person who lawfully possessed an assault weapon prior to the date it was specified as an assault weapon pursuant to Section 12276.5 shall register the firearm within 90 days, with the Department of Justice *pursuant to those procedures that the department may establish.* Except as provided in subdivision (a) of Section 12280, any person who lawfully possessed an assault weapon prior to the date it was defined as an assault weapon pursuant to Section 12276.1, and which was not specified as an assault weapon under Section 12276 or 12276.5, shall register the firearm within one year of the effective date of Section 12276.1, with the department *pursuant to those procedures that the department may establish.*
>
> ***
>
> Except as provided in subdivision (a) of Section 12280, any person who lawfully possesses any .50 BMG rifle prior to January 1, 2005, that is not specified as an assault weapon under Section 12276 or 12276.5 or defined as an assault weapon pursuant to Section 12276.1, shall register the .50 BMG rifle with the department no later than April

30, 2006, *pursuant to those procedures that the department may establish.*

When the legislature wanted to require the DOJ include the possibility of joint registration in it's procedures, it added Penal Code section 12285(e), which states "The department's registration procedures *shall provide the option of joint registration* for assault weapons or .50 BMG rifle owned by family members residing in the same household."

When the legislature wanted to allow the DOJ to have the authority to issue "assault weapon" permits, it added Penal Code section 12287(a), which states that "the Department of Justice *may, upon a finding of good cause, issue permits* for the manufacture or sale of assault weapons or .50 BMG rifles for the sale to, purchase by, or possession of assault weapons or .50 BMG rifles by" certain enumerated entities.

When the legislature wanted ensure that the DOJ conducted a public education and notification program regarding the registration of "assault weapons," it added Penal Code section 12289(a), which states:

> The Department of Justice *shall conduct a public education and notification program* regarding the registration of assault weapons and the definition of the weapons set forth in Section 12276.1. The public education and notification program shall include outreach to local law enforcement agencies and utilization of public service announcements in a variety of media approaches, to ensure maximum publicity of the limited forgiveness period of the registration requirement specified in subdivision (f) of Section 12285 and the consequences of nonregistration. The department *shall develop posters* describing gunowners' responsibilities under this chapter which shall be posted in a conspicuous place in every licensed gun store in the state during the forgiveness period. For 50 BMG rifles, the department's education campaign *shall provide materials* to dealers of .50 BMG rifles, and to recognized national associations that specialize in .50 BMG rifles.

When the legislature wanted to ensure that every permittee is inspected, it added Penal code section 12289.5, which states that "the Department of Justice *shall*, for every person, firm, or corporation to whom a permit is issued pursuant to this article, annually conduct an inspection for security and safe storage purposes, and to reconcile the inventory of assault weapons."

**2. The "Procedures" Provision of Penal Code Section 12285 Does Not Allow The Creation Of A Sub-Class of Registered "Assault Weapons."**

As discussed above, the legislature granted the DOJ authority to review permit applications for substantive material, i.e. good cause. Penal Code section 12287(a). No such requirement exists for registration.

The DOJ's memo stating that they "intend to enforce this restriction through the assault weapon registration process" indicates that they are relying upon the "procedures" provision of Penal Code section 12285(a). As cited above, Penal Code section 12285(a)(1) allows the DOJ to provide "procedures" for registration.

The "procedures" referred to within Penal Code section 12285, however, do not authorize the creation of subclasses of registered "assault weapons," or the prohibition against the installation of "assault weapon" features on a registered "assault weapon." The fact that the "procedures" authority was duplicated with respect to Penal Code section 12276.1 (Generic "assault weapon" characteristics) and Penal Code section 12285(a)(2) (.50 BMG) indicates that the Legislature intended the "procedures" to be limited.

Specifically, when viewed in context, the "procedure" provision merely allows the DOJ to resolve mandatory processing issues of registration, such as where to mail the application and payment, what to include in the application, etc:

> The registration shall contain a description of the firearm that identifies it uniquely, including all identification marks, the full name, address, date of birth, and thumbprint of the owner, *and any other information that the department may deem appropriate*. The department may charge a fee for registration of up to twenty dollars ($20) per person but not to exceed the actual processing costs of the department. After the department establishes fees sufficient to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustment for the department's budget or as otherwise increased through the Budget Act. The fees shall be deposited into the Dealers' Record of Sale Special Account.

Penal Code section 12285(a)(1). Penal Code section (a)(2), relating to .50 BMG rifles, is nearly identical, except with respect to fees.

Additionally, further evidencing that the "procedures" applied to the process of registration, not the subject matter, the Legislature added Penal Code section 12285(e), which states "The department's registration procedures shall provide the option of joint registration for assault weapons or .50 BMG rifle owned by family members residing in the same household."

The DOJ is keenly aware that the "procedure" language is limited to the information contained in the application, since it drafted Title 11, Code of Regulations, section 978.30, which properly limited itself to the information gathering and payment process for registration, not why the firearm was an "assault weapon."

The Penal Code does not support DOJ's tiered registration concept. Nothing within the Penal Code grant's DOJ the authority to unilaterally issue regulations prohibiting "assault weapon" features from being installed on registered "assault weapons." Any regulations prohibiting the installation of "assault weapon" type features onto registered "assault weapons" would be contrary to existing law.

**E. The "Notice" Is In Direct Conflict With Current Regulations**

The DOJ has already issued regulations pursuant to Penal Code section 12285 relating to the registration process. Specifically, the DOJ issued three regulations pursuant to Penal Code section 12285(a) and (e).

The first regulation identifies the boundaries for "assault weapon" registrations pursuant to Penal Code section 12285. The first requirement found in 11 C.C.R. 978.30(a) limits registration to persons in compliance with the Roberti-Roos Assault Weapon Act of 1989 commencing with Penal Code section 12275, relative to the lawful acquisition and ownership of any assault weapon subject to registration. As discussed above, nothing within the Penal Code or the regulations prohibits the installation of "assault weapon" features upon a registered "assault weapon."

The second registration provision found in 11 C.C.R. 978.30(b) identifies the *process* of registering an "assault weapon:"

> Assault weapon registrations shall be filed on a Department of Justice (DOJ) Assault Weapon Registration Application (FD 023). For purposes of compliance with the assault weapon registration period pursuant to Penal Code Section 12285 (a), an assault weapon registration application and required fee must be submitted to the Department with a postmark date no later than the end of the applicable registration period. If submitted on time with the required fee, the Department will process the registration application even if the application must be returned to an applicant for completion or correction after the close of the registration period. The applicant must resubmit the application within 15 days from the date on the notification letter from DOJ. The following information is required on the DOJ Assault Weapon Registration Application (FD 023):
>
> (1) Registrant information: registrant's name; date of birth; sex; height; weight; eye color; hair color; residence address (physical); mailing address; telephone number; California Driver License (CDL) number or Identification number issued by the California Department of Motor Vehicles (DMV); signature; date; right thumb print; and
>
> (2) Assault weapon information: serial number; make; model; type; caliber; day (if known), month (if known), and year of acquisition; name and address of person or firearms dealership from whom assault weapon was acquired (optional);

The third registration provision, 11 C.C.R. 978.30(c), states that "joint registrations will be permitted for assault weapons owned by family members residing in the same household."

The second regulations issued pursuant to Penal Code section 12285, relate to fees. The DOJ issued 11 C.C.R. 978.31, which states that "assault weapon registration applications shall be accompanied by a fee of $20 per person for any number of assault weapons registered at one time."

The third and final DOJ regulation relating to the registration of "assault weapons" pursuant to Penal Code section 12285 is 11 C.C.R. 978.33, and provides the procedure for voluntary cancellation of assault weapons registrations where the firearm is no longer possessed by the registrant or the features have been removed from an firearm registered pursuant to Penal Code section 12276.1.

Most importantly, the "notice" conflicts with the California Code of Regulations by stating that "adding prohibited features to newly registered assault weapons will invalidate the registration." *Nothing* within the CCR requires or permits the DOJ to unilaterally create a sub-class of "assault weapons" that cannot have "assault weapon" features installed.

### F. The "Notice" Is An Underground Regulation

#### 1. Administrative Procedure Act

California has the most comprehensive administrative procedure act in the United States. The California Administrative Procedure Act (APA) provides that "[n]o 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...." Gov.Code, § 11340.5 (a).

Under the APA, "'Regulation' means 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." Not every rule is required to be adopted pursuant to the APA. The APA contains several explicit exemptions. Because the APA definition of "regulation" is so broad, however, any rule of general application should be presumed to require adoption under the APA unless it is exempt. If a written document embodies a standard or rule that an agency applies generally and that agency wants to have the force of law, it should be evaluated to determine if it requires adoption as a regulation under the APA.

#### 2. Procedure For Adding Regulations.

When the DOJ proposes regulations, the Act requires that the DOJ publish a notice of its proposed regulatory change in the California Regulatory Notice Register at least 45 days prior to the agency's hearing or decision to adopt the change. This includes the adoption of new regulations, an amendment to an existing regulation or the repeal of an existing regulation.

The notice must include the following:

- A reference to the DOJ's legal authority for adopting the regulatory change.
- An informative digest containing a concise and clear summary of what the regulatory change would do.
- The deadline for submission of written comments on the agency's proposal.
- The name and telephone number of an agency contact person who will provide the agency's initial statement of reasons for proposing the change.
- The exact text of the proposed change.
- Further information about the proposal and the procedure for its adoption.
- The notice may also include the date, time, and place of a public hearing to be held by the agency for receipt of oral testimony on the proposed regulatory change.

Public hearings are generally optional; however, an interested member of the public can compel the DOJ to hold a public hearing on any proposed regulatory changes by requesting a hearing in writing no later than 15 days prior to the close of the written comment period (Government Code Section 11346.8(a)).

The public may petition the DOJ to conduct a rulemaking hearing. Under Government Code Section 11340.6 et seq., any person may file a written petition requesting the adoption of an amendment, or repeal of a regulation. Within 30 days, the DOJ must notify the petitioners in writing indicating whether (and why) it has denied the petition, or granting the petition or scheduling a public hearing on the matter.

Following the close of the written comment period, the DOJ must formally adopt the proposed regulatory changes and prepare the final "rulemaking file." Although this file contains many pieces of information, the rulemaking file – which is a public document – must contain a final statement of reasons, a summary of each comment made on the proposed regulatory changes, and a response to each comment.

The DOJ then submits the rulemaking file to the Office of Administrative Law (OAL), which is an independent state agency that is authorized to review agency regulations for compliance with the procedural requirements of the Act and for six specific criteria.

The OAL's compliance criteria are authority, clarity, necessity, consistency, reference and notification. The OAL must approve or disapprove the proposed regulatory changes within thirty working days of submission of the rulemaking file.

If the OAL approves the regulatory changes, it forwards the rulemaking file to the Secretary of State for filing and publication in the California Code of Regulations (CCR). The CCR is the official compilation of all state regulations.

If the OAL disapproves the regulatory changes, it returns the rulemaking file to the DOJ with a statement of reasons. The DOJ then has 120 days to correct the deficiencies cited by the OAL and resubmit the regulatory file to the OAL.

**3. DOJ's "Notice" Is An Underground Regulation**

Because the DOJ did not follow procedure for "notice" it is in violation of Gov.Code, § 11340.5 (a). The "notice," in essence, is an "underground regulation." The term "underground regulation" is a colloquial phrase generally meaning a rule or practice that should be, but has not been, adopted pursuant to the APA. And, as a result of the rampant use of "underground regulations," California Governor issued an Executive Order mandating that the DOJ, among others, review their materials for "underground regulations" and submit their review to the Governor's Office.[9]

[9] Executive Order S-2-03 requires state agencies to evaluate whether they are using "underground regulations." Specifically, the relevant portion of the Executive Order S-2-03 provides as follows: "Each Agency shall assess and identify any present issuance, utilization, enforcement or attempt at enforcement

The "notice" clearly falls within these parameters, since (1) the DOJ is tasked with the drafting of certain firearm regulations, (2) has a duty to enforce the "assault weapon" laws, and (3) the issued "notice" declares the attachment of "assault weapons" features onto a registered "assault weapon" *illegal*.

Nothing exempts the DOJ from the duty to issue regulations pertaining to "assault weapons." In fact, as discussed herein, the DOJ has been given limited authority to issue regulations pertaining to many firearm laws.

**CONCLUSION**

The DOJ knowingly issued the inaccurate "notice" that it is unlawful for owners of firearms that the DOJ intends to add to the "series" list to install "assault weapon" features after they have properly registered their firearm. The DOJ does not have the authority to issue such rules or regulations.

Our office represents multiple clients, including District Attorney's who filed a lawsuit against the DOJ – *Hunt v. Lockyer* (Fresno Superior Court #01 CE CG 03182) . The fifth cause of action in *Hunt* is declaratory relief for the Department's inconsistent statements:

> In addition to the erroneous regulations and inaction previously described, *defendants have issued rulings, advice letters, official statements and/or taken other actions inconsistent with those erroneous regulations and/or defendants' formally adopted policies. The inconsistency of these statements and/or actions and to defendants' regulations is a source of otherwise insuperable confusion to the public, and to those charged with enforcing SB 23.* Plaintiffs are, therefore, in need either of judicial clarification or of an order requiring that defendants clarify the law and conform their conduct thereto. (Emphasis added.)

The "notice" is yet another in the long series of contradictory statements and actions by the DOJ in their enforcement of firearm laws.

Not only is the "notice" inaccurate, but it is inconsistent with the DOJ's previous position on "series" firearms. The DOJ is already engaged in a lawsuit for such inconsistent statements. For this reason, we demand that "notice" be amended and the false statement regarding the legality of "assault weapon" features on a registered "assault weapon" be removed immediately.

Additionally, any addition to the "series" list is subject to legal challenge. And, in light of SB23, the DOJ unlikely to prove by a preponderance of evidence that a firearm is a "series" type firearm that should be deemed an "assault weapon" if it does not have the "assault weapon" characteristics as defined

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of any guideline, criterion, bulletin, manual, instruction, order, or standard of general application which has not been adopted as a regulation in potential violation of California Government Code section 11340.5(a) and submit its findings to OAL pursuant to California Government Code section 11340.5(b) and the Legal Affairs Secretary." The Order applies to "agencies," a term that includes "[e]ach Agency, department, board, commission and office of the executive branch." Thus, the Order applies to the DOJ. (Exhibit B.)

by Penal Code section 12276.1.

Please contact me or my clients at your earliest convenience to discuss these in greater detail. Let me know if you have any questions or concerns regarding this matter.

Thank you,

**TRUTANICH • MICHEL, LLP**

C. D. Michel

CDM/ca

cc: Ed Worley, NRA
Jerry Upholt, CRPA
Sam Paredes, GOC
Kathy Lynch, CAFR
Irwin Nowick
Alison Merilees, DOJ

# EXHIBIT G

# 45-Day Comment Period
# Comment/Response Spreadsheet

Attachment A

978.20(a) Detachable Magazine

| Number | Freq. | Comment Summary | Department Response |
|---|---|---|---|
| A1.01 | 22 | The proposed definition of detachable magazine is too broad, and goes beyond the intent of the legislation. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A1.02 | 66 | The regulation lacks clarity because it could be interpreted to include rifles such as the M1 Garand. | The Department does not consider the en bloc clips used in the M1 Garand to be ammunition feeding devices because their purpose is to enable the loading of the cartridges into the fixed magazine, rather than into the firing chamber. The revised definition provides the needed distinction between ammunition feeding devices and clips, stripper clips and en bloc clips, and is consistent with the legislative intent of the statute. |
| A1.03 | 3 | This type of magazine adds to safety. Banning this item is not keeping with Statement's object of rulemaking, which is to promote public safety. | The comment addresses the statute and not the proposed regulations. Pursuant to Penal Code section 12276.1, the "capacity to accept a detachable magazine" is only one of several characteristics that might identify a firearm as an assault weapon if it meets additional criteria specified in the statute. A firearm is not considered an assault weapon as defined in P.C. section 12276.1 solely on the basis of having the "capacity to accept a detachable magazine." |
| A1.04 | 2 | Banning detachable magazines would stop several thousands from hunting because many rifles would be in this category. | The comment addresses the statute and not the proposed regulations. Pursuant to Penal Code section 12276.1, the "capacity to accept a detachable magazine" is only one of several characteristics that might identify a firearm as an assault weapon if it meets additional criteria specified in the statute. A rifle is not considered an assault weapon as defined in P.C. section 12276.1 solely on the basis of having the "capacity to accept a detachable magazine." |
| A1.06 | 5 | The definition is overly broad and lacks clarity because it can be interpreted to include firearms that can be field-stripped without the use of tools making internally fixed magazines detachable. | The Department's revised definition provides the needed clarity to distinguish detachable from fixed magazines and is consistent with the legislative intent of the statute. Thus, firearms that require disassembly of the action to remove a magazine do not fall under this definition. |

# 45-Day Comment Period
# Comment/Response Spreadsheet

Attachment A

| 978.20(a) Detachable Magazine | | | |
|---|---|---|---|
| Number | Freq. | Comment Summary | Department Response |
| A1.07 | 15 | Definition of a detachable magazine is so broad that most hunting rifles would be classified as assault weapons. | The Department disagrees with the comment. Pursuant to Penal Code section 12276.1, the "capacity to accept a detachable magazine" is only one of several characteristics that might identify a firearm as an assault weapon if it meets additional criteria specified in the statute. A rifle is not considered an assault weapon as defined in P.C. section 12276.1 solely on the basis of having the "capacity to accept a detachable magazine." However, based on other comments, the Department has revised the definition to provide the needed clarity and is consistent with the legislative intent of the statute. |
| A1.08 | 7 | The term 'magazine' lacks clarity as the general public believes that any device by which ammunition is loaded into a firearm is interchangeable with terms such as clip, stripper clip, etc. | The Department agrees the term "magazine" lacks clarity. The Department's revised definition provides the needed distinction between ammunition feeding devices and clips, stripper clips and en bloc clips which do not feed cartridges directly into the chamber. The definition is consistent with the statutory definition "any ammunition feeding device". |
| A1.09 | 4 | The term 'readily' is subjective term and needs a more specific definition. | The Department disagrees with the comment. The Department believes the term "readily" is understood by reasonable people when used in the context of "with neither disassembly of the firearm action nor the use of tools being required". |
| A1.10 | 1 | Recommended revision: "A detachable magazine is a bullet feeding device, consisting of a spring, follower, body, and base plate, that can be inserted and removed from the firearm, as a unit, without the use of tools." | The Department disagrees with this comment because it excludes belted and linked ammunition. The statute defines a magazine as "any ammunition feeding device", which includes belted or linked ammunition because they feed ammunition directly into the firing chamber. |
| A1.11 | 1 | Rules should be more narrowly drawn to apply only to those magazines which are intentionally designed to be removed and replaced during the normal course of firing operations. | The Department agrees with the basic premise of the comment. The Department has revised the definition to exclude magazines that require disassembly of the firearm action as that would not be part of the normal course of firing operations. |
| A1.12 | 4 | The SKS rifle with a detachable magazine cannot be changed without using a bullet tip as a tool, thus the regulations conflict with the specific listing of SKS rifles with detachable magazines in the Roberti-Roos Assault Weapons Control Act. DOJ has no authority to contradict existing law. | The Department disagrees with the comment because any magazine that requires the use of a bullet or any other tool for its removal is a fixed magazine, not a detachable magazine. The SKS with a true detachable magazine does not require a bullet or any other tool to remove and is a controlled assault weapon under Penal Code section 12276. Identifying a bullet as a tool allows for the proper categorization of an SKS with a fixed magazine. Therefore, the SKS referred to in the comment has a fixed, not detachable magazine. |

