

RULINGS, PROCEDURES, AND INDUSTRY CIRCULARS

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Editor's Notes

The rulings, procedures, and industry circulars set out herein cannot address all subjects under all possible circumstances. When there is doubt, please contact your nearest ATF office.

These items are often extracts from the original material. Where sections of law have been altered or amended but the purpose or intent of the ruling, procedure, or industry circular remains in effect, a text modification has been made, and the word "amended" appears in brackets at the end in the following manner: [Amended].

"Rev. Rul." or "RR" is a revenue ruling published by the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service, the predecessor of the Bureau of Alcohol, Tobacco and Firearms. "ATF Rul." means ATF Ruling; "ATFP" means ATF Procedure; "I.C." means Industry Circular; "ATFB" means ATF Bulletin; "ATFQB" means ATF Quarterly Bulletin; "ATF C.B." means ATF Cumulative Bulletin; and "C.B." means Internal Revenue Service Cumulative Bulletin.

RULINGS

27 CFR 178.41: General
(Also 178.42, 178.50)

Firearms or ammunition may not be sold at gun shows by a licensed dealer, but orders may be taken under specified conditions; Revenue Ruling 66-265 superseded.

Rev. Rul. 69-59

Advice has been requested whether a person who is licensed under 18 U.S.C. Chapter 44 (which superseded the Federal Firearms Act (15 U.S.C. Chapter 18)) or who is continuing operations under a license issued to him under the Federal Firearms Act, as a manufacturer, importer or dealer in firearms or ammunition may sell firearms or ammunition at a gun show held on premises other than those covered by his outstanding license.

Under 18 U.S.C. 923(a), "a separate fee" is required to be paid for each place at which business as a licensee is to be conducted. Further, each applicant for a license is required to have in a State "premises from which he conducts business" (18 U.S.C. 923(d)(1)(E)) and to specify such premises in the license application. In addition, records are required to be maintained at the business premises covered by the license (18 U.S.C. 923(g)).

Therefore, a person holding a valid license may engage in the business covered by the license only at the specific business premises for which his license has been obtained. Thus, a licensee may not sell firearms or ammunition at a gun show held on premises other than those covered by his license. He may, however, have a booth or table at such a gun show at which he displays his wares and takes orders for them, provided that the sale and delivery of the firearms or ammunition are to be lawfully effected from his licensed business premises only and his records properly reflect such transactions.

There are no provisions in the law for the issuance of temporary licenses to cover sales at gun shows and licenses will be issued only for premises where the applicant regularly intends to engage in the business to be covered by the license.

This ruling does not apply to the activities of licensed collectors with respect to the receipt or disposition of curios and relics by such collectors. For provisions relating to transactions by licensed collectors of curios and relics, see 26 CFR 178.50 of the regulations.

Rev. Rul. 66-265, 1966-2 C.B. 559, is hereby superseded.

Editor's Note

In 1986, the GCA was amended to allow licensees to sell firearms at gunshows in the State in which their licensed premises are located, and was further amended in 1997 to allow licensees to sell curio or relic firearms to other licensees at any location. The ruling is still applicable to licensees' off-premises sales not addressed by these amendments.

27 CFR 178.99: CERTAIN PROHIBITED SALES OR DELIVERIES

A licensed importer, manufacturer or dealer may, without transferring title, ship firearms interstate in care of his nonlicensed employees, agents and representatives for the use and benefit of the licensee's business.

Rev. Rul. 69-248

Under 18 U.S.C. 922(a)(2), it is unlawful (with certain exceptions not here pertinent) for any licensed importer, manufacturer, or dealer to ship, transport or deliver in interstate commerce any firearm to any person other than another licensee. However, there is no provision in 18 U.S.C. Chapter 44 which would prohibit licensees from shipping, transporting or delivering firearms in interstate commerce to themselves for business purposes (exclusive of sale or disposition) in care of their employees, agents or representatives.

Licensees engaged in the firearms or ammunition business typically are corporations which can only conduct their operations through employees, agents and representatives. In the course of such operations, it is frequently necessary to ship, transport or deliver firearms in interstate commerce for bona fide business purposes such as display, advertising research, testing, comparative evaluations and marketing promotions. In such cases, title to, and ultimate control of, the firearms remain in the licensee even though the firearms or ammunition are placed in the temporary custody of an employee, agent or representative for limited lengths of time.

Therefore, under the circumstances described herein, licensed manufacturers, importers and dealers may ship, transport or deliver firearms in interstate commerce to themselves in care of employees, agents and representatives without being in violation of 18 U.S.C. 922(a)(2).

However, such shipment, transportation or delivery should not be made in care of persons who are ineligible "to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce" under 922(g).

This ruling is specifically limited to shipments made by a licensed importer, manufacturer or dealer in care of his nonlicensed employees, agents or representatives for bona fide business purposes (exclusive of sale or disposition), where the actual custody of the firearms is transferred for a limited period of time and where title and ultimate control of the firearms remain in such licensee. When no longer needed by the employee, agent or representative for the business purpose for which received, disposition of all such firearms must be by return to the licensee or in a manner consistent with

the provisions of 18 U.S.C. Chapter 44., (See also I.C. 72-23.)

[This Revenue Ruling does not apply to firearms and ammunition within the purview of the National Firearms Act (26 U.S.C. Chapter 53), pe I.C. 72-23]

[190 -1 C.B. 360] [Amended]

**27 CFR 178.114: IMPORTATION BY
MEMBERS OF THE U.S. ARMED FORCES**

Members of U.S. Armed Forces may, under specified conditions, import up to 3 rifles or shotguns and up to 1,000 rounds of ammunition without obtaining the permit required by 27 CFR 178.114.

Rev. Rul. 69-309

Under the authority contained in 27 CFR 178.22, the requirement of a permit (Form 6 (Firearms)) is hereby waived as to any member of the U.S. Armed Forces desiring to transport, ship, receive or import firearms or ammunition into the United States under the following circumstances:

(1) The member of the U.S. Armed Forces is on active duty outside the United States or has been on active duty outside the United States within the 60-day period immediately preceding the transportation, shipment, receipt or importation;

(2) The importation consists of rifles or shotguns or any combination thereof (excluding any firearm coming within the purview of the National Firearms Act and any firearms of military surplus origin) not to exceed a total of three, and not more than 1,000 rounds of ammunition for rifles and shotguns (excluding tracer or incendiary ammunition) when those firearms or ammunition are on the person of a returning member of the U.S. Armed Forces or with his baggage or effects, whether accompanied or unaccompanied (but not mailed unless they are included in unaccompanied baggage or effects which are officially shipped through the mails by a Transportation Officer of the U.S. Armed Forces incident to a permanent change of duty station);

(3) The rifles and shotguns and ammunition are being transported, shipped, received and imported into the United States to the place of residence, and are intended for the personal use of the member of the U.S. Armed Forces importing them;

(4) The importation is incident to the return of the importer to a permanent duty station in the United States from a permanent duty station abroad, or his release from active duty;

(5) The importer of the firearms and ammunition completes, and he or his authorized agent furnishes to the Customs officer releasing the firearms and ammunition, a Form 6A (Firearms) pursuant to 27 CFR 178.114(b) and a certification that the importation of and the transportation to and the receipt and possession by the importer at his place of residence would not constitute any violation of Title I of the Gun Control Act (Title 18, U.S.C., Chapter 44), or Section 38 of the Arms Export Control Act of 1976 (Title 22, U.S.C., Sec. 2778), or any applicable State law or published ordinance.

[190 -1 C.B. 361] [Amended]

**27 CFR 178.41: GENERAL
(Also 178.42, 178.45, 178.49)**

Licensed firearms dealers operating at multiple locations may establish a common expiration date for all licenses.

ATF Rul. 73-9

Licensed firearms dealers operating more than one location for which a license is required may establish a common expiration date for all licenses issued to their several locations. Dealers wishing to establish such a date for all licenses issued to them may make application in writing to the Regional Director (Compliance) of the region in which the businesses or activities are operated. The application should set out the requested common expiration date and should list all licensed premises in the region covered by the application. The Regional Director (Compliance) will advise the dealer whether the request may be approved and, if approved, will provide the necessary instructions and renewal application. It is pointed out that approval of a request will entail a one time loss associated with the existing license, as it will be cancelled on and after the date of issuance of the license bearing the requested common expiration date, and the regulations do not provide for prorated refunds.

[73 AF C.B. 102] [Amended]

**27 CFR 178.11: MEANING OF TERMS
(Also 178.23, 178.44)**

Because of the nature of operations conducted by a gunsmith, he shall not be required to have business premises open to the general public or to have regular business hours.

ATF Rul. 73-13

Because of the nature of operations conducted by a gunsmith, any applicant for a license who intends to engage solely in this type of business and so specifies on his application will not be required to maintain regular business hours. Further, if the business is conducted from a private dwelling, a separate portion should be designated as the business premises, which need not be open to all segments of the public but only accessible to the clientele that the business is set up to serve. However, the licensed premises of the gunsmith are subject to the inspection requirements of 18 U.S.C. 923(g) and 27 CFR 178.23, and the gunsmith must maintain the required records as specified in 27 CFR 178.121 et seq.

Further, since a gunsmith is a licensed firearms dealer, if he engages in the business of buying and selling firearms, he must record his transactions on Form 4473 (Firearms Transaction Record) for each sale, and maintain the firearms acquisition and disposition records required of all licensed dealers. However, if a gunsmith engages in the business of buying and selling firearms during the term of his current license, he may be required to submit a new Form 7 (Firearms) at the time of renewal in accordance with 27 CFR 178.45 and meet the requirements of an applicant engaging in the business of buying and selling firearms, such as having business premises open to the general public and having regular business hours.

(Amplified by ATFR 77-1)

[73 AF C.B. 92]

**27 CFR 178.11: MEANING OF TERMS
(Also 178.23, 178.44, 178.99, 178.124)**

Because of the nature of operations conducted by a consultant or expert, he shall not be required to have business premises open to the general public or to have regular business hours.

