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MEMORANDUM OF LAW

From: C.D. Michel

Re: Environmental Extremists' Lead Bullet Ban + ATF's "Armor Piercing" Ammo Ban

= Total Ammunition Ban?

Date: January 23, 2013

I. Introduction

There are two more regulatory storm fronts moving in that may make it difficult or impossible to get the ammunition that firearm owners need to defend themselves and their families, and to engage in the shooting sports.

The uncoordinated attacks come separately from neo-enviro groups and from the Bureau of Alcohol, Tobacco, Firearms, and Explosives. But taken together, these two separate proposals from these two separate groups create a perfect storm that could potentially result in an absolute ban on almost all ammunition.

How?

The extremist environmental groups are trying to ban lead ammunition. Federal law already bans the use of lead ammunition to take water fowl, but these groups will not be satisfied until all lead ammunition use is prohibited. They claim that the minuscule levels of lead introduced into the environment by hunters causes harm to persons and wildlife (most notably the California condor). This junk science resulted in the state legislature passing a ban on lead ammunition in central California. Not content with leaving ammunition banned within California borders, the groups have expanded their push to ban lead ammunition into other states and at the federal level.

The groups pushing for bans on lead ammunition argue that there are less toxic substances than

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lead available to make bullets. In making this push they suggest that ammunition should be made from alternate materials such as tungsten alloys, bismuth, steel, iron, brass, copper or bronze instead of lead.

Meanwhile, the second front against ammunition comes from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and stems from its attempts to determine whether certain types of ammunition are "armor piercing" under the law. The problem? All of the alternate metals that the neoenviros want the bullets to be made from can fall under the "armor piercing" ammunition definition due to the hardness of the "green" non-lead metals.

ATF is also reviewing what types of ammunition is "primarily intended to be used for sporting purposes." ATF could use that determination to ban any ammunition that isn't suitable for sporting purposes. What *is* suitable for sporting purposes? Lead ammunition, the very ammunition that the neoenviros want to ban.

Ammunition consumers are caught in the middle between the neo-enviros push to ban lead ammunition, and the ATF's pending re-characterization of "armor piercing" ammunition and ammunition not for "sporing purposes" to mean all non-lead ammunition. If both sides get their way, there could be nothing left.

II. ATF RECONSIDERING WHICH AMMUNITION IS "ARMOR PIERCING"

Over the years, ATF has conducted a number of studies on certain firearms. In 1989, it published a study on the "Suitability of Modified Semiautomatic Assault Rifles." This study is considered a leading cause of California's current "assault weapon" ban and the (now defunct) federal "assault weapon" restrictions. In 1998, ATF revisited this topic in a study called "Sporting Suitability of Modified Semiautomatic Assault Rifles." Recently, ATF issued a study on the "Importability of Certain Shotguns."

Now, the ATF seeks information on "armor piercing ammunition." Before the turn of the year, following was posted on the ATF website:²

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received requests to

¹ ATF created a form which can be used to judge the suitability of handguns for "sporting purposes" when one imports a handgun. See ATF Form 4590 (5330.5).

² http://www.atf.gov/firearms/industry (last visited 12/10/12).

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exempt certain projectiles from regulation as "armor piercing ammunition" under 18 U.S.C. 921(a)(17)(B)(ii) of the Gun Control Act of 1968. In this regard, ATF is seeking public comments on specific projectiles or projectile cores which may be used in a handgun and which are constructed entirely from one or a combination of tungsten, alloys, steel, iron, brass, bronze, beryllium, copper, or depleted uranium, and whether these projectiles or projectile cores pose a threat to public safety and law enforcement, or are, "primarily intended to be used for sporting purposes" and therefore may be exempted from classification as "armor piercing ammunition."

All interested persons may submit comments to APAComments@atf.gov by December 31, 2012. Comments not received by or before December 31, 2012 will not be considered. All comments must include your name and mailing address. Comments are subject to the Freedom of Information Act.

