

# FAIR Trade Group Firearms and Ammunition Import and Export Conference



**U.S. Department of Justice**

Bureau of Alcohol, Tobacco, Firearms and Explosives

# Marking Requirements and Gunsmithing Rules

# Marking Requirements

## Gun Control Act (GCA)

- 18 U.S.C. § 923(i) requires manufacturers and importers to identify, by means of a serial number engraved or cast on the receiver or frame of the weapon, in such manner as the Attorney General shall by regulations prescribe, each firearm manufactured.
- 18 U.S.C. § 921(a)(3)(D) a Destructive Device is considered a firearm.

## National Firearms Act (NFA)

- 26 U.S.C. § 5842(c) requires firearms classified as a destructive device to be identified in such manner as the regulations prescribe.

# Marking Requirements

## Final Rule 2021R-05F (Implementing Regulations – as of August 24, 2022)

- 27 CFR §§ 478.92(a)(1) and 479.102(a) require destructive devices to be marked with:
  - A unique serial number,
  - Manufacturers name (or recognized abbreviation),
  - City and State (or recognized abbreviation) of manufacturer's or importer's place of business, **or**
  - Serial number beginning with the manufacturer's or importer's abbreviated FFL number (e.g. 12345678-**{unique identification number}**)
  - Name of Foreign manufacturer (if any)
  - Country of manufacturer (if imported),
  - Model (if known), and
  - Caliber or gauge.

**These markings may no longer be placed on the barrel (if applicable).**

# Marking Requirements

## Time limits for marking firearms (GCA vs NFA):

- GCA firearms must be marked **within seven (7) days** after completion of the manufacturing process, or prior to disposition, whichever comes first.
- NFA firearms must be marked **by close of the next business day** after completion of the manufacturing process, or prior to disposition, whichever comes first.

# Marking Requirements

Licensees may adopt the serial number or other identifying markings previously placed on a firearm, under the following conditions:

- When a firearm that has not been sold, shipped, or otherwise disposed of to a person other than a licensee and the serial number is not duplicated (*i.e.*, newly manufactured firearms). 27 CFR 478.92(a)(4)(iii)(A).
  - Ruling 2009-5 no longer applicable (non-marking variance/notice not needed).
  - Must add other markings if applicable (model, caliber).

# Marking Requirements

No additional markings are required when a manufacturer performs a service as a gunsmith (as defined in section 27 CFR 478.11) on an existing firearm that is for a non-licensee and not for sale or distribution. 478.92(a)(4)(iii)(C).

# Marking Requirements

## Markings must be added to the firearm:

- When a licensee remanufactures or imports a firearm that was sold, shipped, or disposed of to a nonlicensee the licensee must identify the firearm with their name and city and state; or their name, “FFL” followed by their abbreviated Federal firearms license number (i.e., “FFL12345678”). 478.92(a)(4)(iii)(B).
  - Ruling 2013-3 is no longer applicable (allowed for the adoption of markings).
  - Licensees must still mark any other markings required under 478.92(a)(1) if not present on the firearm imported or remanufactured.



# Marking Requirements

## Marking Grandfathering Provisions:

- Final Rule 2021R-05F allows manufacturers and importers to mark firearms (other than a PMF) of the same design in the same manner as before the effective date of the final rule (August 24, 2022). Almost all firearms that ATF classified prior to issuance of the final rule are grandfathered and may continue to be marked in the same manner as before the effective date of the final rule.

# Marking Requirements

## Regulatory Exceptions:

- 478.92(a)(4)(ii) and 479.102(d) permits ATF to authorize other means of identifying destructive devices if engraving, casting, or stamping (impressing) the destructive devices would be dangerous or impracticable.
- Any deviations require a marking variance approved by FTISB.