ATF Rul. 73-19

Revenue Ruling 69-248 C.B. 1996 -1, 360 (Internal Revenue) permits firearms licensees to ship, transport, or deliver firearms in interstate commerce to their nonlicensed employees, agents, or representatives for business purposes. As was clarified in Industry Circular 72-23 the ruling also permits firearms licensees to similarly transfer firearms to nonlicensed professional writers, consultants, and evaluators for research or evaluation.

Title 18 U.S.C., Section 922(a)(2)(A), permits an individual to ship (and have returned to him) in interstate commerce a firearm to a firearms licensee for repair or customizing. Furthermore, the definition of a firearms dealer in 18 U.S.C. 921 and 27 CFR 178.11 is sufficiently broad that it can be interpreted to include a qualified firearms consultant or expert who is engaged in the business of testing or examining firearms. In view of these provisions, the Bureau has determined that firearms consultants or experts may be licensed as firearms dealers in order that they may receive firearms from nonlicensed individuals for testing and examination.

Because of the nature of operations conducted by a firearms consultant or expert, any licensed dealer who engages solely in this type of business will not be required to maintain regular business hours. If the business is conducted from a private residence, a separate portion of the dwelling should be designated as "business premises." Such premises need not be open to all segments of the public but only accessible to the clientele that the business is set up to serve. However, the licensed premises of the firearms consultant -expert shall be subject to inspection under the authority of 18 U.S.C. 923(g) and 27 CFR 178.23.

A licensed firearms consultant or expert shall maintain records of receipt and delivery of firearms, as is required by 27 CFR 178, Subpart H, except that the licensee need not prepare Forms 4473, Firearms Transaction Record, reflecting the firearms examined.

However, shipments and deliveries of firearms shall not be made in care of persons who are ineligible "to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce" under 922(g).

A firearms consultant or expert who desires to obtain a license as a dealer in firearms shall file Form 7 (Firearms), Application for License Under 18 U.S.C. Chapter 44, Firearms, in the manner prescribed by 27 CFR 178.44. The application shall include a statement that the applicant is engaged in business as a bona fide firearms consultant or expert and, where the applicant intends to perform testing or examination services for one or more persons on a continuing basis, the statement shall include the name, address, and nature of business of such persons. A license as a dealer in firearms will be issued only after the Regional Director (Compliance) is satisfied that the applicant is a bona fide consultant or expert and is otherwise qualified under the law.

Since a licensed firearms consultant or expert is a firearms dealer, if he engages in the business of buying and selling firearms, he must record his transactions on Form 4473, Firearms Transaction Record, for each sale, and maintain the firearms acquisition and disposition records required of all licensed dealers. If a firearms consultant or expert engages in the business of buying and selling firearms during the term of his current license, he may

be required to submit a new Form 7 (Firearms) at the time of renewal in accordance with 27 CFR 178.45 and meet the requirements of an applicant engaging in the business of buying and selling firearms, such as having business premises open to the general public and having regular business hours.

[This ATF ruling does not apply to firearms within the purview of the National Firearms Act (26 U.S.C. Chapter 53)]

[73 AF C.B. 93] [Amended]

**27 CFR 179.104: REGISTRATION OF
FIREARMS BY CERTAIN
GOVERNMENTAL ENTITIES**

When NFA firearms are registered on Form 10 by governmental entities, subsequent transfers of such firearms shall be made only to other governmental entities.

ATF Rul. 74-8

Advice has been requested whether the Bureau will approve transfer of National Firearms Act weapons by a State or political subdivision (police department) to a special occupational taxpayer where such firearms were registered in the National Firearms Registration and Transfer Record pursuant to 27 CFR 179.104.

27 CFR 179.104 provides that any State, any political subdivision thereof, or any official police organization of such a government entity engaged in criminal investigations, which acquires for official use a firearm not registered to it, such as by abandonment or by forfeiture, will register such firearm with the Director by filing Form 10 (Firearms), Application for Registration of Firearms Acquired by Certain Governmental Entities, and that such registration shall become a part of the National Firearms Registration and Transfer Record.

The purpose of the above regulation was to permit the limited registration of firearms by certain governmental entities for official use only. 27 CFR 179.104 may not be used as a vehicle to register otherwise unregistrable firearms for the purpose of introducing such firearms into ordinary commercial channels. Accordingly, when registration of firearms by governmental entities is approved on Form 10, the form will be marked "official use only." The Bureau will approve subsequent transfers of such firearms only to other governmental entities for official use. Otherwise, such firearms must be destroyed or abandoned to the Bureau.

[74 AF C.B. 67]

**27 CFR 178.114: IMPORTATION BY
MEMBERS OF THE U.S. ARMED FORCES**

A member of the U.S. Armed Forces who is a resident of any State or territory which requires that a permit or other authorization be issued prior to possessing or owning a handgun shall submit evidence of compliance with State law before an application to import a handgun may be approved.

ATF Rul. 74-13

Handguns have been transported, shipped, received, or imported into the United States by members of the United States Armed Forces to their place of residence without such members having obtained the required permit or other authorization required by their State of residence which would permit them to possess or own (as opposed to a license to purchase) handguns in that State.

18 U.S.C. 925(a)(4) provides that when established to the satisfaction of the Secretary to be consistent with the provisions of 18 U.S.C. Chapter 44 and other applicable Federal and State laws and published ordinances, the Secretary may authorize the transportation, shipment, receipt, or importation into the United States to the place of residence of any member of the United States Armed Forces who is on active duty outside the United States (or has been on active duty outside the United States within the 60-day period

immediately preceding the transportation, shipment, receipt, or importation), of any firearm or ammunition which is:

(a) Determined by the Secretary to be generally recognized as particularly suitable for sporting purposes, or determined by the Department of Defense to be a type of firearm normally classified as a war souvenir; and

(b) Intended for the personal use of such member.

27 CFR 178.114(a) provides that an application for a permit to import a firearm or ammunition into the United States to the place of residence of any military member of the United States Armed Forces on active duty outside the United States shall include a certification by the applicant that the transportation, receipt, or possession of the firearm or ammunition to be imported, would not constitute a violation of any State law or local ordinance at the place of the applicant's residence.

In order to assure that the transportation, shipment, receipt, or importation of handguns under 27 CFR 178.114 is not in violation of applicable State laws, it is held that, any member of the United States Armed Forces who is a resident of any State or territory which requires that a permit or authorization be obtained prior to possessing or owning a handgun shall, in addition to making the required certification in the application, submit with his application to the Director a copy of the license, permit, certificate of registration, or firearm identification card, as applicable and as required by his State, in order to obtain a permit to import a handgun into the United States.

[74 AF C.B. 60]

**27 CFR 178.124: FIREARMS
TRANSACTION RECORDS
(Also 178.123, 178.125, 178.147)**

Form 4473 shall not be required to record disposition of a like replacement firearm when such firearm is delivered by a licensee to the person from whom the malfunctioning or damaged firearm was received, provided such disposition is recorded in the licensee's permanent records.

ATF Rul. 74-20

It is held that a firearms transaction record, Form 4473, shall not be required to record the disposition of a replacement firearm of the same kind and type where such a firearm is delivered by a licensee to the person from whom the malfunctioning or damaged firearm was received.

It should be noted, however, that the licensee is required by 27 CFR 178.125 to maintain in his permanent records the disposition of such a replacement firearm. (See also ATFR 76-25)

[74 AF C.B. 61]

**27 CFR 178.11: MEANING OF TERMS
(Also 179.11)**

A small caliber weapon ostensibly designed to expel only tear gas, similar substances, or pyrotechnic signals, which may readily be converted to expel a projectile by means of an explosive, classified as a firearm.

ATF Rul. 75-7

The term "firearm" as used in 18 U.S.C. 921(a)(3) includes "any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive."

A small caliber weapon ostensibly designed to expel only tear gas, similar substances or pyrotechnic signals by the action of an explosive, which may readily be converted to expel a projectile by means of an explosive, constitutes, a "firearm" within the purview of 18 U.S.C. 921(a)(3)(A).

Tests performed on these weapons have established that they may readily be converted to expel a projectile by the action of an explosive, normally by means of a minor alteration of the expended Helix cartridge and/or the simple attachment of a barrel/chamber to the firing mechanism.

Such weapons manufactured within the United States on or after June 1, 1975, will be subject to all of the provisions of Chapter 44 and 27 CFR Part 178. Such weapons manufactured before June 1 1975, will not be treated as subject to the provisions of Chapter 44 and 27 CFR Part 178 in order to allow persons manufacturing and dealing in such weapons to comply with the provisions of Chapter 44 and 27 CFR Part 178.

Since such weapons are not generally recognized as particularly suitable for or readily adaptable to sporting purposes (18 U.S.C. 925(d)(3)), the importation of such weapons is prohibited unless such importation comes within one of the statutory exceptions provided in 18 U.S.C. 925.

[75 AF C.B. 55]

**27 CFR 178.94: SALES OR DELIVERIES
BETWEEN LICENSEES**

A firearms licensee may continue operations until his renewal application for a license is finally acted upon.

ATF Rul. 75-27

Under 5 U.S.C. 558, when a licensee has made timely and sufficient application for a renewal in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency. In accordance with section 558, a firearms licensee who timely applies for renewal of his license is authorized to continue his firearms operations as authorized by his license until his renewal application is finally acted upon. As provided by 27 CFR 178.94, a transferor licensee is authorized to continue to make shipments to a licensee for not more than 45 days following the expiration date of the transferee's license.

Held, a transferor licensee may continue to make firearms and ammunition shipments to a licensee who has timely applied for renewal of his license but has not had his application acted upon within 45 days after the expiration of his license. The transferor licensee shall, however, in cases where the 45-day period has passed, obtain appropriate evidence that the transferee's license renewal application is still pending in the office of the Regional Director (Compliance), Bureau of Alcohol, Tobacco and Firearms. Such evidence should consist of a letter from the Regional Director (Compliance), to the transferee licensee stating that his renewal application has been timely received and that action thereon is currently pending.

[75 AF C.B. 60]

**27 CFR 178.92: IDENTIFICATION OF
FIREARMS**

Importers may adopt serial numbers placed on certain firearms by foreign manufacturers.

