RULINGS, PROCEDURES, AND INDUSTRY CIRCULARS

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RULINGS:

Editor's Note:

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, Firearms and Explosives. **"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be sold at gun shows by a licensed dealer, but orders may be taken under specified conditions; Revenue Ruling 66-265 superseded.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Advice has been requested whether a person who is licensed under 18 U.S.C. Chapter 44 (which superseded the Federal Firearms Act (15 U.S.C. Chapter 18)) or who is continuing operations under a license issued to him under the Federal Firearms Act as a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 27 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. Moreover, the interstate controls no longer apply to ammunition sales. However, the ruling is still applicable to licensees' off-premises sales not addressed by these amendments.

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

ATF Rul. 69-309

This ruling was revoked by T.D. ATF-426.

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 ATF 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 ATF 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. 1969-1, 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 ATF 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 unregisterable 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 ATF 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 ATF 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 ATF 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 ATF 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 ATF 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 ATF 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 "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 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 ATF C.B. 96]

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

Certain reporting and record-keeping 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 nonlicensee 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 178.126(a) when the person receiving them is not the person who pawned the firearms.

[76 ATF 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 ATF 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 ATF 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 Firearms 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 ATF 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 ATF 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. 73-13, 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

This ruling is superseded by ATF Rul. 2001-5.

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 ATF 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 ATF Rul. 76-6 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. 76-6, 1976, ATF 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 off-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 1980-4 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 1981-3 77]

27 CFR 179.11: MEANING OF TERMS

The AR15 auto sear is a machinegun 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 machineguns.

The National Firearms Act, 26 U.S.C. 5845(b), defines “machinegun" 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 machinegun as defined by 26 U.S.C. 5845(b).

With respect to the machinegun 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 CFR 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 machinegun as defined by the NFA. Specifically, these parts are a combination of parts designed and intended for use in converting a weapon into a machinegun and are a machinegun as defined in the NFA. (See “Information Concerning AR15-Type Rifles” under “General Information” in this publication.)

27 CFR 179.11: MEANING OF TERMS

The KG-9 pistol is a machinegun 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 disconnector which prevents more than one shot being fired with a single function of the trigger.

The disconnector 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 disconnector 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 machinegun 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 defines 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 machineguns but possess design features which facilitate full automatic fire by simple modification or elimination of existing component parts.

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

With respect to the machinegun 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 CFR Part 179.

[ATFB 1982-1 18]

27 CFR 179.11: MEANING OF TERMS

The SM10 and SM11A1 pistols and SAC carbines are machineguns 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 a disconnector and a trip which prevent more than one shot being fired with a single function of the trigger.

The disconnector 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 disconnector 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 machinegun 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 defines 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 machineguns 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 machineguns as defined in Section 5845(b) of the Act.

With respect to the machinegun 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 CFR Part 179.

[ATFB 1982-2 49]

27 CFR 179.11: MEANING OF TERMS

The YAC STEN MK II carbine is a machinegun 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 submachinegun 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 (disconnector) which has been modified to prevent more than one shot being fired with a single function of the trigger.

The trip lever (disconnector) 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 (disconnector), together with STEN submachinegun 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 machinegun 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 machinegun 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 defines weapons which previously could shoot automatically but will not in their present condition. The "designed" definition includes weapons which have not previously functioned as machineguns but possess specific machinegun 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 machinegun as defined in Section 5845(b) of the Act.

[ATFB 1983-3 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 85-2 62]

Editor's Note:

The importation of machineguns 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, 98 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 relics 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 85-3 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 1984 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 pounds 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 CFR §§ 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]

18 U.S.C. 921(a)(4): DESTRUCTIVE DEVICE

26 U.S.C. 5845(f)(2): DESTRUCTIVE DEVICE

(Nonsporting shotgun having a bore of more than one-half inch in diameter)

The registration period for the USAS-12, Striker-12, and Streetsweeper shotguns closed on May 1, 2001, pursuant to ATF Rul. 2001-1.

ATF Rul. 2001-1

Pursuant to ATF Rulings 94-1 (ATF Q.B. 1994-1, 22) and 94-2 (ATF Q.B. 1994-1, 24), the Bureau of Alcohol, Tobacco and Firearms (ATF) classified the USAS-12, Striker 12, and Streetsweeper shotguns as destructive devices under the National Firearms Act (NFA), 26 U.S.C. Chapter 53. The NFA requires that certain "firearms" be registered and imposes taxes on their making and transfer. The term "firearm" is defined in section 5845 to include "destructive devices." The term "destructive device" is defined in section 5845(f)(2) as follows:

> [T]he 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 finds is generally recognized as particularly suitable for sporting purposes;
>
> The USAS-12, Striker 12, and Streetsweeper shotguns were classified as destructive devices pursuant to section 5845(f) because they are shotguns with a bore of more than one-half inch in diameter which are not generally recognized as particularly suitable for sporting purposes.

Pursuant to 26 U.S.C. 7805(b), ATF. Ruls. 94-1 and 94-2 were issued prospectively with respect to the making, transfer, and special (occupational) taxes imposed by the NFA. Thus, although the classification of the three shotguns as NFA weapons was retroactive, the prospective application of the tax provisions allowed registration without payment of tax. ATF has contacted all purchasers of record of the shotguns to advise them of the classification of the weapons as destructive devices and that the weapons must be registered. ATF has registered approximately 8,200 of these weapons to date.

Held, the registration period for the USAS-12, Striker-12, and Streetsweeper shotguns will close on May 1, 2001. No further registrations will be accepted after that date. Persons in possession of unregistered NFA firearms are subject to all applicable penalties under 26 U.S.C. Chapter 53.

Date signed: February 2, 2001.

27 CFR 47.45: IMPORTATION OF SURPLUS MILITARY CURIO OR RELIC FIREARMS

Importers of surplus military curio or relic firearms must submit originals of all appropriate statements supporting the Form 6 application.

ATF Rul. 2001-3

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received inquiries from firearms importers concerning supporting documents required to be submitted with applications to import surplus military curio or relic firearms. Importers often rely upon documents obtained by the foreign shipper or seller and have asked whether copies of the documents, rather than originals, may be submitted with the application. For the reasons stated below, ATF has found that importers of surplus military curio or relic firearms must submit *originals* of all appropriate statements supporting the application.

ATF has the authority pursuant to section 38 of the Arms Export Control Act (AECA), 22 U.S.C. 2778, and implementing regulations, to approve import permits, as well as to deny, revoke, suspend, or revise import permits without prior notice whenever the proposed importation is found to be inconsistent with the purpose or in violation of section 38 or its implementing regulations. *See* 27 CFR 47.41, 47.44(a).

Under the AECA and implementing regulations, it is the policy of the United States to deny licenses and other approvals with respect to defense articles and defense services originating in certain countries or areas as determined by the Department of State. This policy applies to countries or areas with respect to which the United States maintains an arms embargo. *See* 27 CFR 47.52(a). Nonetheless, applications for permits to import articles that were manufactured in, or have been in, a proscribed country or proscribed area may be approved where the articles:

> Are covered by Category I(a) of the Import List (other than those subject to the provisions of 27 CFR Part 179);
>
> Are importable as curios or relics under the provisions of 27 CFR 178.118;

Were manufactured in a proscribed country or area prior to the date the country or area became proscribed, or, were manufactured in a non-proscribed country or area; *and*,

The articles have been stored for the five year period immediately prior to importation in a non-proscribed country or area.

22 U.S.C. 2778(b)(1)(B);
27 CFR 47.52(e).

Any persons seeking to import articles under these provisions must explain and certify how the firearms meet the applicable criteria. The certification statement must be executed under the penalties of perjury. In addition, the statement must be accompanied by documentary information both on the country or area of original manufacture, and on the country or area of storage for the five year period immediately prior to importation. Such information may, for example, include a verifiable statement in the English language of a government official or any other person having knowledge of the date and place of manufacture and/or the place of storage. ATF reserves the right to determine whether documentation provided is acceptable, and to require the submission of additional documentation as may be necessary.

27 CFR 47.52(f).

To ensure the lawfulness of the importation of surplus military defense articles, ATF must be able to rely upon the validity of import permit applications and all supporting documentation. This documentation includes but is not limited to appropriate and verifiable documentation of the above-referenced:

(1) Importer certification statement;

(2) Statement on the country or area of original manufacture; and,

(3) Statement on the country or area of storage for the five year period immediately prior to importation.

In the past, import permit applicants have submitted photocopies of the required statements. ATF has become aware that, in some cases, the photocopies are fraudulent. To assist ATF in confirming the validity and authenticity of these statements, importers must submit *original* statements in support of all import permit applications. Consistent with the purpose of section 38 of the AECA and implementing regulations, ATF will deny all permit applications that fail to include the above-described original statements.

Held, all importers submitting permit applications to import surplus military defense articles, importable as curio or relics, must provide with the permit applications originals of all necessary supporting statements. ATF will deny permit applications when applicants fail to provide appropriate original statements, as ATF finds that copies are not acceptable documentation within the meaning of 27 CFR 47.52(f).

Date signed: October 31, 2001

18 U.S.C. 922(t)(1)(C): IDENTIFICATION OF TRANSFEREE

27 CFR 178.124: FIREARMS TRANSACTION RECORD

Licensees may accept a combination of valid government-issued documents to satisfy the identification document requirements of the Brady Act. The required valid government-issued photo identification document bearing the name, photograph, and date of birth of the transferee may be supplemented by another valid, government-issued document showing the transferee's residence address. A member of the Armed Forces on active duty is a resident of the State in which his or her permanent duty station is located, and may satisfy the identification document requirement by presenting his or her military identification card along with official orders showing that his or her permanent duty station is within the State where the licensed premises are located.