# Ruling 2016-5

**ATF Ruling 2016-5** authorizes licensed manufacturers of certain destructive devices that are manufactured for and transferred to the U.S. Government (USG) agency listed on the USG contract to mark sequential lot numbers as an alternative to the requirements of 478.92 and 479.102 under the following conditions:

1. Applies only to explosive, incendiary, or poison gas, bombs, grenades, rockets having a propellant charge of more than 4 ounces, missiles having an explosive or incendiary charge of more than one-quarter ounce, or mines.
2. The destructive device munitions are being manufactured to fulfill a current USG contract.
3. The licensed manufacturer is currently a party to that existing USG contract.

## Ruling 2016-5

4. The alternate markings comply with the requirements of the existing USG contract including:
  - a. Lot number sequences comply with MIL-STD-130 (marking and identification of government property) and MIL-STD-1168C; and
  - b. Lot numbers are comprised of only Roman letters and Arabic numerals, or solely Arabic numerals (cannot contain special characters other than a hyphen); and
  - c. only one lot number is used for each production run unless the contract specifies otherwise.

# Ruling 2016-5

5. The markings shall be:
  - a. Applied with permanent ink or paint utilizing stenciling and/or stamping techniques per current USG or DOD standard; and
  - b. placed on labels that are permanently affixed when labels are utilized.
6. If the destructive device is enclosed/covered by a container, the outermost container must be marked as set out above.

# Ruling 2016-5

7. Prior to engaging in the manufacturing process, the licensed manufacturer must submit to ATF:
  - manufacturer's name, address, and license number;
  - contract number of the existing USG contract under which the destructive device munitions will be manufactured;
  - sequential lot numbers that will be used for the destructive device munitions manufactured under the USG contract.

## Ruling 2016-5

8. The licensed manufacturer must maintain copies of its submission to ATF of the information required by this ruling with its permanent records of manufacture.
  - Must retain proof of its submission to ATF (e.g., certified return receipt mail or tracking number).
  - Proof of submission should show that it was sent to ATF's National Tracing Center, or any other office that ATF may designate as the proper recipient of such information.
  - Must allow ATF representatives to inspect such documents upon request at any time during business hours without a warrant.

# Manufacturing vs Gunsmithing



# Definition of a Manufacturer

The definition remains unchanged under 27 CFR 478.11:

(a) **Manufacturer of Firearms.** A person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured

# Definition of a Gunsmith

Final Rule 2021R-05F amends 27 CFR 478.11 to:

(d) **Gunsmith.** A person who, as a service performed on existing firearms not for sale or distribution, devotes time, attention, and labor to repairing or customizing firearms, making or fitting special barrels, stocks, or trigger mechanisms to firearms, **or placing marks of identification on privately made firearms in accordance with this part**, as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who occasionally repairs or customizes firearms (including identification), or occasionally makes or fits special barrels, stocks, or trigger mechanisms to firearms. In the case of firearms for purposes of sale or distribution, such term shall include a person who performs repairs (e.g., by replacing worn or broken parts) on complete weapons, **or places marks of identification on privately made firearms**, but shall not include a person who manufactures firearms (i.e., frames or receivers or complete weapons) by completion, assembly, or applying coatings, or otherwise making them suitable for use, requiring a license as a manufacturer;