ATF Rul. 75-28

The Bureau has determined that in some cases the serial number placed on a firearm by a foreign manufacturer is adequate to provide the identification number required by section 178.92. See, also, section 178.22(a).

Held, where a serial number has been placed on the frame or receiver of a firearm by a foreign manufacturer in the manner contemplated by 27 CFR 178.92, and such serial number does not duplicate a number previously adopted or assigned by the importer to any other firearm, the importer may adopt the serial number of the foreign manufacturer:

Provided, the importer shall in all cases place his name and address (city and State, or recognized abbreviation thereof), and any other marks necessary to comply with the identification requirements of 27 CFR 178.92, on such imported firearms.

[75 AF C.B. 59] [Amended]

**27 CFR 178.11: MEANING OF TERMS
(Also 179.11)**

A hand-held device designed to expel by means of an explosive two electrical contacts (barbs) connected by two wires attached to a high voltage source in the device classified as a firearm.

ATF Rul. 76-6

Taser Model TF-1, a hand-held device designed to expel by means of an explosive two electrical contacts (barbs) connected by two wires attached to a high voltage source in the device, is a "firearm" within the purview of 18 U.S.C. 921(a)(3)(A). It is also an "any other weapon" under the National Firearms Act (26 U.S.C. 5845(e)).

In order to allow persons manufacturing and dealing in such weapons to comply with the provisions of Chapter 44 and 27 CFR Part 178, this ruling will be applicable to such weapons manufactured within the United States on or after May 1, 1976. Such weapons manufactured before May 1, 1976, will not be treated as subject to the provisions of Chapter 44 and 27 CFR Part 178. With respect to the "any other weapon" classification under the National Firearms Act, pursuant to the 26 U.S.C. 7805(b), this ruling will not be applied to such weapons manufactured before May 1, 1976. Accordingly, such weapons manufactured on or after May 1, 1976, will be subject to all the provisions of the National Firearms Act and 27 CFR Part 179.

(Amplified by ATFR 80-20)

[76 AF C.B. 96]

**27 CFR 178.124: FIREARMS
TRANSACTION RECORD
(Also 178.125, 178.126a)**

Certain reporting and recordkeeping requirements of pawnbrokers are explained.

ATF Rul. 76-15

The regulations do not require that a pawnbroker execute Form 4473 when a firearm is pledged for a loan. However, he must record the receipt thereof in his permanent acquisition and disposition record as required by 27 CFR 178.125(e). At the time a firearm is redeemed by a nonlicense pledgor, Form 4473 must be executed and the appropriate entry made in the permanent acquisition and disposition record. Although a redemption is not considered a sale, it is a disposition for purposes of 27 CFR 178.124(a), 178.125(e), and 178.126a. See *Huddleston v. United States*, 415 U.S. 814 (1974).

However, no report of multiple sales and other dispositions is required to be filed with ATF when the handguns are returned to the person from whom received.

Held, Form 4473, Firearms Transaction Record, need not be executed when a pawnbroker accepts a firearm as a pledge for a loan. However, if a nonlicensee pledgor redeems the firearm or if disposition of the firearm is made to any other nonlicensee, Form 4473 must be executed. Held further, pawnbrokers must enter into their permanent acquisition and disposition record the receipt of a firearm as a pledge for a loan and any disposition, including redemption, of such firearm. Held further, pawnbrokers must submit reports of multiple sales and other dispositions of pistols and revolvers as required by 27 CFR 178.126a when the person receiving them is not the person who pawned the firearms.

[76 AF C.B. 100] [Amended]

27 CFR 179.11: MEANING OF TERMS

Mere possession of a license and a special tax stamp as a dealer in firearms does not qualify a person to receive firearms transfer-tax-free.

ATF Rul. 76-22

The mere possession of a license and a special (occupational) tax stamp as a dealer in firearms does not qualify a person to receive firearms transfer-tax-free. Any person holding a license and a special tax stamp as a dealer in firearms and not actually engaged within the United States in the business of selling NFA firearms may not lawfully receive NFA firearms without the transfer tax having been paid by the transferor. Where it is, therefore, determined that the proposed transferee on a Form 3, Application for Tax-Exempt Transfer of Firearm and Registration to Special (Occupational) Taxpayer, is not actually engaged in the business of dealing in NFA firearms, such application will be denied. In addition, if such person receives NFA firearms without the transfer tax having been paid, such firearms may be subject to seizure for forfeiture as having been unlawfully transferred without payment of the transfer tax.

[76 AF C.B. 103]

27 CFR 178.121: GENERAL
(Also 178.147)

Recordkeeping requirements for firearms from which parts are salvaged for use in repairing firearms are clarified.

ATF Rul. 76-25

Section 921(a)(3) of Title 18, United States Code, and the regulations at 27 CFR 178.11 define the term "firearm" to include any weapon which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, and the frame or receiver of any such weapon.

The regulations in 27 CFR 178.122, 178.123 and 178.125 require each licensed importer, licensed manufacturer, and licensed dealer, respectively, to maintain such records of acquisition (including by manufacture) or disposition, whether temporary or permanent, of firearms as therein prescribed.

Held, a licensee who purchases a damaged firearm for the purpose of salvaging parts therefrom shall enter receipt of the firearm in his firearms acquisition and disposition record. If the frame or receiver of the firearm is damaged to the extent that it cannot be repaired, or if the licensee does not desire to repair the frame or receiver, he may destroy it and show the disposition of the firearm in his records as having been destroyed. Before a firearm may be considered destroyed, it must be cut, severed or mangled in such a manner as to render the firearm completely inoperative and such that it cannot be restored to an operative condition.

Where the repair of a customer's firearm results in an exchange of a frame or receiver, an entry shall be made in the licensee's records to show the transfer of such replacement part, as it is a "firearm" as defined in 18 U.S.C. 921(a)(3). Further, as held in ATF Ruling 74-20, 1974 **AT** C.B. 61, a Form 4473, Firearms Transaction Record, shall not be required to record the disposition of a replacement firearm of the same kind and type where the firearm is delivered by the licensee to the person from whom the malfunctioning or damaged firearm was received. The frame or receiver received from the customer shall be entered as an acquisition, and if destroyed, it shall be entered in the disposition record as destroyed.

With regard to National Firearm Act firearms as defined in 26 U.S.C. 5845(a), in addition to the above recordkeeping requirements, the registration and transfer procedures of 27 CFR Part 179 must be complied with.

[76 **AT** C.B. 99]

27 CFR 178.121: GENERAL (RECORDS)

The recordkeeping requirements for licensed gunsmiths are clarified. ATF Rul. 73-13 amplified.

ATF Rul. 77-1

ATF Ruling 73-13, 1973 **AT** C.B. 92, held that a licensed gunsmith must maintain the required records as specified in 27 CFR 178.121 et seq., and if a gunsmith engages in the business of buying and selling firearms, he must record these transactions on a Form 4473 (Firearms Transaction Record) for each sale. However, as provided in Section 178.124(a), a Form 4473 is not required to record the disposition made of a firearm delivered to a gunsmith for repair or customizing when the firearm is returned to the person from whom

received.

The Bureau recognizes the necessity for having on-the-spot repairs made to firearms at skeet, trap, target, and similar organized events. It is, therefore, held that licensed gunsmiths may take immediate on-the-spot repairs to firearms at skeet, trap, target, and similar organized shooting events.

Held further, a licensed gunsmith must enter into his bound acquisition and disposition record, required to be maintained by 27 CFR 178.125(e), each receipt and disposition of firearms, except that a firearm need not be entered in the bound acquisition and disposition record if the firearm is brought in for adjustment or repair and the owner waits while it is being adjusted or repaired or if the gunsmith returns the firearm to the owner during the same business day it is brought in. If the firearm is retained from one business day to another or longer, it must be recorded in the bound acquisition and disposition record.

Held further, a licensed gunsmith is not required to prepare a Form 4473 (Firearms Transaction Record) where a firearm is delivered to him for the sole purpose of customizing, adjustment, or repair and the firearm is returned to the person from whom received. However, if a licensed gunsmith engages in the business of selling firearms, he must record these transactions on a Form 4473 for each sale in addition to maintaining the bound firearms acquisition and disposition record required by 27 CFR 178.125(e).

ATF Rul. 3/ -13, 1973 ATF C.B. 92, is hereby amplified.

[77 ATF C.B. 185]

**27 CFR 178.124: FIREARMS
TRANSACTION RECORD**

Means of identification furnished by a nonlicensee purchasing a firearm.

ATF Rul. 79-7

The law places upon the licensee the responsibility for establishing the identity, place of residence, and age of an unlicensed person before selling or delivering a firearm to such person.

Under 27 CFR 178.124, nonlicensee's eligibility to purchase a firearm is established through the use of Form 4473 (Firearms Transaction Record). The regulation provides that before a licensee may sell or deliver a firearm to a nonlicensee, the form must be completed showing the purchaser's name, address, date of birth, and other pertinent information. Further, the regulation and form require the purchaser to identify himself in any manner customarily used in commercial transactions (e.g., a driver's license) and the licensee must indicate the manner in which the purchaser was identified. (See, also, 178.125a, personal firearms collection sale by a licensee.)

Satisfactory identification of firearms purchaser must identify the purchaser's name, age or date of birth, place of residence, and signature. A driver's license or identification card issued by a State in lieu of a driver's license is particularly appropriate. Social Security cards, alien registration receipt cards, and military identification cards are not, in and of themselves, acceptable to identify potential firearms purchasers. The Social Security card is unsatisfactory because no address or date of birth is shown. While the alien registration card and military identification show name, age or date of birth, as well as other identifying information, the State of residence is not shown. While a particular document may not be sufficient to meet the statutory requirement for identifying the purchaser,

any combination of documents which together disclose the required information concerning the purchaser is acceptable.

