

*****ALERT*******NEW ATF RULING WILL IMPACT MANUFACTURE AND
IMPORT OF MACHINEGUNS**

On September 4, 2014, ATF posted to its website ATF Rul. 2014-1, addressing the transfer and possession of machineguns by qualified manufacturers and importers. The ruling addresses the restrictions of Section 922(o) of the Gun Control Act (18 U.S.C. 922(o)) and sets forth rules for qualified manufacturers and importers to lawfully transfer machineguns for further manufacturing or for repair. This new ruling will have a significant impact on the manufacture and import of machineguns, and will affect the ability of U.S. companies to service their foreign customers because of the transfer and possession restrictions presented in the ruling. The complete text of the ruling can be found [here](#).

BACKGROUND

Section 922(o), Title 18, U.S.C., makes it unlawful for any person to transfer or possess a machinegun. The statute provides exemptions from its prohibitions for transfer[s] to or by, or possession by or under the authority of a Federal, State, or local government agency. Regulations implementing section 922(o) provide that qualified manufacturers may manufacture machineguns for sale or distribution to a Federal, State, or local government agency so long as they are registered in the National Firearms Registration and Transfer Record, and their transfer is restricted to the distribution for official use of Federal, State, or local government agencies. See 27 C.F.R. 478.36, 27 C.F.R. 479.103 and 479.105(c). Regulations also authorize specifically the manufacture of machineguns for purposes of exportation in compliance with regulations of the Department of State issued under the Arms Export Control Act. 27 C.F.R. 479.105(c).

ATF has consistently interpreted 18 U.S.C. § 922(o) to allow qualified manufacturers to stockpile machineguns they manufacture for sale to Federal, State, and local government agencies. As stated in the regulations in 27 C.F.R. 479.105(c), ATF also has consistently interpreted the statute to allow the manufacture and stockpiling of machineguns for export. These positions are outlined in ATF's National Firearms Act Handbook (the "NFA Handbook"), E-Publication 5320.8, Section 7.5, and available [here](#).

ATF has been inconsistent, however, on whether qualified manufacturers and importers may transfer machineguns to other qualified licensees for purposes of further manufacture, repair, alteration, or integration into another defense article. Section 7.6.1 of the NFA Handbook states that qualified NFA manufacturers may contract with other qualified manufacturers to produce machineguns for sale to Federal, State, or local government agencies or for dealer sales samples. This section of the NFA Handbook goes on to state that a variance is required for these types of transfers, as the regulations in 27 C.F.R. 479.105 limit the number of machineguns that may be transferred. Accordingly, section 7.6.1 indicates that both manufacturers who participate in the

production of the machineguns must obtain a variance authorizing the transfer from one manufacturer to the other pursuant to 27 C.F.R. 479.26.

A number of manufacturers have received variances from ATF authorizing the transfer of unlimited quantities of machineguns between licensed manufacturers during the manufacturing process pursuant to the provisions outlined in the NFA Handbook. However, in 2012, ATF officials began making statements at industry trade shows concerning the legality of such transfers under 18 U.S.C. § 922(o). For example, at the 2012 Sporting, Hunting, and Outdoor Trade Show (SHOT Show) held in Las Vegas, Nevada, ATF officials announced the agency's position that allowing licensed manufacturers to transfer machineguns to a second qualified manufacturer for additional manufacturing processes is inconsistent with the plain meaning of section 922(o). These officials announced that the agency would be providing written clarification at some point in the future. ATF Rul. 2014-1 appears to be this clarification.

HOLDINGS OF ATF RUL. 2014-1

The ruling has three separate holdings which we address below:

1. Stockpiling of machineguns for future sale. The first holding states that licensed manufacturers who are properly qualified under the National Firearms Act (NFA) may manufacture and stockpile machineguns for future sale to Federal, State, or local government agencies without first obtaining a specific contract or order from such government agency, provided the machineguns are properly registered under the NFA and are only distributed for the official use of such government agencies.
2. Delivery of machineguns to a second manufacturer-maintaining constructive possession. The ruling states that qualified manufacturers may deliver machineguns (including frames or receivers) to another qualified manufacturer but may not transfer such firearms to the second manufacturer without violating section 922(o). However, the ruling states that the delivery to a second manufacturer will not violate section 922(o) if the first manufacturer maintains continuous dominion or control over the machineguns.
3. Transfers of machineguns between manufacturers when the second manufacturer has a government contract or "official written request" from a government agency. The last holding in ATF Rul. 2014-1 states that a manufacturer may transfer machineguns it has manufactured to another qualified manufacturer if the first manufacturer has a government contract or official written request that meets the following requirements:
 - The document is from a Federal, State, or local government agency and is on official letterhead;
 - The document states that the first manufacturer is an agent of the government agency authorizing the transfer of the machineguns to the second manufacturer;

- The document is signed and dated by an authorized government official and includes the official's title and position;
- The document states that the firearms to be transferred are machineguns as defined by Federal law.
- The document states that the machineguns to be transferred are particularly suitable for official use by the requesting Federal, State, or local government agency; and
- The document includes a statement that the Federal, State, or local government agency requests and authorizes the manufacturer to transfer the machineguns to and/or from other licensed manufacturers for assembly, repair, development, testing, other manufacturing processes, or storage, as the case may be, for that government agency.

The ruling states that manufacturers who wish to transfer machineguns under the third holding, as outlined above, must attach a copy of the government contract or other official written request to the transfer application submitted to ATF's NFA Branch.