ATF Rul. 2001-5

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received numerous inquiries from Federal firearms licensees (FFLs) regarding the acceptance of identification documents that do not show the purchaser's current residence address. FFLs have asked whether they may accept other documents, such as tax bills or vehicle registration documents, to establish the current residence address of the purchaser.

It has been ATF's longstanding position that licensees may accept a combination of documents to establish the identity of a firearm purchaser. ATF Rul. 79-7, ATFQB 79-1, 26, interpreted a licensee's obligation to obtain satisfactory identification from a purchaser in the manner customarily used in commercial transactions, pursuant to the existing regulations under the Gun Control Act of 1968 (GCA). The ruling held that satisfactory identification of a firearms purchaser must include the purchaser's name, age or date of birth, place of residence, and signature. The ruling also held that while a particular document may not be sufficient to meet the statutory requirement for identifying the purchaser, any combination of documents that together disclosed the required information would be acceptable.

ATF Rul. 79-7 has been superseded by an amendment to the GCA. The Brady Handgun Violence Prevention Act (Brady Act), which took effect in 1994, mandated the use of photo identification documents for transfers subject to the Act. Under the permanent provisions of the Brady Act, which went into effect on November 30, 1998, a licensed importer, manufacturer, or dealer is generally required to initiate a background check through the National Instant Criminal Background Check System (NICS) prior to transferring a firearm to an unlicensed individual.

The Brady Act requires a licensee to identify the nonlicensed transferee by examining a valid government-issued identification document that contains the photograph of the holder. *See* 18 U.S.C. 922(t)(1)(C). This requirement applies to all over-the-counter transfers, even where the transferee holds a permit that qualifies as an exception to the requirement for a NICS check at the time of transfer. 27 CFR 178.124(c)(3)(i).

The Brady Act incorporates the definition of an "identification document" provided by 18 U.S.C. 1028(d)(2), which is set forth in relevant part as follows:

[A] document made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign

government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

ATF regulations further require that the identification document must contain the name, residence address, date of birth, and photograph of the holder. 27 CFR 178.11.

ATF has received questions from licensees regarding purchasers who present a State-issued driver's license or other identification document that shows either an out-of-date residence address or a mailing address (such as a post office box) in lieu of a residence address. ATF has advised that these identification documents, standing alone, would not satisfy the requirements of the regulations implementing the Brady Act.

It is ATF's position that a combination of documents may be used to satisfy the Brady Act's requirement for an identification document. The prospective transferee must present at least one valid document that meets the statutory definition of an identification document; i.e., it must bear the transferee's name and photograph, it must have been issued by a governmental entity, and it must be of a type intended or commonly accepted for identification purposes. ATF recognizes, however, that some valid government-issued identification documents do not include the bearer's current residence address. Such an identification document may be supplemented with another valid government-issued document that contains the necessary information.

Thus, for example, a licensee may accept a valid driver's license that accurately reflects the purchaser's name, date of birth, and photograph, along with a vehicle registration issued by the State indicating the transferee's current address. Licensees should note that if the law of the State that issued the driver's license provides that the driver's license is invalid due to any reason (*i.e.*, the license is expired or is no longer valid due to an unreported change of address), then the driver's license may not be used for identification purposes under the Brady Act. If a licensee has reasonable cause to question the validity of an identification document, he or she should not proceed with the transfer until those questions can be resolved.

The licensee must record on the Form 4473 the type of identification document(s) presented by the transferee, including any document number. Examples of documents that may be accepted to supplement information on a driver's license or other identification document include a vehicle registration, a recreation identification card, a fishing or hunting license, a voter identification card, or a tax bill. However, the document in question must be valid and must have been issued by a government agency.

ATF has also received questions from licensees as to how to comply with the identification document requirement in the case of purchasers who are in the military. Some active duty military personnel may not have driver's licenses from the State in which they are stationed. The only identification document carried by some active duty military personnel is a military identification card that bears the holder's name, date of birth, and photograph, but does not reflect the holder's residence address.

Section 921(b) of the GCA provides that a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located. The purchaser's official orders showing that his or her permanent duty station is within the State where the licensed premises are located suffice to establish the purchaser's residence for GCA purposes. In combination with a military identification card, such orders will satisfy the Brady Act's requirement for an identification document, even though the purchaser may actually reside in a home that is not located on the military base.

Licensees should note that for purposes of the GCA, military personnel may in some cases have two States of residence. For example, a member of the Armed Forces whose permanent duty station is Fort Benning, Georgia, may actually reside in a home in Alabama. For GCA purposes, that individual is a resident of Georgia when he or she is in Georgia and a resident of Alabama when he or she is in Alabama. If such an individual wishes to purchase a firearm in Alabama, he or she must of course comply with the identification document requirement in the same way as any other Alabama resident.

Held: the Brady Act and the implementing ATF regulations require licensed importers, manufacturers, and dealers to examine a valid government-issued identification document that bears the name, residence address, date of birth, and photograph of the holder prior to making an over-the-counter transfer to any unlicensed transferee. Licensees may accept a combination of valid, government-issued documents to satisfy the identification document requirements of the Brady Act. A government-issued photo identification document bearing the name, photograph, and date of birth of the transferee may be supplemented by another valid, government-issued document showing the transferee's current residence address.

Held further, a purchaser who is a member of the Armed Forces on active duty is a resident of the State in which his or her permanent duty station is located, and may satisfy the identification document requirement by presenting his or her military identification card along with official orders showing that his or her permanent duty station is located within the State where the licensed premises are located.

ATF Ruling 79-7, ATFQB 79-1, 26, is hereby superseded.

Date signed: December 31, 2001

Editor's Note:

"Identification document" currently is defined in 18 U.S.C. 1028(d)(3).

27 CFR 179.105: TRANSFER AND POSSESSION OF MACHINEGUNS

Applications to transfer two (2) machineguns of a particular model to a Federal firearms licensee as sales samples will be approved if documentation shows necessity for demonstration to government agencies.

ATF Rul. 2002-5

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received inquiries from dealers in machineguns concerning the justification necessary to obtain more than one machinegun of a particular model as dealer sales samples. Specifically, the inquiries

are from machinegun dealers who demonstrate machineguns to large police departments and Special Weapons and Tactics (SWAT) teams, which requires the firing of thousands of rounds of ammunition during a single demonstration. Section 922(o) of Title 18, United States Code, makes it unlawful for any person to transfer or possess a machinegun, except a transfer to or by or under the authority of the United States or any department or agency thereof or a State or a department, agency, or political subdivision of; or any lawful transfer or lawful possession of a machinegun lawfully possessed before May 19, 1986.

The regulations in 27 CFR 179.105(d) provide that applications to register and transfer a machinegun manufactured or imported on or after May 19, 1986, to dealers registered under the National Firearms Act (NFA), 26 U.S.C. Chapter 53, will be approved if three conditions are met. The conditions required to be established include **(1)** a showing of the expected government customers who would require a demonstration of the weapon; **(2)** information as to the availability of the machinegun to fill subsequent orders; and **(3)** letters from government entities expressing a need for a particular model or interest in seeing a demonstration of a particular weapon. The regulation further provides that applications to transfer more than one machinegun of a particular model must also establish the dealer's need for the quantity of samples sought to be transferred.

The dealer sales sample regulation in section 179.105(d) is a narrow exception to the general prohibition on possession of post-1986 machineguns imposed by section 922(o). It requires that dealers submit letters of interest from law enforcement agencies to ensure that dealers possess post-1986 machineguns only for the purposes permitted by law, i.e., for sale or potential sale to government agencies.

Qualified dealers in machineguns often demonstrate weapons to all officers of the department, requiring the machinegun to fire thousands of rounds of ammunition during a single demonstration. In the case of new model machineguns, a department may wish to have thousands of rounds fired from the weapon before they are fully satisfied of its reliability. ATF is aware that after firing hundreds of rounds a machinegun often gets too hot to safely handle, resulting in the dealer's inability to demonstrate the weapon until it cools. In addition, it is not uncommon for machineguns to jam or misfeed ammunition after a large quantity of ammunition has been fired. Accordingly, dealers who demonstrate machineguns to departments with a large number of officers have asked that ATF approve the transfer of two (2) machineguns of each model as dealer sales samples.

The purpose of the dealer sales sample provision is to permit properly qualified dealers to demonstrate and sell machineguns to law enforcement agencies. Neither the law nor the implementing regulations were intended to impose unnecessary obstacles to police departments and other law enforcement agencies in obtaining the weapons they need to carry out their duties. Accordingly, if a dealer can provide documentation that the dealer needs to demonstrate a particular model of machinegun to an entire police department or SWAT team, ATF will approve the transfer of two (2) machineguns of that model to the dealer as sales samples.

This ruling should not be interpreted to imply that under no circumstances may a Federal firearms licensee (FFL) receive more than two (2) machineguns as sales samples. Consistent with past practice, an FFL who can show a bona fide reason as to why they need more than two (2) machineguns, may be able to receive more than two (2) if the request is accompanied by specific documentation.

Held*:* applications to transfer two (2) machineguns of a particular model to a Federal firearms licensee as sales samples will be approved if the dealer provides documentation that the dealer needs to demonstrate the machinegun to all the officers of a police department or the department's SWAT team or special operations team. An FFL who offers other bona fide reasons for their need for two (2) or more machineguns may get more than two (2) with specific documentation.