[ATFQB 1979 -1 26] [Amended]

Editor's Note

ATF Rul. 79-7 was modified by T.D. ATF-389, 62 FR 19442, April 21, 1997, to require additional information on Form 4473. Under the new regulations, the form also requires the purchaser to state whether he or she is a citizen of the United States and to affirmatively provide his or her State of residence. In the case of a purchaser who is an alien legally in the United States, the regulations also require the purchaser to provide proof of residency through the use of substantiating documentation showing that the purchaser has resided in a State continuously for at least 90 days prior to the transfer of the firearm. In addition, the licensee must verify the identity of the alien by examining a government issued photo identification document. It should also be noted that Public Law 105-277, enacted on October 21, 1998, makes it unlawful, with certain exceptions, to transfer firearms to aliens admitted to the United States under a nonimmigrant visa and for such aliens to possess firearms.

27 CFR 178.112: IMPORTATION BY A LICENSED IMPORTER

Applications to import surplus military firearms or nonsporting firearms or ammunition for individual law enforcement officers for official use must be accompanied by the agency's purchase order.

ATF Rul. 80-8

The Bureau of Alcohol, Tobacco and Firearms has received several inquiries from firearms importers and dealers, law enforcement agencies, and the public requesting clarification of the statutes, regulations and procedures regarding the importation of firearms for law enforcement agencies.

Importation of surplus military firearms or firearms not particularly suitable for or readily adaptable to sporting purposes is generally prohibited by section 925(d)(3) of Title 18, United States Code. However, section 925(a)(1) provides that this prohibition does not apply to the importation of firearms or ammunition sold or shipped to, or issued for the use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

Pursuant to section 925(a)(1), the Bureau has previously allowed the importation of surplus military firearms and nonsporting firearms for individual law enforcement officers for official use. In approving such importation applications, the Bureau required federal firearms licensees to obtain from the agency employing the officer a certificate of the chief law enforcement officer stating that the firearm ammunition is for use in the performance of official duties.

However, once these firearms are imported for the individual officer for "official use," there is no prohibition in the law against the officer's resale or retention of the firearms for personal use. The purpose of section 925(a)(1) is to permit importation of firearms for the exclusive use of government agencies. The statute was not intended and may not be used as a vehicle by which unimportable firearms can be introduced into ordinary commercial channels in the United States.

Held, a licensee's application to import surplus military firearms or

nonsporting firearms or ammunition for law enforcement officers will not be approved unless accompanied by a purchase order from a department or agency of the United States or any department, agency or political subdivision of any State. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

[80 AF C.B. 20]

**27 CFR 178.11: MEANING OF TERMS
(Also 27 CFR 179.11)**

A hand-held device with a hand grip bent at an angle to the bore and having a rifled bore which is designed to expel, by means of an explosive, two electrical contacts (barbs) connected by two wires to a high voltage source within the device is classified as a firearm. ATF Rul. 76-6 is amplified.

ATF Rul. 80-20

The Bureau has determined in AT Rul. 67 -6 that the Taser Model TF1 was a firearm as that term is defined in Title 18, United States Code (U.S.C.), section 921(a)(3), and that the Model TF1 also met the "any other weapon" definition found in the National Firearms Act (NFA), Title 26, U.S.C., section 5845(e). This ruling was limited in its application to Taser Models TF1 produced on or after May 1, 1976. The Taser Models TF76 and TF76A were subsequently developed and differ from the Taser Model TF1 in that these models each have a hand grip bent at an angle to the bore and the bore of each is rifled.

The changes in the design of the Taser Models TF76 and TF76A bring them within the exclusion found in the "any other weapon" definition of the NFA for pistols and revolvers having a rifled bore or rifled bores.

Held, the Taser Models TF76 and TF76A are not subject to the provisions of the NFA. However, they are firearms as defined in Title 18, U.S.C., section 921(a)(3) and are subject to the provisions of Title 18, U.S.C., Chapter 44 and Title 27, Code of Federal Regulations, Part 178.

ATF Rul. 67 -6, 1976, FAT C.B. 96 is hereby amplified.

[ATFB 1980 -4 24]

27 CFR 178.11: MEANING OF TERMS

An out-of-State college student may establish residence in a State by residing and maintaining a home in a college dormitory or in a location off-campus during the school term.

ATF Rul. 80-21

"State of residence" is defined by regulation in 27 CFR 178.11 as the State in which an individual regularly resides or maintains a home. The regulation also provides an example of an individual who maintains a home in State X and a home in State Y. The individual regularly resides in State X except for the summer months and in State Y for the summer months of the year. The regulation states that during the time the individual actually resides in State X he is a resident of State X, and during the time he actually resides in State Y he is a resident of State Y.

Applying the above example to out-of-State college students it is held, that during the time the students actually reside in a college dormitory or at

an of -campus location they are considered residents of the State where the dormitory or off-campus home is located. During the time out-of-State college students actually reside in their home State they are considered residents of their home State.

[ATFB 198 -4 25]

27 CFR 178.111: GENERAL

Nonresident U.S. citizens returning to the United States and nonresident aliens lawfully immigrating to the United States may obtain a permit to import firearms acquired outside of the United States, provided such firearms may be lawfully imported.

ATF Rul. 81-3

Section 922(a)(3) of Title 18, United States Code, makes it unlawful, with certain exceptions, for a person to bring into his State of residence a firearm which he acquired outside that State. An unlicensed resident of a State must, therefore, arrange for the importation of the firearm through a Federal firearms licensee.

The definition of "State of residence" in 27 CFR 178.11 provides that the State in which an individual regularly resides or maintains a home is the State of residence of that person. U.S. citizens who reside outside of the United States are not residents of a State while so residing. A person lawfully immigrating to the United States is not a resident of a State unless he is residing and has resided in a State for a period of at least 90 days. Therefore, such persons are not precluded by section 922(a)(3) from importing into the United States any firearms acquired outside of the United States that may be lawfully imported. The firearms must accompany such persons since once a person is in the United States and has acquired residence in a State he may import a firearm only by arranging for the importation through a Federal firearms licensee.

As applicable to this ruling, 18 U.S.C. 925(d) provides that firearms are importable if they are generally recognized as particularly suitable for, or readily adaptable to, sporting purposes, excluding National Firearms Act (NFA) firearms and surplus military firearms.

Held, a nonresident U.S. citizen returning to the United States after having resided outside of the United States, or a nonresident alien lawfully immigrating to the United States, may apply for a permit from ATF to import for personal use, not for resale, firearms acquired outside of the United States without having to utilize the services of a Federal firearms licensee. The application on ATF Form 6 Part I (7570.3A), Application and Permit for Importation of Firearms, Ammunition and Implements of War, should include a statement, on the application form or on an attached sheet, that:

(1) the applicant is a nonresident U.S. citizen who is returning to the United States from a residence outside of the United States or, in the case of an alien, is lawfully immigrating to the United States from a residence outside of the United States; and

(2) the firearms are being imported for personal use and not for resale.

[ATFB 198 -3 77]

27 CFR 179.11: MEANING OF TERMS

The AR15 auto sear is a machine gun as defined by 26 U.S.C. 5845(b).

ATF Rul. 81-4

The Bureau of Alcohol, Tobacco and Firearms has examined an auto sear known by various trade names including "AR15 Auto Sear," "Drop In Auto Sear," and "Auto Sear II," which consists of a sear mounting body, sear, return spring, and pivot pin. The Bureau finds that the single addition of this auto sear to certain AR15 type semiautomatic rifles, manufactured with M16 internal components already installed, will convert such rifles into machine guns.

The National Firearms Act, 26 U.S.C. 5845(b) defines "machine gun" to include any combination of parts designed and intended for use in converting a weapon to shoot automatically more than one shot, without manual reloading, by a single function of the trigger.

Held: The auto sear known by various trade names including "AR15 Auto Sear," "Drop In Auto Sear," and "Auto Sear II," is a combination of parts designed and intended for use in converting a weapon to shoot automatically more than one shot, without manual reloading, by a single function of the trigger. Consequently, the auto sear is a machine gun as defined by 26 U.S.C. 5845(b).

With respect to the machine gun classification of the auto sear under the National Firearms Act, pursuant to 26 U.S.C. 7805(b), this ruling will not be applied to auto sears manufactured before November 1, 1981. Accordingly, auto sears manufactured on or after November 1, 1981, will be subject to all the provisions of the National Firearms Act and 27 C.F.R. Part 179.

[ATFQB 1981-3 78]

Editor's Note

Regardless of the date of manufacture of a drop in auto sear, possession of such a sear and certain M-16 fire control parts is possession of a machine gun as defined by the NFA. Specifically, these parts are a combination of parts designed and intended for use in converting a weapon into a machine gun and are a machine gun as defined in the NFA. (See "Important Information Concerning AR15-Type Rifles" under "Items of Interest" in this publication.)

27 CFR 179.11: MEANING OF TERMS

The KG-9 pistol is a machine gun as defined in the National Firearms Act.

ATF Rul. 82-2

The Bureau of Alcohol, Tobacco and Firearms has examined a firearm identified as the KG-9 pistol. The KG-9 is a 9 millimeter caliber, semiautomatic firearm which is blowback operated and which fires from the open bolt position with the bolt incorporating a fixed firing pin. In addition, a component part of the weapon is a disconnecter which prevents more than one shot being fired with a single function of the trigger.

The disconnecter is designed in the KG-9 pistol in such a way that a simple modification to it, such as cutting, filing, or grinding, allows the pistol to operate automatically. Thus, this simple modification to the disconnecter together with the configuration of the above design features (blowback operation, firing from the open bolt position, and fixed firing pin) in the KG-9 permits the firearm to shoot automatically, more than one shot, without manual reloading, by a single function of the trigger. The above combination of design features as employed in the KG-9 is normally not found

in the typical sporting firearm.

The National Firearms Act, 26 U.S.C. 5845(b), defines a machine gun to include any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.

The "shoots automatically" definition covers weapons that will function automatically. The "readily restorable" definition define weapons which previously could shoot automatically but will not in their present condition. The "designed" definition includes those weapons which have not previously functioned as machine guns but possess design features which facilitate full automatic fire by simple modification or elimination of existing component parts.

Held: The K -9 pistol is designed to shoot automatically more than one shot, without function of the trigger. Consequently, the KG-9 pistol is a machine gun as defined in section 5845(b) of the Act.