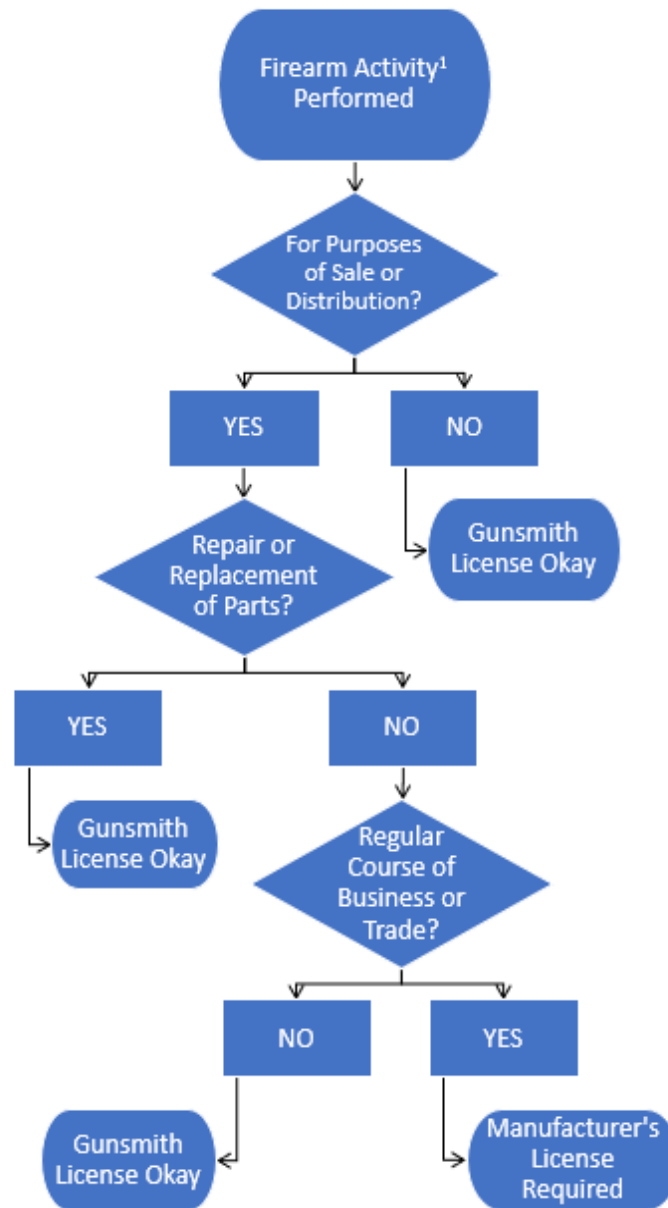
# Manufacturing vs Gunsmithing

Generally, an individual must be licensed as a manufacturer if the firearms activity is:

- 1) A regular course of business or trade, **and**
- 2) For purposes of sale or distribution.

The revised definition of “gunsmith” clarifies Rulings 55-342 and 2015-1 by explaining that a gunsmith must obtain a manufacturer’s license when the activity is conducted on a firearm for purposes of sale or distribution.

**Exception:** A licensed dealer/gunsmith may continue to repair firearms (e.g., replace worn or broken parts) that are for sale or distribution.



<sup>1</sup>Includes formerly non-manufacturing activities such as painting, taping, decorative engraving, etc.

# Manufacturing vs Gunsmithing

A manufacturer's license is required when an individual manufactures firearms by completion, assembly, or applying coatings, or otherwise making them suitable for use, **as a regular course of business or trade for purposes of sale or distribution.**

- Adding to or changing a firearm's appearance, by camouflaging a firearm by painting, dipping, or applying tape, or by engraving the external surface of a firearm. (Ruling 2009-1 No longer applicable)
- Enhancing firearm durability (e.g., Cerakoting, anodizing, powder coating, etc.), (Ruling 2010-10 No longer applicable)
- Assembling firearms from component parts (e.g., assembling lower receiver into rifles, etc.). (Ruling 2010-10 No longer applicable)

# Manufacturing vs Gunsmithing

## Example 1



A Dealer of Firearms (Type 01) licensee intends to acquire new and used firearms (primarily shotguns and 1911 pistols) from other licensees and non-licensees. They intend to decoratively engrave the firearm frames, receivers, slides and barrels. After they engrave the firearms, they will then sell them through various online platforms. The licensee does not plan to manufacture firearms, assemble firearms, engrave marks of identification for other licensees, or mark privately made firearms (PMFs).

# Manufacturing vs Gunsmithing

## Example 1



In the case of customizing (i.e. decorative engraving) new and used firearms *for the purposes of sale or distribution*, a manufacturing license would be necessary because it does not qualify as an allowable activity for gunsmiths, by updated regulatory definition.

The decorative engraving activity described would qualify as “remanufacturing” to which marking requirements (under regulation 27 CFR 478.92 (a)(4)(iii)(B)) would apply, allowing for the adoption of the serial number or other identifying markings previously placed on a firearm. \*Note: The serial number adopted must not duplicate any serial number previously adopted by the licensee or placed on any other firearm, manufactured by the licensee.

