



# Second Amendment Foundation

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March 2, 2015

Denise Brown, Mailstop 6N-602  
ATTN: AP Ammo Comments  
Office of Regulatory Affairs, Enforcement Programs and Services  
Bureau of Alcohol, Tobacco, Firearms, and Explosives  
99 New York Avenue NE  
Washington, DC 20226

**Re: “ATF Framework for Determining Whether Certain Projectiles are ‘Primarily Intended for Sporting Purposes’ Within The Meaning Of 18 U.S.C. 921(a)(17)(C).”**

Dear BATFE Director B. Todd Jones:

On behalf of the Second Amendment Foundation’s (SAF) more than 650,000 members and supporters, please accept this comment in opposition to the above-referenced proposed changes. SAF opposes the proposed framework, and resulting ban on almost ubiquitous M855 ammunition, because it is a politically motivated, factually unsupported, and administratively and statutorily unlawful scheme designed to impair the fundamental constitutional rights of all Americans.

## **The Second Amendment Foundation**

Since 1974 the Second Amendment Foundation (SAF) has driven the defense of Americans’ Second Amendment rights through education and litigation.

SAF is recognized as the litigation powerhouse behind landmark cases protecting and restoring firearms rights in San Francisco, Chicago, Seattle, Omaha, New Orleans and Washington, D.C. SAF’s emblematic victories include a win at the Supreme Court, establishing that the 2<sup>nd</sup> Amendment applies against states, counties and cities (*McDonald v. Chicago*). SAF also counts various court of appeals victories, including the disposal of stealth gun bans created by impossible licensing requirements (*Ezell v. Chicago*) and a decision compelling Illinois to issue concealed pistol licenses for the first time in over 50 years (*Moore v. Madigan*). Through its history, SAF has removed hundreds of improper and unconstitutional gun laws from the books all over this great country.

SAF helps maintain and strengthen the firearms civil rights movement through education campaigns, an annual policy conference, and through our various broadly circulated publications, which range from print and online magazines, like *Women & Guns* and *The Gun Mag*, to newsletters, like the *Gottlieb-Tartaro Report* and the *SAF Reporter*, to the premier annual reference book of key firearm-issue articles, *SAF’s Journal on Firearms and Public Policy*. SAF is also involved in national firearms safety and skills education through the SAF Training Division.

SAF's members have been vocal in their opposition to this proposed framework, as SAF staff have received many hundreds of comments and requests for action on this topic in the days since it was announced by the BATFE.

**The BATFE's proposed ban on M855 ammunition has no basis in fact.**

M855 ammunition has been commonly used for target shooting and competition for decades. The proposed framework concludes that this is the case because of an exemption provided by the Attorney General in 1986. Alas, examination of the statute and the M855 round show us that no such exemption is needed. M855 should be outside the purview of 18 U.S.C. 921(a)(17)(C) because it is not armor piercing pursuant to the definition in the statute.

The statute includes two possible definitions for determining ammunition is armor piercing. The first would be "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." In the case of M855, there is no debating that the ammunition may be used in a handgun. AR-15 derivative pistols have been common in the firearms market for almost a quarter of a century. The M855, however, does not have a core entirely made from a "combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper or depleted uranium." Rather, it has a traditional lead core and a small steel tip, which according to scientific reports makes up about 16% of the projectile's total mass. A small tip of steel making up less than 1/6<sup>th</sup> of the projectile cannot be used to claim the bullet or its core are "entirely" steel. Accordingly, the M855 round is not armor piercing pursuant to the first available prong in the statute.

The second definitional prong in the statute also cannot make M855 "armor piercing." The second prong limits those rounds which include 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." While this does not seem to be the section BATFE is relying on in this letter, it nonetheless fails immediately as the 5.56 x 45 mm round is not designed and intended for use in a handgun. Additionally, the M855 is not fully jacketed and its copper jacket does not weigh more than 25% of the rounds total 62 grains.

Because M855 does not meet the definition of armor piercing, it should not require a "sporting purposes" exemption from the Attorney General and should be outside the proposed framework.

**The proposed framework is arbitrary and disconnected from actual sporting purposes.**

The proposed framework intends to define the intended purpose of ammunition based on the availability of certain types of handguns made for it. Such a circular definition is highly illogical in any context. Here it is especially arbitrary considering that the statute directs its interpreters to look at whether the ammunition is "primarily intended" for sport.

According to the proposed framework, if a non-single shot handgun is available for a round, that round cannot be primarily intended for sporting purposes. Previous BATFE decisions have explained that "sporting purposes" include the traditional sports of hunting, competitive target shooting, and skeet and trap shooting. None of these activities are only suited to single-shot pistols. In fact, Americans commonly hunt and shoot targets competitively with multiple shot handguns chambered for rifle calibers, ranging from revolvers chambered in .45-70 and .30-30, to modern sporting pistols in 7.62 x 39 mm.

The existence of multiple shot handguns in a caliber has absolutely no relation to a bullet's primary intended use. Multiple shot pistols are commercially available in nearly all of the most common rifle calibers on the market. If the proposed framework goes through, lead-free hunting ammunition each of these common calibers will become classified as illegal armor piercing ammunition. If it were not for the potentially far reaching effects on Americans' civil rights, the proposed framework would be laughable.

**The current proposal violates the Administrative Procedures Act.**

In order to protect from easily foreseen oversteps like this one, Americans not ceded lawmaking authority to administrative agencies without checks on the power. Among the most important check on administrative rule making is strict notice requirement scheme found in the Administrative Procedures Act (APA).

As many members of Congress recently noted to the BATFE in response to this proposed framework, the APA "requires that 'general notice of proposed rulemaking shall be published in the Federal Register...'" They noted that the proposal in question had not been published in the Federal Register, violating Americans' rights and invalidating any resulting regulatory decision.

**Partisan politics, not safety, are the basis for this proposed framework.**

Among the primary concerns expressed by SAF's membership is the fact that this proposed framework is just a collateral attack in the President's failed war on the millions of modern sporting rifles, like the AR-15, owned by Americans. The administration's failure to achieve bans on modern firearms through traditional methods, like passing laws through congress, have led it to a push for such bans through executive agency action.

Just today, the President Obama's Press Secretary attempted to lump this framework and the proposed ammunition ban in with the rest of the "common sense" anti-firearms agenda pushed by the Administration. Short of hypotheticals, neither the proposed framework, nor its Administration supporters have cited a single example of the problem this new regulation is supposed to fix. Instead, they appeal to emotion, claiming that this is intended to protect a constituency the Administration has long attacked and vilified: America's police officers. Alas, the National Association of Police Organizations has explained that this new regulation would not protect officers.

This proposal is just an attempt to limit firearms rights because the President's other such attempts have been blocked through constitutional checks and balances on his power.

Should the BATFE lawlessly proceed on this path, SAF intends to call on those checks and balances to stop the Administration's executive overreach again. SAF's Board of Trustees has already authorized court action if this politically motivated, factually unsupported, and unlawful scheme is implemented.

Sincerely,



Miko Tempski  
General Counsel