With respect to the machine gun classification of the KG-9 pistol under the National Firearms Act, pursuant to 26 U.S.C. § 7805(b), this ruling will not be applied to KG-9 pistols manufactured before January 19, 1982. Accordingly, KG-9 pistols manufactured on or after January 19, 1982, will be subject to all the provisions of the National Firearms Act and 27 C.F.R. Part 179.

[ATFB 1982 -1 18]

27 CFR 179.11: MEANING OF TERMS

The SM10 and SM11A1 pistols and SAC carbines are machine guns as defined in the National Firearms Act.

ATF Rul. 82-8

The Bureau of Alcohol, Tobacco and Firearms has reexamined firearms identified as SM10 pistols, SM11A1 pistols, and SAC carbines. The SM10 is a 9 millimeter or .45ACP caliber, semiautomatic firearm; the SM11A1 is a .380ACP caliber, semiautomatic firearm; and the SAC carbine is a 9 millimeter or .45ACP caliber, semiautomatic firearm. The weapons are blowback operated, fire from the open bolt position with the bolt incorporating a fixed firing pin, and the barrels of the pistols are threaded to accept a silencer. In addition, component parts of the weapons are disconnect and trip which prevent more than one shot being fired with a single function of the trigger.

The disconnect and trip are designed in the SM10 and SM11A1 pistols and in the SAC carbine (firearms) in such a way that a simple modification to them, such as cutting, filing, or grinding, allows the firearms to operate automatically. Thus, this simple modification to the disconnect or trip, together with the configuration of the above design features (blowback operating, firing from the open bolt position, and fixed firing pin) in the SM10 and SM11A1 pistols and in the SAC carbine, permits the firearms to shoot automatically, more than one shot, without manual reloading, by a single function of the trigger. The above combination of design features as employed in the SM10 and SM11A1 pistols and the SAC carbine are normally not found in typical sporting firearms.

The National Firearms Act, 26 U.S.C. § 5845(b), defines a machine gun to include any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.

The "shoots automatically" definition covers weapons that will function automatically. The "readily restorable" definition define weapons which previously could shoot automatically but will not in their present condition. The "designed" definition includes those weapons which have not previously functioned as machine guns but possess design features which facilitate full automatic fire by a simple modification or elimination of existing component parts.

Held: The SM10 and SM11A1 pistols and the SAC carbine are designed to shoot automatically more than one shot, without manual reloading, by a single function of the trigger. Consequently, the SM10 and SM11A1 pistols and SAC carbines are machine guns as defined in Section 5845(b) of the Act.

With respect to the machine gun classification of the SM10 and SM11A1 pistols and SAC carbines, under the National Firearms Act, pursuant to 26 U.S.C. 7805(b), this ruling will not be applied to SM10 and SM11A1 pistols and SAC carbines manufactured or assembled before June 21, 1982. Accordingly, SM10 and SM11A1 pistols and SAC carbines, manufactured or assembled on or after June 21, 1982, will be subject to all the provisions of the National Firearms Act and 27 C.F.R. Part 179.

[ATFB 1982 -2 49]

27 CFR 179.11: MEANING OF TERMS

The YAC STEN MK II carbine is a machine gun as defined in the National Firearms Act.

ATF Rul. 83-5

The Bureau of Alcohol, Tobacco and Firearms has examined a firearm identified as the YAC STEN MK II carbine. The YAC STEN MK II carbine is a 9 millimeter caliber firearm which has identical design characteristics to the original selective fire STEN submachine gun designed by Reginald Vernon Shepherd and Harold John Turpin. The weapon is blowback operated and fires from the open bolt position with the bolt incorporating a fixed firing pin. In addition, a component part of the weapon is a trip lever (disconnecter) which has been modified to prevent more than one shot being fired with a single function of the trigger.

The trip lever (disconnecter) is designed in such a way that a simple modification to it, such as bending, breaking or cutting, allows the weapon to operate automatically. Thus, this simple modification to the trip lever (disconnecter), together with STEN submachine gun design features and components in the YAC STEN MK II carbine, permits the firearm to shoot automatically, more than one shot, without manual reloading by a single function of the trigger. The above combination of machine gun design features as employed in the YAC STEN MK II carbine are not normally found in the typical sporting firearm.

The National Firearms Act, 26 U.S.C. 5845(b), defines a machine gun to include any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.

The "shoots automatically" definition covers weapons that will function automatically. The "readily restorable" definition define weapons which previously could shoot automatically but will not in their present condition. The "designed" definition includes weapons which have not previously functioned as machine guns but possess specific machine gun design features

which facilitate automatic fire by simple alteration or elimination of existing component parts.

Held: The YAC STEN MK II carbine is designed to shoot automatically more than one shot, without manual reloading, by a single function of the trigger. Consequently, the STEN MK II semiautomatic carbine is a machine gun as defined in Section 5845(b) of the Act.

[ATFB 198 -3 35]

27 CFR 179.111: IMPORTATION PROCEDURE

A National Firearms Act (NFA) firearm may not be imported for use as a sample for sales to law enforcement agencies if the firearm is a curio or relic unless it is established that the firearm is particularly suitable for use as a law enforcement weapon.

ATF Rul. 85-2

The Bureau of Alcohol, Tobacco and Firearms has approved a number of applications to import National Firearms Act (NFA) firearms for the use of registered importers to generate orders for such firearms from law enforcement agencies.

A review of the characteristics of the NFA firearms approved for importation as sales samples indicates that some of the firearms are not being imported for the purposes contemplated by the statute. Some of the NFA firearms imported are, in fact, curios or relics and are more suitable for use as collector's items than law enforcement weapons.

Importations of NFA firearms are permitted by 26 U.S.C. 5844, which provides in pertinent part:

"No firearms shall be imported or brought into the United States or any territory under its control or jurisdiction unless the importer establishes, under regulations as may be prescribed by the Secretary, that the firearm to be imported or brought in is:

(1) being imported or brought in for the use of the United States or any department, independent establishment, or agency thereof or any State or possession or any political subdivision thereof; or

(2) ***

(3) being imported or brought in solely for ... use as a sample by a registered importer or registered dealer;

except that, the Secretary may permit the conditional importation or bringing in of a firearm for examination and testing in connection with classifying the firearm."

The sole purpose of the statute permitting the importation of NFA firearms as sales samples is to permit registered importers to generate orders for firearms from government entities, primarily law enforcement agencies, on the basis of the sample.

The implementing regulation, 27 CFR Section 179.111, provides that the person importing or bringing a firearm into the United States or any territory under its control or jurisdiction has the burden of proof to affirmatively establish that the firearm is being imported or brought in for one of the authorized purposes. In addition, a detailed explanation of why the

importation falls within one of the authorized purposes must be attached to the application to import. The mere statement that an NFA firearm is being imported as a sales sample for demonstration to law enforcement agencies does not meet the required burden of proof and is not a detailed explanation of why the importation falls within the import standards.

Held, an application to import a National Firearms Act firearm as a sample in connection with sales of such firearms to law enforcement agencies will not be approved if the firearm is determined to be a curio or relic unless it is established by specific information that the firearm is particularly suitable for use as a law enforcement weapon. For example, the importer must provide detailed information as to why a sales sample of a particular weapon is suitable for law enforcement purposes and the expected customers who would require a demonstration of the weapon. Information as to the availability of firearms to fill subsequent orders would help meet the burden of establishing use as a sales sample. Also, letters from law enforcement agencies expressing a need for a particular model or interest in seeing a demonstration of a particular firearm would be relevant.

[ATFB 8 -2 62]

Editor's Note

The importation of machine guns for use as sales samples must also meet the requirements of 27 CFR 179.105(d).

27 CFR 178.118: IMPORTATION OF CERTAIN FIREARMS CLASSIFIED AS CURIOS OR RELICS (Also 178.11 and 178.26)

Surplus military firearms frames or receivers alone not specifically classified as curios or relics by ATF will be denied importation.

ATF Rul. 85-10

Section 233 of the Trade and Tariff Act of 1984, 9 Stat. 2991, amended Title 18, United States Code, section 925 to allow licensed importers to import firearms listed by the Secretary as curios or relics, excluding handguns not generally recognized as particularly suitable for or readily adaptable to sporting purposes. The amendment had the effect of allowing the importation of surplus military curio or relic firearms that were previously prohibited from importation by 18 U.S.C. section 925(d)(3).

Congressional intent was expressed by Senator Robert Dole in 130 CONG. REC. S2234 (daily ed., Mar. 2, 1984), as follows:

First. This provision is aimed at allowing collectors to import fine works of art and other valuable weapons.

Second. This provision would allow the importation of certain military surplus firearms that are classified as curios and relics by regulations of the Secretary of the Treasury.

Third. In order for an individual or firm to import a curio or relic it must first be put on a list by petitioning the Secretary of the Treasury. The Secretary must find the firearm's primary value is that of being a collector's item.

Fourth. The only reason a person would purchase these firearms is because of their peculiar collector's status. And, in fact, they must be

special firearms and classified as such in order to import.

This language clearly shows that Congress intended to permit the importation of surplus military firearms of special interest and value to collectors and recognized by ATF as meeting the curio or relic definition in 27 CFR 178.11. The regulation defines "curios or relics" as firearms of "special interest to collectors by reason of some quality other than is ordinarily associated with firearms intended for sporting use or as offensive or defensive weapons." The regulation further defines curios or relics to include "firearms which derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period or event."

In classifying firearms as curios or relics under this regulation, ATF has recognized only assembled firearms as curios or relics.

Moreover, ATF's classification of surplus military firearms as curios or relics has extended only to those firearms in their original military configuration. Frames or receivers of curios or relics and surplus military firearms not in their original military configuration were not generally recognized as curios or relics by ATF since they were not of special interest or value as collector's items.

Specifically, they did not meet the definition of curio or relic in section 178.11 as firearms of special interest to collectors by reason of a quality other than is ordinarily associated with sporting firearms or offensive or defensive weapons.

Furthermore, they did not ordinarily have monetary value as novel, rare, or bizarre firearms; nor were they generally considered curios or relics because of their association with some historical figure, period or event.