Date signed: September 6, 2002

18 U.S.C. 923(i): LICENSING

26 U.S.C. 5842: IDENTIFICATION OF FIREARMS

27 CFR 179.102: IDENTIFICATION OF FIREARMS

27 CFR 178.92: IDENTIFICATION OF FIREARMS, ARMOR PIERCING AMMUNITION, AND LARGE CAPACITY AMMUNITION FEEDING DEVICES

In accordance with 27 CFR 178.92 and 27 CFR 179.102, identification of firearms, armor piercing ammunition, and large capacity ammunition feeding devices, the terms "conspicuously" and "legibly" as used therein mean, respectively, that the markings are wholly unobstructed from plain view and that the markings contain exclusively Roman letters and Arabic numerals.

ATF Rul. 2002-6

The Bureau of Alcohol, Tobacco and Firearms (ATF) has been asked by State and local law enforcement officials to trace firearms that are marked, in part, with non-Roman letters, and/or non-Arabic numbers. Specifically, ATF received a request to trace a Makarov type pistol made in Bulgaria. The original manufacturer marking was *И*М 18 355. Because the importer did not stamp the firearm with a unique identifier that could be recognized by either ATF or a State or local law enforcement official, and because the marking contained a Cyrillic character, the firearm was not properly recorded, resulting in a failed trace of the weapon.

Because markings with non-Roman characters or non-Arabic numbers are not easily recorded or transmitted through ordinary means by importers, dealers or distributors, many firearm traces have proved unsuccessful. In some cases, an importer attempts to translate portions of the markings into Roman letters and Arabic numbers and re-marks the weapon with "translated" symbols. For example, an imported SKS rifle was marked with the serial number ДМ7639*И*. The importer translated the marking as LM7639i, but rather than restamp the entire number merely added the letters "L" and "i" below the original markings. This practice often results in failed traces because those required to record the markings (importers, dealers, or distributors) may record only the translated portions or both sets of markings. Moreover, law enforcement recovering a firearm with such markings may submit a trace

request lacking some portion of the markings, further impeding efforts to successfully trace the firearm.

In addition, ATF has found that some traces have failed because the required markings on the firearms barrel were wholly or partially obstructed from plain view by a flash suppressor or bayonet mount, resulting in the Federal Firearms Licensee creating an inaccurate record. ATF has been unable to trace hundreds of firearms as a result of nonstandard or obscured markings.

As a result of these practices, some licensed importers may not be in compliance with the marking requirements set forth in 27 CFR 178.92 and 27 CFR 179.102 because they have marked using non-Roman letters (such as Greek or Russian letters, Δ or Д) or non-Arabic numbers (e.g., XXV).

The above regulations require markings that legibly identify each item or package and require that such markings are conspicuous. ATF has consistently taken the position that "legibly" marked means using exclusively Roman letters (A, a, B, b, C, c, and so forth) and Arabic numerals (1, 2, 3, 4, 5, 6, and so forth), and "conspicuous" means that all required markings must be placed in such a manner as to be wholly unobstructed from plain view. These regulations apply to licensed manufacturers and licensed importers relative to firearms, armor piercing ammunition, and large capacity ammunition feeding devices, and to makers of National Firearms Act firearms.

Firearms, armor piercing ammunition, and large capacity ammunition feeding devices which contain required markings or labels using non-Roman letters (such as Greek or Russian letters, Δ or Д) or non-Arabic numbers (e.g., XXV), must be completely remarked or relabeled with a new serial number or other required markings that satisfy the legibility requirements described above. It is not sufficient to simply add an additional Roman letter or Arabic numeral to a nonconforming marking; a new and unique marking using Roman letters and Arabic numerals is required. Where feasible, the new markings should be placed directly above the non-compliant markings.

Similarly, firearms and large capacity ammunition feeding devices which contain required markings obstructed in whole or in part from plain view must be remarked with required markings that satisfy the conspicuousness requirements described above. For example, required markings may not be placed on a portion of the barrel where the markings would be wholly or partially obstructed from view by another part of the firearm, such as a flash suppressor or bayonet mount.

In certain unavoidable circumstances owing mainly to firearms of unusual design or other limiting factor(s) which would limit the ability of the manufacturer or importer to comply with the above legibility and conspicuousness requirements, alternate means of identification may be authorized as described in 27 CFR 178.92(a)(3)(i), (ii), or (iii) and 27 CFR 178.92(c)(3)(ii).

Held, a Makarov type pistol imported from Bulgaria utilizing Cyrillic letters or non-Arabic numbers is not marked in accordance with 27 CFR 178.92 and 27 CFR 179.102.

Held further, an imported firearm with any part of the required marking partially or wholly obstructed from plain view is not marked in accordance with section 27 CFR 178.92 and 27 CFR 179.102.

Date signed: November 5, 2002

26 USC 5844, 18 USC 922(o), 22 USC 2778

IMPORTATION OF BROWNING M1919 TYPE RECEIVERS FOR UNRESTRICTED COMMERCIAL SALE

An ATF-approved method of destruction for the Browning M1919 type machinegun will result in the severed portions of the receiver being importable for unrestricted commercial sale.

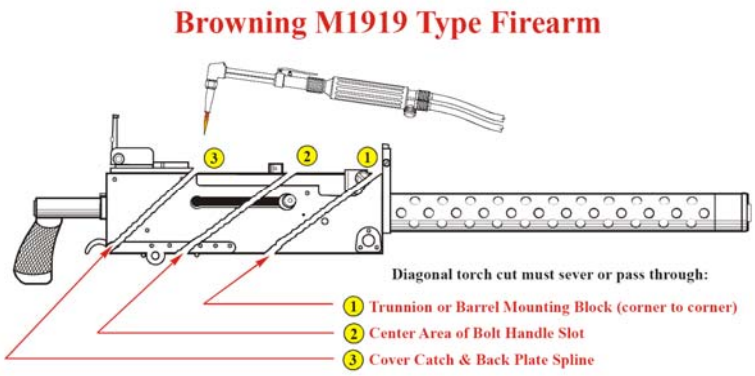
ATF Rul. 2003–1

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received inquiries about modifications necessary to the receiver of a Browning M1919 type machinegun to make it importable under 26 U.S.C. 5844 and 18 U.S.C. 922(o) for unrestricted commercial sale.

The Browning M1919 is a machinegun as defined in 26 U.S.C. 5845(b). The receiver of a Browning M1919 is also a machinegun as defined. Various manufacturers made Browning M1919 style machineguns in caliber .30-06 and 7.62x51mm (.308). The M1919 is a recoil-operated, belt-fed machinegun designed to be fired from a mount.

Section 5844 of Title 26, United States Code, makes it unlawful to import any firearm into the United States, unless the firearm to be imported or brought in is: (1) being imported for use by the United States or any department, independent establishment, or agency thereof or any State or possession or any political subdivision thereof; or (2) the firearm is being imported for scientific or research purposes; or (3) it is being imported solely for testing or use as a model by a registered manufacturer or solely for use as a sample by a registered importer or dealer. Additionally, the Secretary may permit the conditional importation of a firearm for examination and testing in connection with classifying the firearm.

Section 922(o) of Title 18, United States Code, makes it unlawful for any person to transfer or possess a machinegun, except a transfer to or by the United States or any department or agency thereof or a State or a department, agency, or political subdivision thereof; or any lawful transfer or lawful possession of a machinegun



lawfully possessed before May 19, 1986.

A review of the statutes above indicates that machineguns and machinegun receivers cannot be lawfully imported for unrestricted commercial sale. Accordingly, machinegun receivers may be imported for commercial sale only if they are destroyed in a manner that will prevent their function and future use as a firearm. The resulting severed receiver portions would not be subject to the provisions of 26 U.S.C. 5844 or 18 U.S.C. 922(o); however, these articles would be subject to the provisions of the Arms Export Control Act, 18 U.S.C. 925, 22 U.S.C. 2778, and implementing regulation at 27 CFR Part 47. It is important to note that these machinegun receivers must be destroyed and cannot be imported whether they are serviceable or unserviceable.

An ATF-approved method of destruction for a Browning M1919 type machinegun receiver requires three diagonal torch cuts that sever or pass through the following areas: (1) the trunnion or barrel mounting block (corner to corner), (2) the center area of the bolt handle slot, and (3) the cover catch and back plate spline. All cutting must be done with a cutting torch having a tip of sufficient size to displace at least ¼ inch of material at each location. Each cut must completely sever the receiver in the designated areas and must be done with a diagonal torch cut. Using a bandsaw or a cut-off wheel to destroy the receiver does not ensure destruction of the weapon.

This method of destruction is illustrated in the diagram below.

Alternative methods of destruction may also be acceptable. These alternative methods must be equivalent in degree to the approved method of destruction. Receivers that are not sufficiently modified cannot be approved for importation. To ensure compliance with the law, it is recommended that the importer submit in writing the alternative method of destruction to the ATF Firearms Technology Branch (FTB) for review and approval prior to importation.

Held, an ATF-approved method of destruction for a Browning M1919 type machinegun receiver will result in the severed portions of the receiver being importable for unrestricted commercial sale. The severed articles would not be subject to the provisions of 26 U.S.C. 5844 or 18 U.S.C. 922(o), but would continue to be subject to the provisions of the Arms Export Control Act, 22 U.S.C. 2778. Alternative methods of destruction may also be acceptable. It is recommended that such methods be reviewed and approved by the ATF Firearms Technology Branch prior to the weapon's importation.