Lastly, for those firearms that have previously entered commerce – beyond direct licensee control - the manufacturer must place on the frame or receiver either:

1. their name (or recognized abbreviation) and city and State (or recognized abbreviation) where they maintain their place of business; **or**
2. their name (or recognized abbreviation) and abbreviated Federal firearms license number (the first three and last five digits of their FFL#), after the letters “FFL”, in the following format: “**FFL12345678**”. \*Note: this must be separate and distinct from any adopted serial number.

# Manufacturing vs Gunsmithing

## Example 2



A Dealer of Firearms (Type 01) licensee receives a rifle receiver and its component parts from a customer. The licensee assembles the receiver and parts into a fully functional rifle and then returns the firearm to the customer.



# Manufacturing vs Gunsmithing

## Example 2



A licensed Dealer/Gunsmith is not required to be licensed as a Manufacturer if they only perform gunsmithing services on existing firearms for their customers, or for another licensee's customers, because the work is not being performed to create firearms for sale or distribution. These services may include customizing a customer's complete weapon by changing its appearance through painting, camouflaging, or engraving, applying protective coatings, or by replacing the original barrel, stock, or trigger mechanism with drop-in replacement parts.

# Manufacturing vs Gunsmithing

## Example 3



A Dealer of Firearms (Type 01) plans to purchase used firearms from law enforcement agencies and other distributors. They will transfer the firearms to a Manufacturer of Firearms (Type 07) licensee for cerakoting, engraving, stippling, refurbishing, installing new triggers and springs, etc. Once complete, the Type 07 licensee will return the firearms back to the Type 01 licensee, who plans to sell the firearms to non-licensees in a retail capacity.

# Manufacturing vs Gunsmithing

## Example 3



A Type 01 licensee does not need to be licensed as a manufacturer when the role of the dealer is limited to sending firearms to, and receiving firearms from, a licensed manufacturer and all manufacturing activity is performed by the licensed manufacturer.

To clarify, “remanufacturing” occurs when a new and different firearm is produced from a firearm (one that already existed in commerce, whether as a frame/receiver or as a completed weapon) by way of further completing, assembling, applying coatings, or otherwise making them suitable for use. Remanufacturing cannot occur if a firearm has never entered into commerce.

Because this example’s activity qualifies as remanufacturing, the firearms would need to be properly marked (by the entity that conducts the manufacturing) **IF** they have ever been previously possessed by a non-licensee. Otherwise, only missing model designations or caliber/gauges would need to be added, if missing.

# Manufacturing vs Gunsmithing

## Example 4



A Manufacturer of Firearms (Type 07) licensee is hired by another Manufacturer of Firearms (Type 07) licensee to assemble new frames and receivers into complete firearms. The firearms are then returned to the original Type 07 licensee for sale and or distribution to other FFLs and the public.

# Manufacturing vs Gunsmithing

## Example 4



Assembling complete firearms from component parts for sale or distribution is manufacturing and marking requirements apply. Serial numbers and other identifying marks on the firearm may be adopted pursuant to 478.92(a)(4)(iii)(A) or (B). Pursuant to 478.92(a)(1)(ii), the manufacturer must mark the firearm with the caliber or gauge and, if assigned, the firearm model.

In this scenario the Type 07 hired to assemble new frames and receivers into complete firearms is allowed to adopt the serial number and other identifying markings previously placed on a firearm, under the following conditions:

- If the firearms in question are newly manufactured (have never previously been sold, shipped or otherwise disposed of to a non-licensee) and already bear all required markings (per 27 CFR 478.92) than the licensee may adopted the markings and is not required to place additional markings on the firearm; provided that the serial number present on the firearm is not duplicated (has never been utilized by the company on any other manufactured firearm).

# QUESTIONS?

Email firearm inquiries to: [FIPB@atf.gov](mailto:FIPB@atf.gov)

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