It is clear from the legislative history that Congress did not intend for the frames or receivers alone of surplus military firearms, or any other surplus military firearms not in their original military configuration, to be importable under section 925(e). It is also clear that only those firearms classified by ATF as curios or relic were intended to be approved by ATF for importation.

Held, to be importable under 18 U.S.C. section 925(e), surplus military firearms must be classified as curios or relics by ATF. Applications by licensed importers to import frames or receivers alone of surplus military curio or relic firearms will not be approved under section 925(e). Surplus military firearms will not be classified as curios or relics unless they are assembled in their original military configuration, and applications for permits to import such firearms will not be approved.

[ATFB 8 -3 46]

26 U.S.C. § 5845(f)(2): DESTRUCTIVE DEVICE (Nonsporting shotgun having a bore of more than one-half inch in diameter)

The USAS-12 shotgun has a bore of more than one-half inch in diameter and is not generally recognized as particularly suitable for sporting purposes. Therefore, it is classified as a destructive device for purposes of the National Firearms Act, 26 U.S.C. Chapter 53.

ATF Rul. 94-1

The Bureau of Alcohol, Tobacco and Firearms (ATF) has examined a firearm identified as the USAS-12 shotgun to determine whether it is a destructive

device as that term is used in the National Firearms Act (NFA), 26 U.S.C. Chapter 53.

The USAS-12 is a 12-gauge, gas-operated autoloading semiautomatic shotgun which is chambered for 12-gauge 2 3/4-inch ammunition. It has an 18 1/4-inch barrel, is approximately 38 inches long, and weighs 12.4 pounds unloaded and approximately 15 pounds with a loaded magazine, depending on the capacity of the magazine. The USAS-12 is equipped with a 12-round detachable box magazine, but a 28-round detachable drum magazine is also available. The shotgun is approximately 11 inches deep with a box magazine. There is an integral carrying handle on top of the receiver, which houses a rifle-type aperture rear and adjustable post-type front sight. The USAS-12 has a separate combat-style pistol grip located on the bottom of the receiver, forward of the buttstock. An optional telescopic sight may be attached to the carrying handle. The barrel is located below the operating mechanism in such fashion that the barrel is in a straight line with the center of the buttstock.

Section 5845(f), Title 26, U.S.C., classifies certain weapons as "destructive devices" which are subject to the registration and tax provisions of the NFA. Section 5845(f)(2) provides as follows:

(f) **Destructive device.** - The term "destructive device" means * * *
(2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary or his delegate finds is generally recognized as particularly suitable for sporting purposes;

A "sporting purposes test which is almost identical to that in section 5845(f)(2) appears in 18 U.S.C. § 925(d)(3). This provision of the Gun Control Act of 1968 (GCA) provides that the Secretary shall authorize a firearm to be imported into the United States if the firearm is "generally recognized as particularly suitable for or readily adaptable to sporting purposes." With the exception of the "readily adaptable" language, this provision is identical to the sporting shotgun exception to the destructive device definition. The definition of "destructive device" in the GCA (18 U.S.C. § 921(a)(4)) is identical to that in the NFA.

In determining whether shotguns with a bore of more than one-half inch in diameter are "generally recognized as particularly suitable for sporting purposes" and thus are not destructive devices under the NFA, we believe it is appropriate to use the same criteria used for evaluating shotguns under the "sporting purposes" test of section 925(d)(3). Congress used virtually identical language in describing the weapons subject to the two statutory schemes, and the language was added to the GCA and NFA at the same time.

In connection with the determination of importability, ATF determined that the USAS-12 shotgun was not eligible for importation under the sporting purposes test in section 925(d)(3). In reaching this determination, ATF evaluated the weight, size, bulk, designed magazine capacity, configuration, and other characteristics of the USAS-12. It was determined that the weight of the USAS-12, 12.4 pounds, made it much heavier than traditional 12-gauge sporting shotguns, which made it awkward to carry for extended periods, as in hunting, and cumbersome to fire at multiple small moving targets, as in skeet and trap shooting. The width of the USAS-12 with drum magazine, approximately 6 inches, and the depth with box magazine, in excess of 11 inches, far exceeded that of traditional sporting shotguns, which do not exceed 3 inches in width or 4 inches in depth. The large size and bulk of the USAS-12 made it extremely difficult to maneuver quickly enough to engage moving targets as is necessary in hunting, skeet, and trap shooting. The detachable box magazine

with 12-cartridge capacity and the detachable drum magazine with 28-cartridge capacity were of a larger capacity than traditional repeating sporting shotguns, which generally contain tubular magazines with a capacity of 3-5 cartridges. Additionally, detachable magazines permit more rapid reloading than do tubular magazines. Finally, the combat-style pistol grip, the barrel-to-buttstock configuration, the bayonet lug, and the overall appearance and general shape of the weapon were radically different from traditional sporting shotguns and strikingly similar to shotguns designed specifically for or modified for combat and law enforcement use.

Section 7805(b), Title 26, U.S.C., provides that the Secretary may prescribe the extent, if any, to which any ruling relating to the internal revenue laws shall be applied without retroactive effect. Accordingly, all rulings issued under the Internal Revenue Code are applied retroactively unless they specifically provide otherwise. Pursuant to section 7805(b), the Director, as the delegate of the Secretary, may prescribe the extent to which any ruling will apply without retroactive effect.

Held: The USAS-12 is a shotgun with a bore of more than one-half inch in diameter which is not particularly suitable for sporting purposes. The weight, size, bulk, designed magazine capacity, configuration, and other factors indicate that the USAS-12 is a semiautomatic version of a military-type assault shotgun. Accordingly, the USAS-12 is a destructive device as that term is used in 26 U.S.C. § 5845(f)(2). Pursuant to section 7805(b), this ruling is applied prospectively effective March 1, 1994, with respect to the making, transfer, and special (occupational) taxes imposed by the NFA. All other provisions of the NFA apply retroactively effective March 1, 1994.

[ATFB 1993-94-1 21]

26 U.S.C. § 5845(f)(2): DESTRUCTIVE DEVICE (Nonsporting shotgun having a bore of more than one-half inch in diameter)

The Striker-12/Streetsweeper shotgun has a bore of more than one-half inch in diameter and is not generally recognized as particularly suitable for sporting purposes. Therefore, it is classified as a destructive for purposes of the National Firearms Act, 26 U.S.C. Chapter 53.

ATF Rul. 94-2

The Bureau of Alcohol, Tobacco and Firearms (ATF) has examined a firearm identified as the Striker-12/Streetsweeper shotgun to determine whether it is a destructive device as that term is used in the National Firearms Act (NFA), 26 U.S.C. Chapter 53.

The Striker-12 and Streetsweeper shotguns are virtually identical 12-gauge shotguns with a spring-driven revolving magazine. The magazine has a 12-round capacity. The shotgun has a fixed stock or folding shoulder stock and may be fired with the folding stock collapsed. The shotgun with an 18-inch barrel is 37 inches in length with the stock extended, and 26.5 inches in length with the stock folded. The shotgun is 5.7 inches in width and weighs 9.24 pounds unloaded. The Striker/Streetsweeper has two pistol grips, one in the center of the firearm below the buttstock, and one on the forearm. The Striker/Streetsweeper was designed and developed in South Africa as a military, security, and anti-terrorist weapon. Various types of 12-gauge cartridges can be fired from the shotgun, and a rapid indexing procedure allows various types of ammunition to be loaded into the cylinder and selected for firing. All 12 rounds can be fired from the shotgun in 3 seconds or less.

Section 5845(f), Title 26, U.S.C., classifies certain weapons as "destructive devices" which are subject to the registration and tax provisions

of the NFA. Section 5845(f)(2) provides as follows:

(f) **Destructive device.**--The term "destructive device" means * * *
(2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary or his delegate finds is generally recognized as particularly suitable for sporting purposes; ..."

A "sporting purposes" test which is almost identical to that in section 5845(f)(2) appears in 18 U.S.C. § 925(d)(3). This provision of the Gun Control Act of 1968 (GCA) provides that the Secretary shall authorize a firearm to be imported into the United States if the firearm is "generally recognized as particularly suitable for or readily adaptable to sporting purposes." With the exception of the readily adaptable language, this provision is identical to the sporting shotgun exception to the destructive devices definition. The definition of "destructive device" in the GCA (18 U.S.C. § 921(a)(4)) is identical to that in the NFA.

In determining whether shotguns with a bore of more than one-half inch in diameter are "generally recognized as particularly suitable for sporting purposes" and thus are not destructive devices under the NFA, we believe it is appropriate to use the same criteria used for evaluating shotguns under the "sporting purposes" test of section 925(d)(3). Congress used virtually identical language in describing the weapons subject to the two statutory schemes, and the language was added to the GCA and NFA at the same time.

In 1984, ATF ruled that the Striker-12 was not eligible for importation under section 925(d)(3) since it is not particularly suitable for sporting purposes. In making this determination, the 198 letter-ruling notes that the Striker was being used in a number of "combat" shooting events. In a letter dated June 30, 1986, ATF again denied importation to the Striker-12, on the basis that it did not meet the "sporting purposes" test of section 925(d)(3). This letter states that, "We believe the weapon to have been specifically designed for military and law enforcement uses."

In evaluating the physical characteristics of the Striker 12/Streetsweeper, ATF concludes that the weight, bulk, designed magazine capacity, configuration, and other features indicate that it was designed primarily for military and law enforcement use and is not particularly suitable for sporting purposes.

The weight of the Striker-12/Streetsweeper, 9.24 pound unloaded, is on the high end for traditional 12-gauge sporting shotguns, which generally weigh between 7 and 10 pounds. Thus, the weight of the Striker-12/Streetsweeper makes it awkward to carry for extended periods, as in hunting, and cumbersome to fire at multiple small moving targets, as in skeet and trap shooting. The width of the Striker-12/Streetsweeper, 5.7 inches, far exceeds that of traditional sporting shotguns, which do not exceed three inches in width or four inches in depth. The large size and bulk of the Striker-12/Streetsweeper make it extremely difficult to maneuver quickly enough to engage moving targets as is necessary in hunting, skeet, and trap shooting. The spring driven revolving magazine with 12-cartridge capacity is a much larger capacity than traditional repeating sporting shotguns, which generally contain tubular magazines with a capacity of 3-5 cartridges. The folding shoulder stock and the two pistol grips are not typical of sporting-type shotguns. Finally, the overall appearance and general shape of the weapon are radically different from traditional sporting shotguns and strikingly similar to shotguns designed specifically for or modified for combat and law enforcement use.

