BEFORE THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES

IN RE:	**)**	
ATF FRAMEWORK FOR DETERMINING	**)**	
WHETHER CERTAIN PROJECTILES ARE	**)**	**NO DOCKET NUMBER**
"PRIMARILY INTENDED FOR SPORTIN	**)**	**ASSIGNED**
PURPOSES" WITHIN THE MEANING OF	**)**	
18 U.SC. § 921(A)(17)(C)	**)**	

COMMENTS OF GEORGIACARRY.ORG, INC.

GeorgiaCarry.Org, Inc. ("GCO") submits the following comments in response to the recent (undated) "Framework" published by the Bureau.

Introduction

GCO is a non-profit corporation whose primary mission is to foster the rights of its members to keep and bear arms. GCO's membership is largely based in the State of Georgia, but GCO has some members from other states and other countries.

In the Framework, the Bureau announces its intentions to re-classify one of the most common rifle rounds in existence as "armor piercing," thus rendering manufacture and sale of such ammunition illegal under federal law. Because the Framework fails to take into consideration the statutory requirements, and the constitutional ramifications of the Framework as applied, GCO opposes the Framework.

Background

18 U.S.C. § 921(a)(17)(B) and (C) provide:

> **(B)** The term "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.

> **(C)** 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.

The Framework proposes to re-classify M855 (NATO 5.56 "green tip") ammunition as "armor piercing" under the statute, resulting in the prohibition of its manufacture or sale. The Framework asserts that M855 ammunition meets the definition of armor piercing under 18 U.S.C. § 921(a)(17)(B)(ii), and that it is not primarily intended to be used for sporting purposes.[1]

Discussion

I. *M855 Fails the Statutory Tests for Armor Piercing Ammunition*

Congress created objective tests, coupled with a subjective "savings clause" for determining whether given ammunition is armor piercing. Ironically, whether the ammunition does pierce armor, or is more adept at piercing armor than other (presumably "non-armor piercing") ammunition, is not relevant. Instead, Congress elected to establish criteria related to caliber, weight, and other physical characteristics, plus design intent, to determine objectively if ammunition is armor piercing. Only ammunition that meets these objective criteria is then considered under the subjective test of whether the attorney general finds that there is a "sporting purpose" for the ammunition. The objective criteria are:

1. The projectile must be "larger than .22 caliber;"
2. The projectile must have a jacket that weighs more than 25% of the total weight of the projectile;

[1] The Framework does not assert that M855 ammunition meets the definition of § 921(a)(17)(B)(i), so GCO does not address that possibility here. GCO observes that M855 would not meet that definition, however, because it has some lead in the core, and therefore is not "entirely" made of the materials listed.

3. The projectile must be fully jacketed;

4. The ammunition must be designed and intended for use in a handgun.

GCO will show below that M855 ammunition does not meet any of the objective criteria, and therefore does not meet the statutory definition of armor piercing.

a. M855 Is Not "Larger Than .22 Caliber"

A threshold requirement for armor piercing ammunition under the statute is that it must be "larger than .22 caliber." The Bureau seems to have assumed, without discussion, that M855 meets that requirement. The SAAMI specification for M855 projectile diameter is 5.7 mm, or .224 inches. By contrast, the diameter for .22 long rifle projectiles is 5.72 mm, or .225 inches.[2] Both are commonly referred to as ".22 caliber." On that basis alone, one might conclude that M855 is not larger than .22 caliber.

Moreover, because the statutory requirement contains only two significant digits, one must round any subject ammunition to two significant digits in order to make a comparison. M855 projectiles, rounded to two significant digits, are .22 in diameter. Thus, M855 ammunition fails the threshold requirement of being larger than .22 caliber and cannot, by definition, be armor piercing. Ironically, one might argue that .22 LR ammunition should be rounded up to .23 caliber, and therefore it passes this test.

b. The Jacket Does Not Weigh More Than 25% of the Core

Another threshold requirement is that armor piercing ammunition must have a jacket whose weight is more than 25% of the weight of the projectile. In its Framework, the Bureau fails to make any findings regarding this requirement. The jacket on the projectile of M855 ammunition

[2] SAAMI specifies a range for .22 LR projectiles, of 0.2255 +/- 0.004 inches.