Date signed: January 24, 2003

26 USC 5844, 18 USC 922(o), 22 USC 2778

IMPORTATION OF FN FAL TYPE RECEIVERS FOR UNRESTRICTED COMMERCIAL SALE

An ATF-approved method of destruction for the FN FAL type machinegun will result in the severed portions of the receiver being importable for unrestricted commercial sale.

ATF Rul. 2003–2

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received inquiries about modifications necessary to the receiver of an FN FAL type machinegun to make it importable under 26 U.S.C. 5844 and 18 U.S.C. 922(o) for unrestricted commercial sale.

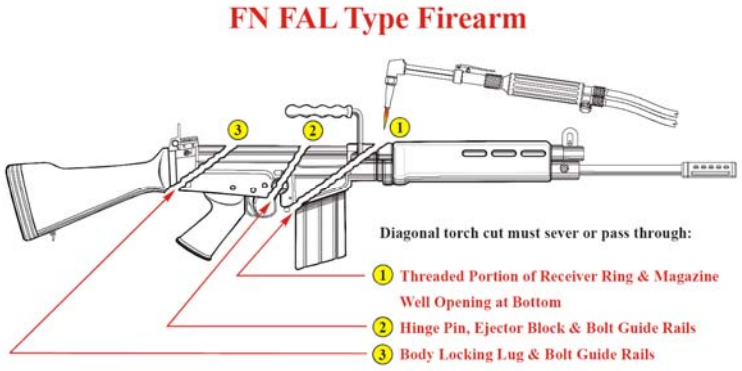
The FN FAL is a machinegun as defined in 26 U.S.C. 5845(b). The receiver of an FAL is also a machinegun as defined. Various manufacturers made FAL style machineguns in caliber 7.62x51mm (.308). The FAL is a gas-operated, shoulder-fired, magazine-fed, selective-fire machinegun.

Section 5844 of Title 26, United States Code, makes it unlawful to import any firearm into the United States, unless the firearm to be imported or brought in is: (1) being imported for use by the United States or any department, independent establishment, or agency thereof or any State or possession or any political subdivision thereof; or (2) the firearm is being imported for scientific or research purposes; or (3) it is being imported solely for testing or use as a model by a registered manufacturer or solely for use as a sample by a registered importer or dealer. Additionally, the Secretary may permit the conditional importation of a firearm for examination and testing in connection with classifying the firearm.

Section 922(o) of Title 18, United States Code, makes it unlawful for any person to transfer or possess a machinegun, except a transfer to or by the United States or any department or agency thereof or a State or a department, agency, or political subdivision thereof; or any lawful transfer or lawful possession of a machinegun lawfully possessed before May 19, 1986.

A review of the statutes above indicates that machineguns and machinegun receivers cannot be lawfully imported for unrestricted commercial sale. Accordingly, machinegun receivers may be imported for commercial sale only if they are destroyed in a manner that will prevent their function and future use as a firearm. The resulting severed receiver portions would not be subject to the provisions of 26 U.S.C. 5844 or 18 U.S.C. 922(o); however, these articles would be subject to the provisions of the Arms Export Control Act, 18 U.S.C. 925, 22 U.S.C. 2778, and implementing regulation at 27 CFR Part 47. It is important to note that these machinegun receivers must be destroyed and cannot be imported whether they are serviceable or unserviceable.

An ATF-approved method of destruction for an FN FAL type machinegun receiver requires three



diagonal torch cuts that sever or pass through the following areas: (1) the threaded portion of the receiver ring and magazine well opening at bottom, (2) the hinge pin, ejector block and bolt guide rails, and (3) the body locking lug and bolt guide rails. All cutting must be done with a cutting torch having a tip of sufficient size to displace at least ¼ inch of material at each location. Each cut must completely sever the receiver in the designated areas and must be done with a diagonal torch cut. Using a bandsaw or a cut-off wheel to destroy the receiver does not ensure destruction of the weapon.

This method of destruction is illustrated in the diagram below.

Alternative methods of destruction may also be acceptable. These alternative methods must be equivalent in degree to the approved method of destruction. Receivers that are not sufficiently modified cannot be approved for importation. To ensure compliance with the law, it is recommended that the importer submit in writing the alternative method of destruction to the ATF Firearms Technology Branch (FTB) for review and approval prior to importation.

Held, an ATF-approved method of destruction for an FN FAL type machinegun receiver will result in the severed portions of the receiver being importable for unrestricted commercial sale. The severed articles would not be subject to the provisions of 26 U.S.C. 5844 or 18 U.S.C. 922(o), but would continue to be subject to the provisions of the Arms Export Control Act, 22 U.S.C. 2778. Alternative methods of destruction may also be acceptable. It is recommended that such methods be reviewed and approved by the ATF Firearms Technology Branch prior to the weapon's importation.

Date signed: January 24, 2003.

26 USC 5844, 18 USC 922(o), 22 USC 2778

IMPORTATION OF HECKLER & KOCH G3 TYPE RECEIVERS FOR UNRESTRICTED COMMERCIAL SALE

An ATF-approved method of destruction for the Heckler & Koch G3 type machinegun will result in the severed portions of the receiver being importable for unrestricted commercial sale.

ATF Rul. 2003–3

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received inquiries about modifications necessary to the receiver of a Heckler and Koch G3 type machinegun to make it importable under 26 U.S.C. 5844 and 18 U.S.C. 922(o) for unrestricted commercial sale.

The G3 is a machinegun as defined in 26 U.S.C. 5845(b). The receiver of a G3 is also a machinegun as defined. Various manufacturers made G3 style machineguns in caliber 7.62x51mm (.308). The G3 is a delayed blowback, shoulder-fired, magazine-fed, selective-fire machinegun.

Section 5844 of Title 26, United States Code, makes it unlawful to import any firearm into the United States, unless the firearm to be imported or brought in is: (1) being imported for use by the United States or any department, independent establishment, or agency thereof or any State or possession or any political subdivision thereof; or (2) the firearm is being imported for scientific or research purposes; or (3) it is being imported solely for testing or use as a model by a registered manufacturer or solely for use as a sample by a registered importer or dealer. Additionally, the Secretary may permit the conditional importation of a firearm for examination and testing in connection with classifying the firearm.

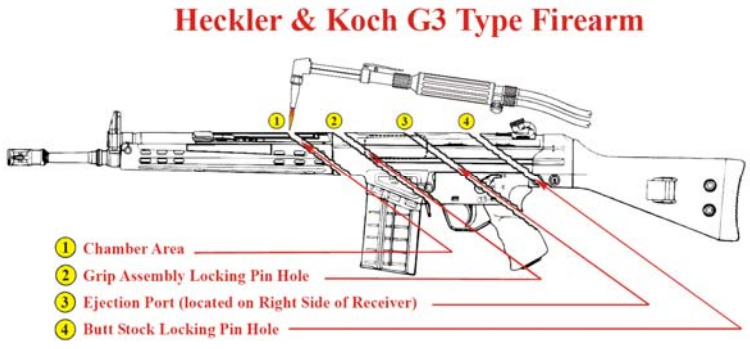
Section 922(o) of Title 18, United States Code, makes it unlawful for any person to transfer or possess a machinegun, except a transfer to or by the United States or any department or agency thereof or a State or a department, agency, or political subdivision thereof; or any lawful transfer or lawful possession of a machinegun lawfully possessed before May 19, 1986.

A review of the statutes above indicates that machineguns and machinegun receivers cannot be lawfully imported for unrestricted commercial sale. Accordingly, machinegun receivers may be imported for commercial sale only if they are destroyed in a manner that will prevent their function and future use as a firearm. The resulting severed receiver portions would not be subject to the provisions of 26 U.S.C. 5844 or 18 U.S.C. 922(o); however, these articles would be subject to the provisions of the Arms Export Control Act, 18 U.S.C. 925, 22 U.S.C. 2778, and implementing regulation at 27 CFR Part 47. It is important to note that these machinegun receivers must be destroyed and cannot be imported whether they are serviceable or unserviceable.

An ATF-approved method of destruction for a Heckler and Koch G3 type machinegun receiver requires four diagonal torch cuts that sever or pass through the following areas: (1) the chamber area, (2) the grip assembly locking pin hole, (3) the ejection port, and (4) the buttstock locking pin hole. All cutting must be done with a cutting torch having a tip of sufficient size to displace at least ¼ inch of material at each location. Each cut must completely sever the receiver in the designated areas and must be done with a diagonal torch cut. Using a bandsaw or a cut-off wheel to destroy the receiver does not ensure destruction of the weapon.

This method of destruction is illustrated in the diagram below.

Alternative methods of destruction may also be acceptable. These alternative methods must be equivalent in degree to the approved method of destruction. Receivers that are not sufficiently modified cannot be ap-



proved for importation. To ensure compliance with the law, it is recommended that the importer submit in writing the alternative method of destruction to the ATF Firearms Technology Branch (FTB) for review and approval prior to importation.

Held, an ATF-approved method of destruction for a Heckler and Koch G3 type machinegun receiver will result in the severed portions of the receiver being importable for unrestricted commercial sale. The severed articles would not be subject to the provisions of 26 U.S.C. 5844 or 18 U.S.C. 922(o), but would continue to be subject to the provisions of the Arms Export Control Act, 22 U.S.C. 2778. Alternative methods of destruction may also be acceptable. It is recommended that such methods be reviewed and approved by the ATF Firearms Technology Branch prior to the weapon's importation.

Date signed: January 24, 2003.

26 USC 5844, 18 USC 922(o), 22 USC 2778

IMPORTATION OF STEN TYPE RECEIVERS FOR UNRESTRICTED COMMERCIAL SALE

An ATF-approved method of destruction for the Sten type machinegun will result in the severed portions of the receiver being importable for unrestricted commercial sale.

