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May 21, 2012

Ms. Kathleen Eddy  
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Sacramento, CA 95814  
VIA FAX (916) 323-6826, OVERNIGHT MAIL & EMAIL

Re: OAL Petition # CTU2012-0207-01  
*DOJ Dangerous Weapons Permitting Policies*

Dear Ms. Eddy:

We write on behalf of our clients, FFL Guard, a nationwide program dedicated to the representation of Federal Firearms Licensees, and the many firearm-related businesses our firm represents throughout California that require the maintenance of "Dangerous Weapons" permits. Specifically, we write in support of the above-referenced petition accepted by the Office of Administrative Law ("OAL") concerning an underground regulation relating to the issuance of "assault weapons" and ".50BMG" permits pursuant to California Penal Code sections 31000 and 31005.

Currently, the California Department of Justice ("DOJ") only issues "assault weapon" and ".50BMG" permits to business applicants in the name(s) of *individual employees* of those businesses. In doing so, the DOJ severely restricts authority of these companies to obtain or otherwise transact in the regulated firearms. As a result, our clients are placed in an extremely precarious position each time an "individually-permitted" employee leaves the company. These businesses are inevitably forced to "re-apply" for a new permit in another employees' name, a process that is not only costly, but one that can take up to a year or more to process. This exposes these companies to significant liability during these inevitable permitting gaps, and cuts off their ability obtain firearms necessary to the operation of their businesses in the interim. And our clients face greater penalties should they attempt to transfer any "unlawfully" possessed firearms out of their possession unless and until a new permit can be issued to another employee.

As explained below, the DOJ's stated and enforced "policy" directly conflicts with state law and has the effect of a department regulation of widespread application. We thus urge the OAL to issue a summary disposition that the DOJ's policy is a regulation as defined in Government Code section 11342.600,<sup>1</sup> which should have been, but was not, adopted pursuant to the Administrative Procedures Act (APA).<sup>2</sup>

California Penal Code section 31000 expressly authorizes "persons" to obtain "assault weapon" and ".50/BMG" permits. Penal Code section 16970, in turn, defines "person" as:

"individuals, partnerships, corporations, limited liability companies, associations, or any other group or entity regardless of how it was created."

Despite the legislature's clear intention to authorize the issuance of permits to corporate entities, the DOJ has nonetheless implemented an underground regulation limiting permits to "individuals" without promulgating a formally-noticed regulation to that effect. In doing so, the DOJ's actions have denied our clients the opportunity to engage in public comment as to the impact of these regulations on their operations – an option they would have exercised given the impact of the DOJ's enforced policy on their ability to engage in legitimate business operations.

The DOJ has routinely refused to issue permits in the name of our clients' businesses, as opposed to issuing them in the names of individual employees, despite repeated requests for corporate issuance. Moreover, the DOJ has consistently informed our office, as well as our clients, that permits will only be issued in the names of individual employees of these businesses. Our office has also received numerous complaints from FFL Guard members about the DOJ's improper limitation on the issuance of the "assault weapons/.50BMG permits to individuals.

The DOJ is well ware of the widespread nature of this policy. Indeed, the DOJ's "assault weapon/.50BMG" permit application forms themselves clearly document their written policy of requiring that the applicant be an individual as opposed to a corporation or other business entity. And the DOJ's policy is not limited to a specific case or circumstance. Rather, the policy is one

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<sup>1</sup> "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.

<sup>2</sup> Such a rule is called an "underground regulation" as defined by California Code of Regulations, title I. Section 250, subsection (a):


"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

Kathleen Eddy, Senior Counsel  
May 21, 2012  
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of universal application, as the DOJ's rule applies to all corporations, limited liability companies, associations, partnerships, or any other entities. Moreover, the DOJ's stated and enforced rules improperly interpret and implement California penal code statutes authorizing the issuance of "assault weapons/.50BMG" permits to partnerships, corporations, and other business entities.

Because the DOJ's policy was implemented and continues to be enforced in the absence of formally-promulgated regulations in direct conflict with applicable state laws, we request the OAL issue an opinion clarifying that the DOJ's rule is an illegal underground regulation. This opinion will serve the interests of the public and legitimate businesses throughout the state that are seeking to comply with state firearms laws, and will prevent undue liability, costs, and delays to these businesses when faced with inevitable personnel changes.

Sincerely,  
**MICHEL & ASSOCIATES, P.C.**



Clinton B. Monfort

CBM/ca

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