978.20(a) Detachable Magazine

| Number | Freq. | Comment Summary | Department Response |
|---|---|---|---|
| A1.13 | 1 | A gun with a detachable magazine allows the owner to keep the gun locked and unloaded, yet, ready for use quickly if needed, therefore, they should not be banned. | The comment addresses the statute and not the proposed regulations. Pursuant to Penal Code section 12276.1, the "capacity to accept a detachable magazine" is only one of several characteristics that might identify a firearm as an assault weapon if it meets additional criteria specified in the statute. |
| A1.14 | 6 | The definition of detachable magazine lacks clarity because it does not define "tool". | The Department agrees the definition requires additional clarification regarding the term "tool". Thus, the Department revised the definition to specify that a bullet or ammunition is a tool because certain firearms have fixed magazines that can be removed utilizing a bullet or cartridge. Identifying a bullet as a tool allows these types of magazines to appropriately remain fixed by definition. |
| A1.15 | 1 | The "detachable magazine" definition makes most pistols illegal. | The Department disagrees with the comment. Pursuant to Penal Code section 12276.1, the "capacity to accept a detachable magazine" is only one of several characteristics that might identify a firearm as an assault weapon if it meets additional criteria specified in the statute. A pistol is not considered an assault weapon as defined in P.C. section 12276.1 solely on the basis of having the "capacity to accept a detachable magazine." However, based on other comments, the Department has revised the definition to provide the needed clarity and is consistent with the legislative intent of the statute. |
| A1.16 | 1 | Recommended revision: "Detachable magazine" means any magazine that can be readily removed without the use of tools and has a capacity of more than 10 rounds. | The Department disagrees with the comment. The capacity of the magazine is irrelevant for the purpose of defining a "detachable magazine". |
| A1.17 | 1 | "Detachable magazine" definition lacks clarity because it doesn't distinguish a standard 30-round capacity AR-15 type magazine from a 10-round Ruger Mini-14 magazine, and others. | The Department disagrees with the comment. The capacity of the magazine is irrelevant for the purpose of defining a "detachable magazine". |
| A1.18 | 2 | Recommended revision: "Detachable magazine means any magazine that can be removed without use of tools and without disassembly of the firearm. | The Department agrees with the comment and has incorporated the recommended wording into the revised definition. |

| 978.20(a) Detachable Magazine | | | |
|---|---|---|---|
| Number | Freq. | Comment Summary | Department Response |
| A1.19 | 8 | A detachable magazine does not make a rifle an assault weapon. | The Department agrees with the comment. Pursuant to Penal Code section 12276.1, the "capacity to accept a detachable magazine" is only one of several characteristics that might identify a firearm as an assault weapon if it meets additional criteria specified in the statute. A rifle is not considered an assault weapon as defined in P.C. section 12276.1 solely on the basis of having the "capacity to accept a detachable magazine." However, based on other comments, the Department has revised the definition to provide the needed clarity and is consistent with the legislative intent of the statute. |
| A1.20 | 1 | Recommended revision: "Detachable magazine" means any magazine that can be readily removed without the use of tools with the exception of ammunition clips that are inserted into the top of the receiver when the bolt is retracted, and holds no more than 8 rounds of ammunition." | The Department disagrees with this comment because it excludes belted and linked ammunition. The statute defines a magazine as "any ammunition feeding device", which includes belted or linked ammunition because they feed ammunition directly into the firing chamber. |
| A1.21 | 1 | The definition should be revised and expanded in detail by firearms experts so that a precise and useful definition may be rendered. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A1.22 | 4 | The definition should distinguish between an external, detachable magazine that carries the bullets for the gun, and a clip (such as an en bloc or stripper clip) this is merely used to hold the bullets while loading an internal magazine. | The Department's revised definition provides the needed distinction between ammunition feeding devices and clips, stripper clips and en bloc clips which do not feed cartridges directly into the chamber. The definition is consistent with the statutory definition "any ammunition feeding device". |
| A1.23 | 1 | Magazine should be clearly defined as a self feeding spring loaded device. | The Department disagrees with the comment because it excludes belted and linked ammunition. The statute defines a magazine as "any ammunition feeding device", which includes belted or linked ammunition because they feed ammunition directly into the firing chamber. |
| A1.24 | 1 | The detachable magazine definition goes beyond the intent of the legislature by including any magazine that can be easily removed without tools. | The Department disagrees with the comment. The Department believes it is consistent with the legislative intent of the statute to define a detachable magazine as being readily removed without the use of tools. |

| 978.20(a) Detachable Magazine | | | |
|---|---|---|---|
| Number | Freq. | Comment Summary | Department Response |
| A1.25 | 2 | The definition should read: ". . . That can be readily removed without disassembly of a portion of the action". | The Department agrees with the comment and has incorporated the recommended wording into the revised definition. |
| A1.26 | 1 | The broad definition will produce various law enforcement interpretations, therefore the definition is void for vagueness. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A1.27 | 2 | Recommends that the M1 Garand be specifically excluded from the definition of an assault weapon. | The Department disagrees with the comment because the Department does not have the authority to exclude specific makes and models of firearms. However, the Department has revised the definition to be consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A1.28 | 1 | Recommended revision: "Detachable magazine means any magazine with a capacity of ten rounds or more which protrudes below an imaginary line drawn parallel to the barrel that runs through the bottom of the exposed trigger and can be readily removed without the use of tools." | The Department disagrees with the comment. The capacity of the magazine and the length the magazine protrudes beneath the exposed trigger are irrelevant to the definition of a "detachable magazine". |
| A1.29 | 1 | The proposed definition greatly expands the scope and effect of SB 23 by including firearms not typically classified as "assault weapons" and fails to provide clarity as to the types of firearms that will be banned. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A1.30 | 1 | Many shotguns have tubular magazines that can be removed by unscrewing a single large bolt, that is by design 'finger tight' so that it can be removed by hand. Therefore, these semi-automatic shotguns meet the requirement for a detachable magazine. | The Department disagrees with the comment. Having to unscrew a single large bolt to reload the tubular magazine precludes that type of magazine from being considered "readily" removable. Thus, such a magazine would not be considered "detachable". |

| 978.20(a) Detachable Magazine | | | |
|---|---|---|---|
| Number | Freq. | Comment Summary | Department Response |
| A1.31 | 1 | Recommended revision: "A container from which the mechanism of the gun transfers ammunition to the chamber and which can readily be removed and exchanged for a full one. | The Department disagrees with the comment. The Department believes the terms "mechanism" and "chamber" would require further clarification/definition for the recommended definition to meet the clarity standard. Furthermore, the Department disagrees with this comment because it excludes belted and linked ammunition. The statute defines a magazine as "any ammunition feeding device", which by the proposed regulation includes belted or linked ammunition because they feed ammunition directly into the firing chamber. |
| A1.32 | 1 | Every firearm having a barrel has "the capacity to accept" a flash suppressor. Almost every firearm that has a stock has "the capacity to accept" a different stock of another configuration... It should be clarified in the regulation that the "capacity to accept" as used in PC section 12276.1(a) refers only to the detachable magazine, not to the enumerated items. | The Department disagrees with the comment. The comment addresses the statute, which expressly qualifies "capacity to accept" or "capability to accept" for every specifically intended instance. |
| A1.33 | 2 | Recommended revision: a magazine that can be removed by using a built-in magazine release. | The Department disagrees with the comment. The recommended definition is too narrow, therefore inconsistent with the legislative intent of the statute. |
| A1.34 | 1 | Recommended revision: a magazine that can be removed by pushing an external button with a finger. | The Department disagrees with the comment. The recommended definition is too narrow, therefore inconsistent with the legislative intent of the statute. |
| A1.35 | 1 | Detachable magazine is loosely worded enough to include a cylinder from a revolver. | The Department disagrees with the comment. The definition applies to terms used in the identification of assault weapons pursuant to Penal Code section 12276.1, in which the firearms affected are semiautomatic centerfire rifles, semiautomatic pistols, and semiautomatic shotguns, not revolvers. |
| A1.36 | 1 | There is no definition of what is or is not a magazine for the purposes of the law. | The Department agrees with the comment. The Department's revised definition provides the needed distinction between ammunition feeding devices and clips, stripper clips and en bloc clips which do not feed cartridges directly into the chamber. The definition is consistent with the statutory definition "any ammunition feeding device". |

# 45-Day Comment Period
# Comment/Response Spreadsheet

Attachment A

| 978.20(a) Detachable Magazine | | | |
|---|---|---|---|
| Number | Freq. | Comment Summary | Department Response |
| A1.37 | 1 | Recommended revision: "detachable magazine" means any integral ammunition magazine that will hold ammunition in place when the magazine is removed from the firearm and that can be readily removed without the use of tools. | The Department disagrees with this comment because it excludes belted and linked ammunition. The statute defines a magazine as "any ammunition feeding device", which includes belted or linked ammunition because they feed ammunition directly into the firing chamber. |
| A1.38 | 1 | The definition is critically flawed and misstates legislative intent, in that it tacitly assumes "large capacity magazines" and/or interchangeability and ignores design intent and functionality. | The Department disagrees with the comment. The capacity of the magazine is irrelevant for the purpose of defining a "detachable magazine". The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A1.39 | 1 | Recommends the definition be modified to reflect legislative intent and accordingly craft language suitable and sufficiently broad to reflect the distinctions peculiar to the BAR hunting rifle magazine system. | The Department disagrees with the comment. The Department does not have the authority to craft language intended to exclude a specific manufacturer's magazine system. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |

978.20(b) Flash Suppressor

| Number | Freq. | Summary of Comment | Department Response |
|---|---|---|---|
| A2.01 | 84 | Flash suppressor definition lacks clarity; does not provide measurement standards or testing procedures. | The Department disagrees with the comment. The Department believes the absence of any measurement standards in the statute demonstrates the legislative intent to identify as a flash suppressor, a device that reduces or redirects any amount of muzzle flash from the shooter's field of vision. Therefore, establishment of specific measurement standards that permit some percentage or amount of flash suppression would conflict with the legislative intent of the statute. There is no legislative mandate or funding for the Department to establish scientific methodology for testing devices which may or may not be flash suppressors. The purpose of this regulation is to define "flash suppressor". The Department believes the revised definition is clear and consistent with the legislative intent of the statute. |
| A2.02 | 71 | Flash suppressor definition lacks clarity; does not provide the ability to determine the difference between illegal flash suppressors and flash hiders, and legal muzzle brakes and compensators. | The Department disagrees with the comment. Any definition that includes or excludes devices based solely on what they are named, without consideration of whether the devices suppress flash, would exceed statutory authority. Muzzle brakes and compensators are flash suppressors if they reduce or redirect muzzle flash from the shooter's field of vision. The Department believes the absence of specific measurement standards in the statute demonstrates the legislative intent to identify as a flash suppressor, any device that reduces or redirects flash from the shooter's field of vision regardless of its name, or intended purpose, or additional purpose. Furthermore, there is no legislative mandate or funding for the Department to establish scientific methodology for testing devices which may or may not be flash suppressors. The purpose of this regulation is to define "flash suppressor". The Department believes the revised definition is clear and consistent with the legislative intent of the statute. |

978.20(b) Flash Suppressor

| Number | Freq. | Summary of Comment | Department Response |
|---|---|---|---|
| A2.03 | 25 | Flash suppressor definition lacks clarity; it is ambiguous and subject to the arbitrary interpretation of law enforcement officers. | The Department disagrees with the comment. Any definition that includes or excludes devices based solely on what they are named, without consideration of whether the devices suppress flash, would exceed statutory authority. Muzzle brakes and compensators are flash suppressors if they reduce or redirect muzzle flash from the shooter's field of vision. The Department believes the absence of specific measurement standards in the statute demonstrates the legislative intent that a device that reduces or redirects any amount of muzzle flash from the shooter's field of vision, be considered a flash suppressor. Furthermore, there is no legislative mandate or funding for the Department to establish scientific methodology for testing devices which may or may not be flash suppressors. The purpose of this regulation is to define "flash suppressor". The Department believes the revised definition is clear and consistent with the legislative intent of the statute. |
| A2.05 | 3 | The definition lacks a legal definition of "reduces". | The Department disagrees with the comment. The meaning of the word "reduces" is understood by reasonable people who are not being purposely obtuse. |
| A2.06 | 2 | The term "conceal" lacks clarity and should be further defined. | The Department agrees that as used in the proposed definition, the term "conceal" lacked clarity. The term has been removed from the revised definition. |
| A2.07 | 2 | The term 'any device' conflicts with the term used in the statute and goes beyond the language of the statute. The statute makes no distinction between a flash suppressor or muzzle brake. You don't have the authority to grant an exception to the statute. | The Department disagrees with the comment. The Department's definition begins with "any device" but then adds the appropriate qualifications or characteristics that make a device a flash suppressor. Any definition that includes or excludes devices based solely on what they are named, without consideration of whether the devices suppress flash, would exceed statutory authority. Muzzle brakes and compensators are flash suppressors if they reduce or redirect muzzle flash from the shooter's field of vision. The absence of specific measurement standards in the statute demonstrates the legislative intent to identify as a flash suppressor, any device that reduces or redirects muzzle flash from the shooter's field of vision regardless of its name, or intended purpose, or additional purpose. Muzzle brakes and compensators are not flash suppressors only if they do not reduce or redirect muzzle flash from the shooter's field of vision. The revised definition is consistent with that intent. |

978.20(b) Flash Suppressor

| Number | Freq. | Summary of Comment | Department Response |
|---|---|---|---|
| A2.08 | 17 | Any device mounted to the barrel or a weapon will reduce or conceal to some degree the light from the area when fired. | The Department's revised definition (including deletion of "conceals") provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A2.09 | 1 | The regulation should be written to clarify that a flash suppressor is a device whose only purpose is the reduction of flash signature in order to avoid such inadvertent inclusion of innocuous gun parts. | The Department disagrees with the comment. The Department believes the legislative intent of statute is to identify as a flash suppressor, a device that reduces or redirects any amount of muzzle flash from the shooter's field of vision regardless of its name, or intended purpose, or additional purpose. The revised definition is consistent with that intent. |
| A2.11 | 4 | Flash suppressor should be defined as a device attached to the end of the barrel that provides no other benefit than to reduce the flash created by firing a rifle. | The Department disagrees with the comment. The Department believes the legislative intent of statute is to identify as a flash suppressor, a device that reduces or redirects any amount of muzzle flash from the shooter's field of vision regardless of its name, or intended purpose, or additional purpose. The revised definition is consistent with that intent. |
| A2.12 | 3 | If the device serves as a muzzle brake or compensator it should not be considered to be a flash suppressor for the purposes of this definition. | Any definition that includes or excludes devices based solely on what they are named, without consideration of whether the devices suppress flash, would exceed statutory authority. Muzzle brakes and compensators are flash suppressors if they reduce or redirect muzzle flash from the shooter's field of vision. The Department believes the absence of specific measurement standards in the statute demonstrates the legislative intent to identify as a flash suppressor, any device that reduces or redirects any amount of muzzle flash from the shooter's field of vision regardless of its name, or intended purpose, or additional purpose. The revised definition is consistent with the legislative intent of the statute. |

978.20(b) Flash Suppressor

| Number | Freq. | Summary of Comment | Department Response |
|---|---|---|---|
| A2.13 | 7 | As different cartridges have different propellants and charges, cartridges will have varying amounts of muzzle flash. Regulations need to address how much reduction in visible light is required, and how the change of ammunition will affect the testing of various firearms, since different cartridges have different propellants, charges and varying amounts of muzzle flash. | The Department disagrees with the comment. The variance in the amount of muzzle flash created by different cartridges is not a factor in determining whether a device is a flash suppressor. If the presence of a particular device results in muzzle flash being reduced or redirected from the shooter's field of vision, it is a flash suppressor. The Department believes the absence of any measurement standards in the statute demonstrates the legislative intent to identify as a flash suppressor, a device that reduces or redirects any amount of muzzle flash. Therefore, establishment of specific measurement standards that permit some percentage or amount of flash suppression would conflict with the legislative intent of the statute. Additionally, there is no legislative mandate or funding for the Department to establish scientific methodology for testing devices which may or may not be flash suppressors. The purpose of this regulation is to define "flash suppressor". The Department believes the revised definition is clear and consistent with the legislative intent of the statute. |
| A2.14 | 8 | As written, every law enforcement agency could have their own measurement standards, which can lead to inconsistent enforcement. | The Department disagrees with the comment. The Department believes the absence of specific measurement standards in the statute demonstrates the legislative intent that a device that reduces or redirects any amount of muzzle flash from the shooter's field of vision, be considered a flash suppressor. The revised definition is clear and consistent with that intent. |
| A2.15 | 2 | Concise terminology is necessary to eliminate subjective interpretation. | The Department agrees with the comment. The Department believes the revised definition is clear, concise, and consistent with the legislative intent of the statute. |
| A2.16 | 1 | Questions what possible public interest this regulation is design to protect. | The purpose of the regulation is to define the term "flash suppressor" as used to identify one of the assault weapon characteristics pursuant to Penal Code section 12276.1. |

| 978.20(b) Flash Suppressor | | | |
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| Number | Freq. | Summary of Comment | Department Response |
| A2.17 | 1 | The definition of flash suppressor should be amended to include measurable criteria for defining such devices that is developed from scientific testing and measurement, and written in a way to make the requirement clear to the average citizen. | The Department disagrees with the comment. The Department believes the absence of specific measurement standards in the statute demonstrates the legislative intent that a device that reduces or redirects any amount of muzzle flash from the shooter's field of vision, be considered a flash suppressor. Thus the Department would be exceeding its authority if it were to establish specific measurement standards that permitted some percentage or amount of flash suppression. The revised definition is consistent with the legislative intent of the statute and provides the needed clarity to be understood by reasonable people. |
| A2.18 | 2 | The definition of flash suppressor requires clarifying revision that actually describe the physical characteristic that make an item a "flash suppressor". | The Department disagrees with the comment that flash suppressor should be defined by physical characteristics. The revised definition defines flash suppressor by its functional characteristics and provides the needed clarity to be understood by reasonable people. |
| A2.20 | 2 | Requests a clear, fault-free definition of use of flash suppressor, compensator, muzzle brakes, which are legal and which are not. | The Department disagrees with the comment as far as the need to define compensators and muzzle brakes. However, any definition that includes or excludes devices based solely on what they are named, without consideration of whether the devices suppress flash, would exceed statutory authority. Muzzle brakes and compensators are flash suppressors if they reduce or redirect muzzle flash from the shooter's field of vision. The Department believes the legislative intent of the statute is to identify as a flash suppressor, a device that reduces or redirects any amount of muzzle flash form the shooter's field of vision regardless of its name, or intended purpose, or additional purpose. The revised definition is consistent with the legislative intent of the statute and provides the needed clarity to be understood by reasonable people. |
| A2.21 | 1 | Flash suppressor fails to delineate any method of determining whether a device is actually a flash suppressor or not. Thus the determination will be made in a subjective, rather than objective manner, any many abuses of the law are bound to occur. | There is no legislative mandate or funding for the Department to establish scientific methodology for testing devices which may or may not be flash suppressors. Accordingly, the sole purpose of this regulation is to define "flash suppressor" and it has been defined in a manner which is both clear and consistent with the legislative intent of the statute. |

