



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of the Director

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18 U.S.C. 921(a)(23): DEFINITIONS (MACHINEGUN)
18 U.S.C. 922(o): TRANSFER AND POSSESSION OF MACHINEGUNS
26 U.S.C. 5845(b): DEFINITIONS (MACHINEGUN)
26 U.S.C. 5845(j): DEFINITIONS (TRANSFER)
27 CFR 478.36: TRANSFER OR POSSESSION OF MACHINE GUNS
27 CFR 479.11: DEFINITIONS (MACHINE GUN AND TRANSFER)
27 CFR 479.103: REGISTRATION OF (NFA) FIREARMS MANUFACTURED
27 CFR 479.105: TRANSFER AND POSSESSION OF MACHINE GUNS

A manufacturer licensed and qualified under the Gun Control Act (GCA) and National Firearms Act (NFA) may manufacture and maintain an inventory of machineguns for future sale to Federal, State, or local government agencies without a specific government contract or official request; provided, the machineguns are properly registered, and their subsequent transfer is conditioned upon and restricted to the sale or distribution of such weapons for the official use of Federal, State, or local government agencies. A manufacturer may deliver machineguns it has manufactured to another qualified manufacturer for any manufacturing process; provided, the first manufacturer maintains continuous dominion or control over the machineguns. A manufacturer may transfer machineguns it has manufactured for present or future sale to a Federal, State, or local government agency to another qualified manufacturer for any manufacturing processes or storage; provided, the manufacturer has a specific government contract or official written request documenting that it is an agent of the government agency requesting and authorizing such transfer. ATF Ruling 2004-2 is clarified.

ATF Rul. 2014-1

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received numerous inquiries from licensed firearms manufacturers asking whether machineguns may be transferred to other licensees involved in the manufacturing process and whether manufacturers may maintain an inventory of post-1986 machineguns for future transfer to Federal, State, or local government agencies.

In recent years, licensed firearms manufacturers have contracted certain machinegun manufacturing processes to other qualified manufacturers. Such activities may include assembly, development, testing, repair, or applying special coatings and treatments to machineguns. Although some manufacturers transport and remain with the machineguns during the manufacturing process, these manufacturers assert that it would be less costly to leave machineguns with the other qualified manufacturer while such processes are being conducted. In some cases, a manufacturer may not yet have a sales contract with the government, but desires to manufacture and maintain an inventory of machineguns in anticipation of future sales to the government (*i.e.*, stockpiling).

The GCA at Title 18, United States Code (U.S.C.), section 922(o), generally makes it unlawful for any person to transfer or possess a machinegun. The term “machinegun” is defined under the GCA, 18 U.S.C. 921(a)(23), and the National Firearms Act (NFA), 26 U.S.C. 5845(b), to include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person. While the GCA does not define “transfer,” case law interprets this term to mean a change in dominion or control of a firearm. *See* ATF Rul. 2010-1 (approved May 20, 2010). Under the NFA, the term “transfer” is defined by 26 U.S.C. 5845(j) to include selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of an NFA firearm.

Section 922(o)(2)(A) exempts from section 922(o) transfer[s] to or by, or possession by or under the authority of a Federal, State, or local government agency. The regulations implementing section 922(o) further 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 (NFRTR), and their subsequent transfer is conditioned upon and restricted to the sale or distribution of such weapons for the official use of Federal, State, or local government entities. *See* 27 CFR 478.36, 27 CFR 479.103 and 479.105(c). Prior to discontinuance of business, qualified manufacturers must transfer machineguns manufactured to a Federal, State or local governmental entity, qualified manufacturer, qualified importer, or a dealer qualified to possess such machineguns. *See* 27 CFR 479.105(d) and (f).

Manufacture and Possession of Machineguns

Manufacturers necessarily come to “possess” machineguns during the manufacturing process (assuming they manufacture them to completion or to a point where the parts constitute a machinegun). While section 922(o) does not expressly prohibit the manufacture of machineguns, it would normally bar possessing and maintaining an inventory of machineguns unless those activities fall within an exception.

The government exception, section 922(o)(2)(A), does not expressly state that the contemplated transfer of machineguns to governmental entities will include machineguns produced by domestic manufacturers. But the fact that section 922(o)(2)(A)’s companion

provision, section 922(o)(2)(B), broadly permits “any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect” suggests that section 922(o)(2)(A) is intended to address transfers of machineguns manufactured or imported *after* the statute’s effective date. There is also no evidence that Congress meant to require government agencies to import all machineguns.

