



FFL newsletter

Federal Firearms Licensees Information Service provided by the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms • Washington, D. C.

MP-83 AND MP-22 PISTOLS

ATF has recently examined certain types of weapons in caliber .22 and 9mm, which fired semiautomatically from the open bolt position with a fixed firing pin. These firearms are the MP-83 and the MP-22. Examination revealed that the disconnecter mechanism of these firearms includes a small pin which can be readily removed thereby allowing the weapon to fire automatically.

As defined in Title 26, United States Code, section 5845(b) the term machinegun includes 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 term design covers weapons which have not previously functioned as machineguns, but, possess design features characteristic of automatic weapons and which facilitate automatic fire by simple modification or elimination of existing component parts.

The design features of the weapons are similar to weapons identified in ATF Rulings 82-2, 82-8, and 83-5 which were determined to be machineguns. Based on their particular design features and the fact that they will shoot automatically by the mere removal of a pin, we have determined that the Holmes open bolt firing pistols are machineguns and they are subject to all the provisions of the National Firearms Act (NFA).

It is unlawful for anyone to make, transfer, or possess a machinegun which is not registered in accordance with the provisions of the NFA. Any such weapons which are not registered in accordance with NFA controls may not lawfully be possessed and must be abandoned. In addition, the possession or transfer of machineguns manufac-

tured after May 19, 1986, is prohibited except in certain narrow instances.

There are currently 24 of the MP-83 and MP-22 weapons which have not been abandoned to ATF. Anyone possessing these firearms should contact their local ATF office of Law Enforcement for instructions concerning their abandonment. Dealers who have acquired and disposed of these firearms should contact ATF regarding the firearm's disposition. A listing of the serial numbers of these firearms follows:

- | | |
|----------------|----------------|
| 1. 1001 | 13. L100 -048 |
| 2. 1002 | 14. L100 - 049 |
| 3. 1003 | 15. L100 - 050 |
| 4. D015 | 16. L100 - 053 |
| 5. D016 | 17. L100 - 055 |
| 6. L100 - 013 | 18. L100 - 058 |
| 7. L100 - 028 | 19. L100 - 063 |
| 8. L100 - 029 | 20. L100 - 071 |
| 9. L100 - 030 | 21. L100 - 074 |
| 10. L100 - 032 | 22. L100 - 076 |
| 11. L100 - 034 | 23. L100 - 077 |
| 12. L100 - 039 | 24. L100 - 082 |

SIGNIFICANT COURT CASES

MACHINEGUN BAN UPHELD BY U.S. COURT OF APPEALS IN FARMER V. HIGGINS

On July 11, 1990, the U.S. Court of Appeals for the Eleventh Circuit reversed the prior decision of the district court and ruled in the case of Farmer v. Higgins that 18 U.S.C. 922(o) prohibits the private

possession of machineguns not lawfully possessed prior to May 19, 1986.

The suit challenged ATF's denial of an individual's application to make a machinegun for his personal collection. The application was filed in November 1986 and ATF denied the application on the grounds that section 922(o) prohibits the making and manufacturing of new machineguns for private purposes. The U.S. District Court for the Northern District of Georgia disagreed with ATF's interpretation of section 922(o) and ordered ATF to process the plaintiff's application.

The Court of Appeals reversed the district court's order and held that ATF's interpretation of section 922(o) and its denial of the plaintiff's application was consistent with the language of section 922(o) as well as with congressional intent in enacting the machinegun ban.

FLORIDA CONVICTIONS

The U.S. Court of Appeals for the Eleventh Circuit recently addressed Florida's withheld adjudications in *United States V. Grinkiewicz*, 873 F. 2nd 253 (11th Cir. 1989), in which it affirmed the defendant's conviction for possession of firearms after having been convicted of a felony in violation of 18 U.S.C. 922(g)(1). The prior conviction was a guilty plea in 1980 for which the Florida court ordered that adjudication of guilt be withheld pursuant to Florida Stat. Ann. section 948.01(3). Relying on a prior decision in *United States V. Orellanes*, the court held that the defendant was "convicted" for purposes of Federal firearms laws.

