

**\*\*\*ALERT\*\*\*****PROCEDURES FOR MANUFACTURING NATIONAL FIREARMS ACT  
FIREARMS FOR FEDERAL GOVERNMENT AGENCIES**

If you manufacture and sell National Firearms Act (NFA) firearms to Federal government agencies, you may be aware there is an exemption in the law and regulations that greatly simplifies the required paperwork. Many Federal firearms licensees believe the exemption is automatic, as long as they have a valid government contract. Unfortunately, this is not the case, as *ATF must approve the use of the exemption in advance*. This alert will provide you with information on how to obtain approval for the exemption so you can avoid unintentional violations of the law.

**GENERAL LICENSING AND REGISTRATION REQUIREMENTS**

Before we discuss the regulatory exemption, let's review the legal requirements for manufacturers of firearms.

- Manufacturers of NFA firearms must obtain a license under the Gun Control Act and register as a manufacturer under the NFA.
- Manufacturers must pay special (occupational) tax each year.
- Firearms must be marked with an individual serial number and other required information.
- Firearms manufactured must be registered on ATF Form 2 Notice of Firearms Manufactured no later than the close of the next business day following the day on which the firearms were manufactured.
- Transfers of firearms must be approved in advance, and firearms may be transferred to Federal agencies free of tax by filing ATF Form 5 Application for Tax Exempt Transfer and Registration of Firearm.

**REGULATORY EXEMPTION - IT IS NOT AUTOMATIC!**

Many of the above provisions of the regulations may be waived by manufacturers if they obtain approval pursuant to 27 C.F.R. 479.33. This provision allows manufacturers to file an application with ATF stating they are doing business with the United States and requesting exemption from compliance with the provisions of Part 479 as to such business. The manufacturer must submit a letter to the Chief, National Firearms Act Branch, setting out the manner in which the business will be conducted, the type of firearms to be manufactured, and evidence of the government contract. Unless the contract is classified, a copy should be included with the letter. If the contract is classified, the contract number and cover page should be submitted.

### **THE EXEMPTION IN PRACTICE - WHICH PROVISIONS WILL ATF WAIVE?**

Pursuant to section 479.33, ATF will generally waive payment of special (occupational) tax, if the manufacturer does business exclusively with the United States. The exemption may also be used by any person manufacturing firearms for or on behalf of the United States to apply for relieve from filing ATF Forms 2 for the firearms manufactured under a government contract and Forms 5 to transfer firearms to the government customer. Manufacturers may also request that markings required by sections 479.102 and 478.92 be waived or varied. Requests for marking variances must be supported by documentation from the federal government customer stating why the markings required by the regulations are impracticable.

Note, however, that ATF will *not* waive the requirement that a manufacturer or importer submit an ATF Form 6 import application to bring an NFA firearm into the United States, even if the firearms are the subject of a Federal government contract. Only the United States is allowed to import without an import permit.

It is also important to emphasize that the 479.33 exemptions are available only to manufacturers doing business with the federal government and does not extend to business with state or local government agencies or with foreign governments.

### **RENEWAL OF EXEMPTION**

If you succeed in obtaining an exemption under section 479.33, you must renew it with another letter application on or before July 1 of each year. This timeframe coincides with the deadline for paying special (occupational) tax in accordance with 27 C.F.R. 479.31.

### **CAUTIONARY NOTES**

Manufacturers who succeed in obtaining an exemption under section 479.33 should keep several things in mind. First, if the firearms are not registered in accordance with the law and regulations, they cannot be sold commercially. While a manufacturer may obtain an ATF variance allowing a waiver of the registration requirement for a federal government contract, unforeseen circumstances arise that bring the firearms out of the government contract. For example, instances when the government contract is cancelled or the number of firearms produced exceed the quantities authorized in the contract, or the government customer rejects the firearms for any reason. If one of these situations arises, a manufacturer cannot submit Forms 2 on a tardy basis. Submitting a Form 2 at any time after the close of the business day following the day of manufacture is a violation of the NFA and implementing regulations, and also amounts to a false entry on an application, return, or record required by the NFA. These violations are punishable as felonies and put the individual violator and the business at risk.

The other possible obstacle to a commercial sale is markings. If ATF grants a marking variance pursuant to a federal government contract, it is with the understanding the firearms would be available only to the federal government customer and would not be distributed commercially. Manufacturers who wish to distribute firearms commercially must mark them in accordance with the GCA and NFA. If there is a problem in marking the firearms (e.g., they are destructive devices that would be unsafe to mark), manufacturers must request approval from ATF to distribute the unmarked or partially marked firearms commercially. In the case of destructive devices, we caution manufacturers that the ATF regulations in 27 C.F.R. 479.102(d) require a request be submitted to ATF for approval to identify the destructive device by other means. The ATF regulations **do not** grant an automatic variance from the marking requirements for destructive devices, no matter how dangerous or impracticable. An application must be made, and ATF may be reluctant to grant such requests because of the difficulty in tracing such firearms in the event they are diverted and become crime guns.

Further information about the exemption in 27 C.F.R. 479.33 can be found in the following ATF publications:

- Federal Firearms Regulations Reference Guide, ATF Publication 5300.4, 2005, Q&A (M10), page 188.
- ATF National Firearms Act Handbook, ATF E-Publication 5320.8, April 2009, Section 7.7, pg. 47-48.
- ATF website, <http://www.atf.gov/firearms/faq/national-firearms-act-firearms.html#tax-exemptions>.

*The above analysis is for informational purposes only and is not intended to be construed or used as legal advice. Receipt of this alert does not establish, in and of itself, an attorney-client relationship.*

Questions about this alert can be directed to:

**Johanna Reeves** — 202.715.9941 | [jreeves@reevesdola.com](mailto:jreeves@reevesdola.com)  
**Teresa Ficaretta** — 202.715.9183 | [tficaretta@reevesdola.com](mailto:tficaretta@reevesdola.com)