weighs approximately 10.8 grains.[3] The entire projectile weighs 62 grains. That means the jacket weighs approximately 17% of the total weight of the projectile. By definition, M855 ammunition is not armor piercing, and the Bureau would be exceeding its authority to determine otherwise. It is unclear why the Bureau apparently assumes, without finding, that M855 ammunition meets this requirement.

c. M855 Is Not Fully Jacketed

Yet another threshold requirement in § 921(a)(17)(B)(ii) is that the projectile have a "full jacket." M855 ammunition has only a partial jacket, the tip being an unjacketed steel core painted green.[4] In addition, GCO understands that at least some manufacturers do not jacket the entire butt end of the projectile. Because it is not fully jacketed, M855 is statutorily excluded from being armor piercing ammunition.

d. The Ammunition is Not Designed and Intended for Use in a Handgun

The Framework acknowledges that the M855 ammunition was developed at a time when there were no commercially available handguns chambered for it. Relatively recently, however, manufacturers have begun marketing handguns that will fire .223/5.56 NATO ammunition, including M855. Significantly, the availability of such handguns is the only development the Bureau cites as evidence that M855 is designed and intended for use in a handgun. That is, nothing about the ammunition itself has changed. There have been no design changes since the advent of handgun availability. Ammunition manufacturers continue to produce ammunition to exactly the

[3] GCO cannot find a published specification for jacket weight, but some literature suggests a typical weight is 10.8 grains. If there is no specification, the Bureau would be unable to find that ***all*** M855 ammunition meets the jacket weight element of the test. Instead, the Bureau would have to find this on a product by product basis and could not categorically exclude all M855 ammunition.

[4] GCO observes that some manufacturers describe their product as "full metal jacketed," but of course the manufacturer's description is not dispositive. If a projectile is not completely encased in the jacket, it can hardly be described as fully jacketed.

same specifications for rifle use that they made when the only devices commercially available to fire the ammunition were rifles. In short, the ammunition is not designed to be used in handguns. Instead, firearms manufacturers have developed handguns intended to be used with rifle ammunition.

It is a feature inherent in our economic system that innovators will find new ways to use existing products, and will even develop new products to be used with existing products. New applications for existing products cannot be logically thought of as design changes of those products.

Dried peas were on the market for decades. One day, someone invented a spring loaded plastic toy in the shape of a handgun, capable of discharging dried peas at harmless velocities. Did that invention cause newly-dried peas to be designed and intended to be fired from pea shooters? Of course not, at least not in any logical use of the word "designed." Dried peas continued to be designed and intended as dehydrated food. It just so happened that there were devices chambered to fire them.

II. The "Sporting Purpose" Requirement Is Unconstitutional

If the Bureau were to find that M855 ammunition meets ***all*** the statutory criteria for armor piercing status (in the face of the apparent lack of meeting ***any*** of the criteria), then the attorney general may consider whether the ammunition nonetheless is primarily "intended for use for sporting purposes." The phrase "sporting purposes" is not defined, but the Bureau interprets it to mean "for shooting sports." Framework, p. 8.

This regime thus supposes that the federal government may limit or ban all handgun ammunition that is not primarily intended for shooting sports. In doing so, the regime ignores that the Second Amendment guarantees a core right to "keep and carry arms in case of confrontation."

District of Columbia v. Heller, 554 U.S. 570, 592 (2008). Given that "[T]he American people have considered the handgun to be the quintessential self-defense weapon," [*Id.* at 629], it is difficult to understand why the test is "sporting purpose" rather than "self defense purpose." For if the Bureau applies the "sporting purpose" test in such a way as to exclude ammunition readily usable in a handgun for self defense, then the Bureau could make a similar finding against any or all handgun ammunition.

The very reasons the Bureau uses for proposing the lack of a sporting purpose are the very reasons that make a given handgun more readily usable for self defense. The Framework concludes that only single-shot handguns, with a bolt action or break action and no magazine, are "sporting purpose" handguns. But such handguns are not particularly suited to self defense. Repeating guns, either revolvers or semiautomatics, are much more commonly used for self defense purposes. By applying the "sporting purpose" provision so as to exclude commonly-used self defense handguns, the Bureau is infringing on the Second Amendment right to keep and bear arms for self defense in case of confrontation.

Conclusion

M855 does not meet any of the statutory criteria for being armor piercing, but even if it did, it would be unconstitutional to ban its manufacture on the premise that it is not intended for a "sporting purpose." The Framework is fundamentally flawed and must be discarded.

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