Section 7805(b), Title 26, U.S.C., provides that the Secretary may

prescribe the extent, if any, to which any ruling relating to the internal revenue laws shall be applied without retroactive effect. Accordingly, all rulings issued under the Internal Revenue Code are applied retroactively unless they specifically provide otherwise. Pursuant to section 7805(b), the Director, as the delegate of the Secretary, may prescribe the extent to which any ruling will apply without retroactive effect.

Held: The Striker-12/Streetsweeper is a shotgun with a bore of more than one-half inch in diameter which is not particularly suitable for sporting purposes. The weight, size, bulk, designed magazine capacity, configuration, and other factors indicate that the Striker-12/Streetsweeper is a military-type shotgun, as opposed to a shotgun particularly suitable for sporting purposes. Accordingly, the Striker-12/Streetsweeper is a destructive device as that term is used in 26 U.S.C. § 5845(f)(2). Pursuant to section 7805(b), this ruling is applied prospectively effective March 1, 1994, with respect to the making, transfer, and special (occupational) taxes imposed by the NFA. All other provisions of the NFA apply retroactively effective March 1, 1994.

[ATFB 1993-1994-1 23]

18 U.S.C. § 921(a)(4): DESTRUCTIVE DEVICE
26 U.S.C. § 5845(f)(2): DESTRUCTIVE DEVICE
(Firearm having a bore of more than one-half inch in diameter)

37/38 mm gas/flare guns possessed with cartridges containing wood pellets, rubber pellets or balls, or bean bags are classified as destructive devices for purposes of the Gun Control Act, 18 U.S.C. Chapter 44, and the National Firearms Act, 26 U.S.C. Chapter 53.

ATF Rul. 95-3

The Bureau of Alcohol, Tobacco and Firearms (ATF) has examined various 37/38 mm gas/flare guns in combination with certain types of ammunition to determine whether these are destructive devices as defined in the Gun Control Act (GCA), 18 U.S.C. Chapter 44, and the National Firearms Act (NFA), 26 U.S.C. Chapter 53.

Section 5845(f), Title 26, United States Code, classifies certain weapons as "destructive devices" which are subject to the registration and tax provisions of the National Firearms Act (NFA). Section 5845(f)(2) provides as follows:

(f) **Destructive device.**—The term "destructive device" means * * * (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary or his delegate finds is generally recognized as particularly suitable for sporting purposes; . . ."

Section 5845(f)(3) excludes from the term "destructive device" any device which is neither designed or redesigned for use as a weapon and any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device.

The definition of "destructive device" in the GCA (18 U.S.C. § 921(a)(4)) is identical to that in the NFA.

ATF has previously held that devices designed for expelling tear gas or pyrotechnic signals are not weapons and are exempt from the destructive device definition. However, ammunition designed to be used against individuals is

available for these 37/38 mm devices. This "anti-personnel" ammunition consists of cartridges containing wood pellets, rubber pellets or balls, and bean bags.

When a gas/flare gun is possessed with "anti-personnel" type ammunition, it clearly becomes an instrument of offensive or defensive combat and is capable of use as a weapon. Since these gas/flare guns have a bore diameter of greater than one-half inch, fire a projectile by the means of an explosive, and, when possessed with "anti-personnel" ammunition, are capable of use as weapons, the combination of the gas/flare gun and "anti-personnel" ammunition is a destructive device as defined in the GCA and NFA. As a result, registration as a destructive device is required. Any person possessing a gas/flare gun with which "anti-personnel" ammunition will be used must register the making of a destructive device prior to the acquisition of any "anti-personnel" ammunition. In addition, the gas/flare guns are classified as firearms as defined by the GCA when possessed with "anti-personnel" type ammunition.

Each gas/flare gun possessed with anti-personnel ammunition will be required to be identified as required by law and regulations (27 C.F.R. §§ 178.92 and 179.102), including a serial number. Any person manufacturing the gas/flare gun and the "anti-personnel" ammunition must, if selling them in combination, have the appropriate Federal firearms license as a manufacturer of destructive devices and must have paid the special (occupational) tax as a manufacturer of National Firearms Act firearms. Any person importing the gas/flare gun and the "anti-personnel" ammunition must, if importing them in combination, have the appropriate Federal firearms license as an importer of destructive devices and must have paid the special (occupational) tax as an importer of National Firearms Act firearms.

Further, the "anti-personnel" ammunition to be used in the gas/flare launchers is ammunition for destructive devices for purposes of the GCA. Any person manufacturing the "anti-personnel" ammunition must have the appropriate Federal firearms license as a manufacturer of ammunition for destructive devices. Any person importing the "anti-personnel" ammunition must have the appropriate Federal firearms license as an importer of ammunition for destructive devices.

HELD: 37/38 mm gas/flare guns possessed with "anti-personnel" ammunition, consisting of cartridges containing wood pellets, rubber pellets or balls, or bean bags, are destructive devices as that term is used in 18 U.S.C. § 921(a)(4) and 26 U.S.C. 5845(f)(2).

[ATFB 95-3 28]

**18 U.S.C. § 923 (a): ENGAGING IN THE BUSINESS
OF DEALING IN FIREARMS (Auctioneers)**

Auctioneers who regularly conduct consignment-type auctions of firearms, for example, held every 1-2 months, on behalf of firearms owners where the auctioneer takes possession of the firearms pursuant to a consignment contract with the owner of the firearms giving the auctioneer authority to sell the firearms and providing for a commission to be paid by the owner upon sale of the firearms are required to obtain a license as a dealer in firearms.

ATF Rul. 96-2

An association of auctioneers has asked the Bureau of Alcohol, Tobacco and Firearms (ATF) for a ruling concerning the auctions conducted by their members and whether the sale of firearms at such auctions requires a Federal firearms license as a dealer in firearms.

The auctioneers' association stated that their members generally conduct two types of auctions: estate-type auctions and consignment auctions. In estate-type auctions, articles to be auctioned, including firearms, are sold by the executor of the estate of an individual. In these cases the firearms belong to and are possessed by the executor. The auctioneer acts as an agent of the executor and assists the executor in finding buyers for the firearms. The firearms are possessed by the estate and their sale to third parties is controlled by the estate. The auctioneer is paid a commission on the sale of each firearm by the estate at the conclusion of the auction.

The association states that, in consignment-type auctions, an auctioneer may take possession of firearms in advance of the auction. The firearms are inventoried, evaluated, and tagged for identification. The firearms belong to individuals or businesses who have entered into a consignment agreement with the auctioneer giving the auctioneer authority to sell the firearms. The agreement states that the auctioneer has the exclusive right to sell the items listed on the contract at a location, time, and date to be selected by the auctioneer. The consignment-type auctions generally involve accepting firearms for auction from more than one owner. Also, these auctions are held on a regular basis, for example, every 1-2 months.

Section 923(a), Title 18, U.S.C., provides that no person shall engage in the business of dealing in firearms until he has filed an application and received a license to do so. Section 922(a)(1), Title 18, U.S.C., provides that it is unlawful for any person, other than a licensee, to engage in the business of dealing in firearms. Licensees generally may not conduct business away from their licensed premises.

The term "dealer" is defined at 18 U.S.C. § 921(a)(11)(A) to include any person engaged in the business of selling firearms at wholesale or retail. The term "engaged in the business" as applied to a dealer in firearms means a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. A dealer can be "engaged in the business" without taking title to the firearms that are sold. However, the term does not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms. 18 U.S.C. § 921(a)(21)(C).

In the case of estate-type auctions, the auctioneer acts as an agent of the executor and assists the executor in finding buyers for the estate's firearms. The firearms are possessed by the estate, and the sales of firearms are made by the estate. In these cases, the auctioneer does not meet the definition of "engaging in the business" as a dealer in firearms and would not require a license. An auctioneer engaged in estate-type auctions, whether licensed or not, may perform this function, including delivery of the firearms, away from the business premises.

In the case of consignment-type auctions held on a regular basis, for example, every 1-2 months, where persons consign their firearms to the auctioneer for sale pursuant to an agreement as described above, the auctioneer would be "engaging in the business" and would require a license. The auctioneer would be disposing of firearms as a regular course of trade or business within the definition of a "dealer" under § 921(a)(11)(A) and must comply with the licensing requirements of the law.

As previously stated, licensed auctioneers generally must engage in the business from their licensed premises. However, an auctioneer may conduct an auction at a location other than his licensed premises by displaying the firearms at the auction site, agreeing to the terms of sale of the firearms,

then returning the firearms to the licensed premises for delivery to the purchaser.

Held: Persons who conduct estate-type auctions at which the auctioneer assists the estate in selling the estate's firearms, and the firearms are possessed and transferred by the estate, do not require a Federal firearms license.

Held further: Persons who regularly conduct consignment-type auctions, for example, held every 1-2 months, where the auctioneer takes possession of the firearms pursuant to a consignment contract giving the auctioneer the exclusive right and authority to sell the firearms at a location, time and date to be selected by the auctioneer and providing for a commission to be paid upon sale are required to obtain a license as a dealer in firearms pursuant to 18 U.S.C. § 923(a).

[ATFB 96-2 101]

PROCEDURES

PART 178: COMMERCE IN FIREARMS (Also 27 CFR 178.94, 178.12)

Recordkeeping procedures for "drop shipments" of firearms are prescribed.

ATF Proc. 75-3

This ATF Procedure sets forth the recordkeeping procedures for "drop shipments" of firearms [other than National Firearms Act firearms as defined in section 5845(a) of Chapter 53, Title 26, U.S.C.] between federally licensed firearms dealers, importers, and manufacturers.

Where licensee "A" places an order for firearms with licensee "B", and "B" transmits the order to licensee "C" for direct shipment (drop shipment) to "A", a certified copy of the license/list of "A" must be forwarded to "C" prior to shipment of the order.