978.20(b) Flash Suppressor

| Number | Freq. | Summary of Comment | Department Response |
|---|---|---|---|
| A2.22 | 6 | "The ("Flash Suppressor") definition is inaccurate, subjective and confusing. A flash suppressor or flash hider does not reduce or conceal visible light or flash created when the weapon is fired. It merely redirects the blast somewhat so it is less visible to the person firing the weapon. While the principles for designing military flash hiders are well known, apparently the legislature and DOJ are unaware of their capabilities and purpose. The proposed definition does nothing to clarify what a flash suppressor is, and might equally be applied to gun powder that produces less flash than "average". I recommend DOJ study how flash suppressors are designed and come up with a(n) objective definition based on those principles." | While the Department agrees a flash suppressor does not reduce or conceal total light or flash output, it does in fact, reduce or redirect light or flash very specifically away from the shooter's field of vision. The Department's revised definition (including replacing "conceals" with "redirects") provides the needed clarity and is consistent with the legislative intent of the statute. The Department believes the absence of specific measurement standards in the statute demonstrates the legislative intent that a device that reduces or redirects any amount of muzzle flash from the shooter's field of vision, be considered a flash suppressor. |
| A2.23 | 5 | The definition does not differentiate between other barrel attachments such as the Browning BOSS system and bloop tubes, which are extended barrel enclosures that are used by Olympic competitors and other target shooters. | The Department agrees with the comment. The original definition exceeded Departmental authority by including and/or excluding particular devices by name without consideration of whether the devices suppress flash. The Department believes the legislative intent is to identify a flash suppressor as any device that reduces or redirects muzzle flash from the shooter's field of vision regardless of its name, or intended purpose, or additional purpose. The revised definition of a flash suppressor based on its functional characteristics is consistent with the legislative intent of the statute and provides the needed clarity to be understood by reasonable people. |
| A2.24 | 1 | Commentary suggests there is no way to quantify the effectiveness of any given design of flash suppressor type device; there are too many variables, including primer composition and flame temperature; propellant sensitivity, frangibility, burn rate, caloric content and expansion ratio; working pressure; projectile weight, obturation and friction coefficient; muzzle pressure and plume temperature, etc. | While the Department believes it is possible to measure a device's effectiveness at reducing or redirecting flash or light from the shooter's field of vision, there is no legislative mandate or funding for the Department to establish scientific methodology for testing devices which may or may not be flash suppressors. |

978.20(b) Flash Suppressor

| Number | Freq. | Summary of Comment | Department Response |
|---|---|---|---|
| A2.25 | 4 | Objects to Flash Suppressors or hiders being banned. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A2.26 | 2 | ATF has a process for testing. Commentary questions whether DOJ will accept ATF's determination on any devices submitted to them for testing. | There is no legislative mandate or funding for the Department to establish a testing program for devices such as flash suppressors, muzzle brakes, etc. The Department will neither approve nor disapprove any devices regardless of ATF determinations. |
| A2.27 | 2 | Recommends specifically excluding tuning devices, and barrel extensions for increasing the sign radius or weight and balance, because many of those devices are being installed on a large number of hunting and competitive rifles to enhance accuracy. Excluding those terms from the definition of flash suppressors will protect the rights of sportsmen and competitive shooters. | The Department disagrees with the comment. The Department believes the legislative intent of the statute is to identify as a flash suppressor, a device that reduces or redirects any amount of muzzle flash from the shooter's field of vision regardless of its name, or intended purpose, or additional purpose. The Department does not have statutory authority to make exclusions that would be inconsistent with the intent of the law. |
| A2.28 | 2 | The Department should abide by federal standards. | No formal standards or specifications have been published by the Bureau of Alcohol, Tobacco, and Firearms regarding flash suppressors. |
| A2.29 | 1 | The proposed definition greatly expands the scope and effect of SB 23 by including firearms not typically classified as "assault weapons" and fails to provide clarity as to the types of firearms that will be banned. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A2.30 | 1 | The term 'muzzle barrel' is not only unclear, it is inherently contradictory. | The Department agrees with the comment. The term "muzzle barrel" has been deleted from the revised definition. |

# 45-Day Comment Period
## Comment/Response Spreadsheet

Attachment A

978.20(b) Flash Suppressor

| Number | Freq. | Summary of Comment | Department Response |
|---|---|---|---|
| A2.31 | 4 | The definition is ambiguous because compensators and muzzle brakes also reduce visible light but are, by the proposed regulations, exempt. | The Department believes the legislative intent of the statute is to identify as a flash suppressor, a device that reduces or redirects any flash from the shooter's field of vision regardless of its name, or intended purpose, or additional purpose. Any definition that includes or excludes devices based solely on what they are named, without consideration of whether the devices suppress flash, would exceed statutory authority. The revised definition is consistent with the legislative intent of the statute and provides the needed clarity to be understood by reasonable people. |
| A2.32 | 2 | Flash suppressor must be accounted for in terms of intensity and frequency of visible electromagnetic flux. | The Department disagrees with the comment. The Department believes the revised definition provides the needed clarity for proper understanding of the regulations by those people affected by them and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A2.33 | 3 | Since many flash suppressors perform some recoil compensation or muzzle braking functions, and many compensators and muzzle brakes also suppress flash to some extent, it may be impossible to provide a definition that meets both the literal requirements of SB 23 and its legislative intent. A legislative "fix" may be required. | The Department agrees with the comment. However, in the absence of any legislative amendment, the Department believes the intent of the existing statute is to identify as a flash suppressor, a device that reduces or redirects any flash from the shooter's field of vision regardless of its name, or intended purpose, or additional purpose. The revised definition is consistent with the legislative intent of the statute and provides the needed clarity to be understood by reasonable people. |
| A2.34 | 1 | Does not agree that flash hiders should be lumped with flash suppressors, they were designed for two different things. | The Department agrees with the comment as far as including and/or excluding devices based on the name of the device. The Department believes the legislative intent of statute is to identify as a flash suppressor, a device that reduces or redirects any flash from the shooter's field of vision regardless of its name, or intended purpose, or additional purpose. The revised definition is consistent with that legislative intent. |
| A2.35 | 2 | Recommends using military engineering drawing to describe "flash suppressors". | The Department disagrees with the comment. The Department believes the revised definition is sufficiently clear without the use of military engineering drawings. |

| 978.20(b) Flash Suppressor | | | |
|---|---|---|---|
| Number | Freq. | Summary of Comment | Department Response |
| A2.36 | 1 | The Department should publish a list of legal muzzle brakes and compensators so that law enforcement officers don't mistakenly engage in false arrest. | The Department disagrees with the comment. The Department believes the legislative intent of statute is to identify as a flash suppressor, a device that reduces or redirects any flash from the shooter's field of vision regardless of its name, or intended purpose, or additional purpose. Furthermore, there is no legislative mandate or funding for the Department to establish a testing program for the approval/disapproval of devices such as flash suppressors, muzzle brakes, etc. Therefore, the Department will publish no list. The revised definition is consistent with the legislative intent of the statute and provides the needed clarity to be understood by reasonable people. |
| A2.37 | 1 | The definition is insufficiently broad so as to be exclusionary by class. | The Department agrees with the comment. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A2.38 | 1 | Requests a modification that would fairly reflect legislative intent and incorporate an exclusion of the Browning BOSS and BOSS-CR. | The Department disagrees with the comment. Any definition that includes or excludes devices based solely on what they are named, without consideration of whether the devices suppress flash, would exceed statutory authority. The Department believes the legislative intent is to identify a flash suppressor as any device that reduces or redirects muzzle flash from the shooter's field of vision regardless of its name, or intended purpose, or additional purpose. The revised definition of a flash suppressor based on its functional characteristics is consistent with the legislative intent of the statute and provides the needed clarity to be understood by reasonable people. |

# 45-Day Comment Period
# Comment/Response Spreadsheet

Attachment A

978.20(c) Forward Pistol Grip

| Number | Freq. | Summary of Comment | Department Response |
|---|---|---|---|
| A3.01 | 96 | The definition lacks clarity because it is unclear whether items such as sling swivels, magazines forward of the trigger, fore-ends, hand guards and bipods are considered forward pistol grips. | The Department's revised definition specifies a forward pistol grip as necessarily being a grip. The revision is consistent with the legislative intent of the statute. |
| A3.02 | 60 | The definition lacks clarity because it does not state whether such a device has to possess a vertical or horizontal orientation and can be interpreted to include any rifle with a stock or forearm that extends past the trigger. | The Department disagrees with the comment. The legislature did not specify an intended grip orientation in the statute. Therefore, the Department would exceed its authority to specify whether the grip possesses a vertical or horizontal orientation. The Department's revised definition specifies a forward pistol grip as necessarily being a grip. The revision is consistent with the legislative intent of the statute. |
| A3.03 | 4 | Regulation is contrary to the statement's object to protect the health, safety and security of California citizens, because if the definition of a forward pistol grip is to grasp and control the firearm, it only makes sense that the better the control of the firearm, the safer the firearm. | The statute and not the regulations establishes a forward pistol grip as an assault weapon characteristic. The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A3.04 | 1 | The proposed definition does not state that the protrusion needs to be attached to the weapon, only in use with the weapon, and implies a shooting stick can be a forward pistol grip. | The Department disagrees with the comment. The statute is express and clear when it states an assault weapon "has" versus "can be used with" a forward pistol grip. Although the definition is clear in this respect, the Department has nevertheless revised its definition to specifically define physical characteristics of a forward pistol grip. The revision is consistent with the legislative intent of the statute. |
| A3.05 | 1 | The word protrudes is not sufficiently defined and would seem to include a 'potbellied stock/forearm'. | The Department's revised definition specifies a forward pistol grip as necessarily being a grip. The revision is consistent with the legislative intent of the statute. |
| A3.07 | 5 | Forward Pistol Grip definition leaves too much room for misinterpretation. | The Department's revised definition specifies a forward pistol grip as necessarily being a grip. The revision is consistent with the legislative intent of the statute. |

978.20(c) Forward Pistol Grip

| Number | Freq. | Summary of Comment | Department Response |
|---|---|---|---|
| A3.08 | 2 | The forward pistol grip definition would outlaw an old Remington hunting rifle. | The Department disagrees with the comment. Pursuant to Penal Code section 12276.1, a "forward pistol grip" is only one of several characteristics that might identify a firearm as an assault weapon if it meets additional criteria specified in the statute. A rifle is not considered an assault weapon as defined in P.C. section 12276.1 solely on the basis of having a forward pistol grip. |
| A3.09 | 6 | Definition lacks clarity because misinterpretation of the definition could include sporting firearms that have detachable magazines that protrude in front of the trigger. | The Department's revised definition specifies a forward pistol grip as necessarily being a grip. A magazine forward of the trigger that is also a grip would be subject to this definition. The revision is consistent with the legislative intent of the statute. |
| A3.10 | 3 | Definition doesn't make sense. | The Department disagrees with the comment. However, the Department agrees the original definition was subject to broad interpretation unintended by the Department and the Legislature. The Department's revised definition specifies a forward pistol grip as necessarily being a grip. The revision is consistent with the legislative intent of the statute. |
| A3.11 | 1 | The use of some form of "forward grip" is important for safety and control the firearm. | The statute and not the regulations establishes a forward pistol grip as an assault weapon characteristic. The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A3.12 | 5 | The regulation is too broad. | The Department's revised definition specifies the physical characteristics of a forward pistol grip. The revision is consistent with the legislative intent of the statute. |
| A3.13 | 1 | A grasp could be with a single finger, for example on the checkered front surface of a trigger guard, such as are found on the Glock pistols. | The Department's revised definition specifies a forward pistol grip as necessarily being a grip. The revision is consistent with the legislative intent of the statute. |

978.20(c) Forward Pistol Grip

| Number | Freq. | Summary of Comment | Department Response |
|---|---|---|---|
| A3.14 | 1 | Recommends an illustration or picture of a forward pistol grip be included. | The Department disagrees with the comment. The Department believes the revised regulations are sufficiently clear without the use of illustrations. |
| A3.16 | 8 | The forward pistol grip definition does not include specific measurable criteria for defining "any protrusion" in a way that can be clearly understood by the average citizen. | The Department disagrees with the comment. The revised definition provides the needed clarity by defining the physical characteristics of a forward pistol grip. The Legislature did not address specific measurable criteria. |
| A3.17 | 6 | Requests wording to specifically exempt slings, forehand stops, palm rests and bi-pods from the forward pistol grip definition. | The Department's revised definition provides the needed clarity by defining the physical characteristics of a forward pistol grip and is consistent with the legislative intent of the statute. The named devices would not be included in the definition. |
| A3.18 | 1 | As written, definition includes the enlarged rifle stocks peculiar to Olympic .22 competition rifles. | The Department does not have the authority to draft definitions that would exclude a particular type of firearm if to do so would conflict with the legislative intent of the statute. However, the Department's revised definition provides the needed clarity by defining the physical characteristics of a forward pistol grip and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A3.19 | 5 | The Department has exceeded its administrative authority by expanding the scope of what is included far beyond a pistol grip. | The Department agrees with the comment. The Department's revised definition specifies the physical characteristics of a forward pistol grip and is consistent with the legislative intent of the statute. |
| A3.20 | 2 | The definition is reasonable as long as it means a device that is "intended to be grasped", rather than "could be grasped" (such as a sling swivel). | The Department disagrees with the comment because the Department believes it exceeds its authority in requiring the forward pistol to allow for the grasp and control of the firearm. The mere presence of a forward pistol grip meets the criteria in statute. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |

978.20(c) Forward Pistol Grip

| Number | Freq. | Summary of Comment | Department Response |
|---|---|---|---|
| A3.21 | 1 | The forward pistol grip should be defined as a stand alone protrusion. | The Department disagrees with the comment because the term protrusion is overly broad. The Department's revised definition specifies a forward pistol grip as necessarily being a grip. The revision is consistent with the legislative intent of the statute. |
| A3.22 | 1 | A forward pistol grip should be defined as a pistol grip that is forward of the trigger mechanism. | The Department agrees with the comment and has incorporated the recommendation into its revised definition. |
| A3.23 | 1 | Recommended revision: "forward pistol grip means any protrusion in front of the trigger that is mainly designed or intended to grasp and control the firearm." | The Department disagrees with the comment. The term "mainly" as recommended lacks clarity. The Department's revised definition provides the needed clarity by defining the physical characteristics of a forward pistol grip and is consistent with the legislative intent of the statute. |
| A3.24 | 3 | The proposed definition should be withdrawn, and rewritten. | The proposed definition was rewritten and is consistent with the legislative intent of the statute. |
| A3.25 | 1 | The proposed definition greatly expands the scope and effect of SB 23 by including firearms not typically classified as "assault weapons" and fails to provide clarity as to the types of firearms that will be banned. | The Department has revised the definition to provide the needed clarity and the revision is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A3.26 | 1 | Recommended revision: "forward pistol grip means a protrusion in front of the trigger that is substantially perpendicular to the barrel and that extends more than three inches below the barrel, and that is designed for the grasping and control of the firearm". | The Department disagrees with the comment. The revised definition provides the needed clarity by defining the physical characteristics of a forward pistol grip. The Legislature did not address specific measurable criteria. |

| 978.20(c) Forward Pistol Grip | | | |
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| Number | Freq. | Summary of Comment | Department Response |
| A3.27 | 1 | Recommended revision: "distinct protrusion below the forestock, not including a sling, which enables the firearm to be grasped and controlled independently of such forestock." | The Department disagrees with the comment. The Department believes the mere presence of a forward pistol grip meets the criteria in the statute. The revised definition specifies the physical characteristics of a forward pistol grip and is clear and consistent with the legislative intent of the statute. |
| A3.28 | 1 | Recommended revision: "A rigid protrusion extending 3 inches or more below the lowest longitudinal surface." | The Department disagrees with the comment. The revised definition provides the needed clarity by defining the physical characteristics of a forward pistol grip. The Legislature did not address specific measurable criteria. |
| A3.29 | 1 | A pistol grip is a pistol grip. Doesn't agree that "any protrusion" is a pistol grip. | The Department agrees with the comment and has revised the definition accordingly. |
| A3.30 | 1 | Recommend "a hand grip perpendicular to the barrel that protrudes one inch or more below the bottom of the detachable magazine." | The Department disagrees with the comment. The revised definition provides the needed clarity by defining the physical characteristics of a forward pistol grip. The Legislature did not address specific measurable criteria. |
| A3.31 | 1 | Recommended revision - A vertical or nearly vertical hand-hold projection, attached to the fore-end, intended to be encompassed by the grasping hand. | The Department disagrees with the comment. The legislature did not specify an intended grip orientation in the statute. Therefore, the Department would exceed its authority to specify whether the grip possesses a vertical or horizontal orientation. The Department's revised definition specifies a forward pistol grip as necessarily being a grip. The revision is consistent with the legislative intent of the statute. |

| 978.20(c) Forward Pistol Grip | | | |
|---|---|---|---|
| Number | Freq. | Summary of Comment | Department Response |
| A3.32 | 1 | Recommended revision: a tubular grip perpendicular to the barrel and forward of the action that protrudes one inch or more below the bottom of the detachable magazine. | The Department disagrees with the comment. The revised definition provides the needed clarity by defining the physical characteristics of a forward pistol grip. The Legislature did not address specific measurable criteria. |

978.20(d) Permanently Altered

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A4.01 | 13 | The definition lacks clarity; commentary suggests that the only way a firearm can be permanently altered is for it to be destroyed. | The Department agrees the definition lacks clarity. The Department has deleted the proposed definition because it believes the phrase "permanently altered" conveys a meaning that is sufficiently understood by reasonable people. None of the alternative definitions considered by the Department added clarity to the inherent meaning of the phrase. |
| A4.02 | 3 | This vague requirement can be interpreted to mean just about anything, even to stock checkering and stock recoil pad installation. | The Department agrees the definition lacks clarity. The Department has deleted the proposed definition because it believes the phrase "permanently altered" conveys a meaning that is sufficiently understood by reasonable people. None of the alternative definitions considered by the Department added clarity to the inherent meaning of the phrase. |
| A4.03 | 1 | There is no language in statute that allows for the alteration of a magazine, permanent or temporary that will take it out of the definition given by the statute itself. | The Department disagrees with the comment. The Department has determined the phrase "permanently altered" as stated in PC section 12276.1(c)(2) is easily understood by reasonable people. Therefore, the Department believes further specificity is not necessary and has deleted the definition from its regulations. |
| A4.04 | 2 | The definition lacks clarity; and indicates there is no way of telling which modification DOJ would or would not consider irreversible. The definition must specify those procedures it would find acceptable in order to make the resale of large-capacity magazines legal. | The Department disagrees a need exists for resale procedures because 12020(a)(2) prohibits, with certain exceptions, the sale of Large Capacity Magazines. The Department would exceed its authority to create sales procedures. |