ATF Rul. 2003–4

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received inquiries about modifications necessary to the receiver of a Sten type machinegun to make it importable under 26 U.S.C. 5844 and 18 U.S.C. 922(o) for unrestricted commercial sale.

The Sten is a machinegun as defined in 26 U.S.C. 5845(b). The receiver of a Sten is also a machinegun as defined. Various manufacturers made Sten style machineguns in caliber 9x19mm (9mm Luger). The Sten is a blowback-operated, shoulder-fired, magazine-fed, selective-fire submachinegun.

Section 5844 of Title 26, United States Code, makes it unlawful to import any firearm into the United States, unless the firearm to be imported or brought in is: (1) being imported for use by the United States or any department, independent establishment, or agency thereof or any State or possession or any political subdivision thereof; or (2) the firearm is being imported for scientific or research purposes; or (3) it is being imported solely for testing or use as a model by a registered manufacturer or solely for use as a sample by a registered importer or dealer. Additionally, the Secretary may permit the conditional importation of a firearm for examination and testing in connection with classifying the firearm.

Section 922(o) of Title 18, United States Code, makes it unlawful for any person to transfer or possess a machinegun, except a transfer to or by the United States or any department or agency thereof or a State or a department, agency, or political subdivision thereof; or any lawful transfer or lawful possession of a machinegun lawfully possessed before May 19, 1986.

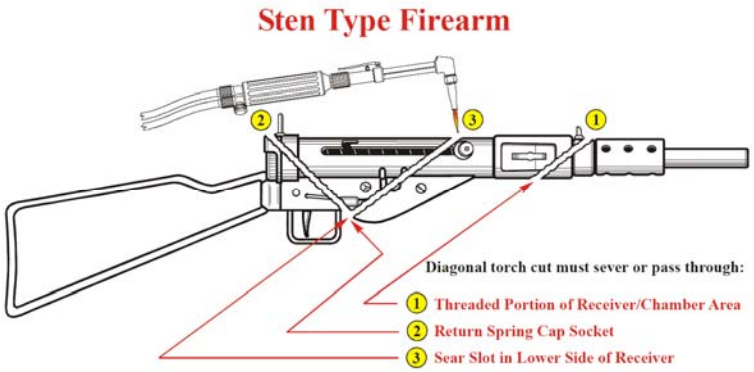
A review of the statutes above indicates that machineguns and machinegun receivers cannot be lawfully imported for unrestricted commercial sale. Accordingly, machinegun receivers may be imported for commercial sale only if they are destroyed in a manner that will prevent their function and future use as a firearm. The resulting severed receiver portions would not be subject to the provisions of 26 U.S.C. 5844 or 18 U.S.C. 922(o); however, these articles would be subject to the provisions of the Arms Export Control Act, 18 U.S.C. 925, 22 U.S.C. 2778, and implementing regulation at 27 CFR Part 47. It is important to note that these machinegun receivers must be destroyed and cannot be imported whether they are serviceable or unserviceable.

An ATF-approved method of destruction for a Sten type machinegun receiver requires three diagonal torch cuts that sever or pass through the following areas: (1) the threaded portion of the receiver/chamber area, (2) the return spring cap socket, and (3) the sear slot in the lower side of the receiver. All cutting must be done with a cutting torch having a tip of sufficient size to displace at least ¼ inch of material at each location. Each cut must completely sever the receiver in the designated areas and must be done with a diagonal torch cut. Using a bandsaw or a cut-off wheel to destroy the receiver does not ensure destruction of the weapon.

This method of destruction is illustrated in the diagram below.

Alternative methods of destruction may also be acceptable. These alternative methods must be equivalent in degree to the approved method of destruction. Receivers that are not sufficiently modified cannot be approved for importation. To ensure compliance with the law, it is recommended that the importer submit in writing the alternative method of destruction to the ATF Firearms Technology Branch (FTB) for review and approval prior to importation.

Held, an ATF-approved method of destruction for a Sten type machinegun receiver will result in the severed portions of the receiver being importable for unrestricted commercial sale. The severed articles would not be subject to the provisions of 26 U.S.C. 5844 or 18 U.S.C. 922(o), but would continue to be subject to the provisions of the Arms Export Control Act, 22 U.S.C. 2778. Alternative methods of destruction may also be acceptable. It is recommended that such methods be reviewed and approved by the ATF Firearms Technology Branch prior to the weapon's importation.



Date signed: January 24, 2003.

18 U.S.C. 925(d): EXCEPTIONS

22 U.S.C. 2778: IMPORTATION

26 U.S.C. 5844: IMPORTATION

27 CFR 478.111, 478.112, 478.113: IMPORTATION

27 CFR 479.111, 479.112, 479.113: IMPORTATION

27 CFR 447.42: APPLICATION FOR PERMIT

Persons with a valid Federal Firearms license and/or registered as an importer of articles enumerated on the U.S. Munitions Import List seeking to import firearms, ammunition and implements of war may submit the ATF Form 6, Application and Permit for Importation of Firearms, Ammunition and Implements of War, electronically using the eForm 6 online electronic filing system, provided such persons have met certain registration requirements.

ATF Rul. 2003-6

The Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44, and the National Firearms Act (NFA), 26 U.S.C. Chapter 53, provide that, with certain exceptions, no firearm, firearm barrel, or ammunition shall be imported or brought into the United States unless the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has authorized its importation. See 18 U.S.C. 925(d); 26 U.S.C. 5844. The Arms Export Control Act (AECA), 22 U.S.C. 2778, gives the President the authority to control the export and import of defense articles and defense services in furtherance of world peace and the security and foreign policy of the United States. Authority to administer the permanent import provisions of the AECA was delegated to the Attorney General, while the authority to administer the export and temporary import provisions of the AECA was delegated to the Secretary of State. Executive Order 11958 of January 18, 1977, as amended by Executive Order 13284 of January 23, 2003, 3 CFR Executive Order 13284.

Persons who wish to import firearms or ammunition must file with the Director an ATF Form 6 (Firearms), Application and Permit for Importation of Firearms, Ammunition and Implements of War, in triplicate, executed under the penalties of perjury. See 27 CFR 478.112, 478.113, 479.111, 479.112, 479.113, and 447.42. The Form 6 must contain the information specified in 27 CFR Subpart G. If the Director approves the application, the approved application will serve as the import permit. See 27 CFR 478.112(b).

The Government Paperwork Elimination Act (GPEA), enacted in 1998, requires executive agencies to provide for the option of the electronic maintenance, submission, or disclosure of information, as a substitute for paper, and for the use and acceptance of electronic signatures, when practicable, by October 2003. See Government Paperwork Elimination Act, Pub. L. No. 105-277, § 1704, 112 Stat. 2681-749, 2681-750 (1998). In accordance with the GPEA's mandate, ATF developed the eForm 6 online electronic filing system for persons with a valid Federal Firearms license and persons registered as an importer of articles enumerated on the U.S. Munitions Import List.

The eForm 6 online electronic filing system enables licensees and registered importers to file the ATF Form 6 and obtain an approved import permit from ATF electronically via the Internet. eForm 6 online applications will be approved, returned for correction, or denied and a paper copy returned to the applicant. If approved, the paper copy will serve as the import permit and may be submitted to United States Bureau of Customs and Border Protection. The system also enables licensees and registered importers to obtain status updates regarding both electronic and paper import permit applications they have filed. The applicable laws, regulations, policies, and procedures pertaining to import applications also apply to the eForm 6.

To register for the eForm 6 online electronic filing system, licensees and registered importers (or employees of licensees and registered importers) must complete a registration form, the ATF Form 5013.3, eForm 6 Access Request. Each individual requesting access to the system must sign the ATF Form 5013.3 certifying that they intend the electronic credentials assigned to them to substitute for their original signature and that any eForm 6 submissions will be treated as bearing an original signature. The user also agrees to be bound by the Notices and Agreement governing the use of the eForm 6 system.

Each ATF Form 5013.3 must also include the name, title and signature of a responsible person for the Federal firearms licensee or AECA registrant. The responsible person authorizes the user to complete and execute import applications on behalf of the Federal firearms licensee or AECA registrant. The responsible person also agrees that the licensee or registered importer will be bound by the entries on applications filed via the eForm 6 system and intends that such applications be treated as bearing an original signature, and agrees to be bound by the Notices and Agreement governing the use of the eForm 6 system.

Upon proper registration, ATF will issue each registrant a user ID and password allowing access to the eForm 6 system. Each individual user will be issued a separate user ID and password.

The eForm 6 system will require users to attest that the information submitted via the eForm 6 system are statements made subject to penalty of perjury and confirm their ATF-issued electronic credentials in order to complete the application process. Specifically, in order to complete the application process, a user will be required to declare first that all the statements contained in the application are true and correct and that the user has read, understood, and complied with the conditions and instructions for the import application. Second, the user will be required to declare that the user authorizes the transmittal via the eForm 6 system of what may constitute tax return information, as defined in section 6103 of the Internal Revenue Code, Title 26, United States Code.

The eForm 6 online electronic filing system is accessible on ATF's Firearms and Explosives Imports Branch website at :

http://www.atfonline.gov/eforms6

This site contains the instructions and forms necessary to register as an eForm 6 user.

Licensees and registered importers are not required to use the eForm 6 electronic filing system, and in certain circumstances may not be able to

participate. Licensees and registered importers may continue to submit ATF Form 6 on paper to ATF.

