INDUSTRY CIRCULAR

DEPARTMENT OF THE TREASURY
Bureau of Alcohol, Tobacco and Firearms
Washington, D.C. 20226

Number: 75-1 Date: January 23, 1975

PENGUNS CLASSIFIED AS FIREARMS

Manufacturers and Importers of
Firearms and Others Concerned:

Purpose. This is to inform you that a new ruling reclassifies small caliber weapons (such as penguns) 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, as firearms. The new ruling, which will be published soon in the ATF Bulletin, will read as follows:

> The Bureau has re-examined its position with respect to the applicability of Titles I and II of the Gun Control Act of 1968 (Chapter 44 of Title 18 U.S.C., and Chapter 53 of Title 26 U.S.C. (National Firearms Act)), to small caliber weapons (commonly known as "penguns") ostensibly designed to expel only tear gas, similar substances or pyrotechnic signals by the action of an explosive.
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> Revenue Ruling 56-29, C.B. 1956-1, 552 (Internal Revenue) held that a tear gas gun designed to expel only a gas or other mist rather than a shot or a projectile was not a "firearm" as that term was previously defined in the repealed Federal Firearms Act and in the National Firearms Act. Revenue Ruling 56-29 also held that if such a device was capable of firing other than the shells or cartridges designed for use therewith, such as fixed metallic cartridges or shotgun shells, it would be a "firearm" within the purview of the National and/or Federal Firearms Acts, depending upon the individual characteristics of the device.
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> The Bureau has had occasion to re-examine such weapons for the purpose of determining their status under the Gun Control Act of 1968. Such weapons are readily concealable and ostensibly designed to expel only tear gas, similar substances or pyrotechnic signals by the action of an explosive, normally by means of a firing mechanism designed to accept a plastic or extruded aluminum helix-type disposable cartridge.
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> Unlike the definition of "firearm" in the repealed Federal Firearms Act, the term "firearm" as used in 18 U.S.C. 921(a)(3) includes "any weapon (including a starter gun) which will or is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." 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.

Held, 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).

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 26 CFR Part 178. Such weapons manufactured before June 1, 1975, will not be treated as subject to the provisions of Chapter 44 and 26 CFR Part 178 in order to allow persons manufacturing and dealing in such weapons to comply with the provisions of Chapter 44 and 26 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. The importation of such weapons pursuant to an unexpired permit will not be affected by this Ruling.

The Bureau has long held that such weapons when actually converted to fire other than the gas or pyrotechnic cartridges originally designed for use therewith are "firearms" under Chapter 44 and the National Firearms Act, depending upon the individual characteristics of the weapon. See Revenue Ruling 56-29, supra, and Revenue Ruling 56-597, C.B. 1956-2, 931 (Internal Revenue). These determinations with respect to the converted weapon were not altered by the amended definitions of the term "firearm" now found in 18 U.S.C. 921(a)(3) and the term "any other weapon" in 26 U.S.C. 5845(e). Accordingly, any such weapon which is capable of being concealed on the person which has originally been designed or converted to discharge a shot through the energy of an explosive will remain subject to the provisions of the National Firearms Act as an "any other weapon" (26 U.S.C. 5845(e)).

Revenue Ruling 56-29, C.B. 1956-1, 552 (Internal Revenue), is hereby revoked.

Inquiries. Inquiries regarding this circular should refer to its number and be addressed to your Regional Director, Bureau of Alcohol, Tobacco and Firearms.

William R. Thompson
for Rex D. Davis
Director