U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms, and Explosives

Office of the Assistant Director
Enforcement Programs and Services

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OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES ON SILENCERS

The purpose of this open letter is to notify all federal firearm licensees (FFLs) of guidance from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regarding modifying firearm silencers registered in the National Firearms Registration and Transfer Record (NFRTR). A complete silencer may be repaired, or the caliber may be changed, and such actions will not be considered a new making under the National Firearms Act (NFA), provided the action does not result in destroying the serialized "frame or receiver," remove, obliterate, or alter required markings, or make a new firearm.

The NFA defines the term "make" as "manufacturing (other than by one qualified to engage in such business under this chapter), putting together, altering, any combination of these, or otherwise producing a firearm." 26 U.S.C. § 5845(i). The NFA defines the term "firearm" to include "any silencer" as defined under the Gun Control Act (GCA). 26 U.S.C. § 5845(a)(7). The definition of "firearm silencer" includes not only "any device for silencing, muffling, or diminishing the report of a portable firearm," but also, "any part intended only for use in such assembly or fabrication" of a firearm silencer or firearm muffler. 18 U.S.C. § 921(a)(24).

On April 17, 2008, ATF published a frequently asked questions (FAQ) document that provided information on firearm silencers, including repairing these items.[1] ATF advised that replacing the outer tube was a new "making" under the NFA because that component "is the main structural component of the silencer" and replacing it "is so significant an event that it amounts to the 'making' of a new silencer." Further, ATF advised that changes in caliber or an increase to the overall length of the outer tube were changes found to affect "performance of the silencer and result[ ] in the 'making' of a new silencer." Because these actions were considered "making" a new silencer, NFA marking, tax, and registration requirements applied.

[1] National Firearms Handbook, Appendix B, *Frequently Asked Questions*- Silencers, pp. 175–77, *https://www.atf.gov/firearms/docs/guide/atf-national-firearms-act-handbook-atf-p-53208/download.*

However, pursuant to guidance in the FAQ document, the NFA's marking, tax, and registration requirements were not implicated if a repair could be performed: without replacing the outer tube, by repairing the damaged component parts of the silencer, or by replacing damaged component parts on a one-to-one basis. Replacing parts on a one-to-one basis was critical to the analysis because the statutory definition of "firearm silencer or muffler" defines each part of a device as a registrable firearm. Increasing the length of a silencer would likely mean adding parts, including additional baffles, that were not part of the firearm originally registered. Similarly, modifying parts, including drilling baffles to increase the caliber, made a new part, itself a "firearm," that required marking and registration.

On April 26, 2022, ATF published a final rule titled, *Definition of "Frame or Receiver" and Identification of Firearms* (87 FR 24652). In part, the final rule determined the outer tube to be the "frame or receiver" of a firearm silencer.[2] This provided clarity to the industry, formally confirming that the outer tube was the part to mark as part of a complete device. This largely eliminated the possibility that a manufacturer or maker would mark an end cap or other part that could be affected by a change in caliber.

The final rule also formalized marking and registration requirements for a "complete silencer or muffler device"[3] comprised of regulated parts. A "complete silencer or muffler device" includes the various silencer parts and must be marked and registered as a "firearm" pursuant to the NFA. 26 U.S.C. § 5841; 27 CFR 479.102. Marking such a device therefore indicates that it is in its complete, registrable configuration, containing a definite number of parts, designed for a particular caliber. As is the case for all NFA firearms, marking and registration requirements for a complete silencer include the caliber. 27 CFR 479.102(a)(2)(ii). However, ATF has long permitted possessors of registered short-barreled rifles to change the caliber of those items without a new registration or marking. To do so, ATF simply recommends that possessors update the registration information in the NFRTR. Like rifles, firearm silencers now have a specified "frame or receiver" that must be marked. Changing the caliber of a registered firearm silencer that will not affect the marked frame or receiver will not result in "making" a new "complete silencer or muffler device." Further, changing the caliber through modifying components (for example, drilling end caps and baffles to permit a .22 silencer to accommodate a 9mm projectile) will not result in "making" new parts, as these remain part of the previously registered "complete silencer or muffler device."

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[2] 27 CFR § 478.12(b) ("the part…that provides housing or a structure for the primary internal component designed to reduce the sound of a projectile (i.e., baffles, baffling material, expansion chamber, or equivalent). In the case of a modular silencer with more than one such part, the frame or receiver is the principal housing attached to the weapon that expels the projectile, even if an adapter or other attachments are required to connect the part to the weapon. The term shall not include a removable end cap or an outer tube or modular piece.")

[3] 27 CFR § 479.11 ("A muffler or silencer that contains all component parts necessary to function, whether or not assembled or operable.")

Additional or spare parts "intended only for use in assembly or fabrication" of a firearm silencer and possessed by persons (other than qualified manufacturers) must be marked and registered pursuant to the NFA. Once an unregistered and unmarked silencer component is added to the existing silencer as a replacement part, it is now part of the complete silencer device that is already appropriately marked and registered in the NFRTR. Such silencer may then be returned to the registered owner. Transferring silencer parts to unlicensed individuals must comply with NFA requirements to register and transfer each part. 27 CFR 479.102(a)(4). Note that qualified manufacturers may obtain silencer parts from other qualified manufacturers and may use unregistered and unmarked silencer components to change the caliber or repair registered complete silencers. 27 CFR 479.102(b)(4).

Repairing registered complete silencers without otherwise altering the frame or receiver may result in a minimal reduction in the length of the outer tube due to rethreading. Altering, modifying, or changing the silencer's serialized "frame or receiver" may result in "making" a new NFA firearm, and triggering the NFA marking and registration requirements.

Please note that this applies only to changing the caliber of firearm silencers. Changing the caliber of other registered NFA firearms is permitted only when that change does not result in making a different weapon.

If you have any questions about the permitted modifications to a completed silencer, please contact ATF Firearms and Ammunition Technology Division at fire_tech@atf.gov or (304) 616-4300.

Jennifer Cicolani
Assistant Director
Enforcement Programs and Services