978.20(d) Permanently Altered

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A4.05 | 22 | The description of "permanently altered" is vague and confusing because the irreversible standard is unachievable. | The Department agrees the definition lacks clarity. The Department has deleted the proposed definition because it believes the phrase "permanently altered" conveys a meaning that is sufficiently understood by reasonable people. None of the alternative definitions considered by the Department added clarity to the inherent meaning of the phrase. |
| A4.07 | 2 | The definition is vague and does not include a standard by which it can be enforced. | The Department agrees the definition lacks clarity. The Department disagrees that establishment of enforcement standards is required. Physical inspection is sufficient to determine a magazine's capacity to accept more than ten rounds. The Department has deleted the proposed definition because it believes the phrase "permanently altered" conveys a meaning that is sufficiently understood by reasonable people. None of the alternative definitions considered by the Department added clarity to the inherent meaning of the phrase. |
| A4.08 | 1 | Recommended revision: "altered so as to not conform to the definition of an assault rifle as defined in SB 23 and requiring the use of tools to change the alteration." | The Department disagrees with the comment. The statute does not allow for the alteration to be restored. Therefore, such definition would be in conflict with the statute and the Department does not have authority to conflict with the statute. |
| A4.09 | 2 | Recommended revision: "Permanently altered means any change or modification which cannot be readily restored or converted to allow the magazine or other feeding device to accept more than ten rounds of ammunition. | The Department disagrees with the comment. The statute does not allow for the alteration to be restored. Therefore, such definition would be in conflict with the statute and the Department does not have authority to conflict with the statute. |
| A4.10 | 1 | This definition would negate the part of the law that allows things to be done with magazines that have been altered so as to hold no more than 10 rounds. A realistic standard for ease of restoration should be specified. | The Department disagrees with the comment. The statute does not allow for the alteration to be restored. Therefore, such definition would be in conflict with the statute and the Department does not have authority to conflict with the statute. |

978.20(d) Permanently Altered

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A4.11 | 22 | The definition needs to be reworded because there is nothing irreversible that cannot be fixed, repaired or changed back on a firearm. | The Department agrees that "irreversible" is not synonymous with the word "permanent". The Department has deleted the proposed definition because it believes the phrase "permanently altered" conveys a meaning that is sufficiently understood by reasonable people. None of the alternative definitions considered by the Department added clarity to the inherent meaning of the phrase. |
| A4.12 | 1 | The definition does not specify acceptable methods of implementation and tests of "irreversible change". | The Department agrees the definition lacks clarity. The Department has deleted the proposed definition because it believes the phrase "permanently altered" conveys a meaning that is sufficiently understood by reasonable people. None of the alternative definitions considered by the Department added clarity to the inherent meaning of the phrase. |
| A4.13 | 2 | The regulation should be amended to include a definition that allows the devices to be modified such that they cannot be returned to the original state without the use of specialized tools, machinery, and knowledge not generally available to the average citizen. A simple test of this status should be developed and specified so that the average citizen can quickly and cheaply determine if any change is in compliance with the law. | The Department disagrees with the comment. The statute does not allow for the alteration to be restored. Therefore, such definition would be in conflict with the statute and the Department does not have authority to conflict with the statute. |
| A4.14 | 1 | The term "modification" in the definition of "Permanently Altered" is unclear. | The Department does not agree that the term "modification" is unclear. However, the Department has deleted the proposed definition because it believes the phrase "permanently altered" conveys a meaning that is sufficiently understood by reasonable people. None of the alternative definitions considered by the Department added clarity to the inherent meaning of the phrase. |

978.20(d) Permanently Altered

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A4.15 | 2 | The definition of "Permanently Altered" says virtually nothing that would be useful to firearms owner, law enforcement or the courts. The department must describe what is a "permanent" alteration. For example, is "welding" deemed to be "permanent?" The statute does not require that "permanent" be "irreversible". If a large capacity detachable magazine is configured by alteration to be identical to a lawful 10 round magazine as newly manufactured, is that acceptable? The definition as proposed is vague and has great potential for unnecessary confusion, arrest and prosecution. It requires revision. The department must state what procedures are "permanent" for the purposes of the new law. | The Department agrees the definition lacks clarity. The Department agrees that the word "irreversible" is not synonymous with the work "permanent". The Department has deleted the proposed definition because it believes the phrase "permanently altered" conveys a meaning that is sufficiently understood by reasonable people. None of the alternative definitions considered by the Department added clarity to the inherent meaning of the phrase. |
| A4.16 | 1 | Death is the only "irreversible change". | The comment addresses neither the statute nor the proposed regulations. However, The Department has determined the phrase "permanently altered" as stated in PC section 12276.1(c)(2) is easily understood by reasonable people. Therefore, the Department believes further specificity is not necessary and has deleted the definition from its regulations. |
| A4.17 | 1 | The use of the word "irreversible" in its definition, thus making it impossible to "permanently alter" something, alters the meaning of the law, which DOJ does not have the authority to do. | The Department agrees that the word "irreversible" is not synonymous with the word "permanent". The Department has determined the phrase "permanently altered" as stated in PC section 12276.1(c)(2) is easily understood by reasonable people. Therefore, the Department believes further specificity is not necessary and has deleted the definition from its regulations. |
| A4.18 | 1 | Recommended revision: "Permanently Altered" means any change or modification not reversible without extensive use of tools. | The Department disagrees with the comment. The statute does not allow for the alteration to be restored. Therefore, such definition would be in conflict with the statute and the Department does not have authority to conflict with the statute. |

978.20(d) Permanently Altered

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A4.19 | 1 | The irreversible standard would damage the functionality of the magazine. | The Department disagrees with the comment because the alteration of a magazine does not necessarily damage its functionality. The Department has deleted the proposed definition because it believes the phrase "permanently altered" conveys a meaning that is sufficiently understood by reasonable people. None of the alternative definitions considered by the Department added clarity to the inherent meaning of the phrase. |
| A4.20 | 1 | The proposed definition greatly expands the scope and effect of SB 23 by including firearms not typically classified as "assault weapons" and fails to provide clarity as to the types of firearms that will be banned. | The Department agrees the definition lacks clarity. The Department has deleted the proposed definition because it believes the phrase "permanently altered" conveys a meaning that is sufficiently understood by reasonable people. None of the alternative definitions considered by the Department added clarity to the inherent meaning of the phrase. |
| A4.21 | 1 | The regulation is not adequate in the context of the due process required of a statute that imposes criminal penalties for violation. | The Department has deleted the proposed definition because it believes the phrase "permanently altered" conveys a meaning that is sufficiently understood by reasonable people. None of the alternative definitions considered by the Department added clarity to the inherent meaning of the phrase. |
| A4.22 | 1 | If proposed definition stands, the DOJ should be the single point of approval to pass judgment on proposed alterations by manufacturers, importers, retailers, gunsmiths and owners, or every jurisdiction could impose its own standard. | The Department has deleted the proposed definition because it believes the phrase "permanently altered" conveys a meaning that is sufficiently understood by reasonable people and there is no reason for the DOJ to be the point of approval to pass judgment on proposed alterations. None of the alternative definitions considered by the Department added clarity to the inherent meaning of the phrase. |
| A4.23 | 1 | Definition is purposefully broad and would include alterations made to firearms such as lengthening or shortening the stock to fit the shooter, or the addition of swivels for accuracy. | The Department disagrees with the comment. The comment references firearms and firearms accessories, while the term "permanently altered" refers solely to the capacity of feeding devices. |

978.20(d) Permanently Altered

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A4.24 | 1 | "Permanently altered" = "Irreversibly changed" = Tautology. | The Department has deleted the proposed definition because it believes the phrase "permanently altered" conveys a meaning that is sufficiently understood by reasonable people. None of the alternative definitions considered by the Department added clarity to the inherent meaning of the phrase. |
| A4.25 | 1 | Recommended revision: one or more parts are modified or replaced so as not to allow more than 10 rounds in any one feeding device. | The Department agrees with the intent of the comment. The Department has deleted the proposed definition because it believes the phrase "permanently altered" conveys a meaning that is sufficiently understood by reasonable people. None of the alternative definitions considered by the Department added clarity to the inherent meaning of the phrase. |
| A4.26 | 1 | Recommended revision: Permanent alteration would require substantial reworking of the magazine structure or replacement of altered parts to restore the magazine to the original capacity. | The Department disagrees with the comment. The statute does not allow for the alteration to be restored. Therefore, such definition would be in conflict with the statute and the Department does not have authority to conflict with the statute. |
| A4.27 | 1 | Regulation is vague and meaningless. All forms of use, wear and maintenance produce permanent alteration. | The Department agrees the definition lacks clarity. However, the Department disagrees with the relevance of the assertion that all forms of use produce permanent alteration. The Department has deleted the proposed definition because it believes the phrase "permanently altered" conveys a meaning that is sufficiently understood by reasonable people. None of the alternative definitions considered by the Department added clarity to the inherent meaning of the phrase. |

978.20(d) Permanently Altered

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A4.28 | 1 | The definition is in conflict with legislative intent and the plain reading of the bill. | The Department agrees with the comment. The Department has deleted the proposed definition because it believes the phrase "permanently altered" conveys a meaning that is sufficiently understood by reasonable people. None of the alternative definitions considered by the Department added clarity to the inherent meaning of the phrase. |

978.20(e) Pistol Grip that Protrudes Conspicuously Beneath the Action of the Weapon

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A5.01 | 2 | Recommended revision: A grip is defined as that structure the hand grasps or encircles, and includes any connected extension used for attachment to the gun. No gun should have a grip that is perpendicular to the barrel, or in any amount that is less than perpendicular, to a point that the grip can no longer be grasped. No gun should have a grip that attaches to the gun in more than one place. | The Department disagrees with the comment because it lacks clarity and would be subject to interpretation that is inconsistent with the legislative intent of the statute. This comment would make it easy to circumvent the law by simply attaching a pistol grip at an angle slightly more than perpendicular to the barrel which would exclude it from being considered a pistol grip according to the definition. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.02 | 4 | Recommends the use of illustrations in the regulations to provide clarity. | The Department disagrees with the comment. The Department believes the revised regulation is sufficiently clear without the use of illustrations. |
| A5.03 | 42 | The vagueness of the regulation makes equal enforcement throughout the state difficult, due to the various interpretations that can be made. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A5.04 | 2 | Recommends the use of the Association of Firearm and Tool Mark Examiners (AFTE) definition of pistol and to distinguish a pistol grip as separate and distinct from the "wrist" of a rifle stock. | The Department disagrees with the comment. The Department believes the term "wrist" would require further clarification/definition for the recommended definition to meet the clarity standard. The Department also disagrees with the comment's assertion that a grip must be separate and distinct from the wrist of a rifle stock to be considered a pistol grip. |
| A5.05 | 10 | Requests that the pistol grip definition be deleted as unnecessary and susceptible to misinterpretation. The meaning of the term 'pistol grip' is sufficiently understood without additional definition. | The Department agrees the original definition was subject to misinterpretation. The Department also agrees the term "pistol grip" is sufficiently understood by reasonable people without further clarification . However, the Department believes for the sake of clarity, the extended phrase "pistol grip that protrudes conspicuously beneath the action" needs to be defined. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A5.06 | 4 | Recommends amending the definition to show the imaginary line drawn parallel to the barrel running through the bottom most portion, or part, of the exposed trigger, rather than the top of the exposed trigger. | The Department disagrees with the comment. The Department believes the comment incorrectly identifies the location of a firearm's action. As a result, the recommended definition is inconsistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |

# 45-Day Comment Period
## Comment/Response Spreadsheet

### 978.20(e) Pistol Grip that Protrudes Conspicuously Beneath the Action of the Weapon

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A5.07 | 15 | The regulation doesn't include a definition for "conspicuously". | The Department disagrees that the word "conspicuously" requires an exclusive definition that is independent from the phrase "pistol grip that protrudes conspicuously beneath the action". The Department believes that to a reasonable person, the meaning of "conspicuously" is sufficiently understood within the context of the entire phrase as defined. |
| A5.08 | 3 | The objective of a pistol grip is to control the weapon. The better the control of the firearm, the safer the firearm. The regulation is contrary to the objective to protect the health, safety and security of citizens. | The purpose of the definition is to clarify the meaning of a term used in the identification of an assault weapon pursuant to Penal Code section 12276.1. It is the statute, not the regulations, that established a "pistol grip that protrudes conspicuously beneath the action" as one of the assault weapon characteristics. |
| A5.10 | 1 | The imaginary line definition appears to have been arbitrarily promulgated and not based upon the mechanics of handling and using a firearm with or without a pistol grip. | The Department disagrees with the comment that the original definition was "arbitrarily promulgated." However, the "imaginary line" wording has been deleted from the Department's revised definition. |
| A5.11 | 2 | Definition lacks clarity. Most hunting rifles and shotguns have forearms that protrude low enough to be considered a pistol grip when the imaginary line is drawn parallel to the barrel to the top of the trigger. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.12 | 8 | Statute does not specify nor do you have the authority to expand the definition in such a way as to enlarge the class of weapons to be controlled by the statute. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.13 | 1 | The terms 'grasp, control and fire . . ' as used could be interpreted in a manner that would expand the class of weapons beyond the intent of the legislation. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |

978.20(e) Pistol Grip that Protrudes Conspicuously Beneath the Action of the Weapon

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A5.14 | 1 | The term 'exposed trigger' lacks clarity and must be further defined. As used it appears to mean the upper portion of a trigger a part of which is exposed, with the balance of the trigger hidden from view in the receiver of the firearm. As defined the placement of the imaginary lines would be moved some distance higher than the bottom of the action. It is vague and ambiguous as defined in the proposed rule. | The Department agrees with the comment. The Department has revised the definition from "top of the exposed trigger" to "top of the exposed portion of the trigger." |
| A5.15 | 131 | The language as proposed can be argued to define the imaginary line in such a way as to apply to any firearm that has a stock that is in any part below the imaginary line, since a stock is used to control, grasp and fire the weapon. | The definition has been revised, including deletion of the "imaginary line" wording. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.17 | 20 | The definition is tremendously ambiguous and too easily misconstrued and is impossible to interpret with any degree of certainty. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.18 | 8 | Recommended revision: Pistol grip that protrudes conspicuously beneath the action of the weapon means any component that allows for the grasp, control and fire of the firearm where the portion grasped is located completely (or entirely) beneath an imaginary line drawn parallel to the barrel that runs through the top of the exposed trigger. | The Department disagrees with the comment because it lacks clarity and would be subject to interpretation that is inconsistent with the legislative intent of the statute. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.19 | 3 | Definition lacks clarity because misinterpretation of the definition could include the detachable magazine that protrudes beneath the action of the rifle. | The Department's revised definition specifies a protruding pistol grip as necessarily being a grip. A magazine that is also a grip that allows for a pistol style grasp in which the web of the trigger hand (between the thumb and index finger) can be placed below the top of the exposed portion of the trigger while firing would be subject to this definition. The revision is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |

978.20(e) Pistol Grip that Protrudes Conspicuously Beneath the Action of the Weapon

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A5.20 | 6 | The proposed definition lacks clarity and exceeds the legislative intent of the statute by including firearms not typically classified as assault weapons. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.21 | 49 | The exemption explained in the Pistol Grip Information and illustrations on the DOJ web site must be integrated into the rules. | The DOJ web sites (www.reqagun.org and www.caag.state.ca.us/firearms) have always accurately identified a "pistol grip that protrudes conspicuously beneath the action of the weapon." The establishment of the definition was an evolving process over the course of several months. While an iteration of the evolving definition may have had the appearance of conflicting with the DOJ web site, the Department's revised definition and web site are consistent, clear, and fulfil the legislative intent of the statute. |
| A5.22 | 2 | The regulation would impact most of the competitive shooters in the state because competition target rifles have a conspicuous pistol grip. | The Department disagrees with the comment because the characteristics used to identify a firearm as an assault weapon were established by the Legislature in Penal Code section 12276.1, and not by the Department in these regulations. The Department does not have the authority to amend the statute nor implement regulations that would conflict with the legislative intent of the statute. |
| A5.23 | 80 | The pistol grip definition can be interpreted to include the Remington 7400, Browning BAR, and Ruger Mini 14 and many other civilian-type firearms as assault weapons. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. Standard hunting rifle stocks, such as those typically found on the Remington 7400, Browning BAR and Ruger Mini 14, do not meet the revised definition of a "pistol grip that protrudes beneath the action of the weapon". |
| A5.24 | 48 | Remington 7400 and Ruger Mini-14 and other rifles with a curved stock can be interpreted as having "conspicuously protruding pistol grips", but the Attorney General says these weapons were not intended to be covered. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. Standard hunting rifle stocks, such as those typically found on the Remington 7400 and Ruger Mini 14, do not meet the revised definition of a "pistol grip that protrudes beneath the action of the weapon". |

978.20(e) Pistol Grip that Protrudes Conspicuously Beneath the Action of the Weapon

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A5.25 | 4 | Requests a more reasonable definition for conspicuous pistol grip that will only ban military style AK-47's and the like. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.26 | 1 | The standard stock like those on the Ruger Mini-14 and the M1 Garand predate the arrival of assault weapons in W.W.II, and therefore cannot be included in an assault weapons classification. | The Department disagrees with the comment. The date a particular firearm model is first made available does not impact whether the firearm is subject to the law. However, standard hunting rifle stocks do not meet the revised definition of a "pistol grip that protrudes beneath the action of the weapon." |
| A5.29 | 17 | The proposed redefinition of pistol grip is arbitrary and capricious and goes well beyond the letter and intent of the law, therefore needs to be revised. | The Department disagrees with the comment that the original definition was arbitrary and capricious. However, the Department has revised the definition to provide the needed clarity consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.30 | 2 | A firearm "handle" has no bearing on any type of crime and turns innocent people into felons. | The comment addresses the statute rather than the proposed regulations. A "pistol grip that protrudes conspicuously beneath the action" was established as one of the assault weapon characteristics by the Legislature in Penal Code section 12276.1, not by the Department's proposed regulations. |
| A5.31 | 5 | The pistol grip definition must be such that it covers only those firearms that have a distinct pistol grip which is separate from the rifle stock or which can be removed or altered. | The Department disagrees with the comment. The Department does not believe that a grip must be separate and distinct from the rifle stock to be considered a pistol grip. |
| A5.32 | 1 | To clarify the pistol grip definition take the "fire with one hand" statement from the test used to define a "thumbhole stock" and include it after "firearm" in the pistol grip" definition. | The Department disagrees with the comment because it would be subject to interpretations that conflict with the legislative intent of the statute. After considering numerous public comments that were critical of the "fired with one hand" standard in the thumbhole stock definition, the Department believes it's use would add confusion rather than clarity to the definition. It is an overly subjective standard that requires consideration of physical characteristics such as strength and dexterity that vary from person to person. |
| A5.33 | 10 | Pistol grip definition doesn't make sense. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |

