

**18 U.S.C. 921(a)(3): DEFINITIONS (FIREARM)**

**18 U.S.C. 921(a)(24): DEFINITIONS (FIREARM MUFFLER AND FIREARM SILENCER)**

**26 U.S.C. 5845(a)(7): DEFINITIONS (FIREARM)**

**26 U.S.C. 5845(i): DEFINITIONS (MAKE)**

*Certain integral devices intended to diminish the report of paintball guns are not "firearm silencers" or "firearm mufflers" under the Gun Control Act of 1968 or the National Firearms Act.*

**ATF Rul. 2005-4**

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received requests from manufacturers of paintball guns for evaluation and classification of integral devices intended to diminish the report of a paintball gun. Specifically, the manufacturers have asked whether the device would be considered a "silencer" as defined in 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.

The sample submitted is a paintball gun with a ported device attached to the barrel. The paintball gun uses compressed air to expel a projectile. The paintball gun has a barrel with a smooth bore 12 1/4 inches long and 1 inch in diameter. The barrel is permanently welded to the paintball gun. The section of the barrel that the device is attached to has an internal diameter of .68 inches and is ported with 20 openings. Ten of the openings are rectangular in shape and are approximately .430 inches wide and 1 inch in length. The other 10 openings are oval in shape and approximately .25 inches wide and 1 inch in length. Two end caps, each with a diameter of 1.5 inches, are permanently welded to the barrel at either end of the ported section of the barrel. A section of plastic tube approximately 8 inches in length and 2 inches in diameter covers the ported section of the barrel. It is attached by sliding over the paintball gun barrel and is held in place by two rubber "O" rings that are affixed to metal bushings. These metal bushings are permanently welded to the barrel, one toward the rear and one at the muzzle end of the barrel. The plastic tube, however, can be removed.

To determine whether the ported barrel and outer sleeve would function as a silencer, it was removed by cutting with a hack saw. A threaded adaptor with tape wrapped around it was utilized so the device could be attached to a .22 caliber Ruger Mark II pistol. With the device attached, a sound meter test was performed, with five shots being fired with the device attached and five shots fired without the device attached. The testing indicated that the attachment of the device resulted in a 7.98-decibel sound reduction.

The GCA defines the term "firearm" as:

(A) 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; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

18 U.S.C. 921(a)(3)(C).

The definition of “firearm silencer” and “firearm muffler” in 18 U.S.C. 921(a)(24) provides as follows:

The terms “firearm silencer” and “firearm muffler” mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

The NFA defines the term “firearm” to include any silencer as defined in section 921 of the GCA. 26 U.S.C. 5845(a)(7).

The term “make” is defined in the NFA to include manufacturing, putting together, altering, any combination of these, or otherwise producing a firearm. 26 U.S.C. 5845(i).

The paintball gun examined by ATF is not a “firearm” as defined, because it does not, is not designed to, and may not be readily converted to expel a projectile by the action of an explosive and does not utilize the frame or receiver of a firearm. The sole issue presented is whether the ported barrel and outer sleeve are a firearm muffler or firearm silencer as defined in the GCA and NFA.

The design characteristics of the ported barrel and outer sleeve are similar to those of conventional commercial silencers. The barrel is ported to allow the escape of gases from a fired round and the outer sleeve dampens or muffles the sound when a round is fired. Moreover, the sound meter test indicates a reduction of 7.98 decibels when the ported barrel and sleeve were attached to a .22 caliber pistol, which is consistent with the sound reduction resulting from the use of commercial silencers.

Noteworthy, the definition of “firearm silencer” and “firearm muffler” requires that the device be one for diminishing the report of a portable firearm. The device under consideration is permanently attached to and an integral part of a paintball gun, which is not a firearm as defined in the GCA or NFA. The device cannot be removed from the paintball gun without destroying the barrel and rendering the paintball gun unusable. Under these circumstances, the integral device is not a firearm muffler or firearm silencer.

However, once the device is cut from the paintball gun, it can be used to diminish the report of a firearm. As stated previously, the design characteristics of the device are consistent with those of commercial silencers, and testing indicates that the device functions to reduce the report of the firearm. Moreover, removal of the

device from the paintball gun indicates some intention to utilize the device for something other than reducing the report of the paintball gun. Because the device will no longer be permanently attached to an unregulated item, and because of its silencer design characteristics, removal will result in the making of a silencer under the NFA and GCA. This is consistent with the definition of "make" in the NFA, as removal of the device results in production of a silencer.

Making of a silencer by an unlicensed person for personal use does not require any license or notification to ATF under the GCA. However, under the NFA the making of a silencer must be approved in advance by ATF. Unlicensed persons must file an ATF Form 1, Application to Make a Firearm, pay a \$200 making tax, and comply with all other provisions of the law prior to making the firearm. Approval of the Form 1 results in registration of the silencer to the maker. Subsequent transfers of the registered silencer must be approved in advance by ATF. Possession of a silencer not registered to the possessor, and a making or transfer that does not comply with the NFA and regulations are punishable by imprisonment for up to 10 years, a fine of \$250,000, or both.

*Held*, a device for an unregulated paintball gun, having a permanently affixed, integral ported barrel and other components, that functions to reduce the report of the paintball gun is not a "firearm silencer" or "firearm muffler" as defined, as the device is not one for diminishing the report of a portable firearm.

*Held further*, removal of the permanently affixed ported barrel and other components from a paintball gun is a "making" of a silencer under the GCA and NFA that requires advance approval from ATF.

Date approved: October 12, 2005

Signed by:

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Director