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Classification of Firearms

ISSUE

Recent corrections to firearms classification.

BACKGROUND

Part III of the *Criminal Code* and its associated regulations establish the legal framework governing the classification of firearms in Canada. Firearms are classified either by way of definition in section 84(1) of the *Code* or through the *Regulations Prescribing Certain Firearms and Other Weapons*.

There are three classes of firearms: **non-restricted** (ordinary hunting rifles; shot guns), **restricted** (handguns; certain rifles and semi-automatics) and **prohibited** (prescribed rifles and handguns; fully automatics). The table below outlines the specific criteria for each.

Classification	Criteria
Non-restricted	A non-restricted firearm is: <ul style="list-style-type: none">• A firearm that is neither prohibited nor restricted; generally long-guns, hunting rifles and shot guns.
Restricted	A restricted firearm is a: <ul style="list-style-type: none">• handgun that is not a prohibited handgun;• firearm that has a barrel length less than 470mm in length and is capable of discharging centre-fire ammunition in a semi-automatic manner;• firearm that is designed or adapted to be fired when reduced to a length of less than 660mm by folding, telescoping or otherwise; or,• firearm of any other kind that is prescribed to be a restricted firearm.
Prohibited	A prohibited firearm is: <ul style="list-style-type: none">• a handgun that has a barrel equal to or less than 105mm in length, or is designed or adapted to discharge a 25 or 32 calibre cartridge, but does not include any such handgun that is prescribed, where the handgun is for use in international sporting competitions governed by the rules of the International Shooting Union;• a firearm that is adapted from a rifle or shotgun, whether by sawing, cutting or any other alteration, and that as so adapted is less than 660mm in length or is 660mm or greater in length and has a barrel less than 457mm in length;• an automatic firearm, whether or not it has been altered to discharge only one projectile with one pressure of the trigger; or,• any firearm that is prescribed to be a prohibited firearm.

Source: Section 84(1) Part III, Criminal Code

The regulations list specific models of firearms (e.g., AK-47 rifle, Beretta, M16) known at the time, as restricted or prohibited, and include “variants and modified versions” of those named models (e.g., any version of the Beretta BM59 is prohibited). The term “variant” was employed as a means to capture future firearms that differed slightly (e.g., barrel length, cartridge size) from those specifically listed in the regulations, but were generally the same make and type.

Given the technical knowledge required to determine what particular firearms, weapons, devices and ammunition should be classed as either prohibited or restricted, an exclusively statutory regime is not practicable. Instead, the use of regulations allows for the classification regime to be regularly updated as the technical description of existing

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firearms and weapons changes as a result of further developments or as new models and devices appear.

The absence of regularly updating the regulations has allowed firearms to enter the Canadian market as non-restricted firearms, but that would have been classified as either restricted or prohibited had they existed in 1995. This poses a risk to public safety by allowing firearms designed for military and para-military purposes to be easily available to the public.

In addition to the classification framework, the *Code* provides an exemption from the definition of prohibited firearm for certain handguns used in international sporting competitions governed by the rules of the International Shooting Union (now known as the International Sport Shooting Federation). The *Regulations Prescribing Exclusions from Certain Definitions of the Criminal Code (International Sporting Competition Handguns)* were created in 1998, and last updated in 2000, currently exempt 37 types of handguns for use in sporting competitions.

Roles and Responsibilities

Firearms are an area of shared responsibility. The Minister of Public Safety is the lead minister responsible for firearms policy. The Minister of Justice is responsible for the firearms-related penalty provisions of the *Code* and the criteria defining the classification of firearms.

The Royal Canadian Mounted Police (RCMP) Canadian Firearms Program (CFP) is responsible for the administration of the *Firearms Act*; which, in addition to licencing, registration and the operation of the verifier's network, includes providing the technical expertise to interpret and determine the classification of firearms. It is also responsible for maintaining the Firearms Reference Table (FRT), a database of all known firearms. Every firearm in the FRT is assigned a legal classification based upon an assessment of the firearms' characteristics in relation to the requirements established in the *Code*, and is used by the CFP in order to carry out its licencing and registration responsibilities under the *Firearms Act*. It is important to note, however, that this is only the RCMP's interpretation, and individuals are entitled to challenge this in court via reference hearing, at which time a judge may confirm or overturn the CFP's assessment of the firearm based upon the definitions in federal law.

Classification Process

In practice, the classification of firearms is interpreted by the CFP based upon physical inspections conducted by private sector verifiers.

In limited circumstances, the CFP will physically inspect a firearm at the request of law enforcement, a manufacturer or an importer.

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New variant firearms are registered via three-step process:

1. private sector verifiers provide descriptions of imported firearms to the CFP;
2. a record is created in the FRT following interpretation of the firearms' characteristics by the CFP pursuant to criteria in the *Criminal Code* and associated regulations; and,
3. the firearms are registered accordingly.