On shipment of the order to "A", "C" shall enter in his bound record the disposition of the firearms to "A". On receipt of the shipment by "A", he shall enter the acquisition of the firearms in his bound record. Both licensees shall make such entries in the manner prescribed by regulations.

Since the actual movement of the firearms is between "C" and "A", and since "B" does not take physical possession, "B" will make no entry in his bound record. However, "B" should make appropriate entries or notations in his commercial records to reflect the transaction.

For Example: Where a licensed dealer orders firearms from a wholesaler and the wholesaler requests drop shipment from a manufacturer to the dealer, a certified copy of the dealer's license (or a certified copy of the dealer's list, if he has a multi-licensed business organization) shall accompany the wholesaler's order to the manufacturer.

The manufacturer shall enter in his bound record the disposition of the firearms to the dealer, and the dealer shall enter the acquisition of the firearms in his bound record reflecting receipt from the manufacturer.

The wholesaler, although a part of the business transaction, neither acquires nor disposes of the firearms and would, therefore, enter nothing of the transaction in his bound record.

NFA Firearms: Transfer of National Firearms Act firearms may be accomplished only pursuant to the manner outlined in Subpart F, Part 179, Title 27, Code of Federal Regulations.

Inquiries: Inquiries concerning this procedure should refer to its number and be addressed to your nearest ATF office. (See ATF Publication 5300.5, State Laws and Published Ordinances-Firearms for the current address.)

[75 AF C.B. 78] [Amended]

**27 CFR 179.35: EMPLOYER
IDENTIFICATION NUMBER**
(Also see 179.34, 179.84 179.88, 179.90,
179.103 and 179.112)

Identification Number for Special (Occupational) Taxpayer

ATF Proc. 90-1

Purpose: The purpose of this ATF procedure is to inform Federal Firearms licensees who have paid the special (occupational) tax to import, manufacture, or deal in National Firearms Act (NFA) firearms of the discontinuance of the use of the ATF Identification Number and the replacement with the use of the Employer Identification Number (EIN) on all NFA transaction forms.

Background: Section 5801 of Title 26, U.S.C. provides that on first engaging in business, and thereafter on or before the first day of July of each year, every importer, manufacturer, and dealer in NFA firearms shall pay the appropriate special (occupational) tax. In addition, section 5802 requires each importer, manufacturer, and dealer to register with the Secretary his name and the address of each location where he will conduct business. The filing of ATF Form 5630.5, with payment of the appropriate tax required by section 5801, also accomplishes registration requirements under section 5802.

The regulations at 27 CFR 179.34 require that the special tax be paid by return (ATF Form 5630.5, Special Tax Registration and Return) and require that all information called for on the return be provided, including the Employee Identification Number. 27 CFR 179.35 provides the instruction for applying for an EIN.

The regulations in 27 CFR 179.84, 179.88, and 179.90 provide require that the application to transfer an NFA firearm identify the special tax stamp, if any, of the transferor and transferee. The regulations in 27 CFR 179.103 and 179.112 require that the notice submitted to register NFA firearms identify the special tax stamp of the manufacturer or importer respectively. Identification of the tax stamp is necessary to ensure the tax liability has been satisfied, that the parties are qualified to import, manufacture, or deal in NFA firearms, and, in certain instances, is necessary to ensure that both parties in a transfer application are entitled to an exemption from the transfer tax.

In 1980, because of delays in the issuance of special tax stamps resulting in the inability of special taxpayers to conduct business operations, ATF Procedure 80-6 was implemented. This procedure notified taxpayers that they could obtain an ATF identification number which should be used in lieu of the IRS special tax stamp number on all NFA transaction forms. This procedure was established to facilitate the processing of NFA forms and to eliminate the delay caused by the time period required for IRS processing of the special tax stamp.

ATF has recently taken over the collection of special tax from the Internal Revenue Service, and is now issuing the special tax stamps. The number used to identify the special tax stamp is the EIN.

Because the number used to identify the special tax stamp is the EIN, this number must appear on all forms (applications, notices, and returns) involving NFA firearms. The problems that caused the implementation of the procedure in 1980 have been resolved. In fact, the assignment of an ATF identification number is now duplicative and requires more paperwork of the taxpayer. Accordingly, the use of the ATF identification number is no longer necessary and is discontinued.

ATF Procedure 80-6 is cancelled.

Inquiries: Inquiries regarding this ATF procedure should refer to its number and be addressed to the Bureau of Alcohol, Tobacco and Firearms, Chief, National Firearms Act Branch, Washington, DC 20226.

[ATFB 1990-1 55]

INDUSTRY CIRCULARS

Industry Circular 72-23

SHIPMENT OR DELIVERY OF FIREARMS BY LICENSEES TO EMPLOYEES, AGENTS, REPRESENTATIVES, WRITERS, AND EVALUATORS

Purpose. The purpose of this circular is to clarify the provisions of 18 U.S.C. Chapter 44, and Subpart F of the regulations thereunder (27 C.F.R. 178) pertaining to the shipment of firearms in interstate commerce by a firearms licensee to its own nonlicensed employees, agents, and representatives, for the use and benefit of the licensee's business. The position of the Bureau is set out in Revenue Ruling 69-248.

Background. Revenue Ruling 69-248 provides as follows: [See RR 69-248].

Scope. Included within the category of agents and representatives discussed in the Revenue Ruling are professional writers, consultants and evaluators who in the course of their professions acquire firearms from a licensee for research or evaluation. The Revenue Ruling applies only to firearms acquired from a licensee for limited lengths of time and where the title to and ultimate control of the firearm remains in the licensee. Should the writer or evaluator desire to permanently keep the examined firearm, prior arrangements must be made to acquire the firearm through a licensee in such writer's or evaluator's State of residence and the Revenue Ruling would have no application.

Restriction. This Revenue Ruling also does not apply to firearms and ammunition within the purview of the National Firearms Act (26 U.S.C. Chapter 53).

Records. The licensee should enter in his firearms records the shipment or delivery of firearms to the employee, agent, representative, writer, consultant, or evaluator in accordance with Subpart H of the regulations. Upon the completion of the business purpose for which the firearms were received the firearms must be returned to the licensee who should enter their receipt in his records.

Editor's Note

Rev. Rul. 69-248 and ATF Rul. 73-19 discuss this matter in greater detail and can be found in this publication.

Industry Circular 72-30

IDENTIFICATION OF PERSONAL FIREARMS ON LICENSED PREMISES NOT OFFERED FOR SALE

Purpose. The purpose of this circular is to urge licensed firearms dealers to identify their personal collection of firearms kept at the business premises.

Scope. The provisions of Section 923(g), 18 U.S.C. Chapter 44, and Subpart H of the regulations (27 CFR 178) require all licensed firearms dealers to maintain records of their receipt and disposition of all firearms at the licensed premises. Section 178.121(b) of the regulations and the law

further provide for the examination and inspection during regular business hours or other reasonable times of firearms kept or stored on business premises by licensees and any firearms record or document required to be maintained.

Guidelines for Identifying Personal Firearms on the Business Premises of Licensed Dealers. A presumption exists that all firearms on a business premises are for sale and accordingly must be entered in the records required to be maintained under the law and regulations. However, it is recognized that some dealers may have personal firearms on their business premises for purposes of display or decoration and not for sale. Firearms dealers who have such personal firearms on licensed premises should not intermingle such firearms with firearms held for sale. Such firearms should be segregated from firearms held for sale and appropriately identified (for example, by attaching a tag) as being "not for sale". Personal firearms on license premises which are segregated from firearms held for sale and which are appropriately identified as not being for sale need not be entered in the dealer's records.

There may be occasions where a firearms dealer utilizes his license to acquire firearms for his personal collection. Such firearms must be entered in his permanent acquisition records and subsequently be recorded as a disposition to himself in his private capacity. If such personal firearms remain on the licensed premises, the procedures described above with respect to segregation and identification must be followed.

The above procedures will facilitate the examination and inspection of the records of firearms dealers and result in less inconvenience to licensees.

Industry Circular 74-13

GUIDELINES FOR VERIFYING IDENTITY AND LICENSED STATUS OF TRANSFEREE

General: The Bureau urges all firearms licensees to require whatever information they deem necessary and within reason in order to verify the identity and licensed status of transferee licensees with whom they do business.

Personal Appearance: A licensee who appears in person at another licensee's business premises for the purpose of acquiring firearms should be required to furnish, to the transferor, positive identification in addition to a certified copy of his license [or in addition to a copy of his certified list, if a multi-licensed entity]. Such identification should prove to the satisfaction of the transferor that the person receiving firearms is, in fact, the same person to whom the license was issued.

Mail Order Sales: When the shipment is to be made to an address other than the transferee's premises as listed on his license or on his certified list, it is suggested that the transferor verify the address as being that of the transferee.

Industry Circular 77-20

DUPLICATION OF SERIAL NUMBERS BY LICENSED IMPORTERS

ATF has noted cases where some licensed importers have adopted the same serial number for more than one firearm. These instances of duplication have generally occurred when firearms are received from more than one source.

Title 27, CFR section 178.92 requires that the serial number affixed to a firearm must not duplicate the number affixed to any other firearm that you import into the United States. Those of you who import destructive devices are under the same requirement due to the inclusion of destructive devices in the definition of firearm as used in 27 CFR 178.11. ATF Ruling 75-28 stated that a serial number affixed by the foreign manufacturer may be adopted to fulfill this unique serial number requirement. However, the manufacturer's serial number must be affixed in the manner set forth in 27 CFR 178.92 and must not duplicate a number previously adopted by you for another firearm.

If you receive two or more firearms with the same serial number, it is your responsibility to affix additional markings to make each serial number unique.

ATF Ruling 75-28 also reminds you of the other identifying marks required by 27 CFR 178.92. In addition to a unique serial number, each firearm must be marked to show the model (if any); the caliber or gauge; the name of the manufacturer and importer, or recognizable abbreviations; the country of manufacture; and the city and State (or recognized abbreviations) in which your licensed premises are located.