

*****ALERT*******ATF REVISES 2014 REFERENCE GUIDE TO CORRECT PUBLISHING ERROR ON ARMOR PIERCING AMMUNITION**

On March 7, 2015, ATF published a notice on its website announcing the revision of the Federal Firearms Regulations Reference Guide – 2014 Edition (ATF P 5300.4). The announcement stated that the updates to the 2014 edition include “corrections of omissions and editing errors.” The revised ATF Regulations Guide may be accessed [here](#). A “Notice of Publishing Error” sent by ATF to licensees indicates that the revisions to the Regulations Guide were necessary because of an error in omitting information relating to armor piercing ammunition. The entire [Notice](#) is as follows:

NOTICE OF PUBLISHING ERROR

On Feb. 13, 2015, ATF released for public comment a proposed framework to guide its determination on what ammunition is "primarily intended for sporting purposes" for purposes of granting exemptions to the Gun Control Act's prohibition on armor piercing ammunition. The posted framework is only a proposal, posted for the purpose of receiving public comment, and no final determinations have been made.

Media reports have noted that the 2014 ATF Regulation Guide published online does not contain a listing of the exemptions for armor piercing ammunition, and conclude that the absence of this listing indicates these exemptions have been rescinded. This is not the case.

Please be advised that ATF has not rescinded any armor piercing ammunition exemption, and the fact they are not listed in the 2014 online edition of the regulations was an error which has no legal impact on the validity of the exemptions. The existing exemptions for armor piercing ammunition, which apply to 5.56 mm (.223) SS 109 and M855 projectiles (identified by a green coating on the projectile tip), and the U.S .30-06 M2AP projectile (identified by a black coating on the projectile tip), remain in effect.

The listing of Armor Piercing Ammunition exemptions can be found in the 2005 ATF Regulation Guide on page 166, which is posted here.

The 2014 Regulation Guide will be corrected in PDF format to include the listing of armor piercing ammunition exemptions and posted shortly. The e-book/iBook version of the Regulation Guide will be corrected in the near future. ATF apologizes for any confusion caused by this publishing error.

BACKGROUND

On February 13, 2015, ATF's released for public comment a proposed framework for determining whether a particular projectile may be exempted from the statutory definition of "armor piercing ammunition." Among other things, the framework proposes withdrawal of an exemption for 5.56mm "green tip" ammunition that has been in place since 1986. ATF published the proposed framework to give industry members and the general public the opportunity to review and provide comments or suggestions "on how it can best implement withdrawal of this exemption while minimizing disruption to the ammunition and firearm industry and maximizing officer safety." Please refer to our alert of February 16, 2015, accessible on [the Reeves & Dola website](#).

Prior to distribution of the proposed framework, ATF released the 2014 edition of the Federal Firearms Regulations Reference Guide. Comparison of the *original* 2014 edition with ATF's 2005 edition of the reference guide reveals that the 2014 edition, page 190, *omits* 5.56mm (.223) SS 109 and M855 ammunition from the list of calibers exempt from the restrictions on armor piercing ammunition.

In reaction to media reports of ATF's seemingly critical omission in the 2014 reference guide, ATF circulated the above notice of correction to the reference guide. Comparing page 167 of the [2005 version of ATF's Federal Firearms Regulations Reference Guide](#) with page 190 of the [2014 version](#), it appears ATF has restored the original language listing rounds exempt from the armor piercing classification.

IMPACT ON EXISTING INVENTORIES OF 5.56MM SS109 AND M855 GREEN TIP AMMUNITION

A fair reading of the proposed framework leads to the conclusion that ATF is likely to withdraw the exemption for "green tip" ammunition in the immediate or near future. However, until ATF officially withdraws the exemption, the ammunition may be manufactured, imported, and distributed free of the restrictions applicable to "armor piercing ammunition." Anyone with existing stocks of the ammunition may continue to use the ammunition or transfer it to another person without penalty. Any person may acquire additional stocks of the green tip ammunition, without quantity limitation, up until the time ATF withdraws the exemption.

Once ATF withdraws the exemption, however, restrictions on manufacturing, importation and transfer will immediately go into effect, *unless* ATF factors in a grace or "use up" period. Federal

firearms licensees will be able to distribute the ammunition *only* to Federal, State, or local government agencies for official use, for purposes of export, or for purposes of testing/experimentation authorized by ATF. Record keeping and marking requirements will also apply after the exemption is withdrawn. Significantly, even after ATF withdraws the exemption, there is no penalty under the statute for manufacturers or importers who use armor piercing ammunition for purposes of testing or experimentation. This is because the prohibitions in the statute apply only to manufacture, importation, and distribution by Federal firearms licensees and do not criminalize the mere possession or use of armor piercing ammunition.

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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