978.20(e) Pistol Grip that Protrudes Conspicuously Beneath the Action of the Weapon

| Number | Freq. | Summary of Comment | Response |
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| A5.34 | 35 | The pistol grip definition is too broad. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.35 | 2 | Recommended revision: a handgrip, most of which *protrudes below* the trigger guard, that is designed to be grasped by a closed fist. | The Department disagrees with the comment because it lacks clarity and would be subject to interpretation that is inconsistent with the legislative intent of the statute. In particular, the terms "most of which protrudes" and "grasped by a closed fist" are unclear and the definition should not be limited to consideration of the component's "designed" purpose, but more importantly, its actual functional capability. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.36 | 8 | The definition is too broad and exceeds the intent of the legislation because it would include all semi-automatic centerfire rifles capable of accepting a detachable magazine. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.37 | 2 | The definition implies that if the pistol grip was redesigned to a "target configuration" where the thumb is positioned on a rest above the imaginary line, it would be in compliance. | The Department agrees with the comment. However, the Department's revised definition references the position of the web of the trigger hand. Thus, the grip described in the comment would be considered a pistol grip only if the web of the trigger hand can be placed below the top of the exposed portion of the trigger while firing. |
| A5.40 | 1 | Recommended revision: It would make more sense to have the line drawn from the muzzle to the butt plate so that no grip may extend more than four or five inches below that imaginary line. | The Department disagrees with the comment. The Department believes the comment could allow the law to be circumvented by simply lengthening the rear end (butt plate) of the stock. |
| A5.41 | 1 | Disagrees that pistol grips should be banned because a pistol grip only allows for control of a weapon on full automatic fire, these firearms have been controlled since the 1930s. | The comment addresses the statute rather than the proposed regulations. A "pistol grip that protrudes conspicuously beneath the action" was established as one of the assault weapon characteristics by the Legislature in Penal Code section 12276.1, not by the Department's proposed regulations. The Department has no authority to amend the statute. |

978.20(e) Pistol Grip that Protrudes Conspicuously Beneath the Action of the Weapon

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A5.42 | 2 | The proposed language should be clarified to only specify pistol grips that protrude separately from the rear stock piece and/or skeletonized rear stocks, in which the fingers and thumb may completely surround the grip piece. | The Department disagrees with the comment. The Department disagrees with the contention that a grip must be separate from the stock piece to be considered a pistol grip. Additionally, the Department also believes the requirement that the fingers and thumb "completely surround" the grip piece would be inaccurate and inconsistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.43 | 3 | "Attorney General Lockyer said the definition means the hand is "entirely" below the line. The web of my hand is above the line on an AR 15. He also stated that if "some fingers" are above the line, then the firearm is not an assault weapon. My hand only has five fingers: a trigger finger, three below that, and a thumb. If my thumb is above the line, does that count as "some fingers"? He also stated "it depends on how you hold it". So, a firearm is an assault weapon if one person holds it wrong? And a non-assault weapon if another person, or the same person, holds it right? How about holding it upside down?" | The revised definition is based on whether the firearm is capable of being grasped in the specified manner as opposed to how any individual chooses to grasp the firearm. The Department believes the revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.44 | 1 | Recommended revision: Any component that allows for the single handed grasp, control, and fire of the firearm from the hip. | The Department disagrees with the comment because it lacks clarity and would be subject to interpretation that is inconsistent with the legislative intent of the statute. The Department has received conflicting opinions from the public regarding the single handed "grasp, control, and fire" a rifle. Some comments suggest almost all rifles would meet the standard, while others state virtually none of them would. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.45 | 1 | With a true pistol grip, the web of the hand, between the thumb and index finger, is below the small of the stock of the weapon. If the weapon has a legal handgrip, the web of the hand is above the small of the stock. | The Department agrees with the comment relative to the use of the web of the hand in explaining a pistol grip and has incorporated this concept into it's revised definition. The Department rejects use of the phrase "small of the stock" because of concern that it is not entirely clear and could be inconsistent with the legislative intent of the statute. |

978.20(e) Pistol Grip that Protrudes Conspicuously Beneath the Action of the Weapon

| Number | Freq. | Summary of Comment | Response |
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| A5.46 | 1 | Objects to this definition as the proposed "imaginary line" language was not included in the original text of SB 23. | The Department disagrees with the comment's assertion that regulations that define statutory terms may not use words or phrases that aren't in the statute. However, in consideration of other issues raised by public comments, the "imaginary line" wording has been deleted from the Department's revised definition. |
| A5.47 | 4 | Objects to this definition because it includes sporting rifles and curio & relics. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.48 | 1 | This definition is so broad that people who are no longer involved with firearms may have firearms that are now assault weapons in their attic, and they may be unaware of the need to register them. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. Since January, 2000, the Department has conducted an extensive public notification campaign regarding assault weapon registration. This campaign has included radio and television advertisements, a web site (www.regagun.org) devoted to assault weapon registration information, a toll free assault weapon information telephone number (1-888-REG-A-Gun), and placement of informational posters and counter displays at firearms dealerships throughout California. |
| A5.49 | 3 | The regulation does not address the orientation of the firearm when applying the imaginary line definition. | The Department disagrees with the comment because the Department believes a reasonable person would accurately infer that the orientation of the firearm would be horizontal with the " right side up". However, in consideration of other issues raised by public comments, the "imaginary line" wording has been deleted from the Department's revised definition. |
| A5.51 | 2 | Features such as a pistol grip contribute to the safe control, firing and accuracy of the firearm. | The comment addresses the statute rather than the proposed regulations. A "pistol grip that protrudes conspicuously beneath the action" was established as one of the assault weapon characteristics by the Legislature in Penal Code section 12276.1, not by the Department's proposed regulations. |

978.20(e) Pistol Grip that Protrudes Conspicuously Beneath the Action of the Weapon

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A5.52 | 4 | Pistol grip definition lacks clarity because it doesn't specifically include or exclude pistols. | The Department disagrees with the comment because the purpose of the definition is to clarify the meaning of a "pistol grip that protrudes conspicuously beneath the action" as the phrase is used in the identification of an assault weapon pursuant to Penal Code section 12276.1. The law specifies the types of firearms that are considered assault weapons based on the its individual characteristics. The Department does not have the authority to amend the statute or establish regulations that conflict with intent of the law. |
| A5.53 | 2 | The definition of a pistol grip should be amended in such a way that it is clear to the average citizen, law enforcement, and firearm dealers which designs are covered by the regulations. The definition should include a more normal description of a pistol grip, a projection of a minimum size that extends a minimum distance below the level of the lowest portion of the trigger and is used to grasp and control the firearm with the hand and fingers other than the trigger finger. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.54 | 3 | The Department has exceeded its administrative authority by expanding the meaning of "pistol grip" and "beneath" to include any portion of a firearm that is lower that an imaginary line drawn "parallel to the barrel that runs through the top of the exposed trigger. | The definition has been revised, including deletion of the "imaginary line" wording. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.55 | 1 | The action of a firearm includes all of its moving parts including the entire length of the trigger. The statute is very clear that the "conspicuous protrusion" must be below the action. That means the bottom of the trigger, not the bottom of the receiver. Obviously, the imaginary line proposed would have to be drawn tangent to the bottom of the trigger. Otherwise, the statute would have said bottom of the receiver, not beneath the action. Furthermore, contributor believes the term "beneath" means directly under the action, not lower than an imaginary line along the bottom of the receiver (top of the exposed trigger) drawn parallel to the barrel. | The Department disagrees with the comment. The Department believes "action" must include only the top of the exposed portion of the trigger which is what initiates the firing sequence. The lowest portion and overall length of the trigger is insignificant beyond the need that the trigger be sufficiently exposed to be pulled. |

978.20(e) Pistol Grip that Protrudes Conspicuously Beneath the Action of the Weapon

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A5.56 | 1 | The definition requires revision to conform to the statute. | The Department agrees with the comment. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.57 | 3 | A pistol grip that extends below the trigger does not make a rifle an assault weapon. | The comment addresses the statute rather than the proposed regulations. A "pistol grip that protrudes conspicuously beneath the action" was established as one of the assault weapon characteristics by the Legislature in Penal Code section 12276.1, not by the Department's proposed regulations. |
| A5.58 | 63 | Attorney General's public statements and information on the DOJ web site to clarify the definitions conflict with the published regulations. | The DOJ web sites (www.regagun.org and www.caag.state.ca.us/firearms) have always accurately identified a "pistol grip that protrudes conspicuously beneath the action of the weapon." The establishment of the definition was an evolving process over the course of several months. While an iteration of the evolving definition may have had the appearance of conflicting with the DOJ web site, the Department's revised definition and web site are consistent, clear, and fulfil the legislative intent of the statute. |
| A5.59 | 1 | Proposed definition quite reasonable and in keeping with what the Legislature intended. | The Department appreciates the support expressed by the comment. However, in response to problems and concerns expressed in other comments, the definition has been revised. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.60 | 4 | Recommended Revision: Pistol grip exists if the web of the hand is below the lower portion of the action of the rifle (a line drawn parallel with the barrel through the exposed top of the trigger) when grasping and controlling the rifle. | The Department agrees with the comment. The Department has revised the definition to incorporate the concept of identifying a pistol grip based on the placement of the web of the hand. |
| A5.61 | 1 | Pistol grip should be defined as a stand alone protrusion. | The Department disagrees with the comment. The Department does not believe that a grip must be a "stand alone protrusion" to be considered a pistol grip. This comment would narrow the meaning of the term and would conflict the legislative intent of the statute. |

978.20(e) Pistol Grip that Protrudes Conspicuously Beneath the Action of the Weapon

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A5.62 | 4 | The pistol grip definition is inconsistent with the wording in the statute, and should include the same language the Legislature used in the bill. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.63 | 4 | The definition lacks clarity. Mr. Lockyer's response to a question of how to define a pistol grip was "It depends on how you hold it". This statement implies that holding the rifle sideways, upside down, etc. can change the legality of the weapon. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.64 | 1 | The location of the thumb, the web of the hand, and the proximal region of the second finger grasping the rifle must be the sole determinant of whether the entire grasp is beneath the imaginary line, because when grasping *ANY rifle, the distal region of the second finger ALWAYS* lies below the imaginary line. | The Department disagrees that an acceptable definition must be limited to positioning of the thumb, the web of the hand, and the proximal region of the second finger. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.65 | 2 | Semi-pistol grip and straight conventional rifle stocks cannot be grasped without placing the hand around the principal (long) axis of the shoulder stock, while a full pistol grip stock can be grasped without putting the hand around the main shoulder stock. A full (or conspicuously protruding) pistol grip is independent of the shoulder stock. | The Department disagrees with the comment because it lacks clarity and would be subject to interpretation that is inconsistent with the legislative intent of the statute. The Department does not believe that a grip must be independent of the shoulder stock to be a pistol grip. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.66 | 1 | As defined, a sling could be included because it can be grasped by the firing hand and can allow better control of the weapon when it is wrapped around the hand. | The Department agrees with the comment and has revised the definition accordingly. As worded in the revision, the definition would not include slings. |
| A5.67 | 2 | Recommends adoption of the BATF definition of the term to avoid legal complications. | The Department disagrees with the comment because the Bureau of Alcohol, Tobacco, and Firearms (ATF) does not have a definition for a "pistol grip that protrudes conspicuously beneath the action", although the phrase is used in regulations promulgated by that agency. |

978.20(e) Pistol Grip that Protrudes Conspicuously Beneath the Action of the Weapon

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A5.68 | 2 | The explanation that sporting rifles would not be included in this classification because they are capable of bring gripped "both above and below" the imaginary line drawn is confusing. There are pure "assault rifle" style guns that fall within this description. The most obvious is the H & K assault rifle which is a semi-automatic rifle, has a detachable magazine and a "pistol grip" so it would fall easily within the assault rifle description. It appears as if it does not, though, because the pistol grip is configured so that a substantial portion of the hand is both above and below the top of the trigger guard. | The definition has been revised, including deletion of the "imaginary line" wording. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.69 | 1 | Recommended revision: "Pistol grip that protrudes conspicuously beneath the action of the weapon means any component that allows for the grasp, control and fire of the firearm where the portion mainly grasped is located beneath an imaginary line drawn parallel to the barrel that runs through the bottom of the exposed trigger. | The Department disagrees with the comment because it lacks clarity and would be subject to interpretation that is inconsistent with the legislative intent of the statute. The recommended revision would only compound the problem by adding the word "mainly." Assuming "mainly" is intended to mean "more than 50%", it would still be difficult to determine when the standard is met relative to gripping a firearm. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.70 | 1 | Under the proposed definition, a flintlock rifle from our Revolutionary War has a pistol grip. | The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.71 | 1 | Recommended revision: A "pistol grip that protrudes conspicuously beneath the action of the weapon is a vertical or near-vertical grip immediately behind the trigger, similar to the grip of a pistol, attached to the buttstock and/or receiver only at its upper and/or front portions. | The Department disagrees with the comment because it lacks clarity and would be subject to interpretation that is inconsistent with the legislative intent of the statute. In particular, the terms "near-vertical" and "similar to" are unclear. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |

978.20(e) Pistol Grip that Protrudes Conspicuously Beneath the Action of the Weapon

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A5.72 | 2 | The definition of pistol must discuss the angle of an axis through the cylinder of the finger's grip, relative to the axis of the gun barrel. | The Department disagrees with the comment. In addition to concern that it may not be possible to accurately distinguish all pistol grips from all non-pistol grips by using the recommended criteria (the angle of an axis through the cylinder of the finger's grip, relative to the axis of the gun barrel), the language would be difficult for non-technical people to understand. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.73 | 1 | The definition does not take into account the various shooting styles of different shooters with respect to various grips on the "portion grasped". | The Department disagrees with the comment because the shooting style is not a relevant consideration for determining whether or not a "pistol grip" is present on a firearm. |
| A5.74 | 2 | Recommended revision: "Any component that allows for the grasp, control and fire of the firearm, where the portion grasped extends more than four inches below the top of the exposed trigger, or more than two inches below the lowermost portion of the trigger guard." | The Department disagrees with the comment because it would allow the legislative intent of the statute to be circumvented by simply lengthening the trigger guard. If the Legislature had intended to identify a "pistol grip that protrudes ..." on the basis of a fixed length it would have done so in the law. Thus, the Department believes its revised definition is more consistent with the legislative intent of the statute. |
| A5.75 | 1 | Recommended revision: "distinct protrusion beneath the action, not including a sling, which enables the firearm to be grasped and controlled independently of the stock." | The Department disagrees with the comment. The Department does not believe that a grip must allow for the grasp and control independent of the stock to be a pistol grip. |
| A5.76 | 1 | The intent of the law might be better served by a definition of the extension of the butt (aft) side of the pistol grip 3 inches or more below its point of attachment to the stock or mechanism. | The Department disagrees with the comment. If the Legislature had intended to identify a "pistol grip that protrudes ..." on the basis of a fixed length it would have done so in the law. Thus, the Department believes its revised definition is more consistent with the legislative intent of the statute. |
| A5.77 | 2 | "pistol grip that protrudes conspicuously beneath the action of the weapon means any component not integral to, or part of, the stock or buttstock, that allows for the grasp or control of the firearm, and where the portion designed to be grasped is attached to the portion of the firearms housing the action and is independent of the firearm's stock or buttstock." | The Department disagrees with the comment because it lacks clarity and would be subject to interpretation that is inconsistent with the legislative intent of the statute. The Department does not agree a pistol grip must be "not integral to, or part of, the stock or buttstock" a "stand alone protrusion". The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |

# 45-Day Comment Period
## Comment/Response Spreadsheet

### 978.20(e) Pistol Grip that Protrudes Conspicuously Beneath the Action of the Weapon

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A5.78 | 1 | Recommends using the Glossary of the AFTE definition - "on shoulder arms, that part of the stock, behind the trigger, shaped similar to the grip of a pistol to afford a better grasp." | The Department disagrees with the comment because it lacks clarity and would be subject to interpretation that is inconsistent with the legislative intent of the statute. In particular, the terms "similar to" and "better" are unclear. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.79 | 1 | The DOJ's extra-regulatory interpretation of "above and below" the "imaginary line" on the DOJ web site only adds to the confusion. Contributor believes it is improper, confusing, and unfair to attempt to make such changes outside of the properly defined public regulatory process. | The DOJ web sites (www.regagun.org and www.caag.state.ca.us/firearms) have always accurately identified a "pistol grip that protrudes conspicuously beneath the action of the weapon." The establishment of the definition was an evolving process over the course of several months. While an iteration of the evolving definition may have had the appearance of conflicting with the DOJ web site, the Department's revised definition and web site are consistent, clear, and fulfil the legislative intent of the statute. |
| A5.81 | 3 | A suitable litmus test would be to define the maximum angle (in degrees from the axis of the bore) that the middle, ring, and little finger of the firing hand can be when gripping the rifle at the grip. | The Department disagrees with the comment. In addition to concern that it may not be possible to accurately distinguish all pistol grips from all non-pistol grips by using the recommended criteria, the language would be difficult for non-technical people to understand. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.82 | 3 | Terminology "action" does not fit the intent of the definition. A receiver is a part, action is the type of fire; i.e. semi-automatic, lever action, etc. | The Department disagrees with the comment. The Department believes the word "action" is intended to identify "part" of the firearm. The term "pistol grip that protrudes conspicuously beneath the action of the weapon" would be nonsensical if "action" referred to the type of fire as suggested by the comment. |
| A5.83 | 1 | The imaginary line theory is not enforceable by law enforcement. | The definition has been revised, including deletion of the "imaginary line" wording. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |

978.20(e) Pistol Grip that Protrudes Conspicuously Beneath the Action of the Weapon