Sections 478.22 and 479.26, Title 27, CFR, provide that the Director may approve an alternate method or procedure in lieu of a method or procedure specifically prescribed in the regulations when he finds that:

(1) Good cause is shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and that the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and

(3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of Parts 478 and 479.

ATF finds that there is good cause to authorize a variance to the provisions of 27 CFR 478.111, 478.112, 478.113, 479.111, 479.112, 479.113 and 447.42 requiring the filing of ATF Form 6, Application and Permit for Importation of Firearms, Ammunition and Implements of War, in paper form due to the mandate of the GPEA that executive agencies provide the option of electronic submission of information as a substitute for paper, and for the use and acceptance of electronic signatures. Accordingly, ATF authorizes the following alternate method or procedure to the ATF Form 6 filing requirements of 27 CFR 478.111, 478.112, 478.113, 479.111, 479.112, 479.113, and 447.42:

The ATF Form 6 may be filed in electronic form on ATF eForm 6, provided that:

(1) The applicant has registered with ATF by submitting the registration form, ATF Form 5013.3, eForm 6 Access Request;

(2) The applicant has received a unique user ID and password, and has agreed that the electronic signature assigned to them is intended as their original signature on eForm 6 submissions; and

(3) The applicant has agreed to be bound by the Notices and Agreement governing the use of the eForm 6 system.

Licensees and registered importers who fail to abide by the conditions outlined above may be advised by ATF that their privilege of utilizing the eForm 6 electronic filing system has been terminated.

ATF finds that the above alternate method is consistent with the provisions of 27 CFR 478.111, 478.112, 478.113, 479.111, 479.112, 479.113 and 447.42 because it will ensure that the required information is captured on the eForm 6 and that the eForm 6 is signed under penalties of perjury. The alternate method is not contrary to any provision of law, will not increase costs to ATF, and will not hinder the effective administration of the regulations in 27 CFR Parts 478, 479, and 447.

Held, pursuant to 27 CFR 478.22 and 479.26, ATF authorizes a variance from the requirements of 27 CFR 478.111, 478.112, 478.113, 479.111, 479.112, 479.113 and 447.42 for Federal Firearms licensees and registered importers of articles enumerated on the U.S. Munitions Import List filing ATF Form 6, Application and Permit for Importation of Firearms, Ammunition and Implements of War. As an alternate method or procedure, the ATF Form 6 may be filed in electronic form on ATF eForm 6, provided that:

(1) The applicant has registered with ATF by submitting the registration form, ATF Form 5013.3, eForm 6 Access Request;

(2) The applicant has received a unique user ID and password, and has agreed that the electronic signature assigned to them is intended as their original signature on eForm 6 submissions; and

(3) The applicant has agreed to be bound by the Notices and Agreement governing the use of the eForm 6 system.

Date signed: July 11, 2003

18 U.S.C. 922(b)(3): TRANSFER OF FIREARMS

27 CFR 478.11, 478.124(c)(3)(ii): DEFINITIONS, TRANSFER OF FIREARMS

A Federal firearms licensee (FFL) may not lawfully transfer a firearm to a nonimmigrant alien who has not resided in a State continuously for at least 90 days immediately prior to the FFL conducting a National Instant Criminal Background Check System (NICS) check.

ATF Rul. 2004-1

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received questions from nonimmigrant aliens concerning how aliens satisfy the Gun Control Act's (GCA) State of residence requirement. Several nonimmigrant aliens have asked why they have been prohibited from purchasing a firearm from a Federal firearms licensee (FFL), even though the aliens believe they have lived in the State where the FFL is licensed for more than 90 days.

The GCA provides that an FFL generally may not transfer a handgun to an unlicensed person who does not reside in the State where the licensee's premises are located. 18 U.S.C. 922(b)(3). FFLs may transfer long guns to residents of other States in over-the-counter transactions, if the sale, delivery, and receipt of the firearm comply with the laws of the FFL's State and the buyer's State. *Id*. In order to satisfy these long gun sale requirements, the buyer must reside in a State within the United States.

The regulations implementing the GCA define "State of residence" as: "[t]he State in which an individual resides. An individual resides in a State if he or she is present in a State with the intention of making a home in that State." For aliens, the definition also provides that a legal alien "shall be considered to be a resident of a State only if the alien is residing in the State and has resided in the State for a period of at least 90 days prior to the date of sale or delivery of a firearm." 27 CFR 478.11.

Moreover, the GCA regulations require that after an alien completes ATF Form 4473 (Firearms Transaction Record), the FFL shall have the alien present documentation establishing that the alien is a resident of the State (as defined in section 478.11) in which the FFL's business premises are located. The regulation states that "[e]xamples of acceptable documentation include utility bills or a lease agreement which show that the

transferee has resided in the State continuously for at least 90 days prior to the transfer of the firearm." 27 CFR 478.124(c)(3)(ii).

ATF interprets these provisions to mean a nonimmigrant alien must reside in the State continuously for 90 days *immediately* preceding the NICS check. If this temporal requirement is not imposed, the purpose of the 90 continuous days requirement will be defeated. Documentation that a nonimmigrant alien resided in a State continuously for 90 days at some point in the past does not establish the alien's State of residence at the time of the NICS check.

Moreover, for all non-U.S. citizens, NICS checks include a check of Bureau of Immigration and Customs Enforcement (ICE) databases. These databases generally contain records of when nonimmigrant aliens enter and exit the United States. Accordingly, when a nonimmigrant alien attempts to receive a firearm from an FFL, the background check generally will show if the nonimmigrant alien has left the United States in the preceding 90 days.

ATF recognizes that some nonimmigrant aliens who temporarily leave the United States may have an intent to reside in a State within the United States, and are simply going on a trip abroad. However, ATF has determined that evidence of a nonimmigrant alien leaving the country represents a break in residency that requires a subsequent 90-day residence in a State before the alien can lawfully purchase a firearm from an FFL.

Accordingly, if the ICE records show the nonimmigrant alien has left the United States in the preceding 90 days, NICS will tell the FFL to cancel the transaction because the 90 day residency requirement has not been met. The transaction is canceled (rather than denied) because, since the nonimmigrant alien did not meet the residency requirement, a NICS check was not appropriate. Further, a denial is not appropriate because the 90 day residency requirement is not a prohibited category under 18 U.S.C. 922(g) or (n), and so is not grounds for NICS denying a transaction.

Held, pursuant to 18 U.S.C. 922(b)(3), 27 CFR 478.11, and 478.124(c)(3)(ii), Federal firearms licensees may not lawfully transfer firearms to nonimmigrant aliens who have not resided in the State where their business premises are located (or in the case of a long gun, in any State) for at least 90 continuous days immediately preceding the National Instant Criminal Background Check System (NICS) check.

Held further, that if a National Instant Criminal Background Check System check demonstrates a nonimmigrant alien has left the United States during the 90 days immediately preceding the NICS check, the nonimmigrant alien does not satisfy the 90 day State of residency requirement. This is the case even if the nonimmigrant alien has provided other documentation, such as utility bills or a lease, to demonstrate 90 days of continuous residency immediately preceding the NICS check.

Date signed: March 22, 2004

26 U.S.C. 5812, 5841, 5844, 5861, 5872
27 CFR 479.11, 479.26, 479.105, 479.111, 479.112, 479.114 – 479.119:
IMPORTATION OF FIREARMS SUBJECT TO THE NATIONAL FIREARMS ACT

18 U.S.C. 921(a)(3), 922(l), 922(o), 923(e), 924(d), 925(d)(3)
27 CFR 478.11, 478.22, 478.111 – 478.113: IMPORTATION OF MACHINEGUNS, DESTRUCTIVE DEVICES, SHORT-BARREL SHOTGUNS, SHORT-BARREL RIFLES, FIREARMS SILENCERS, AND OTHER FIREARMS SUBJECT TO THE NATIONAL FIREARMS ACT

22 U.S.C. 2778
27 CFR 447.11, 447.21:
TEMPORARY IMPORTATION OF DEFENSE ARTICLES

The Bureau of Alcohol, Tobacco, Firearms and Explosives has approved an alternate method or procedure for importers to use when temporarily importing firearms subject to the National Firearms Act, the Gun Control Act and the Arms Export Control Act for inspection, testing, calibration, repair, or incorporation into another defense article.

ATF Rul. 2004-2

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received numerous inquiries from importers who wish to temporarily import firearms subject to the Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44, and the National Firearms Act (NFA), 26 U.S.C. Chapter 53, for inspection, testing, calibration, repair, or incorporation into another defense article. Importers advise ATF that they generally obtain a temporary import license, DSP-61, from the Department of State authorizing the importation or comply with one of the regulatory exemptions from licensing in 22 CFR 123.4. They ask whether such a license or exemption is sufficient to satisfy the requirements of the GCA and NFA.

Statutory Background

1. *The National Firearms Act*

The NFA imposes restrictions on certain firearms, including registration requirements, transfer approval requirements, and import restrictions. 26 U.S.C. 5812, 5841, 5844. The term "firearm" is defined in 26 U.S.C. 5845(a) to include machineguns, short-barrel shotguns, short-barrel rifles, silencers, destructive devices, and "any other weapons." Section 5844 of the NFA provides that no firearm may be imported into the United States unless the importer establishes that the firearm to be imported 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) Being imported or brought in for scientific or research purposes; or

(3) Being imported or brought in solely for testing or use as a model by a registered manufacturer or solely for use as a sample by a registered importer or registered dealer.