FIREARMS REGULATIONS UPHeld BY U.S. COURT OF APPEALS IN NRA V. BRADY

On September 13, 1990, the U.S. Court of Appeals for the Fourth Circuit upheld ATF's regulations implementing the 1986 amendments to the Gun Control Act, with two minor exceptions. The law suit, which was filed by the National Rifle Association and other plaintiffs in the U.S. District Court for South Carolina in September 1988, sought an injunction against enforcement of the regulations and a declaratory judgment that the regulations were invalid.

The primary thrust of the suit was that the regula-

tions were contrary to statute or were not "necessary" as required by the Gun Control Act. The plaintiffs also alleged certain defects in the rule-making process, including the failure to hold an oral public hearing and the issuance of temporary regulations prior to inviting and receiving public comment.

Specific regulations which were challenged in the suit included the definitions of "business premises", "gun show", and "manufacture", and the recordkeeping requirements for licensed collectors and for licensees' receipt and disposition of "personal" firearms.

In August 1989, the district court ruled in ATF's favor, except for the definition of "manufacture" which the court set aside because the court believed that the regulation as written could be confusing to gunsmiths. The plaintiffs then appealed the case to the Court of Appeals.

The Court of Appeals held that two additional provisions in the regulations were invalid as exceeding statutory authority. These included (1) the requirement in 27 C.F.R. 178.125a for licensees to record in their bound book of sales of "personal" firearms the license number of the transferee if the transferee is a licensee and the method of identification used if the transferee is a nonlicensee; and (2) the requirement in 27 C.F.R. 125(f) for licensed collectors to record as a "receipt" those curio or relic firearms possessed at the time they obtained their license.

The plaintiffs filed with the Court of Appeals a motion for rehearing which was denied. They have also filed a motion in the district court for the Government to pay the attorneys' fees for which the NRA has been charged in connection with the case. The amount claimed exceeds \$490,000. The Government will oppose the motion.

FIREARMS AND EXPLOSIVES DIVISION PERSONNEL CHANGES

There have been a number of recent personnel changes within the Firearms and Explosives Division (Compliance Operations) which industry members should be aware of:

Chief, Firearms and Explosives Division
Robert E. Daugherty

Chief, Firearms and Explosives Operations Branch
Louis M. Krivitsky

Chief, National Firearms Act Branch
Evans W. Miller

Chief, Firearms and Explosives Imports Branch
Carmen L. Alston

COMPLIANCE INSPECTION PROBLEMS

This section is used to advise dealers of areas in which ATF inspectors find serious and/or continual problems in dealer's records during the performance of compliance inspections.

Handgun sales to nonresidents - There appears to be some confusion among dealers concerning the 1986 amendments to the Gun Control Act of 1968, regarding sales of firearms to out-of-State residents. Handgun sales to out-of-State residents continue to be illegal. However, nonlicensees may acquire rifles and shotguns from Federal firearms licensees outside their state of residence. These sales must comply with State and local laws applicable at the place of sale and where the purchaser resides, and may only take place at the licensee's business premises or organized gun shows (as defined in 27 C.F.R. 178.100) which are held in the State in which the licensee's premises are located. The interstate shipment or delivery of firearms to nonlicensees is still prohibited.

Class 3 Dealers - Upon receipt of a weapon transferred to you on an ATF Form 3, 4 or 5, check the information on the form describing the firearm (serial number, description, etc.) to ensure it properly reflects the firearm actually received from the manufacturer or dealer making the transfer.

Numerous firearms are being registered on ATF Forms 3, 4 or 5 which do not accurately reflect the description of the firearm transferred. If the firearm is a receiver only, the ATF Form 3, 4 or 5 should reflect this information, therefore, a barrel length or overall length is not applicable.

Additionally, if there is a change to the description of the firearm, notify ATF (NFA Branch) immediately as to the change, so that the registration papers will accurately describe the firearm.