Before a firearm can be legally sold in Canada, it must be verified by an approved verifier to ensure that the information provided to the Registrar of Firearms for registration purposes is accurate. Once a firearm has been verified it does not need to be re-verified when the ownership changes, unless the firearm is modified.

Verifiers are individuals employed by a business or public agency, and designated by the Registrar of Firearms as having the required knowledge to identify and classify firearms. The role of a verifier is to certify the identity (e.g., make and model) and classification of a firearm before being transferred or registered. Businesses, police officers and sponsored individuals may be designated by the Registrar as approved verifiers. All verifiers are required to successfully complete the "*Enhanced Firearms Verifiers Training Course*", in addition to holding a valid firearms licence, prior to the Registrar of Firearms designating a verifier and issuing a verifier number. There is no relationship between the RCMP and private verifiers. A firearm verifier's name and verifier number are required for verification transactions to be completed.

Restricted and prohibited firearms require physical verification, while the verification of non-restricted firearms is done over the telephone by CFP employees during the registration process. RCMP verifiers ask the client for a complete description of the firearm and the officer then compares the description with the information found in the FRT. If there are any discrepancies, the verifying officer, acting under the authority of the Registrar, can require a physical verification of the firearm.

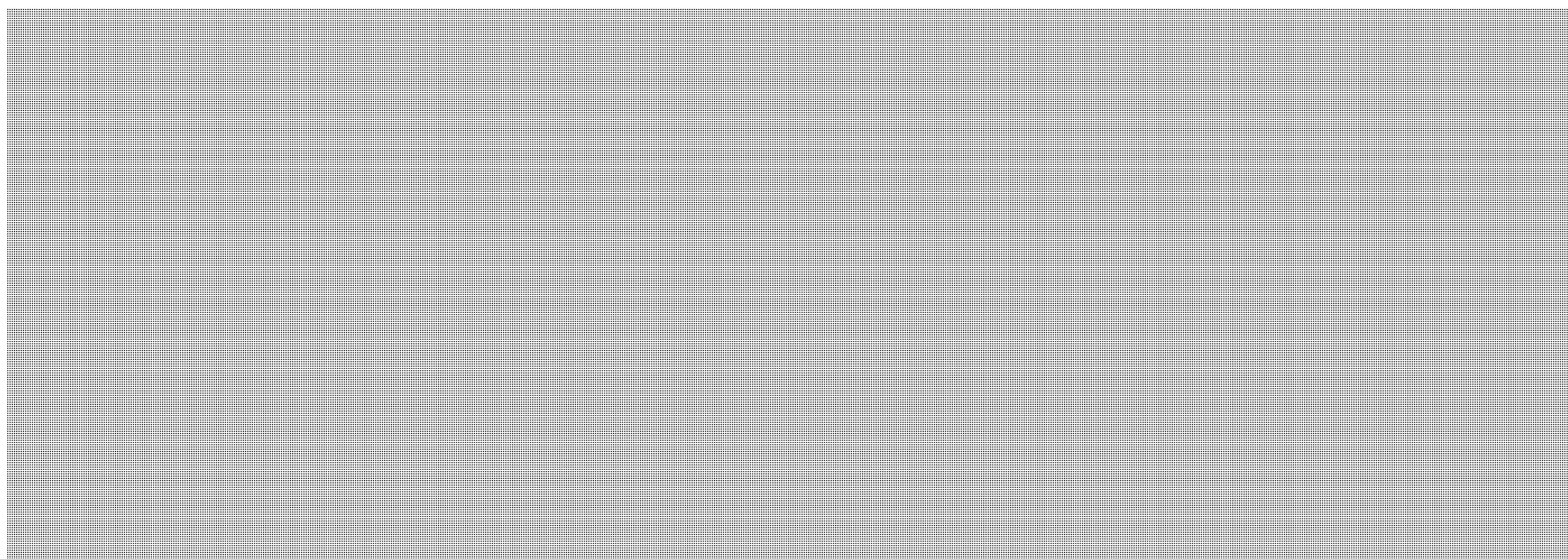
CONSIDERATIONS

While every effort is made to ensure firearms classifications are properly identified, occasionally, it comes to the attention of the CFP that a firearm has been incorrectly described by a verifier, or that an FRT record generated for a specific firearm describes an incorrect classification. Upon further inspection, the FRT record may be updated pursuant to the criteria in the *Code*. Such corrections can affect the registration status of the firearms (i.e., restricted becomes prohibited) and can be challenged in court via reference hearing.

In 2010, the RCMP Specialized Firearms Support Services undertook 27 inspections dealing with the classification of firearms or firearm accessories.

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Actions taken by the CFP since 2010 to amend incorrectly interpreted classifications have been met with some resistance from owners and with negative media coverage. In particular, the following three issues have received high profile:

Norinco Type 97A firearms

Between October 2006 and November 2007, sixty Type 97A firearms were imported in two separate shipments from China. The firearms were classified at the time as non-restricted and restricted based on information provided by the importer's verifier and technical specifications from the manufacturer. Forty of the firearms, which were distributed to 35 individuals and one business, were subsequently physically inspected by the RCMP and determined to be purpose-made fully automatic firearms that had been temporarily modified to be semi-automatic.