Regulations implementing the NFA in 27 CFR Part 479 require importers to obtain an ATF Form 6, Application and Permit for Importation of Firearms, Ammunition and Implements of War, prior to importing NFA firearms into the United States. 27 CFR 479.111. In addition, the regulations require importers to register the firearms they import by filing with the

Director an accurate notice on Form 2, Notice of Firearms Manufactured or Imported, executed under the penalties of perjury, showing the importation of a firearm. 27 CFR 479.112. When an NFA firearm is to be exported from the United States, the exporter must file with the Director an application on Form 9, Application and Permit for Exportation of Firearms, to obtain authorization to export the firearm. 27 CFR 479.114-119.

Regulations in 27 CFR Part 479 indicate that NFA firearms may be imported for scientific or research purposes or for testing or use as a model by a registered manufacturer or as a sample by a registered importer or registered dealer. 27 CFR 479.111(a). However, section 479.105(c), implementing section 922(o) of the GCA, clarifies that machineguns manufactured on or after May 19, 1986, may be imported only with a purchase order for transfer to a governmental entity, or as a dealer's sales sample pursuant to section 479.105(d).

The regulations in Part 479 give the Director the authority to approve an alternate method or procedure in lieu of a method or procedure specifically prescribed in the regulations when it is found that:

> **(1)** Good cause is shown for the use of the alternate method or procedure;
>
> **(2)** The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and that the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and
>
> **(3)** The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of the GCA or regulations issued thereunder.

27 CFR 479.26.

2. *The Gun Control Act*

Import provisions of the GCA, 18 U.S.C. 922(l) and 925(d)(3), generally prohibit the importation of firearms subject to the NFA, except for the use of governmental entities. 18 U.S.C. 925(a)(1). The term "firearm" is defined in section 921(a)(3) to include any weapon which will or is designed to or may be readily converted to expel a projectile by the action of an explosive; the frame or receiver of such weapon; any firearm silencer; and any destructive device. In addition, section 922(o) of the GCA prohibits the transfer or possession of a machinegun manufactured on or after May 19, 1986, except for the official use of governmental entities.

Regulations implementing the GCA in 27 CFR Part 478 require that persons importing firearms into the United States obtain an approved ATF Form 6, Application and Permit for Importation of Firearms, Ammunition and Implements of War, prior to bringing the firearms into the United States. 27 CFR 478.111-114. Regulations in Part 478 provide that the Director may approve an alternate method or procedure in lieu of a method or procedure specifically prescribed by the GCA and regulations when it is found that:

> **(1)** Good cause is shown for the use of the alternate method or procedure;
>
> **(2)** The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and that the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and
>
> **(3)** The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of the GCA or regulations issued thereunder.

27 CFR 478.22.

3. *The Arms Export Control Act*

The Arms Export Control Act (AECA), 22 U.S.C. 2778, gives the President the authority to control the export and import of defense articles and defense services in furtherance of world peace and the security and foreign policy of the United States. Authority to administer the permanent import provisions of the AECA was delegated to the Attorney General, while the authority to administer the export and temporary import provisions of the AECA was delegated to the Secretary of State. Executive Order 11958 of January 18, 1977, as amended by Executive Order 13333 of January 23, 2003, 3 CFR Executive Order 13284.

The term "defense article" is defined in 27 CFR 447.11 as any item designated in sections 447.21 or 447.22. Section 447.21, the U.S. Munitions Import List, includes a number of defense articles that are also subject to the GCA and NFA. Category I, "Firearms," includes nonautomatic and semiautomatic firearms to caliber .50 inclusive, combat shotguns, shotguns with barrels less than 18 inches in length, and firearms silencers and suppressors. All Category I firearms are subject to the GCA. "Combat shotguns" include the USAS-12 shotgun and the Striker-12/Streetsweeper shotgun, which have been classified as destructive devices under the GCA and NFA. In addition, all shotguns with barrels of less than 18 inches in length are subject to both the GCA and NFA. All rifles with barrels of less than 16 inches in length are subject to both the GCA and NFA, and silencers are subject to both the GCA and NFA.

Category II, "Artillery Projectors," includes guns over caliber .50, howitzers, mortars, and recoilless rifles. Firearms over .50 caliber have a bore of more than one-half inch in diameter and are "destructive devices" as defined in the GCA and NFA.

Category IV, "Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines," includes rockets, bombs, grenades, torpedoes, and land and naval mines. All these articles are "destructive devices" as defined in the GCA and NFA.

Regulations of the Department of State implementing the AECA generally require a temporary import license, DSP-61, for the temporary import and subsequent export of unclassified defense articles, unless otherwise exempted. 22 CFR 123.3. Regulations in 22 CFR 123.4 provide an exemption from licensing if the item temporarily imported:

> **(1)** Is serviced (e.g., inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items, parts or components, but excluding any modification, enhancement, upgrade or other form

of alteration or improvement that changes the basic performance of the item), and is subsequently returned to the country from which it was imported. Shipment may be made by the U.S. importer or a foreign government representative of the country from which the goods were imported; or

(2) Is to be enhanced, upgraded or incorporated into another item which has already been authorized by the Office of Defense Trade Controls for permanent export; or

(3) Is imported for the purpose of exhibition, demonstration or marketing in the United States and is subsequently returned to the country from which it was imported; or

(4) Has been rejected for permanent import by the Department of the Treasury [after January 24, 2003, the Department of Justice] and is being returned to the country from which it was shipped; or

(5) Is approved for such import under the U.S. Foreign Military Sales (FMS) program pursuant to an executed U.S. Department of Defense Letter of Offer and Acceptance (LOA).

Willful violations of the AECA are punishable by imprisonment for not more than 10 years, a fine of not more than $1,000,000, or both. 22 U.S.C. 2778(c). Articles imported in violation of the AECA are also subject to seizure and forfeiture. 18 U.S.C. 545.

Discussion

A temporary import license authorizing the temporary importation and subsequent export of a defense article by the Department of State satisfies all legal requirements under the AECA. Importers may also comply with AECA requirements if the importation meets one of the exemptions in 22 CFR 123.4. However, if the defense article is subject to the GCA and NFA, the importer must also comply with the requirements of those statutes. Neither the GCA nor NFA make a distinction between temporary importation and permanent importation, as is the case under the AECA. Regulations implementing the GCA and NFA make it clear that an "importation" occurs when firearms are brought within the territory of the United States. 27 CFR 478.11 and 479.11. Accordingly, any bringing of firearms into the territory of the United States is subject to the import provisions of the GCA and NFA. Issuance of a temporary import license by the Department of State, or exemption from licensing under regulations in 22 CFR Part 123, will not excuse compliance with the GCA and NFA.

The statutes and regulations outlined above do not address the importation of machineguns manufactured after May 19, 1986, for scientific or research purposes or for testing, repair, or use as a model by a manufacturer or importer. Nor do the regulations address the importation of post-86 machineguns for repair, inspection, calibration, or incorporation into another defense article.

For other "defense articles" that are subject to the requirements of the GCA and NFA, such as silencers, destructive devices, and short-barrel weapons, ATF has the authority to approve the importation of such firearms for scientific or research purposes or for testing or use as a model or sample by a registered importer or registered dealer. However, such importations must comply with all applicable provisions of the NFA, including filing of a Form 2, Notice of Firearms Manufactured or Imported, to effect registration. If such articles are subsequently exported, a Form 9, Application and Permit for Permanent Exportation of Firearms, must also be approved prior to exportation.

As with post-86 machineguns, neither the law nor regulations specifically address the importation of firearms subject to the NFA for purposes of repair, inspection, calibration, or for incorporation into another defense article.

ATF recognizes that inspection, repair, calibration, incorporation into another defense article, and reconditioning of machineguns, destructive devices, and other NFA firearms is often necessary for National defense. These defense articles are frequently sold to allies of the United States for their legitimate defense needs. Accordingly, ATF believes it is appropriate to recognize an alternate method that allows importers to temporarily import these firearms, subject to requirements to ensure the security of these articles while they are in the United States and accountability of the persons who import them.

Pursuant to 27 CFR 478.22 and 479.26, ATF hereby authorizes an alternate method or procedure for importers of defense articles to use for temporary importation of such articles for inspection, calibration, repair, or incorporation into another defense article when such articles are subject to the requirements of the NFA and GCA. The procedure requires that importers--

(1) Be qualified under the GCA and NFA to import the type of firearms sought for importation;

(2) Obtain a temporary import license, DSP-61, from the Department of State in accordance with 22 CFR 123.3 OR qualify for a temporary import license exemption pursuant to 22 CFR 123.4;

(3) Within 15 days of the release of the firearms from Customs custody, file an ATF Form 2, Notice of Firearms Manufactured or Imported, showing the importation of the firearms. The DSP-61 must be attached to the Form 2. If the importation is subject to a licensing exemption under 22 CFR 123.4, the importer must submit with the ATF Form 2 a statement, under penalty of perjury, attesting to the exemption and stating that the article will be exported within four years of its importation into the United States;

(4) Maintain the defense articles in a secure place and manner to ensure that the articles are not diverted to criminal or terrorist use; and

(5) Export the articles within 4 years of importation into the United States.

Importers who follow the procedures outlined above will be in compliance with all the provisions of the GCA, NFA, and AECA administered and enforced by ATF. All other provisions of the law must be followed.

ATF finds that the procedure outlined above meets the legal requirements for an alternate method or procedure because there is good cause to authorize the importation of defense articles for repair, inspection, calibration, or incorporation into another defense article. Because such defense articles are often provided to

allies of the United States, it is imperative that the original manufacturers have a lawful method of importing such articles for repair and routine maintenance. The alternate method or procedure is consistent with the effect intended by the procedure set forth in the GCA and NFA, because the firearms must be registered and stored securely. Finally, the alternate method is consistent with the requirements of the GCA and NFA and will not result in any additional costs to ATF or the Department of State.