CERTIFIED COPIES OF LICENSES

Section 27 CFR 178.94 provides the following for sales or deliveries between licensees:

"A licensed importer, licensed manufacturer, or licensed dealer selling or otherwise disposing of firearms, and a licensed collector selling or otherwise disposing of curios or relics, to another licensee shall verify the identity and licensed status of the transferee prior to making the transaction. Verification shall be established by the transferee furnishing to the transferor a certified copy of the transferee's license and by such other means as the transferor deems necessary: . . ."

This section of the regulations requires a licensee to verify another licensee's status prior to making sales or deliveries to such licensee. ATF inspectors are discovering many instances of licensees accepting blurred or illegible copies of FFL's as verification of another licensee's status. Verification and certification of licensed status is not considered valid unless a legible copy of the transferee's license clearly identifies the name, address, license number and expiration date of the license, in addition to containing an original signature of the licensee in the "Purchasing Certification" section. Acceptance of faxed, blurred and/or illegible copies of a transferee's license will constitute noncompliance with the regulations and will result in the accepting licensee being cited for that violation.

ATF has been advised recently that several mail order firms are offering photo ID's which purport to identify the holder as a federally licensed firearms dealer. Licensees are cautioned that the only acceptable means of verification of a person's licensed status is the certified copy of the license.

EXCISE TAX - UPDATE

As announced in the last edition of the FFL Newsletter, it is anticipated ATF will be assuming responsibility for the collection function on firearms and ammunition excise taxes during 1991.

A Federal excise tax is imposed by 26 U.S.C. 4181 on the sale of pistols and revolvers, other firearms, and shells and cartridges sold by firearms manufacturers and importers.

The tax rate is 10% of the sale price for pistols and revolvers, 11% for firearms other than pistols and revolvers, and 11% for shells and cartridges.

This tax is currently being collected by IRS and will remain their responsibility until further notice. Taxpayers should continue to file returns and deposit taxes with IRS until given specific instructions by ATF to do otherwise. Therefore, if you have any questions concerning this tax and your potential liability, you should refer the questions to your IRS District Office, Excise Tax Specialist.

Additional information concerning tax computation, filing and deposit requirements is available in ATF Publication 5300.4, (Your Guide to) Federal Firearms Regulation, page 99.

Future editions of the FFL Newsletter, Industry Circulars and ATF news releases will provide more detailed information concerning ATF's assumption of this collection function. An information packet containing tax returns, deposit forms and applicable instructions will be sent to all manufacturers and importers who are licensed under the Gun Control Act of 1968 (GCA). Those individuals who are liable for the excise tax but are not licensed under the GCA (black powder firearms manufacturers, etc.) are advised to contact ATF through the Firearms and Explosives Operations Branch at (202) 789-3026 to obtain the information packet and initial supply of tax returns and deposit slips.

Those individuals who are liable for Firearms and Ammunition Excise Taxes and will be making tax deposits and filing tax returns with ATF must obtain an Employer Identification Number, if they do not already have one, prior to making tax deposits or filing tax returns with ATF. An Employer Identification Number can be obtained by filing an application with IRS on Form SS-4. Form SS-4 may be obtained from any Internal Revenue District Office or Service Center.

GUN SHOW GUIDELINES

A gun show is an event sponsored by any national, state or local organization devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors events devoted to the collection, competitive use or other sporting use of firearms in the community. A flea market is not a gun show.

LICENSEES FROM OUT-OF-STATE ATTENDING A GUN SHOW:

- * may purchase/acquire firearms from in-state licensees or non-licensees at the show;

- * may have a booth/table at the show at which he displays his wares and takes orders, but the sale and disposition of a firearm must be lawfully effected from his permanent licensed premises;
- * cannot make sales of guns at such shows even if the transaction is to or through an in-state licensee. In this type of transaction the out-of-state dealer is unlawfully engaged in business away from his licensed premises.