A. Armor Piercing Defined, Its Exceptions, and Certain Restrictions

Under federal law "armor piercing ammunition" means:

- (i) a projectile or projectile core which *may be used in a handgun* and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or
- (ii) a full jacketed projectile larger than .22 caliber designed and *intended for use in a handgun* and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

18 U.S.C. § 921(a)(17)(B)(emphasis added).

But there is one major exception to these definitions:

The term "armor piercing ammunition" does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Attorney General finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Attorney General finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

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18 U.S.C. § 921(a)(17)(C)(Emphasis added)

It is illegal anyone to manufacture or import armor piercing ammunition unless:

- (A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;
- (B) the manufacture of such ammunition is for the purpose of exportation; or
- (C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General

18 U.S.C. § 922(a)(7).

And it is illegal for any manufacturer or importer to sell or deliver armor piercing ammunition unless such sale or delivery:

- (A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;
- (B) is for the purpose of exportation; or
- (C) is for the purpose of testing or experimentation and has been authorized by the Attorney General;

18 U.S.C. § 922(a)(8).

It is illegal for licensed importers, manufacturers, dealers, and collectors to sell or deliver "armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923..., the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity." 18 U.S.C.A. § 922(b)(3).

B. "Sporting Purposes"

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The phrase "sporting purposes" appears as an exception to "armor piercing ammunition." But this is not the only place where the phrase "sporting purposes" appears in the federal code, and it is not the first time ATF has attempted to tackle its meaning.

Federal law restricts the importation of firearms that are not "generally recognized as particularly suitable for or readily adaptable for *sporting purposes*..." ATF consequently takes the term "sporting purposes" into consideration when allowing certain firearms to be imported into the U.S.. But the phrase is not defined under federal law or regulation.

Nonetheless, in all of the ATF studies listed above the ATF limits "sporting purposes" to hunting and target/trap shooting and refuses to extend the definition of "sporting purposes" to activities such as "plinking" and "practical shooting" competitions/events (i.e. sports like the increasingly popular "threegun" competitions).⁴

ATF is now compiling information on the "sporting purposes" exemption for the "armor piercing ammunition" law. But what is a "sporting purpose" for ammunition, and what should be done with new alloys that are ideal for hunting and target shooting and yet can also be used in self-defense rounds? These calibers clearly have a "sporting purpose," despite the fact that they may be fired from a handgun and meet one of the two definitions for "armor piercing ammunition" above. So where will ATF draw the line for "sporting purposes?" We will see in a couple months with ATF issues its report.

C. What Calibers of Ammunition Are Now "Used" or "Intended" for Handguns?

More and more firearm manufacturers are discovering innovations in firearm design to allow handguns to discharge ammunition of certain calibers previously considered to be exclusive to rifles (and vice versa). Consequently this line between calibers for handguns and calibers for rifles is becoming more and more blurred. Determining which calibers are "used" or "intended for use" in handguns is becoming increasingly difficult. And because certain calibers of ammunition are now "used" or can be considered "intended for use" in handguns they are subject to the "armor piercing ammunition" classification/restriction. The result being that non-lead ammunition that might have been considered ideal for hunting, because it can be used in a handgun, can suddenly be considered armor piercing if it meets the

³ 18 USC § 925(d)(3)(emphasis added).

⁴ Although in the recent shotgun study, it appears ATF may be slowly moving away from this opinion relating to "practical shooting."

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federal definition of "armor piercing ammunition."

III. CONCLUSION

With neo-enviro groups on the left and ATF on the right, the U.S. firearm owning public may be stuck in the middle with no ammunition to use in their firearms. With lead ammunition demonized as an environmental hazard and lead-alternatives potentially classified as "armor piercing," firearm owners may be left with spitballs and wadded up pieces of paper to defend their families and to use in hunting.

For Further Assistance:

For links to free information on firearms laws, the Legal Resources section of our www.calgunlaws.com website has subsections on various firearms law topics. Check it out!

To stay updated on firearm law issues we encourage you to subscribe to our firearms law newsletters, Facebook pages, and Twitter feed. <u>CalGunLaws.com</u>, CalGunLaws' e-Bulletins, the <u>Self-Defense Defense</u>, <u>Right to Keep and Bear Arms</u>, <u>MichelLawyers</u>, and <u>Shooting Range Lawyers</u> informational Facebook pages and the <u>@MichelLawyers</u> Twitter feed are produced as a pro bono public service by <u>Michel & Associates</u>, P.C., a full service law firm.

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