"Transfers" of NFA Weapons After Importation

ATF recognizes that temporarily imported NFA firearms are sometimes "transferred" from the importer to a contractor within the United States for inspection, testing, calibration, repair, or incorporation into another defense article. ATF has approved a procedure for authorizing the transportation or delivery of temporarily imported NFA firearms to licensed contractors for repair or manipulation, as noted above.

Conveyance of an NFA weapon to a licensee for purposes of inspection, testing, calibration, repair, or incorporation into another defense article is generally not considered to be a "transfer" under 26 U.S.C. 5845(j). ATF has taken the position that temporary custody by a licensee is not a transfer for purposes of the NFA since no sale, lease, or other disposal is intended by the owner. However, in order to document the transaction as a temporary conveyance and make clear that an actual "transfer" of a firearm has not taken place, ATF strongly recommends that the importer submit a Form 5, Application for Tax Exempt Transfer and Registration of Firearm, for approval prior to conveying a firearm for repair or manipulation. In the alternative, the importer should convey the weapon with a letter to the contractor, stating: (1) the weapon is being temporarily conveyed for inspection, testing, calibration, repair, or incorporation into another defense article; and (2) the approximate time period the weapon is to be in the contractor's possession. The transferee must be properly licensed to engage in an NFA firearms business.

Held, pursuant to 27 CFR 478.22 and 479.26, the Bureau of Alcohol, Tobacco, Firearms and Explosives has approved an alternate method or procedure for importers to use when temporarily importing firearms subject to the Gun Control Act, National Firearms Act, and the Arms Export Control Act for inspection, testing, calibration, repair, or incorporation into another defense article. This procedure applies to all defense articles that are also subject to the NFA and GCA. The procedure requires that importers--

(1) Be qualified under the GCA and NFA to import the type of firearms sought for importation;

(2) Obtain a temporary import license, DSP-61, from the Department of State in accordance with 22 CFR 123.3 or qualify for a temporary import license exemption pursuant to 22 CFR 123.4;

(3) Within 15 days of the release of the firearms from Customs custody, file an ATF Form 2, Notice of Firearms Manufactured or Imported, showing the importation of the firearms. The DSP-61 must be attached to the Form 2. If the importation is subject to a licensing exemption under 22 CFR 123.4, the importer must submit with the ATF Form 2 a statement, under penalty of perjury, attesting to the exemption and stating that the article will be exported within four years of its importation into the United States;

(4) Maintain the defense articles in a secure place and manner to ensure that the articles are not diverted to criminal or terrorist use; and

(5) Export the articles within 4 years of importation into the United States.

Held further, temporary conveyance of NFA weapons from the importer to a contractor within the United States for purposes of inspection, testing, calibration, repair, or incorporation into another defense article may be accomplished through advance approval of ATF Form 5, Application for Tax Exempt Transfer and Registration of Firearm, or with a letter from the importer to the contractor stating: (1) the weapon is being temporarily conveyed for inspection, testing, calibration, repair, or incorporation into another defense article; and (2) the approximate time period the weapon is to be in the contractor's possession. The transferee must be properly licensed to engage in an NFA firearms business.

Date signed: April 7, 2004

26 U.S.C. 5845(b): DEFINITIONS (MACHINEGUN)

27 CFR 179.11: MEANING OF TERMS

The 7.62mm Aircraft Machine Gun, identified in the U.S. military inventory as the "M-134" (Army), "GAU-2B/A" (Air Force), and "GAU-17/A" (Navy), is a machinegun as defined by 26 U.S.C. 5845(b). Rev. Rul. 55-528 modified.

ATF Rul. 2004-5

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has examined the 7.62mm Aircraft Machine Gun, commonly referred to as a "Minigun." The Minigun is a 36-pound, six-barrel, electrically powered machinegun. It is in the U.S. military inventory and identified as the "M-134" (Army), "GAU-2B/A" (Air Force), and "GAU-17/A" (Navy). It is a lightweight and extremely reliable weapon, capable of discharging up to 6,000 rounds per minute. It has been used on helicopters, fixed-wing aircraft, and wheeled vehicles. It is highly adaptable, being used with pintle mounts, turrets, pods, and internal installations.

The Minigun has six barrels and bolts which are mounted on a rotor. The firing sequence begins with the manual operation of a trigger. On an aircraft, the trigger is commonly found on the control column, or joystick. Operation of the trigger causes an electric motor to turn the rotor. As the rotor turns, a stud on each bolt travels along an elliptical groove on the inside of the housing, which causes the bolts to move forward and rearward on tracks on the rotor. A triggering cam, or sear shoulder, trips the firing pin when the bolt has traveled forward through the full length of the bolt track. One complete revolution of the rotor discharges cartridges in all six barrels. The housing that surrounds the rotor, bolts and firing mechanism constitutes the frame or receiver of the firearm.

The National Firearms Act defines "machinegun" as "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." 26 U.S.C. 5845(b). The term also includes "the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of the person." Id.; see 18 U.S.C. 921(a)(23); 27 CFR 478.11, 479.11.

ATF and its predecessor agency, the Internal Revenue Service (IRS), have historically held that the original, crank-operated Gatling Gun, and replicas thereof, are not automatic firearms or machineguns as defined. See Rev. Rul. 55-528, 1955-2 C.B. 482. The original Gatling Gun is a rapid-firing, hand-operated weapon. The rate of fire is regulated by the rapidity of the hand-cranking movement, manually controlled by the operator. It is not a "machinegun" as that term is defined in 26 U.S.C. 5845(b) because it is not a weapon that fires automatically.

The Minigun is not a Gatling Gun. It was not produced under the 1862 - 1893 patents of the original Gatling Gun. While using a basic design concept of the Gatling Gun, the Minigun does not incorporate any of Gatling's original components and its feed mechanisms are entirely different. Critically, the Minigun shoots more than one shot, without manual reloading, by a single function of the trigger, as prescribed by 26 U.S.C. 5845(b). See United States v. Fleischli, 305 F.3d 643, 655-656 (7th Cir. 2002). See also Staples v. United States, 511 U.S. 600, 603 (1994) (automatic refers to a weapon that "once its trigger is depressed, the weapon will automatically continue to fire until its trigger is released or the ammunition is exhausted"); GEORGE C. NONTE, JR., FIREARMS ENCYCLOPEDIA 13 (Harper & Rowe 1973) (the term "automatic" is defined to include "any firearm in which a single pull and continuous pressure upon the trigger (or other firing device) will produce rapid discharge of successive shots so long as ammunition remains in the magazine or feed device - in other words, a machinegun"); WEBSTER'S II NEW RIVERSIDE - UNIVERSITY DICTIONARY (1988) (defining automatically as "acting or operating in a manner essentially independent of external influence or control"); JOHN QUICK, PH.D., DICTIONARY OF WEAPONS AND MILITARY TERMS 40 (McGraw-Hill 1973) (defining automatic fire as "continuous fire from an automatic gun, lasting until pressure on the trigger is released").

The term "trigger" is generally held to be the part of a firearm that is used to initiate the firing sequence. See United States v. Fleischli, 305 F.3d at 655-56 (and cases cited therein); see also ASSOCIATION OF FIREARMS AND TOOLMARK EXAMINERS (AFTE) GLOSSARY 185 (1st ed. 1980) ("that part of a firearm mechanism which is moved manually to cause the firearm to discharge"); WEBSTER'S II NEW RIVERSIDE- UNIVERSITY DICTIONARY (1988) ("lever pressed by the finger in discharging a firearm").

Held, the 7.62mm Minigun is designed to shoot automatically more than one shot, without manual reloading, by a single function of the trigger. Consequently, the 7.62mm Minigun is a machinegun as defined in section 5845(b) of the National Firearms Act. See United States v. Fleischli, 305 F.3d at 655-56. Similarly, the housing that surrounds the rotor is the frame or receiver of the Minigun, and thus is also a machinegun. Id.; see 18 U.S.C. 921(a)(23); 27 CFR 478.11, 479.11.

To the extent this ruling is inconsistent with Revenue Ruling 55-528 issued by the IRS, Revenue Ruling 55-528, 1955-2 C.B. 482, is hereby modified.

Date signed: August 18, 2004

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

Purpose: 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.) and ammunition between federally licensed firearms dealers, importers, and manufacturers.

Background: The Bureau has experienced difficulty in tracing firearms in instances where drop shipments have been made to third parties and where the recordkeeping procedures employed by the three parties do not lend themselves to easy and fast tracing of firearms and ammunition. For this reason, the Bureau has prescribed recordkeeping procedures for "drop shipments" as set forth below.

Procedures: (1) Where licensee "A" places an order for firearms or ammunition with licensee "B" and "B" transmits the order to licensee "C" for direct shipment (drop shipment) to "A," a certified copy of the license 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 or ammunition to "A." On receipt of the shipment by "A," he shall enter the acquisition of the firearms or ammunition in his bound record. Both licensees shall make such entries in the manner prescribed by regulations. Since the actual movement of the firearms or ammunition is between "C" and "A" and since "B" does not take physical possession of them, "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.

(2) For example, where a licensed dealer orders firearms from a wholesaler and the wholesaler requests drop shipment from the manufacturer to the dealer, a certified copy of the dealer's license 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 the office of the appropriate Regional Director.

[75 ATF C.B. 78]

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 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 CFR 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.

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 licensed 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.