LICENSEES WITH LICENSED PREMISES IN SAME STATE AS THE GUN SHOW:

- * may have a booth/table at the show and conduct business the same as at their permanent licensed premises since the show is considered an extension of their permanent licensed premises;
- * must prominently display a copy of their license at all times;
- * may sell or dispose of long guns and hand guns to in-state and out-of-state licensees;
- * may sell or dispose of long guns and hand guns to residents of the State in which the gun show is held;
- * may sell or dispose of rifles and shotguns, but not handguns, over-the-counter to out-of-state residents who are nonlicensees, provided the sale is legal in both states;
- * must comply with all recordkeeping requirements of ATF regulations, including the keeping of commercial records of sales to licensees until entry is made in the A&D book, and ATF Form 4473 for sales to nonlicensees.
- * must make proper entry into A&D book on return to his licensed premises. Must note in the A&D book that a sale was made at (name and location) of the gun show.

All state and local laws must be followed.

Licenses will not be issued to gun show locations. Licenses will only be issued for premises where the applicant intends to regularly engage in the business.

The above guidelines are not all inclusive. For detailed instructions, please refer to the pertinent section of law or regulations or call the nearest ATF Compliance Operations office.

PERMIT TO CARRY CONCEALED WEAPONS

The Gun Control Act of 1968 contains no provision for the issuance of a Federal permit to carry

a concealed weapon. The jurisdiction to issue permits to carry a concealed weapon is that of State and/or local authorities. Having a Federal firearms license does not entitle the licensee to carry a concealed weapon. Customers should be advised to contact their State Attorney General's office or local law enforcement officials concerning restrictions on the carrying of firearms and their desire to obtain a permit to carry a concealed weapon.

INTRATEC RECALL TEC-22 "SCORPION"

To all owners of TEC-22's from serial #100 to 20,033 and 27,001 to 27,222. A flawed part used in the manufacture of the pistol may cause the gun to function in the full automatic mode.

Already modified (repaired) pistols within the serial number range can be checked by; opening cover and looking by front/side, under cover axis screw to determine if there is an indentation with an "R" affixed inside of it, check both sides, then your firearm "has" been modified (repaired).

If not, send your TEC-22 to Intratec for factory authorized installation, free of charge.

For return instructions call 1-305-232-1821 or send your TEC-22, carefully packed and insured to:

Intratec
12405 S.W. 130th Street
Miami, Florida 33186

LETTERS TO THE EDITOR

The following questions were received regarding issues of concern to Federal firearms dealers:

Q. I am a licensed dealer and want to know if it is true that after 20 years I can throw away my bound book and firearms transaction records?

A. Under 27 CFR 178.129(d), "The records prepared by licensed dealers and licensed collectors under the Act of the sale or other disposition of firearms and the corresponding record of receipt of such firearms shall be retained through December 15, 1988, after which records of transactions over 20 years of age may be discarded."

Therefore, after December 15, 1988, you could discard any and all firearms records in which the disposition of the firearms, in their entirety, took place at least 20 years previous. To further clarify, if a "bound book" acquisition and disposition record contains one firearm with a disposition less than 20 years previous, that record must be retained until the 20 year requirement is met. Forms 4473, Firearms Transaction Record, may be discarded 20 years after the transaction date.

Q. If a purchaser of a firearm is a convicted felon but has received a relief from disability from ATF, how do I have them fill out the Form 4473. Do they answer "no" to the questions concerning indictments and convictions?

A. Convicted felons who obtain a relief from disability from ATF may purchase and possess firearms insofar as Federal firearms laws are concerned. When the Firearms Transaction Record, Form 4473, is filled out to purchase a firearm, an individual with relief from disability must still answer "yes" to questions 8a and 8b concerning indictments and convictions. A copy of the relief from disability should be provided to the licensee prior to the transfer of the firearm from the licensee to the individual. It is recommended that the licensee attach a copy of the relief document to the Form 4473.

