



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, West Virginia 25405

www.atf.gov

APR 29 2009

Dear [REDACTED]

This is in response to your recent correspondence to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Branch (FTB) asking several questions with respect to 18 U.S.C. § 922(r) and its implementing regulation, 27 CFR § 478.39. (Please note that your letter was forwarded to FTB's new location in Martinsburg, West Virginia.) Your questions are listed below in italics, each followed by our answers, which are in bullets.

1. *What is ATF's definition of "assembly" as it applies to § 922(r)?*

- The meaning of "assemble" or "assembly" as it applies to § 922(r) shall be the same as the word is generally known and used.

2. *Does ATF consider routine maintenance, such as the removal and replacement of parts for cleaning, or the removal and insertion of magazines to constitute "assembly"?*

- The removal and re-installing of parts for cleaning and routine maintenance would not constitute assembly for the purpose of § 922(r), as long as none of the original parts are substituted with replacement or additional parts.

3. *Would a person incur criminal liability by the purchase and possession of a second-hand firearm which was determined not to be in compliance with § 922(r), even though the assembly of said firearm was performed by someone other than the buyer, and the buyer had no way to verify the legality of that assembly?*

- 18 U.S.C. § 922(r) applies to the act of assembly per se, not mere possession of the assembled firearm.

4. *If a person were to be criminally charged with a violation of § 922(r), on whom would the burden of proof lie, and what standard of proof would be required to establish guilt or innocence?*

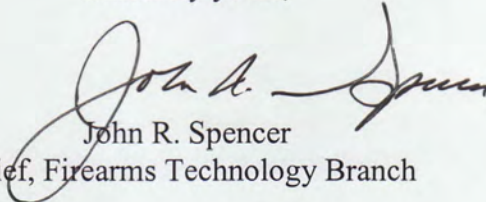
- All persons are considered innocent until proven guilty; therefore, the “burden of proof” in any criminal case lies with the Government. The burden of proof to establish “guilt” has long been codified by legal precedent in U.S. Courts. We recommend you seek the guidance of legal counsel for a detailed explanation of this standard.

5. *What is ATF's procedure for determining whether a given firearm is in compliance with § 922(r), given that the absence of a mark indicating the origin of a part is insufficient to draw any firm conclusion about the part's origin, foreign or domestic?*

- Every method possible is utilized in identifying the origin of manufacture of a firearm part during an investigation involving a suspected violation of § 922(r). Each such review must be taken on a case-by-case basis and may necessitate evaluation of such things as: design characteristics, markings (or lack thereof), and associated documents and/or statements.

We thank you for your inquiry and trust you find our answers responsive.

Sincerely yours,


John R. Spencer
Chief, Firearms Technology Branch