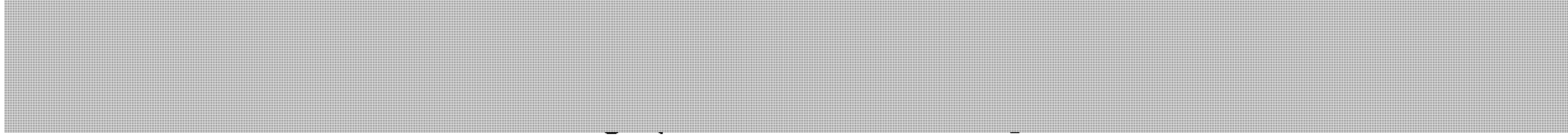
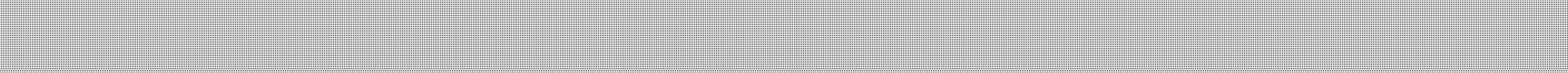
Revocation notices were issued by the Registrar of Firearms on March 23, 2010 and recipients were afforded 30 days to file for a reference hearing before a provincial court judge or lawfully dispose of their firearm(s) (e.g., surrender to law enforcement, transfer the firearm, deactivate it, or seek a reference hearing). On April 19, 2010, the Government decided, in the interest of public safety, to offer reimbursement (up to \$1,400 per firearm) to those who surrendered their firearms to law enforcement.

In June 2010, with Ministerial approval, the RCMP made time-limited settlement offers to parties who had outstanding reference hearings until August 31, 2010. All of the firearms have since been disposed of and are out of public circulation.

Armi Jager AP80 and Walter Model G22 rifles

The RCMP has recently sent notices to specific owners of Armi Jager AP80 and Walter Model G22 rifles to advise them that their firearms, or parts and components of them, are prohibited.

The Armi Jager AP80 semi-automatic rifle was classified as a prohibited firearm in 1995 pursuant to the *Criminal Code* regulations due to its para-military nature. At that time, there were 52 AP80 rifles registered to individuals in RWRS that were grandfathered under the *Firearms Act*.



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The Walter Model G22 is a non-restricted firearm with a bull-pup design. Its classification was originally interpreted by the CFP in 2004 based on information provided by engineers and an examination of a prototype. However, a subsequent inspection in 2005 by the RCMP determined the bull-pup stock to be a prohibited device (because it reduces the overall length of the firearm such that a substantial part of the reloading action or the magazine-well is located behind the trigger of the firearm). There are currently 84 Walter Model G22's with this prohibited device.

The RCMP has updated the FRT records for both firearms, and the distributors and manufacturers have been notified. A communications strategy has been developed and includes bulletins to law enforcement and verifiers. The CFP has also contacted each affected owner to inform them that their firearm, or parts or components of it, are prohibited. Correspondence to affected owners also outlines the required steps to bring themselves into compliance with federal firearms legislation (i.e., transfer, dispose or deactivate the firearm).

Stakeholder Reactions

The incidents such as those listed above reinforce the general view of gun owners that changes in the classification of a firearm are arbitrary "re-classifications" by the RCMP.

The Canadian Firearms Advisory Committee has raised concerns that the Government is in the process of reclassifying firearms, and that new restrictions or prohibitions would be imposed on firearms that are already in the hands of legitimate firearms owners. The Committee also recommended that a technical committee be set up with representation from CFAC as well as experts from industry, the RCMP, and other members as required to review any firearms and procedural issues related to classification. This concept was also raised by Mr Garry Breitkreuz, Member of Parliament for Yorkton-Melville, in correspondence to the Minister dated September 8, 2011 in which he recommended the formation of a Firearms Experts Technical Committee to classify firearms.

CURRENT STATUS

Firearms classification is not on the agenda for the upcoming CFAC meeting. Should this issue be raised, the following talking points are proposed:

- Firearms in Canada are classified pursuant to Part III of the *Criminal Code*, and associated regulations. The last amendments to the classification regime were made in 1995, at the time the current *Firearms Act* was introduced.

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- While the regulations could be updated by Order in Council, the Government is not contemplating any updates to the current classification regime at this time.
- The RCMP strives to ensure firearms classifications are properly identified, but some information may be updated over time, as and when, it becomes available. This is not a form of re-classification, but rather an update of existing records to correctly reflect the legal classification of a firearm.
- The RCMP identifies the classification of firearms with the help of certified verifiers. The Registrar of Firearms designates individuals, employed by a business or public agency, having the required knowledge to identify and classify firearms as “certified verifiers”. The role of the verifier is to certify to the RCMP the identity (make, model and other characteristics) and classification of a firearm before being transferred or registered.