Q. I recently purchased a computer and would like to keep my acquisition and dispositions record in it, but I don't know which software packages are approved by ATF.

A. ATF does not endorse the use of any specific software packages for computerized recordkeeping by licensees. Licensees who wish to apply under 27 CFR 178.125(h) for a variance to use computerized records should make certain that their proposed systems meet the following criteria:

1. The alternate records must contain the same information as required by the regulations in 27 CFR 178.122, 123 and/or 125.
2. Must be able to query by serial number, acquisition date and name of manufacturer.
3. Must have an acceptable daily memory backup system, such as disk or tape.

4. Must be capable of providing a printout of all records:
 - (a) for purposes of inspection by ATF,
 - (b) when the system memory is purged, and
 - (c) when business is discontinued.
5. The computer printout must contain firearms in inventory as well as all that were sold during the period covered, sequentially by date of acquisition.
6. Must record both the manufacturer and importer of foreign made firearms.
7. Printout may include flintlock, percussion cap, or other antique firearms but cannot include merchandise other than firearms.
8. Names and addresses of the supplier/consignor and the purchaser must be included in the computer data. An ATF Form 4473 transaction number may be used to reference the additional information such as: date of birth, place of birth, type of identification used, etc.
9. Cannot rely upon invoices or other paper/manual systems to provide any of the required information (i.e., must be self-contained).
10. If the business is discontinued, all records (including a final printout) must be forwarded to the Out-of-Business Records Center, per 27 CFR 178.127.
11. Any proposed changes in an approved system must be reported to ATF for evaluation.

If you desire to obtain a variance approval for your proposed system, please submit a complete description of the system and a sample printout to the Regional Director (Compliance) for the region in which your licensed premises is located. A listing of the regional office addresses appears on the back cover of this newsletter.

Q. I am a firearms dealer who has paid the annual special (occupational) tax as a Class 3 dealer in National Firearms Act (NFA) weapons. I want to upgrade my business and become a Class 2 Manufacturer of NFA weapons. I have already made application for my 07 license to manufacture

firearms. My question is: Do I now have to pay additional special (occupational) tax and if so, can I apply the \$500 I already paid as a Class 2 dealer to the manufacturers' special (occupational) tax due?

A. Yes, you will incur additional special (occupational) tax (SOT) liability if you change your business activity from dealer to manufacturer or importer of NFA weapons. And, no, you cannot apply the SOT already paid as a dealer to the new liability incurred as a manufacturer. The SOT cannot be either transferred or prorated; thus, you must pay either the \$500 "reduced rate" or the \$1000 SOT as a manufacturer before you engage in the business of manufacturing NFA weapons. You should be aware, however, that when the new tax year begins (July 1, 1991) you would only have to pay the annual \$500 or \$1000 SOT as a manufacturer of NFA weapons. You would no longer be liable for the \$500 SOT as a dealer because the manufacturer's SOT entitles you to also deal in NFA weapons without incurring the dealer's SOT liability.

Questions and/or areas of concern which you would like to see addressed in the FFL Newsletter should be submitted to the following address:

ATF FFL Newsletter
 Letters to the Editor
 P.O. Box 189
 Washington, DC 20044

COMPLIANCE OPERATIONS ADDRESS CORRECTION

Area Supervisor
 Bureau of Alcohol, Tobacco & Firearms
 6 World Trade Center, Room 620
 New York, New York 10048
 212-264-4650

DISCONTINUANCE OF OPERATIONS AS AN NFA DEALER, MANUFACTURER, OR IMPORTER

If you are a Federal firearms licensee who has paid the special (occupational) tax as a dealer, manufacturer, or importer in National Firearms Act (NFA) firearms and intend to discontinue operations involving NFA firearms, you should be aware of certain requirements and issues, especially if you have NFA firearms in inventory.

If you have acquired certain NFA firearms that could not have been otherwise acquired were it not for your special tax status, you should be aware of possible consequences of possession when you are no longer a special taxpayer. For example, some State laws and local ordinances prohibit the possession of machineguns, but provide an exemption for special taxpayers. Thus, a person could be in violation of State law or a local ordinance if the special tax status expires. You should check with your local law enforcement authorities before allowing your special tax status to lapse.