CAUTION! ATF RUL. 2014-1 MODIFIES ATF RUL. 2004-2

In the last paragraph of ATF Rul. 2014-1, ATF states that ATF Rul. 2004-2 is "clarified" with respect to the documentation required under the GCA for qualified importers to transfer an imported machinegun to another qualified licensee for inspection, testing, calibration, repair, reconditioning, further manufacture, or incorporation into another defense article. We fear this "clarification" will significantly impact the ability of U.S. companies to service the repair needs of their foreign customers.

In ATF Rul. 2004-2, ATF used its variance authority under the Gun Control Act and National Firearms Act to establish a procedure for qualified importers to bring exported machineguns and other NFA firearms into the U.S. temporarily for purposes of inspection, testing, calibration, repair, or incorporation into another defense article. The ruling recognized the fact that many manufacturers have a legitimate need to import machineguns they exported to foreign law enforcement agencies for purposes of repairs under warranty, recalibration, or incorporation into another defense article. Consequently, ATF Rul. 2004-2 notes that such importations are necessary for national defense. The ruling further indicates ATF was aware most of these temporary importations take place pursuant to the Department of States' International Traffic in Arms Regulations, 22 C.F.R. Part 120-130 (ITAR). However, ATF expressed concern in the ruling that importers utilizing such regulations were not complying with the registration provisions of the NFA, which help ensure the security and accountability of the firearms while within the U.S. Accordingly, ATF Rul. 2004-2 requires importers temporarily importing NFA firearms under State Department requirements to also register the firearms on ATF Form 2.

ATF Rul. 2004-2 also addresses transfers of machineguns following their temporary importation. The ruling states that conveyance of temporarily imported NFA firearms does not amount to a “transfer” as that term is used in the NFA. Accordingly, no transfer application must be submitted to ATF to lawfully accomplish such conveyances. The ruling does not specifically address the requirements of 18 U.S.C. § 922(o). However, the ruling clearly authorizes the conveyance of imported machineguns to a properly qualified manufacturer for repair, remanufacture, or any of the other purposes outlined in the ruling.

It is important to highlight that the “clarification” of ATF Rul. 2004-2 by ATF Rul. 2014-1 effectively **OVERRULES** the transfer/conveyance language in the 2004 ruling. This is because Rul. 2014-1 makes it clear ATF holds a conveyance of a machinegun is a transfer that violates section 922(o), absent a government contract or other document specifically authorizing the transfer of the imported machinegun to a manufacturer. Because the machineguns will be the property of foreign governments, obtaining a written authorization from a Federal, State, or local government agency may be difficult. It may be problematic for a Federal, State, or local government agency to provide a written authorization for the transfer of the machineguns on its behalf when the machineguns are the property of a foreign government. Accordingly, it will be challenging for importers to utilize the procedure authorized in ATF Rul. 2014-1 to lawfully transfer temporarily imported machineguns to another manufacturer.

CAUTION! PRIOR INCONSISTENT RULINGS AND VARIANCES MODIFIED

ATF Rul. 2014-1 also modifies any prior letter rulings or marking variances that are inconsistent with the positions outlined in the ruling. Consequently, businesses who operate under privately issued variances that authorize transfers of machineguns between qualified manufacturers **may no longer rely upon that variance**. We discuss this below.

IMPACT OF ATF RUL. 2014-1

The practical impact of ATF Rul. 2014-1 on industry operations is as follows:

1. **Manufacture and stockpiling of machineguns**. Qualified manufacturers may continue to manufacture and stockpile machineguns for future sale to Federal, State, and local government agencies.
2. **Transfers of machineguns to a second manufacturer**. ATF marking variances or private letter rulings specifically authorizing the transfer of machineguns from one qualified manufacturer to another qualified manufacturer **are no longer valid**. Businesses who utilize the services of another qualified manufacturer to manufacture machineguns must have an employee accompany the registered machineguns to the premises of the second manufacturer and maintain continuous dominion and control over the machineguns while the manufacturing operations are conducted. Alternatively, the first manufacturer may

obtain a government contract or other document specifically authorizing the transfer to the second manufacturer. Such a document must meet all requirements of ATF Rul. 2014-1 as set forth above and must be submitted to the NFA Branch with the Form 3 transfer application.

In the case of machineguns manufactured for export, transfers to another qualified manufacturer must meet all the requirements outlined above. It may be difficult to obtain a contract or other written authorization from a Federal, State, or local government agency specifically authorizing the transfer to a second manufacturer when the machineguns are being made for export to a foreign customer. The only alternative to this requirement is for the first manufacturer to maintain continuous dominion and control over the machineguns while they are on the premises of the second manufacturer.

- 3. Transfers of machineguns temporarily imported under Department of State requirements.** Persons and businesses properly qualified under the GCA and NFA may continue to temporarily import machineguns exported to foreign governments for purposes of repair, recalibration, and incorporation into another defense article. These temporary imports must comply with ITAR regulations in 22 C.F.R. Parts 120-130 and be registered on ATF Form 2 within 15 days of release from Customs custody. However, these machineguns may not be transferred to another qualified manufacturer absent a contract with a Federal, State, or local government agency specifically authorizing the transfer to the qualified manufacturer OR a written authorization that meets all the requirements set forth in ATF Rul. 2014-1. As with transfers of machineguns manufactured for export to foreign customers, it may be difficult to obtain such an authorization from a domestic agency when the machineguns are owned by a foreign customer. Alternatively, those who have a need for another qualified manufacturer to perform repair or manufacturing operations on temporarily imported machineguns must maintain continuous dominion and control over the weapons while on the premises of the qualified manufacturer to avoid both licensees violating 18 U.S.C. § 922(o).

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.

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