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A5.84 | 2 | Requests an exemption for a monte carlo stock. | The Department has no authority to amend the statute, nor exceed legislative intent with exemptions based on the name (monte carlo stock) of a component without consideration of how it functions. The Department believes the revised definition is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.85 | 1 | Besides being an illegal "underground" regulation, the web site "clarification" is different than the actual proposed language in the regulation. | The DOJ web sites (www.regagun.org and www.caag.state.ca.us/firearms) have always accurately identified a "pistol grip that protrudes conspicuously beneath the action of the weapon." The establishment of the definition was an evolving process over the course of several months. While an iteration of the evolving definition may have had the appearance of conflicting with the DOJ web site, the Department's revised definition and web site are consistent, clear, and fulfil the legislative intent of the statute. |
| A5.86 | 1 | The random selection of a phantom point of "action" is not supported by any reference material or SB 23 and necessarily includes firearms not intended to be classified as "assault weapons." | The Department disagrees with the comment that a "random selection" of a "phantom point" was made to identify the action of a firearm. The Department believes the revised definition is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A5.87 | 1 | The statute uses three terms that require definition (pistol grip, protrudes conspicuously, and action) yet the proposed regulation treats the words as a single term. | The Department disagrees with the comment. The Department does not believe "pistol grip", "protrudes conspicuously" and "action" require exclusive definitions independent from the phrase "pistol grip that protrudes conspicuously beneath the action". The Department believes that to a reasonable person, the meaning of those terms is sufficiently understood within the context of the entire phrase as defined. |
| A5.88 | 2 | Legislative intent indicates that a firearm can have a pistol grip; it can protrude; just not conspicuously. | The Department believes the revised definition based on the placement of the web of the trigger hand is consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. The proposed definition is the only definition considered by the Department that accurately identifies "pistol grips that protrude conspicuously..." and excludes non-pistol grips generally found on typical hunting/sporting rifles. |

| 978.20(e) Pistol Grip that Protrudes Conspicuously Beneath the Action of the Weapon | | | |
|---|---|---|---|
| Number | Freq. | Summary of Comment | Response |
| A5.89 | 1 | Recommended Revision: Pistol grip is any grip or protrusion that is attached (or immediately adjacent) to the trigger guard which extends below a line parallel to the barrel and passes through the bottom of the trigger guard. | The Department disagrees with the comment. The Department does not believe the comment accurately defines all pistol grips nor does it exclude all non-pistol grips as required. |
| A5.90 | 1 | Recommended revision: (a pistol grip is) "a part that protrudes conspicuously beneath the action. It is a separate part that is independent of the rifle stock; the rifle stock can be removed and attached to the action without affecting the pistol grip and vice versa." | The Department disagrees with the comment. The Department does not believe that a grip must be separate and independent of the rifle stock to be considered a pistol grip. |
| A5.91 | 1 | Recommended revision: ". . . Any component specifically designed for the grasp, control and fire of the firearm with one hand where the portion grasped extends two inches or more beneath an imaginary line drawn parallel to the barrel that runs through the bottom of the exposed trigger. | The Department disagrees with the comment because it would be subject to interpretations that conflict with the legislative intent of the statute. After considering numerous public comments that were critical of the "fired with one hand" standard in the thumbhole stock definition, the Department believes it's use would add confusion rather than clarity to the definition. It is an overly subjective standard that requires consideration of physical characteristics such as strength and dexterity that vary from person to person. |
| A5.92 | 1 | Recommended revision: A pistol grip is a protrusion between the butt of the stock and trigger of the rifle that extends six or more inches below the lowest portion of that stock. | The Department disagrees with the comment. If the Legislature had intended to identify a "pistol grip that protrudes ..." on the basis of a fixed length it would have done so in the law. Thus, the Department believes its revised definition is more consistent with the legislative intent of the statute. |
| A5.93 | 1 | Suggests that a pistol grip be distinguished by the position of the thumb when it is being grasped. | The Department disagrees with the comment. The position of the thumb is not a characteristic that allows a pistol grip to be distinguished from a non-pistol grip. |
| A5.94 | 1 | A pistol grip allows 360 degree access with a single hand to the gripping surface, and this should be incorporated into the definition. | The Department disagrees with the comment. Although 360 degree access with a single hand to the gripping surface may be a characteristic of pistol grips, it does not exclude numerous non-pistol grip rifle stocks. |
| A5.95 | 1 | The regulation should clarify whether the term "action" is synonymous with the term "receiver". | The Department disagrees with the comment. The Department believes its revised definition provides the needed clarity to understand the meaning of the term "action" within the context of entire phrase being defined. |

978.20(e) Pistol Grip that Protrudes Conspicuously Beneath the Action of the Weapon

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A5.96 | 1 | Recommended revision: . . ."well-defined handle, similar to that found on a handgun, that protrudes conspicuously beneath the action of the weapon." | The Department disagrees with the comment because it lacks clarity and would be subject to interpretation that is inconsistent with the legislative intent of the statute. In particular, the terms "well-defined handle" and "similar to" are unclear. |
| A5.97 | 1 | Definition "characterizes every rifle, pistol and shotgun I've ever seen unless 'straight stocked' in the English style." | The Department's revised definition will not include every firearm that does not have a straight stock. The revised definition is consistent with the legislative intent of the statute. |
| A5.98 | 1 | Recommended Revision: "pistol grip that protrudes conspicuously beneath the action of the weapon" means "a gripping device extending vertically, or approximately so, beneath the action of the weapon such as the pistol grip on the Colt AR-15." | The Department disagrees with the comment because it lacks clarity and would be subject to interpretation that is inconsistent with the legislative intent of the statute. In particular, the terms "approximately" and "such as" are unclear. |

# 45-Day Comment Period
## Comment/Response Spreadsheet

978.20(f) Thumbhole Stock

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A6.01 | 7 | Any rifle or shotgun can be grasped and fired with one hand. It is unlikely that any can be controlled with one hand. | The Department disagrees with the comment. After considering numerous public comments that were critical of the "fired with one hand" standard, the Department believes it's use would add confusion rather than clarity to the definition. It is an overly subjective standard that requires consideration of physical characteristics such as strength and dexterity that vary from person to person. Furthermore, the Department believes the mere existence of a thumbhole meets the criteria of a thumbhole stock. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A6.02 | 2 | Definition in conflict with state and federal law because BATF allows for the importation of the Russian "Dragunov"-type stock. | The Department disagrees with the comment. The purpose of the regulation is to define a thumbhole stock. A thumbhole stock alone does not make a firearm an assault weapon. For the purposes of California law, there is no restriction on the sale of thumbhole stocks. |
| A6.03 | 2 | Control in firing with one hand could be interpreted to include handguns as assault weapons. | The Department disagrees that the definition could be interpreted to include handguns because the statute addresses semiautomatic centerfire rifles and not handguns. After considering numerous public comments that were critical of the "fired with one hand" standard, the Department believes it's use would add confusion rather than clarity to the definition. It is an overly subjective standard that requires consideration of physical characteristics such as strength and dexterity that vary from person to person. Furthermore, the Department believes the mere existence of a thumbhole meets the criteria of a thumbhole stock. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A6.04 | 2 | The definition to grasp, control and fire with one hand is contrary to the statement's object to protect the health, safety and security of citizens. It makes sense that the better the control of the firearm, the safer is the firearm. | The Department disagrees with the comment. The purpose of the definition is to identify an assault weapon characteristic regardless of the underlying safety issues of the characteristic. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |

978.20(f) Thumbhole Stock

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A6.06 | 8 | The definition's term 'any stock with any opening' is very broad and ambiguous and expands the statutory term beyond its meaning. | The Department agrees with the comment. The phrase "any stock with any opening" includes openings other than thumbholes. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A6.07 | 4 | The definition is inaccurate because an opening such as a thumbhole does not enable the control of a rifle with one hand. | The Department disagrees with the comment. After considering numerous public comments that were critical of the "fired with one hand" standard, the Department believes it's use would add confusion rather than clarity to the definition. It is an overly subjective standard that requires consideration of physical characteristics such as strength and dexterity that vary from person to person. Furthermore, the Department believes the mere existence of a thumbhole meets the criteria of a thumbhole stock. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A6.08 | 2 | Definition of a thumbhole stock is vague because contributor can't tell whether a skeletonized stock is or is not a thumbhole stock. | The Department agrees with the comment. The phrase "any stock with any opening" includes openings other than thumbholes. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A6.09 | 1 | The definition can be interpreted to mean that any firearm with a thumbhole stock that has a long or heavy barrel would not be controllable with one hand and therefore would not be classified as an "assault weapon". As long as a "thumbhole stock" cannot also be a "pistol grip", most rifles with pistol grips can be converted to thumbhole stocks and thus be exempt from registration with reducing their functionality. Contributor requests that this definition not be changed. | The Department disagrees with the comment. After considering numerous public comments that were critical of the "fired with one hand" standard, the Department believes it's use would add confusion rather than clarity to the definition. It is an overly subjective standard that requires consideration of physical characteristics such as strength and dexterity that vary from person to person. Furthermore, the Department believes the mere existence of a thumbhole meets the criteria of a thumbhole stock. The California Legislature decided to specifically identify both characteristics (thumbhole stock and protruding pistol grip) as assault weapon characteristics, although neither is mutually exclusive. Many thumbhole stocks may also meet the Department's definition of a pistol grip that protrudes conspicuously beneath the action of the weapon. |

Attachment A

978.20(f) Thumbhole Stock

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A6.10 | 6 | Thumbhole stock should be defined as a through hole in the stock, which allows the thumb to pass through the stock to the side opposite the controlling hand. Absence of a hole completely through the stock shall not be considered a thumbhole. | The Department disagrees that the hole must extend completely through the stock. The Department has revised the definition to provide clarity and legislative consistency. A hole which allows the thumb to penetrate into or though the stock meets the Department's definition of a thumbhole stock. |
| A6.11 | 3 | Definition is unacceptable because it includes most target stocks used in competition, which are designed to ergonomically fit the shooting hand to increase the control and accuracy necessary for competition. | The Department disagrees with the comment. Presence of a thumbhole stock is an offending characteristic of an assault weapon by virtue of the statute, not the proposed regulation. The Department does not have the authority to amend the statute. However, the Department has revised its original definition to provide the needed clarity and consistency with the legislative intent of the statute. |
| A6.12 | 2 | The definition of thumbhole stock doesn't make sense because the purpose of any stock on a rifle is to enable the control of the firearm. | The Department disagrees with the comment. After considering numerous public comments that were critical of the "fired with one hand" standard, the Department believes it's use would add confusion rather than clarity to the definition. It is an overly subjective standard that requires consideration of physical characteristics such as strength and dexterity that vary from person to person. Furthermore, the Department believes the mere existence of a thumbhole meets the criteria of a thumbhole stock. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A6.13 | 2 | Doesn't agree that consideration of the placement of the thumb should be criteria for defining an assault weapon. | The Department disagrees with the comment. It is the statute, not the regulations, that established a "thumbhole stock" as one of the assault weapon characteristics. |
| A6.14 | 4 | Including in the definition of an assault weapon the ability to fire with one hand discriminates against the disabled, if a one-armed person can grasp, control and fire a weapon with one hand. | The Department disagrees with the comment. After considering numerous public comments that were critical of the "fired with one hand" standard, the Department believes it's use would add confusion rather than clarity to the definition. It is an overly subjective standard that requires consideration of physical characteristics such as strength and dexterity that vary from person to person. Furthermore, the Department believes the mere existence of a thumbhole meets the criteria of a thumbhole stock. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |

978.20(f) Thumbhole Stock

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A6.15 | 4 | A "hole" has a specific definition. "Any opening" is rather vague. | The Department agrees with the comment. The phrase "any stock with any opening" includes openings other than thumbholes. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A6.16 | 3 | The thumbhole stock feature does not make the rifle an assault weapon. | The Department agrees with the comment. It is the statute, not the regulations, that established a "thumbhole stock" as one of the assault weapon characteristics. Pursuant to Penal Code section 12276.1, a thumbhole stock is only one of the characteristics that might identify a firearm as an assault weapon if it meets additional criteria specified in the statute. A rifle is not considered an assault weapon as defined in P.C. section 12276.1 solely on the basis of having a thumbhole stock. |
| A6.17 | 15 | This definition is open to any interpretation as any firearm can be grasped, controlled and fired with one hand. | The Department disagrees with the comment. After considering numerous public comments that were critical of the "fired with one hand" standard, the Department believes it's use would add confusion rather than clarity to the definition. It is an overly subjective standard that requires consideration of physical characteristics such as strength and dexterity that vary from person to person. Furthermore, the Department believes the mere existence of a thumbhole meets the criteria of a thumbhole stock. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A6.18 | 2 | The proposed definition of thumbhole stock requires specific meaning for the terms "opening" and "controlled". They are not clearly stated. | The Department agrees with the comment. The phrase "any stock with any opening" includes openings other than thumbholes. The existence of a thumbhole meets the criteria of a thumbhole stock. Requiring that it enable the grasp, control, and fire of the firearm expands the scope of the definition. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |

978.20(f) Thumbhole Stock

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A6.19 | 7 | The thumbhole stock language depends too much on subjective determinations of strength and dexterity. | The Department agrees with the comment. After considering numerous public comments that were critical of the "fired with one hand" standard, the Department believes it's use would add confusion rather than clarity to the definition. It is an overly subjective standard that requires consideration of physical characteristics such as strength and dexterity that vary from person to person. Furthermore, the Department believes the mere existence of a thumbhole meets the criteria of a thumbhole stock. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A6.20 | 2 | The regulation does not address the discriminatory potential of SB 23 with respect to those with certain physical disabilities that would cause them to fire with one hand. | The Department disagrees with the comment. However, after considering numerous public comments that were critical of the "fired with one hand" standard, the Department believes it's use would add confusion rather than clarity to the definition. It is an overly subjective standard that requires consideration of physical characteristics such as strength and dexterity that vary from person to person. Furthermore, the Department believes the mere existence of a thumbhole meets the criteria of a thumbhole stock. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A6.21 | 7 | The regulation does not contain provisions which would exempt people with types of disabilities that require them to fire with one hand. Without such an exemption, discrimination exists. | The Department disagrees with the comment. However, after considering numerous public comments that were critical of the "fired with one hand" standard, the Department believes it's use would add confusion rather than clarity to the definition. It is an overly subjective standard that requires consideration of physical characteristics such as strength and dexterity that vary from person to person. Furthermore, the Department believes the mere existence of a thumbhole meets the criteria of a thumbhole stock. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A6.22 | 3 | Recommends adoption of the Bureau of Alcohol, Tobacco and Firearms (BATF) definition of thumbhole stock. | The Department disagrees with the recommendation. Federal law does not specifically define a thumbhole stock as an assault weapon feature, rather, ATF considers a thumbhole stock to meet the definition of a "pistol grip that protrudes conspicuously beneath the action of the weapon". The California Legislature decided to specifically identify both characteristics (thumbhole stock and protruding pistol grip) as assault weapon characteristics, although neither is mutually exclusive. Many thumbhole stocks may also meet the Department's definition of a pistol grip that protrudes conspicuously beneath the action of the weapon. |

# 45-Day Comment Period
## Comment/Response Spreadsheet

### 978.20(f) Thumbhole Stock

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A6.23 | 3 | Objects to banning thumbhole stocks. | It is the statute, not the regulations, that established a "thumbhole stock" as one of the assault weapon characteristics. Pursuant to Penal Code section 12276.1, a thumbhole stock is only one of the characteristics that might identify a firearm as an assault weapon if it meets additional criteria specified in the statute. |
| A6.24 | 1 | This term in PC section 12276.1 should be eliminated as it is irrelevant. Any rifle, pistol or shotgun designed or redesigned for individual use can be fired with one hand when equipped with a conventionally designed stock. | The Department disagrees with the comment. The purpose of the definition is to clarify the meaning of term "thumbhole stock" used in the identification of an assault weapon pursuant to PC section 12276.1. It is the statute, not the regulations, that established a "thumbhole stock" as one of the assault weapon characteristics. |
| A6.25 | 1 | Recommended revision: "thumbhole stock means any stock with any opening that enables the firearm to be mainly grasped, controlled, and fired with one hand. | The Department disagrees with the comment. However, after considering numerous public comments that were critical of the "fired with one hand" standard, the Department believes it's use would add confusion rather than clarity to the definition. It is an overly subjective standard that requires consideration of physical characteristics such as strength and dexterity that vary from person to person. Furthermore, the Department believes the mere existence of a thumbhole meets the criteria of a thumbhole stock. Additionally, the term "mainly" as recommended lacks clarity. The Department's revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A6.26 | 1 | A rifle is too heavy, long and ungainly to have any use as a single handed firearm. The regulatory definition arguably would apply to no rifle, since none can be controlled and fired with one hand by the average shooter. | The Department disagrees with the comment. However, after considering numerous public comments that were critical of the "fired with one hand" standard, the Department believes it's use would add confusion rather than clarity to the definition. It is an overly subjective standard that requires consideration of physical characteristics such as strength and dexterity that vary from person to person. Furthermore, the Department believes the mere existence of a thumbhole meets the criteria of a thumbhole stock. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A6.27 | 1 | The proposed definition greatly expands the scope and effect of SB 23 by including firearms not typically classified as "assault weapons" and fails to provide clarity as to the types of firearms that will be banned. | The revised definition provides the clarity needed and is consistent with the legislative intent of the statute relative to the type of firearms identified as assault weapons. |

Attachment A

| 978.20(f) Thumbhole Stock | | | |
|---|---|---|---|
| Number | Freq. | Summary of Comment | Response |
| A6.28 | 1 | There is no justification for an over-inclusive definition of "thumbhole stock" which is also not supported by the reference material in the rulemaking file. | The Department has revised the definition to provide clarity and consistency with the legislative intent of the statute. |
| A6.29 | 1 | The loose definition could be interpreted in a way that the top comb of the pistol grip area of a conventional rifle stock could be "any opening" and therefore be a thumbhole stock. | The Department agrees with the comment. The phrase "any stock with any opening" includes openings other than thumbholes. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A6.30 | 1 | Isn't certain what size a thumbhole has to be but regardless of the size, the thumbhole allows the thumb to go through and wrap around for maximum one-handed leverage and control. | The Department disagrees that the hole must extend completely through and allow the thumb to wrap around the stock. However, the Department has revised the definition to provide clarity and legislative consistency. A hole which allows the thumb to penetrate into or though the stock meets the Department's definition of a thumbhole stock. |
| A6.31 | 1 | A semiautomatic, detachable magazine rifle with a traditional stock with two rectangular holes through the buttstock for attaching a rifle sling could be construed as an "assault weapon" due to the "opening" for a sling which is used for "grasp and control" or even "firing" of the firearm. | The Department agrees with the comment. The phrase "any stock with any opening" includes openings other than thumbholes. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |
| A6.32 | 1 | The definition is not clear. | The Department agrees with the comment. The revised definition provides the needed clarity and is consistent with the legislative intent of the statute. |

978.30(a,b) Requirements for Registration of Assault Weapons

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A7.01 | 7 | Regulations infringe upon the constitutional rights of all citizens by attempting to require citizens to submit to registration not required or allowed under the 2nd amendment. | The comment addresses the statute and not the proposed regulations. |
| A7.02 | 8 | Disagrees with Article 3 #978.30, the registration procedures. | The requirement to register assault weapons is set in statute. The purpose of the regulations is to implement the statute. |
| A7.03 | 1 | Regulations need to include provision for prison inmates to register. | The Department disagrees with the comment. PC section 12021(a)(1) prohibits possession of firearms by felons. |
| A7.04 | 1 | Section (b) 1. Needs to include inmates California Department of Corrections (CDC) identification card, and statement to notify CDC of assault weapons information/registration requirements. Due to the fact that the inmate cannot get to the weapons to provide the requested information, a second party needs to be included in Section 978.30. | The Department disagrees with the comment. PC section 12021(a)(1) prohibits possession of firearms by felons. |
| A7.05 | 1 | The regulation doesn't state what happens to a registered weapon once the owner dies. | The Department disagrees that the regulation must include procedures for assault weapon disposition upon the death of the registered owner. PC section 12285(b)(1) specifies the disposition options for assault weapons upon the death of registered owner. |
| A7.06 | 6 | The regulation does not make a provision for firearms with extra barrels, or what must be done if the barrel must be changed in order to comply with safety or hunting regulations. | The Department agrees with the comment. The requirement that barrel length information be provided on the registration application has been deleted in response to this comment. The lawful changing of barrels will not affect the registration. |
| A7.07 | 2 | Suggests that barrel length requirement be removed as it is not specifically in the law. | PC section 12285(a) authorizes the Department to require any information it deems necessary for registration. However, in response to other comments, the barrel length requirement has been deleted from the proposed regulation. |