In addition, if you have in inventory any machineguns which were manufactured or imported on or after May 19, 1986, you are required to dispose of them prior to the expiration of your special tax status. The disposition must be made in accordance with the provisions of 27 CFR 179.105. If you are unable to meet the requirements of this section for the subsequent transfer, the firearm(s) must be abandoned to an appropriate government agency, otherwise, you would be in violation of 18 U.S.C. 922(o).

To properly discontinue your NFA operations, you must notify our Tax Processing Center in writing (the address is found on your special tax stamp) or by noting the discontinuance on your special tax renewal return.

SPECIAL TAX REFUNDS

Dealers in National Firearms Act (NFA) weapons (machineguns, short-barreled shotguns, etc.) should be aware that ATF will not issue refunds of the special (occupational) tax to NFA taxpayers on the sole basis that they did not have any firearms transactions during the July 1 through June 30 tax year. The absence of weapons transactions during the tax year is not a sufficient basis for refund of the special (occupational) tax. Although the person had no transactions during the year, there would still be tax liability if the person continued to engage in the business of dealing in NFA weapons by holding himself out as an NFA dealer. If you have any questions, call the NFA Branch at (202) 789-3223.

WHAT IS ITAR?

International Trafficking in Arms (ITAR) is a major enforcement program of the Bureau of Alcohol,

Tobacco and Firearms. The program was developed in an attempt to stem the illegal flow of American-manufactured or retailed firearms across U.S. borders to foreign countries. Literally thousands of firearms that have their origin in the United States are recovered each year in foreign countries. A large percentage of these firearms is recovered from organized criminal elements engaged in a wide array of unlawful activity, including narcotics trafficking and international terrorism. Investigations have determined that many firearms unlawfully diverted to foreign countries are being used to safeguard narcotics shipments arriving in the United States. Firearms used in the assassination of three Colombian presidential candidates last year were determined to have been acquired in the United States and subsequently smuggled to Colombia.

The Administration and Congress have been petitioned by foreign officials to take steps to curb the illegal movement of firearms into their countries. To that end, the enforcement commitment to the ITAR program has been increased.

Responsible actions by law-abiding citizens and FFLs, acting in concert with ATF Law Enforcement officials, can form an effective network to combat the violence inherent in the use of firearms in criminal activities.

The effectiveness of the ITAR program can be greatly enhanced with the support and assistance of the federally licensed dealer. Should you suspect that firearm purchases are being unlawfully diverted to foreign countries, you are asked to contact the nearest ATF Law Enforcement office.

DOUBLE HOMICIDE

The Bureau of Alcohol, Tobacco and Firearms, Pensacola, Florida is assisting the Jackson County Florida Sheriff's Office with an investigation into a double homicide which occurred on January 29, 1989, in northwest Florida. One of the victim's was thumbcuffed from behind and both victims, Robert and Kathryn McRae, were shot once in the back of the head with a small caliber weapon. A spent 124 grain, 9mm, Israeli T.Z.Z. cartridge and two ski masks were discovered at the scene and personal property had been taken.

Subsequent investigation revealed that a similar double homicide occurred on October 15, 1989, in west central Alabama where the victims, Acie and Carolyn Worthy, were shot repeatedly with 124 grain, 9mm, Israeli T.Z.Z. ammunition. Ballistics examination revealed the 9mm projectiles recovered from both scenes were fired from the same Uzi weapon.

If you have any information regarding these cases or the sale of T.Z.Z. 9mm ammunition, thumbcuffs and an Uzi firearm to a single customer, please contact the Bureau of Alcohol, Tobacco and Firearms, Pensacola, Florida, Telephone (904) 434-2697 (Collect calls will be accepted).

Please note the description of personal property removed from the crime scene which appears in the reward circular on the following page.