

**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**

**[Status of ruling: Active]**

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

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

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

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

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

ATF has previously held that devices designed for expelling tear gas or pyrotechnic signals are not weapons and are exempt from the destructive device definition. However, ammunition designed to be used against individuals is available for these 37/38 mm devices. This “anti-personnel” ammunition consists of cartridges containing wood pellets, rubber pellets or balls, and bean bags.

When a gas/flare gun is possessed with “anti-personnel” type ammunition, it clearly becomes an instrument of offensive or defensive combat and is capable of use as a weapon. Since these gas/flare guns have a bore diameter of greater than one-half inch, fire a projectile by the means of an explosive, and, when possessed with “anti-personnel” ammunition, are capable of use as

weapons, the combination of the gas/flare gun and “anti-personnel” ammunition is a destructive device as defined in the GCA and NFA. As a result, registration as a destructive device is required. Any person possessing a gas/flare gun with which “anti-personnel” ammunition will be used must register the making of a destructive device prior to the acquisition of any “anti-personnel” ammunition. In addition, the gas/flare guns are classified as firearms as defined by the GCA when possessed with “anti-personnel” type ammunition.

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

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

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