978.30(a,b) Requirements for Registration of Assault Weapons

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A7.08 | 4 | Suggests that procedures and forms be added to allow citizens to properly re-register when they change their place of residence, or modify their firearm. | The Department disagrees with the comment. Because the statute does not require registrants to submit updates to their initial registration, no formal procedures are needed for update information. However, any updated information voluntarily submitted by the registrant to the Department will be processed accordingly. |
| A7.09 | 1 | Suggests that a form and procedure be developed to handle any subsequent removal of a firearm classified and registered as an assault weapon from the DOJ records due to modification, theft or destruction. | The Department agrees that a procedure is needed to allow for voluntary cancellations. The regulations have been revised to include section 978.33, which explains the procedure for voluntary cancellation of an assault weapon registration if the registrant either 1) no longer possesses the assault weapon, or 2) has modified or reconfigured the firearm so that it no longer meets the assault weapon definition. |
| A7.10 | 1 | Objects to the word "application" in all sections of 978.32 because the law requires registration, and the word "application" implies that a citizen attempting to comply can be turned down for reasons not specified in the regulations. Suggests the word "application" be replaced with the word "registration". | The Department disagrees with the comment. The Department is responsible for verifying that applicants for registration meet the qualifications for registration, prior to accepting registration of assault weapons. |
| A7.11 | 1 | The provisions of proposed sections 978.30 through 978.32 appear to be clearly stated and consistent with current law. | The Department appreciates the comment that the regulations are clearly stated. However, in response to other comments, revisions have been made as necessary. |
| A7.12 | 4 | Portions of the Roberti-Roos Act that are awaiting court decisions should be cleared up before including the Act in the regulations. | The Department disagrees with the comment. The Department is mandated by PC section 12285 to implement the assault weapon registration program. |
| A7.13 | 4 | Registration requirement imposes an unnecessary burden on California citizens. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. The Department is making no changes to the proposed regulations to accommodate this comment. |

978.30(a,b) Requirements for Registration of Assault Weapons

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A7.14 | 1 | The exact date and name and address of the person or firearms dealer from whom the assault weapon was acquired may not be known. The regulation does not include a consequence for failure to provide this information. | The Department agrees with the comment. The original regulation has been revised to state that the month and day of acquisition are required only if known. The year of acquisition is required because only assault weapons acquired before specific dates as provided by the Penal Code qualify for registration. It is the Department's responsibility to identify and reject unqualified assault weapon registrations. Additionally, the regulation has been revised so that the name and address of the person or firearms dealership from whom the assault weapon was acquired is optional. |
| A7.15 | 8 | The registration process must provide for registrations without requiring acquisition information because long guns acquired before 1990 did not require receipts, waiting periods or seller information. | The Department agrees with the comment. Requirements for certain acquisition information have been revised in section 978.30 in response to this comment. |
| A7.16 | 1 | The vagueness of the definitions of an assault weapon render the registration requirement null and void, since no one can be certain what an assault weapon is or whether they have one. | The Department disagrees with the comment. The revised definitions provide the needed clarity and are consistent with the legislative intent of the statute relative to the type of firearms considered assault weapons. |
| A7.17 | 1 | If DOJ fails to process in time and a person appeals and gets their fees back, the regulations don't state whether the registration is valid. | The Department disagrees with the comment. The length of time it takes the Department to process a registration application has no bearing on its validity. Nothing in the revised regulations imply or suggest that the Department's failure to meet the specified processing times would in any way affect an otherwise valid registration. |
| A7.18 | 1 | Instructions on FD 23 are subjective. | The Department disagrees with the comment. PC section 12285(a) authorizes the Department to require any information deemed appropriate for registration. |
| A7.19 | 2 | Regulations don't address how to remove a registration from the records if a firearm is modified in a way that it is no longer an assault weapon. | The Department agrees that a procedure should be in place to allow for voluntary cancellations. The regulations have been revised to include section 978.33, which explains the procedure for voluntary cancellation of an assault weapon registration if the registrant either 1) no longer possesses the weapon, or 2) has modified or reconfigured the weapon so that it no longer meets the assault weapon definition. |

978.30(a,b) Requirements for Registration of Assault Weapons

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A7.20 | 1 | Concerned the information contained in the Assault Weapon Registration database will be leaked into the wrong hands. | The Department disagrees with the comment. The Assault Weapon Registration Database is subject to the same privacy safeguards currently in place for other confidential databases maintained by the Department. |
| A7.21 | 1 | The registration process is unnecessarily intrusive and comprehensive. | The Department disagrees with the comment. The process established by the Department is the least burdensome to the registrant, while allowing the Department to collect the information necessary to confirm an applicant's eligibility to register their assault weapon. |

978.30(c) Joint Registration

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A9.01 | 2 | The necessity for grown children or siblings to reside together to acquire gun collection is unreasonable. | PC section 12285(e) allows for joint registration of assault weapons only for family members residing in the same household. However, the Department deleted the stipulation that joint registrations remain valid only while the registrants live in the same household. |
| A9.02 | 1 | Prohibiting (contributor probably meant 'Permitting') joint registrations "only while living in the same household" unconstitutionally infringes on my right to travel and discriminates against my resident co-owner son who spends half of his nights nearer to his job site. | The Department disagrees with the comment that the proposed regulation is unconstitutional and discriminatory. A person who spends some nights away from their residence due to travel or commute purposes would not be considered to have changed residences. Furthermore, the Department deleted the stipulation that joint registrations remain valid only while the registrants live in the same household. |
| A9.04 | 3 | Proposed regulation (978.30 c) changes the law and is beyond the authority of DOJ. The addition of primary and co-registrant title DOJ severed what would have otherwise been joint registration. Penal Code does not require a "primary registrant". | The Department agrees with the comment. The Department removed the requirements that joint registrations identify one individual as the primary registrant, and that joint registrations remain valid only while living in the same household. |
| A9.06 | 1 | The joint registration should be done as it was for the 1989 Roberti-Roos Assault Weapons Control Act. | The Department agrees with the comment. The revised regulation is consistent with the procedures for joint registration under the 1989 Roberti-Roos Assault Weapons Control Act. |
| A9.08 | 1 | This regulation illustrates that the law is not meant for the outlaws but for family members. | The Department disagrees with the comment. By reference, the comment addresses the statute, not the proposed regulations. |
| A9.09 | 1 | There needs to be a procedure in the regulation for rescinding the joint registration from one of the registrants. | The Department agrees with the comment. The regulations have been revised to include section 978.33, which explains the procedure for voluntary cancellation of an assault weapon registration if the registrant either 1) no longer possesses the weapon, or 2) has modified or reconfigured the weapon so that it no longer meets the assault weapon definition. |

978.30(c) Joint Registration

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A9.10 | 1 | The regulations need to have a procedure to follow if one of the co-registrants were to move. | The Department determined it would exceed its authority to require joint registrations to identify one individual as the primary registrant, and has deleted this requirement from the proposed regulations. Additionally, the Department does not require registrants to submit updates to their initial registration. However, any updated information voluntarily submitted by the registrant to the Department will be processed accordingly. |
| A9.11 | 4 | The regulations need to include a procedure to follow if the primary registrant passes away. | The Department agrees that the proposed regulations should have addressed situations in which the primary registrant is survived by a co-registrant. However, the Department determined it would exceed its authority to require joint registrations to identify one individual as the primary registrant, and has deleted this requirement from the proposed regulations. |
| A9.12 | 2 | Firearms are community property under state law. Each spouse is legally entitled to own and possess them unless they belong to a prohibited class. Amend section to provide that either or both spouses can own and register assault weapons. Divorce or separation should not impair the right to possess firearms or what residence they can ultimately reside in. It would, however, be reasonable for DOJ to require an amended registration to show who has what after a family has been dissolved. | The Department agrees with the comment. Spouses who are not prohibited from owning firearms may be joint registrants and the Department has deleted the stipulation that joint registrations remain valid only while the registrants live in the same household. Because the statute does not require registrants to submit updates to their initial registration, no formal procedures are necessary for update information. However, any updated information voluntarily submitted by the registrant to the Department will be processed accordingly. |
| A9.13 | 1 | Recommends revising section 978.30 c as follows: Joint registration will be permitted for assault weapons owned by family members. Joint registration must identify one individual as primary registrant. | The Department disagrees with the comment. PC section 12285(e) allows for joint registration only for family members residing in the same household. Additionally, the requirement that joint registrations identify one individual as the primary registrant was inconsistent with the statute. Therefore, the Department deleted that requirement from the proposed regulation. |

| 978.30(c) Joint Registration | | | |
|---|---|---|---|
| Number | Freq. | Summary of Comment | Response |
| A9.14 | 1 | As long as the co-registration family member is legally authorized to own and possess an assault weapon, the location of that person's residency should not be a factor. The only administrative requirement would be the addition of a second address on the registration application. PC section 12285 (e) should be changed accordingly. | The Department disagrees with the comment. PC section 12285 requires joint registrants to reside in the same household at the time of registration. Allowing family members who do not reside in the same household would conflict with the statute. |
| A9.15 | 1 | Concerned with what could happen if a family member who is not a joint registrant of a weapon uses the weapon to fend off a criminal. | Although the comment raises an issue related to firearms laws, it is not within the scope of the proposed regulations. |

# 45-Day Comment Period
## Comment/Response Spreadsheet

978.31 Fees

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A10.01 | 4 | This law was allegedly wanted by, and to benefit the majority of California tax payers. Its costs should be borne by all via the General Fund, not by the additional fees the proposed regulations impose on the firearms owners. | PC section 12285(a) mandates a one-time registration program with a fee amount up to $20. |
| A10.02 | 4 | Registration requirement imposes a financial burden on citizens. | The Department disagrees with the comment. PC section 12285(a) mandates a one-time registration program with a fee amount up to $20. |
| A10.03 | 1 | The tax payers should not be required to pay for the uncertain and ineffective enforcement of this law. | The Department disagrees with the comment. The $20 fee is authorized under PC 12285(a) for the processing of the registration. |
| A10.04 | 4 | Opposes registration fees. | PC section 12285(a) mandates a one-time registration program with a fee amount up to $20. |
| A10.05 | 2 | Since the DOJ states that the $20 fee will be insufficient to offset the costs of the program, one can only expect regular increases in the registration fees in the future. | PC section 12285(a) mandates a one-time registration program with a fee amount up to $20. |
| A10.06 | 2 | This section should clearly state that the registration fee is the same for both individual and family registrations. | The Department disagrees with the comment. The $20 fee per person is clearly stated in the regulation and needs no further clarification. |
| A10.07 | 3 | Contributor states that any fee is nothing more than a tax, and they will always be paid by the consumer, as an indirect tax. | The Department disagrees with the comment. The $20 fee is authorized under PC 12285(a) for the processing of the registration. |
| A10.08 | 1 | Senior citizen on fixed income cannot afford liability insurance, licensing, annual registration and fees to own a gun. | PC section 12285(a) mandates a one-time registration program with a fee amount up to $20. |

# 45-Day Comment Period
## Comment/Response Spreadsheet

978.31 Fees

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A10.09 | 1 | To impose a tax, post facto, after the fact, is an illegal act by the state. | The $20 fee is authorized under PC 12285(a) for the processing of the registration. |
| A10.10 | 1 | Cash should be accepted as legal tender for registration. | The Department agrees with the comment. Although the Department recommends the use of bank checks and money orders when transmitting payment through the U. S. Mail, the regulations do not prohibit submission of cash payment. |
| A10.11 | 2 | Fee is an infringement on 2nd amendment rights as it artificially discriminates against the poor who have just as much right to own any type of firearm as the rich. | PC section 12285(a) mandates a one-time registration program with a fee amount up to $20. |
| A10.12 | 1 | When I bought my firearm I paid a fee for a Dealer Record Of Sale (DROS) and was not informed I might have to pay registration fees in the future; therefore the proposal of a new fee is tantamount to fraud. | The Department disagrees with the comment. The DROS fee only covers the cost to determine whether or not a purchaser is prohibited from purchasing or possessing a firearm at the time of the transaction. The $20 application fee for an assault weapon registration covers the costs of processing the application, conducting an eligibility background check, and creating and maintaining the database of registered assault weapons. |
| A10.13 | 1 | The fee of $20 per person should be changed to per application to clarify that the fee is for registration of assault weapons and not for the registration of assault weapon owners. PC section 12285 (a) should be changed accordingly. | The Department disagrees with the comment. PC section 12285(a) mandates a one-time registration program with a fee amount up to $20 per person for any number of weapons registered by that person at the same time. The Department has no authority to amend the statute. |

# 45-Day Comment Period
## Comment/Response Spreadsheet

978.32 Processing Times

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A11.01 | 4 | The regulation does not address the disposition of the application when submitted within 30 days of the end of the registration period, since the regulations allow for a 30-day time frame for determining completeness of the application. | The Department agrees with the comment. The proposed regulation has been revised to state that applications submitted to the Department with a postmark date not later than the end of the registration period with the required fee will be processed even if the application must be returned to an applicant for completion or correction after the close of the registration period. |
| A11.02 | 1 | Lack of certain data (acquisition information, etc.) should not be used to delay processing of a registration. Some information may simply not be available. | The Department agrees with the comment relative to the availability of certain acquisition information. The month and day of acquisition is required only if known. The year of acquisition is required because only assault weapons acquired before specific dates as provided by the Penal Code qualify for registration. It is the Department's responsibility to identify and reject unqualified assault weapon registrations. Additionally, the requirement to provide the name and address of the person or firearms dealership from whom the assault weapon was acquired is optional. |
| A11.03 | 1 | The processing time is too lengthy. | The Department disagrees with the comment. The processing time standards are commensurate with the actual processing times of assault weapon registrations during a similar registration program conducted by the Department pursuant to the original Roberti-Roos Assault Weapons Control Act of 1989. |
| A11.04 | 3 | The penalty for the department's failure to inform or deny within the specified period should result in approval of the registration application. | The Department disagrees with the comment. The Department does not have the authority to approve or accept an assault weapon registration except as provided by statute. |
| A11.05 | 1 | The escape clause language of this section '.. . And the department fails to establish good cause for exceeding this time period' seems to apply only to an appeal of the failure to reimburse the applicant's fee. | The Department agrees with the comment. Pursuant to Government Code section 15378, the hearing process is for an appeal in the event the Department fails to provide full reimbursement of an applicant's fees if the Department fails to meet the time frames for processing a registration application. |

# 45-Day Comment Period
## Comment/Response Spreadsheet

| 978.32 Processing Times | | | |
|---|---|---|---|
| Number | Freq. | Summary of Comment | Response |
| A11.06 | 2 | Any appeal process should provide for a face to face hearing with the DOJ official or Attorney General's office representative who will preside over the hearing. That hearing should be at a location convenient to the applicant. | The Department disagrees with the comment. The appeal process established pursuant to Government Code section 15378 does not require the Department to conduct a "face to face" hearing. A written appeal can be made directly to the agency head. |
| A11.07 | 1 | Recommends the following processing deadlines: determine completeness of application - 3 days; process completed application 7 days; appeal determination - 10 days. | The Department disagrees with the comment. The processing time standards are commensurate with the actual processing times of assault weapon registrations during a similar registration program conducted by the Department pursuant to the original Roberti-Roos Assault Weapons Control Act of 1989. |

# 45-Day Comment Period
# Comment/Response Spreadsheet

Attachment A

978.40-44 Large Capacity Magazine Permits

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A13.01 | 1 | The provisions of the proposed section 978.40 through 978.44 appear to be clearly stated and consistent with current law. | The Department appreciates the acknowledgement by the contributor that the regulation is clear. |
| A13.02 | 1 | The term "good cause" is a term calculated to be used to arbitrarily deny permits to law-abiding citizens. | The Department disagrees with the comment. The comment addresses the term "good cause", which is mandated by PC section 12079(a). |
| A13.03 | 1 | Section 978.40 (a) should be amended to permit private owners of high capacity magazines to dispose of them outside of the state without any implied or explicit need for a permit. | The Department disagrees with the comment. A Large Capacity Magazine permit is required for transportation or sale of large capacity magazines from California to an out of state client. Pursuant to PC section 12079, a Large Capacity Magazine permit can be obtained only by a licensed California firearms dealer. The Department does not have the authority to amend the statute. |
| A13.04 | 1 | Regulation makes no provision for wholesale distributors only, who have no California Firearms Dealer (CFD) number which is required. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A13.05 | 1 | Definition of good cause is too vague/broad. | The Department disagrees with the comment. The Department believes the regulation is clearly stated and consistent with the legislative intent of the statute. Due to the ambiguous nature of the comment, the Department is unable to respond further. |
| A13.06 | 2 | Definition of good cause should indicate that serious economic hardship would result with the elimination of large capacity magazines from inventory. | The Department disagrees with the comment. Demonstration of good cause does not require that denial of a permit would result only in hardship to the dealer, but also hardship relative to the impact on those persons' or agencies' legitimate need to acquire large capacity magazines (e.g. law enforcement). |
| A13.07 | 2 | Record retention should be indefinite. | The Department disagrees with the comment. The record keeping requirements established in the proposed regulation are consistent with other programs conducted by the Department for various permits and licenses related to firearms. |

Attachment A

978.40-44 Large Capacity Magazine Permits

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A13.08 | 2 | Permit revocation should result from any violation of the Dangerous Weapons Control Law, not just the Assault Weapons Control Act. | The Department disagrees with the comment. The permit revocation requirements established in the proposed regulation are consistent with other programs conducted by the Department for various permits and licenses related to firearms. |
| A13.09 | 1 | Record keeping requirements are unreasonable. | The Department disagrees with the comment. The record keeping requirements established in the proposed regulation are consistent with other programs conducted by the Department for various permits and licenses related to firearms. |
| A13.10 | 2 | This regulation is too vague and confusing. | The Department disagrees with the comment. The Department believes the regulation is clearly stated and consistent with the legislative intent of the statute. Due to the ambiguous nature of the comment, the Department is unable to respond further. |

## Overall Regulations

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A18.01 | 108 | Regulations go beyond the original intent of the legislature | Due to the ambiguous nature of the comment, the Department is unable to reference a specific regulation in response to the comment. The Department has made revisions to the regulations, as necessary, to provide clarity and consistency with the legislative intent of the statute. |
| A18.02 | 70 | Due to ambiguous wording of the statute, recommends that DOJ reject proposed regulations. | The Department disagrees with the comment. The Department is authorized under PC section 12276.5 to adopt the rules and regulations necessary to carry out the intent of the legislature. These regulations serve to interpret and make clear the statute. |
| A18.03 | 19 | Recommends DOJ provide a list of guns and accessories that are defined as assault weapons under SB 23. | The Department disagrees with the comment. PC section 12276.1 defines assault weapons by characteristic, not by make and model. The Department believes the proposed regulations clearly define the characteristics that, when present on a firearm, may identify a firearm as an assault weapon. |
| A18.04 | 171 | Definitions/regulations are too broad and vague and/or confusing, and lack specificity. | Due to the ambiguous nature of the comment, the Department is unable to reference a specific regulation in response to the comment. The Department has made revisions to the regulations, as necessary, to provide clarity and consistency with the legislative intent of the statute. |
| A18.05 | 7 | Family members who are law abiding and have clean records should be able to hand down gun collection (often quite valuable) to another family member. This becomes a property rights issue. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.06 | 27 | Broad definitions will result in the ban of expensive competitive match rifles, and many ordinary hunting rifles. | The Department has made revisions to the regulations, as necessary, to provide clarity and consistency with the legislative intent of the statute. |
| A18.07 | 118 | SB 23 is a bad law. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |

# 45-Day Comment Period
# Comment/Response Spreadsheet

Attachment A

## Overall Regulations

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A18.08 | 17 | The definitions of what constitutes a detachable magazine, forward pistol grip, flash suppressor or a protruding pistol grip can be interpreted to mean almost anything, and/or exceed legislative intent. | The Department has made revisions to the regulations, as necessary, to provide clarity and consistency with the legislative intent of the statute. |
| A18.09 | 10 | Proposed regulations are confusing, vague and a violation of rights under the constitution. | The regulations have been revised for clarity and consistency with the legislative intent of the statute. The comment addresses the constitutionality of the regulations. The purpose of the regulations is to clarify and make specific the statute. Therefore, the regulations, as written, do not create a constitutional issue. |
| A18.10 | 71 | Regulations should be revised to make them clear. | The Department has revised the regulations to provide additional clarity. |
| A18.11 | 63 | Proposed regulations infringe upon the constitutional right of the people to keep and bear arms. | The Department disagree with the comment. The statute, not the regulations, mandate the registration of assault weapons. The purpose of the regulations is to clarify and make specific the statute. |
| A18.12 | 7 | Regulations should include a list of common types of firearms that do not meet the definition of assault weapon, therefore are lawful. | The Department disagrees with the comment. PC section 12276.1 defines assault weapons by characteristic, not by make and model. The Department believes the proposed regulations clearly define the characteristics that, when present on a firearm, may identify a firearm as an assault weapon. |
| A18.13 | 12 | The definition of an assault rifle is one that has the capability of selecting semi or fully automatic firing. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.14 | 64 | Concerned that this regulatory action will lead to stricter laws and/or confiscation in the future. | The purpose of the regulations is to clarify and make specific the statute. These regulations as written do not impact future legislative action. |
| A18.15 | 27 | SB 23 should be thrown out and declared unconstitutional | The comment addresses the constitutionality of the statute and not the proposed regulations. |
| A18.16 | 2 | Resource materials do not support and were not incorporated into the regulations. | The Department disagrees with the comment. The reference materials cited were used to assist the Department with the proposed regulations. |

Overall Regulations

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A18.17 | 1 | Forward pistol grip, permanently altered, or a thumbhole stock on a single shot target rifle should not make it an assault weapon. | The comment addresses the statute and not the proposed regulations. Pursuant to Penal Code section 12276.1, several characteristics must be present to identify a firearm as an assault weapon. A rifle is not considered an assault weapon as defined in P.C. section 12276.1 solely on the basis of having the one of the features identified in the comment. |
| A18.18 | 16 | The definitions as proposed could lead to expensive and unnecessary litigation due to varying local interpretations. | The comment addresses the enforcement of the statute, not specifically related to the regulations. The Department believes the regulations, as revised, are clearly stated and consistent with the legislative intent of the statute. |
| A18.19 | 7 | Asks that DOJ address and revise the current law as written, to clear up the confusion. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.20 | 159 | SB 23 only hurts the honest, law abiding tax-paying citizens. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.21 | 173 | SB 23 in direct conflict with the 2nd Amendment. | The comment addresses the constitutionality of the statute and not the proposed regulations. |
| A18.22 | 5 | The regulations should include an exception for weapons 50 years or older, historical and collector weapons. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.23 | 6 | "SB 23 is a bad law and worse it is too vague. It can make a gun legal or illegal simply by the interpretation of the agent enforcing the law." | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.24 | 5 | "The object of the proposed regulations should be to make the law administrable (sic), to reduce confusion, and to prevent over-eager accusations against people who are not otherwise criminals." | The purpose of the regulations is to implement, interpret, or make specific the statute referenced. Due to the ambiguous nature of the comment, the Department is unable to reference a specific regulation in response to the comment. The Department made revisions to the original regulations, as necessary, to provide clarity and consistency with the legislative intent of the statute. |

Overall Regulations

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A18.25 | 1 | "The term "assault weapons" should be restricted to only those weapons which the legislature intended, and then only to those guns very obviously intended. It is no part of the Attorney General's powers to expand the intention of an Act passed by the legislature." | Due to the ambiguous nature of the comment, the Department is unable to reference a specific regulation in response to the comment. The original regulations have been revised, as necessary, to provide clarity and consistency with the legislative intent of the statute. |
| A18.26 | 1 | Banning parts of firearms such as magazine, forward pistol grip, etc. renders firearms absolutely useless. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.27 | 2 | Statements in Senate bills that classify firearms as military assault weapons are false, and stated in such general terms that they encompass all firearms, not the few they claim to be addressing. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.28 | 21 | Most of the definitions relate strictly to appearance and have little or nothing to do with safety or criminal use of firearms. | The Department disagrees with the comment. The purpose of the definition is to identify an assault weapon characteristic regardless of the underlying safety issues of the characteristic. |
| A18.29 | 4 | The definitions under 978.20 can be interpreted to include all semi-automatic pistols | The Department disagrees with the comment. The definitions under section 978.20 further define assault weapons pursuant to PC section 12276.1. Semiautomatic pistols must possess certain characteristics as shown in PC section 12276.1 to meet the definition of an assault weapon. |
| A18.30 | 9 | Knowledgeable members of the firearms community should revise regulations so that proper terminology is used to insure that the rights of the private citizens are protected. Postpone implementation until such expertise can be consulted. | The Administrative Procedures Act ensures the opportunity for public participation in the rulemaking process. In addition, meetings with members of the firearms community were held. Input from those meetings was considered in the proposed regulations, and the minutes of the meetings are included in the rulemaking file. |
| A18.31 | 2 | Regulations place unnecessary burden to private owners and dealers by requiring additional paperwork. | The Department disagrees with the comment. The statute, not the regulations, require owners of firearms defined as assault weapons to register those weapons. The paperwork necessary for the registration enables to the Department to meet its obligation relative to confirmation of the applicant's eligibility to register an assault weapon. |

Overall Regulations

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A18.32 | 7 | Regulations will jeopardize the ability of legal firearms owners from participating in legitimate sporting activities. | The Department disagrees with the comment. The statute, not the regulations, define firearms with certain characteristics as assault weapons. The Department does not have to authority to exclude specific firearms on the basis of their use in legitimate sporting activities. The Department does not have the authority to amend the statute. |
| A18.33 | 11 | Law-abiding gun owners will be excessively penalized by arbitrary definitions. | The Department believes the revised regulations are consistent with the legislative intent of the statute. |
| A18.34 | 43 | Recommends DOJ not adopt these regulations. | The Department believes the revised regulations are consistent with the legislative intent of the statute. |
| A18.35 | 26 | Requests changes be made to the proposed regulations that minimize the impact on ordinary firearms owners throughout the state. | Due to the ambiguous nature of the comment, the Department is unable to reference a specific regulation in response to the comment. However, the Department believes the revised regulations are consistent with the legislative intent of the statute and impose minimal impact on the affected public. |
| A18.36 | 4 | Proposed regulations are confusing and/or arbitrary. | Due to the ambiguous nature of the comment, the Department is unable to reference a specific regulation in response to the comment. The Department has made revisions to the regulations, as necessary, to provide clarity and consistency with the legislative intent of the statute. |
| A18.37 | 1 | If my two competition rifles (AR15 and M1A) become inoperable I will be unable to replace them. | The comment does not address the proposed regulations. PC section 12285 includes provisions for servicing or repair of assault weapons, although no provisions are included in statute for replacement of assault weapons. |
| A18.38 | 2 | Firearms dealer concerned about the ability of staff and customers to interpret the proposed regulations. | Due to the ambiguous nature of the comment, the Department is unable to reference a specific regulation in response to the comment. The Department has made revisions to the regulations, as necessary, to provide clarity and consistency with the legislative intent of the statute. |
| A18.39 | 1 | Contributor cites a provision that states "if a person cannot be sure that his property is legal and determine that he has the right to buy, sell, or trade his property, the law becomes invalid." | The Department believes the revised regulations are sufficiently clear to provide firearms owners the ability to determine whether the firearm(s) they possess are assault weapons. If unsure, it is incumbent on the owner to seek advice from a firearms expert, or an attorney. |

# 45-Day Comment Period
# Comment/Response Spreadsheet

Attachment A

| Overall Regulations | | | |
|---|---|---|---|
| Number | Freq. | Summary of Comment | Response |
| A18.40 | 1 | The law is unfair because some people need a stock that allows for a good grasp for control due to pain. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.41 | 6 | The regulations should address the transportation and importation of large capacity magazines. | The Department disagrees with the comment. The Department believes provisions for the transportation of large capacity magazines are sufficiently clear in PC section 12020. Importation and exportation of large capacity magazines by persons licensed pursuant to PC section 12071 are made specific under section 978.40-978.44. |
| A18.42 | 79 | Object to the Regulations | Due to the ambiguous nature of the comment, the Department is unable to reference a specific regulation in response to the comment. The original regulations have been revised, as necessary, to provide clarity and consistency with the legislative intent of the statute. |
| A18.43 | 5 | The definitions are deficient in that they do not address the numerous ambiguities in the law. | The Department disagrees with the comment. The comment addresses the statute and not the proposed regulations. The Department believes the revised definitions are clearly stated and easily understood by those affected by the regulations. |
| A18.44 | 13 | Opposes large capacity magazine restrictions | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.45 | 5 | The law is too vague regarding firearms capable of accepting high capacity magazines. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.46 | 1 | The proposed regulations lack precise technical definitions, which makes it impossible to determine whether the law applies to any particular firearm or part of a firearm. This must be resolved if people are expected to comply. | The revised definitions are clearly stated and easily understood by those affected by the regulations. |
| A18.47 | 8 | Recommends that DOJ stop trying to regulate gun owners' rights out of existence. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.48 | 1 | The law should be changed to allow shooters under 18 to continue sanctioned rifle competition. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |

# 45-Day Comment Period
# Comment/Response Spreadsheet

Attachment A

## Overall Regulations

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A18.49 | 25 | SB 23 is not enforceable as written. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.50 | 6 | Suggests exempting certain Hemmerli, Pardini, and Walther semi-automatic target pistols from assault weapon law | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.51 | 1 | The regulations need to address the opportunity for a person, whose business transfers them to the state or anyone who moves to the state, to properly register assault weapons. | The Department disagree with the comment. PC section 12285 (b)(2) addresses the requirements for persons moving into this state who own an assault weapon, therefore there is no need for the regulations to do so. |
| A18.52 | 2 | Recommends an exemption be made for military weapons range instructors. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.53 | 3 | The definitions in 978.20 attempt to define by cosmetic appearance rather than function, or a combination of both. Function should only be used because it is easily understood. Arms experts, such as Jane's define "assault weapon" as a selective fire weapon, i.e. one that is fully automatic and semi-automatic. | The Department disagrees with the comment. The statute, not the regulations, define an assault weapon by characteristic. The purpose of the regulations is to identify the characteristics of an assault weapon pursuant to PC section 12276.1. The revised regulations are consistent with the legislative to the intent of the statute, relative to the identification of assault weapon characteristics. |
| A18.54 | 1 | Recommend definition of assault rifle: Assault rifle, any rifle that has a clip larger than 10 rounds. | The Department disagrees with the comment. The recommendation conflicts with the legislative intent of the statute. The Department does not have authority to amend the statute or adopt regulations that conflict with the statute. |
| A18.55 | 2 | The assault weapon definitions, as proposed will cause Jr. shooting group, the California Grizzlies to be eliminated. Suggests DOJ contact the NRA and CRPA for guidance. | The Department does not have to authority to exempt particular groups, despite their involvement in legitimate sporting activities. |

Overall Regulations

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A18.56 | 3 | The clause cited in PC section 12280 (b) (1) is not addressed in the regulations. Suggests verbiage be added to the regulations that clarify this requirement in the law and the DOJ's intent in enforcing it. Absence of such clarification, it is impossible to know whether an additional permit is required on an earlier date than specified by other parts of the law. | The Department disagrees with the comment. PC section 12285 clearly defines a one-year registration period. Furthermore, PC section 12280 states there will be no enforcement during the one-year registration period. |
| A18.57 | 1 | The regulations are incomplete as there is no proposed regulation about what constitutes "lending" a large capacity magazine. | The Department disagrees that the regulations should state what constitutes "lending" a large capacity magazine because PC section 12020(a)(2) prohibits, with certain exceptions, the lending of large capacity magazines. |
| A18.58 | 22 | An assault rifle by its original definition is a full automatic firearm. | The Department disagrees with the comment. PC sections 12276 and 12276.1 define "assault weapons" under California law. The proposed regulations interpret, make specific, and clarify those assault weapon characteristics present in PC section 12276.1. |
| A18.59 | 1 | The reference to section 12276.5 under 978.10, should be revised to 12276.5(f). The rest of section 12276.5 applies only to section 12276 which the proposed regulation does not affect. | The Department has made a non-substantial revision to the authority citation for section 978.10 of the regulations by replacing 12276.5 with 12276.5(i) to accommodate this comment. |
| A18.60 | 1 | There needs to be a place where an individual can take a rifle, diagram, or photo, to have a determination made as to whether it is an assault weapon. If it is not, a letter should be issued with the serial number of the rifle, to eliminate various law enforcement determinations. | The Department disagrees with the comment. The Department believes the revised regulations are clear, but ultimately it is up to the firearm owner to determine whether their firearm meets the definition of an assault weapon. |
| A18.61 | 2 | The department must stay within the bounds of its administrative authority. Some of what the Department has proposed requires the enactment of further legislation. | Due to the ambiguous nature of the comment, the Department is unable to reference a specific regulation in response to the comment. The Department believes the revised regulations accurately interpret the statute and are consistent with the legislative intent of the statute. |

Overall Regulations

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A18.62 | 3 | Under this proposal an illegal part can be replaced with one that meets the requirement of the proposed regulations. This is in conflict with BATF ruling 922 r pursuant to 18 U. S. Code, as a violation of the 1994 crime bill. | The Department disagrees with the comment. Although a firearm can be modified or reconfigured to no longer meet the assault weapon definition pursuant to California law, any applicable federal laws remain in force. |
| A18.63 | 2 | The regulations need to include a clear definition of a barrel shroud to separate it from a scope mount on semiautomatic pistols. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.64 | 5 | The broad term in PC section 12276.1 "has the capacity to accept" is not addressed in the proposed regulations, and needs to be to eliminate multiple interpretations by law enforcement, prosecutors, and courts. | The Department disagrees with the comment. The Department believes the phrase "has the capacity to accept" is sufficiently understood by reasonable people. |
| A18.65 | 1 | Regarding a pistol that accepts a magazine outside of the grip. . . Several line pistols have this characteristic, and should not be defined as assault weapons. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.66 | 5 | SB 23 has negatively impacted competitive shooting by eliminating the AR-15 type competitive rifles, which in California rifle match shooters being the only competitors in the U.S. who cannot legally used the best target rifles in the world. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.67 | 4 | If the vagueness of the law is such that the DOJ cannot issue a list of restricted firearms by model and manufacturer, the Attorney General should issue a request to the California Supreme Court to withhold the implementation until the legislature clarifies the law by model, description and manufacturer. | Because the Legislature defined assault weapons by characteristic, the Department does not have the authority to promulgate a list of assault weapons by model and manufacturer. |
| A18.68 | 1 | Detachable Magazines and Pistol Grips enable handicapped and elderly to better control their rifles. Contributor objects to the inclusion of those features. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |

Overall Regulations

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A18.69 | 1 | Disagrees that if a rifle has a pistol grip or flash suppressor it is more dangerous than any other rifle. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.70 | 6 | Restricting/banning the public's ability to possess semi-automatic firearms give the individual an unfair disadvantage when confronted by an attacker. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.71 | 1 | The definitions of terms should be added legislatively. | The Department disagrees with the comment. The purpose of the regulations is to interpret and make specific the statute. |
| A18.72 | 2 | The use of Federal definitions that have withstood challenge, would avoid confusion in the law's interpretation and make it simpler to enforce. | The Department did consider federal statute and regulations when drafting the regulation as cited in the rulemaking file. However, none of the assault weapon characteristic terms defined in the Department's regulations are defined in either federal statute or regulations. |
| A18.73 | 1 | Recommends that PC section 12276.1(b) be amended to read: "Assault weapon" does not include any antique firearm or unmodified M1, M1-C, or M1-D Garand. "Unmodified" as used in the above sentence does not include internal modifications for the purpose of enhancing accuracy or efficiency of the designed function of the firearm. - Note: To categorize these firearms as an assault weapon and to required the law abiding owners of such firearms to register the same would be a gross miscarriage of justice. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.74 | 3 | In order for this law to be effective, there should be an exemption for any person possessing a National Rifle Association High Power Rifle classification card. | The Department does not have to authority to exempt particular groups, despite their involvement in legitimate sporting activities. |

# 45-Day Comment Period
# Comment/Response Spreadsheet

Attachment A

## Overall Regulations

| Number | Freq. | Summary of Comment | Response |
|---|---|---|---|
| A18.75 | 1 | Appreciates knowing that rimfire caliber firearms can still be sold in California. | The statute for which these regulations are being adopted addresses semiautomatic, centerfire rifles, semiautomatic pistols, shotguns and semiautomatic shotguns. Rimfire firearms are not addressed in the statute nor the regulations. |
| A18.76 | 1 | Concern that statute includes a restriction on barrels threaded to accept flash suppressors, forward handgrips, etc., so the question is whether a rifle that is threaded can be purchased. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.77 | 1 | If retired law enforcement officers are exempt from these rules and regulations a double standard is being created by establishing rules that do not apply equally to all citizens of this state. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.78 | 1 | The laws regarding the sales of large capacity magazines to peace officers should be the same between the Federal Government and state. | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.79 | 1 | Requests that a full law enforcement exemption be made for active and retired law enforcement personnel to purchase assault weapons | The comment addresses the statute and not the proposed regulations. The Department has no authority to amend the statute. |
| A18.81 | 1 | Questions whether an offending part, if removed, then reattached outside of California, makes the firearm an assault weapon | The Department disagrees with the comment. The Comment relates to the enforcement of the statute, not the proposed regulations. |
| A18.82 | 1 | Questions the legality of possession of an AR15 and a detached pistol grip | The Department disagrees with the comment. The Comment relates to the enforcement of the statute, not the proposed regulations. |
| A18.83 | 2 | The definitions under 978.20 actually constitute ex post facto, de facto lawmaking. | The Department disagrees with the comment. The purpose of the regulations is to interpret and make specific the statute. |
| A18.84 | 2 | The proposed regulations accurately reflect the majority opinion of those on the task force and are consistent with our understanding of the intent of SB 23. | The Department appreciates the contributor's acknowledgement that the regulations are clear and consistent with legislative intent. As a result of public input, the Department has made revisions to the regulations where necessary. The Department believes the revisions to the proposed regulations further enhance the clarity of the regulations, and the consistency with the legislative intent of the statute. |

## PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, 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.

On September 29, 2006, I served the foregoing document(s) described as

**NOTICE OF LODGMENT IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE AND PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE MOTION FOR SUMMARY ADJUDICATION VOLUME 9 OF 11, EXHIBIT AAAA-JJJJ-1**

on the interested parties in this action by placing

[ ] **the original**

[X] **a true and correct copy**

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

Douglas J. Woods
Attorney General's Office
1300 "I" Street, Ste. 125
Sacramento, CA 94244-2550

___ (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U. S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.

Executed on September 29, 2006, at Long Beach, California.

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

Executed on September 29, 2006, at Long Beach, California.

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

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

CLAUDIA AYALA