



U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

Office of the Director

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MEMORANDUM FOR THE ACTING DEPUTY ATTORNEY GENERAL

**FROM:** Kenneth E. Melson, Deputy Director  
Bureau of Alcohol, Tobacco, Firearms and Explosives

**SUBJECT:** Firearm Receivers of Air Gun Replicas of AR/M-16 Variant Firearms

**PURPOSE:** To Provide Background Regarding Prosecution of Cases Involving  
Firearm Frames or Receivers

**TIMETABLE:** Not Applicable

**SYNOPSIS:** ATF is in the process of taking enforcement actions involving air gun replicas of AR/M-16 variant firearms that have been determined by ATF to be firearms under Federal law. This memorandum provides background and court case summaries in which ATF has taken enforcement actions involving firearm receivers.

**DISCUSSION:**

ATF is in the process of taking enforcement actions involving air gun (*i.e.*, a gun that expels a projectile using compressed air, carbon dioxide, propane, or similar gas) replicas of AR/M-16 variant firearms that have been determined by ATF to have firearm receivers. The air guns in question were manufactured with non-ferrous metal and duplicate the appearance of various types of AR and M-16 rifles. The M-16 is a military style combat machinegun. The AR style firearm is a semi-automatic version of the M-16, and is produced using a variety of model designations. ATF evaluated several of these air guns and determined that these air gun replicas are "firearms" subject to the restrictions of the Gun Control Act of 1968 (GCA), Title 18, United States Code, Chapter 44, and that some of the M-16 variant replicas were also "machineguns" under the GCA and the National Firearms Act (NFA), Title 26, United States Code, Chapter 53.

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Background

Firearm "frames," commonly associated with pistols and revolvers, and "receivers," commonly associated with rifles and shotguns, fall within the definition of "firearm" in the GCA. Specifically, 18 U.S.C. 921(a)(3), and its implementing regulation, 27 CFR 478.11, define "firearm," in part, as "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; (B) the frame or receiver of any such weapon..." Under 27 CFR 478.11, the term "firearm frame or receiver" is defined as "[t]hat part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward position to receive the barrel."

Machinegun frames and receivers are also regulated under the GCA and NFA. Specifically, the National Firearms Act, 26 U.S.C. 5845(a)(6), and its implementing regulation, 27 CFR 479.11, define the term "firearm," in part, as "a machinegun." The term "machinegun" is defined by the GCA, 18 U.S.C. 921(a)(23), the NFA, 26 U.S.C. 5845(b), and their implementing regulations, 27 CFR 478.11 and 479.11, 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. The term shall also include the frame or receiver of any such weapon..."

ATF determined that the air guns examined have the appearance, dimensions, and substantially the same design as AR/M-16 variant firearm receivers and completed weapons. In addition, ATF determined that these air guns were weapons that may readily be converted to expel a projectile by the action of an explosive. Based on either of these conclusions, the air gun replicas of AR/M-16 variant firearms are "firearms," as defined by the GCA, 18 U.S.C. 921(a)(3), and its implementing regulations, 27 CFR 478.11.

ATF also determined that, unlike the AR (semi-automatic) receivers, the M-16 variant air gun receivers examined had machinegun sear mounting pin holes indexed. The indexed holes on the air guns are at the same location and size as those on an M-16 machinegun receiver. The proper size and location of the machinegun sear mounting pin holes is a design characteristic of an M-16 machinegun receiver, whether or not the holes are drilled or the machinegun sear is installed. Once drilled, these holes allow installation and function of an M-16 machinegun sear and, once installed, the replicas shot automatically more than one shot, without manual reloading, by a single function of the trigger. Because of their design, the M-16 variant air gun receivers examined are machinegun receivers, and therefore, "machineguns," as defined by 26 U.S.C. 5845(b) and 27 CFR 479.11.

Thousands of air guns with firearm receivers have been imported into the United States without approval from ATF. Because these air guns contain receivers for non-sporting firearms, they would have been prohibited from importation for commercial distribution, pursuant to 18 U.S.C. §§ 922(l) and 922(d)(3). Those air guns that have machinegun receivers were prohibited from importation for commercial sale and were also prohibited from being transferred to and possessed by private persons, pursuant to 18 U.S.C. §§ 922(o), 925(d)(3), 26 U.S.C. §§ 5861(d) and 5844. Further, because they were imported unlawfully, the receivers were not marked with a serial number as required by 18 U.S.C. § 923(i) and 27 C.F.R. §§ 478.92 and 479.102. As there

are no serial numbers or records made by the importers, manufacturers, or distributors of the weapons, ATF would be unable to trace any of these firearms.

Notable Court Cases Involving Firearm Receivers:

- Stewart v. United States, 451 F.3d 1071 (9<sup>th</sup> Cir. 2006): Defendant felon advertised and sold .50 caliber "Maadi Griffin" rifle kits that contained unfinished rifle receivers. ATF readily completed the unfinished receivers and converted them to fire a projectile by the action an explosive, and for this reason, classified them as "firearms" under the Gun Control Act. A search warrant was conducted based on ATF's classification, and ATF's finding was upheld by the District Court. During the search, five "homemade" Sten-type machineguns and a number of "Maadi Griffin" receivers were found. Defendant Stewart had manufactured some of the parts for these machineguns – the steel receiver tubes and the trigger bar assemblies ("Maadi-Griffin" style). However, the barrels, magazine wells, bolts, bolt springs, and spring end caps were all original British Sten gun parts. Defendant Stewart was charged with unlawful possession of the finished Sten-type machineguns under 18 U.S.C. § 922(o). Although the 9<sup>th</sup> Circuit initially rejected the authority of Congress to prohibit that conduct as-applied to the defendant, on appeal, the Supreme Court remanded the case back to the 9<sup>th</sup> Circuit for further consideration in light of *Gonzales v. Raich*, 545 U.S. 1 (2006). On reconsideration, the 9<sup>th</sup> Circuit overturned its prior decision and held that Congress had authority to prohibit Defendant's illegal possession of homemade machineguns. Also, because numerous "Maadi Griffin" rifle kits were unlawfully made and sold by the defendant without serial numbers, ATF issued letters to non-prohibited purchasers asking them to have an ATF-issued serial number engraved on the receivers.
- MKS Machinegun Receiver Cases (*U.S. v. Kelly*, 276 Fed. Appx. 261 (4<sup>th</sup> Cir. 2007); *U.S. v. One TRW, Model M14, 7.62 Caliber Rifle*, 441 F.3d 416 (6<sup>th</sup> Cir. 2006); *U.S. v. TRW Rifle 7.62x51mm Caliber*, 447 F.3d 686 (9<sup>th</sup> Cir. 2006); *U.S. v. M-K Specialties Model M-14 Machinegun Serial No. 1447797*, 424 F. Supp. 2d 862 (N.D.W.V. 2006)): MK Specialties, Inc. (MK) sold numerous semi-automatic rifles it manufactured from cut-up M-14 machinegun receivers. During execution of a search warrant, many of these receivers were seized, along with an Uzi machinegun receiver, a Maadi semi-automatic assault rifle, an FAL semi-automatic assault rifle, and an AK-47 machinegun. ATF classified the MK receivers as "machineguns" after determining that the receivers were: (1) originally designed as M-14 machinegun receivers; and (2) readily restored to shoot multiple rounds automatically. Defendant Kelly was charged in a 206 count indictment with, among other things, possession of unregistered machineguns, in violation of 26 U.S.C. § 5861(d). Kelly was convicted on 5 of the counts: unlawful firearm transfers to non-residents (3 counts); unlawful possession of a semi-automatic assault weapon; and unlawful possession of the Uzi machinegun receiver. However, Kelly was acquitted of the other charges, to include those relating to his possession and transfer of the MK machineguns and machinegun receivers. Numerous MK receivers were also administratively seized by ATF throughout the United States, and civil forfeiture cases were filed by the Government against those receivers. In upholding the civil forfeitures (and Kelly's criminal convictions) the courts uniformly held that the MK receivers were

originally designed as machinegun receivers, and that they were readily restored to fire fully automatically; therefore, they were "machineguns" as defined by the GCA and NFA.

- United States v. 1,100 Machinegun Receivers, 73 F. Supp. 2d 1289 (D. Utah 1999): The Government brought a civil forfeiture action against 1,100 machinegun receivers willfully imported by Interport, Inc. without the required permit. The District Court upheld the forfeiture, ruling that the defendant receivers met the regulatory definition of receivers in 27 C.F.R. § 178.11 (now 478.11) in that they provided housing for a hammer, bolt and firing mechanism. The court further stated that it made no difference that those receivers were not able to receive a barrel, by threading or otherwise.
- United States v. Evans, 712 F. Supp. 1435 (D. Mont. 1989), *aff'd*, 928 F.2d 858 (9<sup>th</sup> Cir. 1991): Defendants were charged with conspiring to cause illegal possession of machineguns, in violation of 18 U.S.C. §§ 371 and 26 U.S.C. § 5861(d). One of the defendants sold incomplete Sten machinegun conversion kits, while the other sold, to the same customers, steel tube receivers missing from those kits with installation instructions. In denying a motion to dismiss, the District Court ruled that because the steel tubes were designed to be fitted as machinegun receivers, they were machineguns under the GCA and NFA.
- United States v. Podhorn, 2006 U.S. Dist. LEXIS 16712 (S.D. Ill 2006): Defendant, a federally licensed firearms dealer, was convicted of willfully failing to maintain records of a firearms transferee (18 U.S.C. § 922(b)(5)), making false statements in his records (924(a)(3)/1001), selling stolen firearms (922(j)); and failing to maintain records (922(m)). In a related criminal forfeiture proceeding, the District Court upheld the forfeiture of, among other firearms, a lower receiver of an FN-FAL rifle for having been involved in a violation of section 922(n) (receipt of a firearm by a person under indictment for a felony). In so ruling, the court held that the lower receiver provided housing for the hammer, bolt or breechblock, and firing mechanism, and therefore, was a "firearm frame or receiver," and thus, a "firearm" as defined by 27 C.F.R. § 478.11.
- United States v. Wiegand, et al, No. 3:04CR15-MU, WDNC: Firearms licensee (Interordnance of America, LLP) illegally imported PPSH, FN FAL, Steyr MP69 and L1A1 machinegun receivers, alleging on ATF Forms 6 that the weapons were "part kits" that had been destroyed in such a manner to remove them from the purview of the National Firearms Act. These machinegun receivers were seized by ATF from the licensee's premises pursuant to a search warrant, and after ATF sent letters nationwide recalling them from purchasers. The PPSH receivers were readily restored by ATF to fire fully automatically in less than 14 minutes, using duct tape and cable ties. The FN FAL receivers were restored with spot welds and cable ties in less than one hour. The Steyr receivers were restored by welding a piece of sheet metal to the cut frame in under one hour. Based on both the design of the receivers, and easy restoration to fire automatically, the PPSH and FN FAL receivers were determined by ATF to be machineguns. The Steyr receivers were determined to be machineguns based on the restoration only (*i.e.*, not on the original design of the receiver). This case was resolved in a plea agreement whereby the licensee pleaded guilty to violation of 26 U.S.C. 5861(d) (possession of unregistered machineguns). The seized PPSH firearms were forfeited