In light of the breadth of the phrase “possession . . . under the authority of” a government agency, and the fact that the statute contemplates that manufacturers will possess machineguns prior to their transfer to the government, it is reasonable to read section 922(o)(2)(A) as permitting manufacturers to possess machineguns produced for future transfer to the government “under the authority of” that government agency. In addition, permitting qualified manufacturers to maintain an inventory of weapons in anticipation of future government sales is necessary to ensure that military and law enforcement personnel have enough machineguns available during times of war or national emergency.

Delivery of Machineguns to Contractors

As stated above, the GCA, section 922(o), makes it generally unlawful for any person to transfer or possess a machinegun. Under the GCA, a “transfer” occurs when there is a change in dominion or control of a firearm. Thus, once a machinegun has been manufactured for present or future sale, no transfer in violation of the GCA would occur if the registrant—the manufacturer—maintains continuous dominion and control over the machinegun.

To preclude a transfer under the GCA, a manufacturer, including an authorized employee, may deliver the machineguns to the other licensed manufacturer’s business premises, remain with the machineguns during the performance of another process, and return with the machineguns to the first manufacturer’s premises. If the process takes longer than a day, the machineguns must be stored in a manner so that only the registrant has access to them during the overnight period. No work may be conducted on the machineguns without the registrant’s employees being present to maintain dominion and control over them.

Transfers of Machineguns to Contractors

As stated above, under the GCA, a machinegun transfer would occur if there was a change in dominion or control of the machinegun. Thus, a transfer would occur if the manufacturer relinquished control over a machinegun by leaving it at the contractor’s premises for further manufacture, or otherwise disposed of the machinegun to another manufacturer.

Again, while section 922(o) would normally prohibit such a transfer, section 922(o)(2)(A) exempts machinegun transfers “to or by” or possession “by or under the authority of” a Federal, State, or local government agency. Because the phrase, “under the authority of” only modifies “possession,” a machinegun can only be transferred “by” a government agency if the agency itself transfers the machinegun, or another person authorized to act on that agency’s behalf, as a lawful agent, transfers the machinegun.

Under agency common law, the government (as principal) may authorize a manufacturer (as agent) to act on its behalf in accordance with the express terms of a contract or agreement between them. A manufacturer (as agent) may then appoint another manufacturer (as subagent) to perform functions that the manufacturer has consented to perform for, and on behalf of, the government (as principal), so long as the government has granted the first manufacturer authority to do so. Therefore, assuming the machinegun is for future sale to the government, a manufacturer may transfer one or more machineguns to another for further manufacture if it is expressly authorized by a government agency through a specific government contract or official written request. Such documentation would be sufficient to authorize a machinegun “transfer by” and subsequent “possession under the authority of” the interested government department or agency.

Held, a manufacturer licensed and qualified under the Gun Control Act (GCA) and National Firearms Act (NFA) may manufacture and maintain an inventory of machineguns for future sale to Federal, State, or local government agencies without a specific government contract or official request; *provided*, the machineguns are properly registered, and their subsequent transfer is conditioned upon and restricted to the sale or distribution of such weapons for the official use of Federal, State, or local government agencies.

Held further, a manufacturer may deliver machineguns it has manufactured to another qualified manufacturer for assembly, anodizing, or other manufacturing processes; *provided*, the first manufacturer maintains continuous dominion or control over the machineguns.

Held further, a manufacturer may transfer machineguns it has manufactured for present or future sale to a Federal, State, or local government agency to another qualified manufacturer for assembly, development, testing, repair, other manufacturing processes, or storage on behalf of that government agency; *provided*, the first manufacturer has a specific government contract or official written request stating that it is an agent of the government agency requesting and authorizing such transfer and, in the case of a written request, it is on official government letterhead signed and dated by an authorized government official, includes the official’s title and position, and includes the following statements to document government approval:

1. A statement that the firearms to be transferred are machineguns (as defined by Federal law *i.e.*, the GCA, 18 U.S.C. 921(a)(23), and the NFA, 26 U.S.C. 5845(b));
2. A statement that the machineguns to be transferred are particularly suitable for official use by the requesting Federal, State, or local government agency; and
3. 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.

A manufacturer wishing to transfer machineguns under government authority must attach a specific government contract or official written request to the transfer application submitted to ATF's National Firearms Act Branch and receive ATF approval before making the transfer.

ATF Ruling 2004-2 (approved April 7, 2004) is hereby clarified with respect to the documentation required under the GCA for a qualified importer to temporarily transfer a lawfully imported machinegun for inspection, testing, calibration, repair, reconditioning, further manufacture, or incorporation into another defense article. To the extent, this ruling may be inconsistent with any prior letter rulings or marking variances, they are hereby modified.

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Director