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April 27, 2008

BY ELECTRONIC AND HAND DELIVERY

The Hon. Michael J. Sullivan
Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
United States Department of Justice
99 New York Avenue, NE
Washington, D.C. 20226

Re: Request on formal rule making on silencer marking

Dear Director Sullivan:

The National Firearms Act Trade and Collectors Association ("NFATCA") Board of Directors wishes to thank you and other officials in ATF for finally providing guidance in the form of the recently published silencer Q&A's to members of the National Firearms Act ("NFA") trade who primarily manufacture, transport and possess silencers for lawful use. The Board has carefully considered the guidance, and after deliberation and review of the contents of this letter, they have requested that I immediately transmit it to you.

As you know, the law on silencers is a complicated portion of the National Firearms Act. Silencer parts are all treated as silencers for purposes of the Gun Control Act ("GCA," as defined in section 921 of title 18, United States Code) and the NFA. In our earlier communications with ATF (see attachment A) we had requested that ATF provide guidance on silencer marking. There were also a series of other questions posed, which the Bureau provided guidance on as well in the recently published Q's & A's.

We believe these Q's and A's require some further clarification, and in that regard we are suggesting to you and Acting Assistant Director Audrey Stucko that a telephonic conference be convened with members of our trade who are the primary silencer manufacturers. This would permit them to address these clarification questions directly to ATF. In advance of the teleconference, we would provide an outline or a summary of the questions. We respectfully request that this telephonic conference be convened as soon as possible. We would be happy to provide the electronic means for that to occur, and to issue the invitations, and invite ATF to join us on the conference line.

We believe such a teleconference would generally provide the additional clarifications needed for people to proceed in an orderly and business-like manner in adjusting their operations or their business plans based upon the new guidance. However, there is one specific policy matter which cannot be resolved by additional clarification. In attachment B, you will note the guidance that has been issued to the trade regarding silencers, specifically Question #1. The question and answer specifically states as follows:

Q1: What part of a silencer must be marked?

A: The silencer must be marked in accordance with 27 C.F.R. §§ 478.92 and 479.102. The regulations require that the markings be conspicuous and legible, meaning that the markings may be placed on any external part, such as the outer tube or end cap.

ATF strongly recommends that manufacturers place all required markings on the outer tube of the silencer, as this is the accepted industry standard. Moreover, this practice eliminates the need to remark in the event an end cap bearing the markings is damaged and requires replacement.

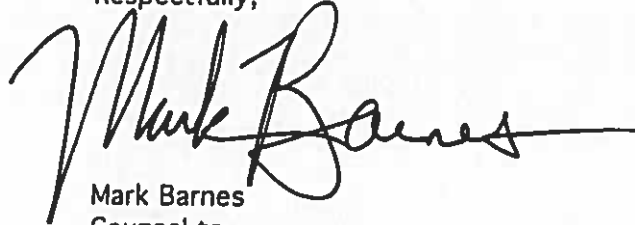
There has been an overwhelmingly negative response from the members of our trade to this particular guidance. We understand, in discussions with your staff, that ATF feels legally constrained from forcing the manufacturer of a silencer or suppressor to mark only what ATF considers to be the major component piece of the silencer (the silencer tube itself). Apparently there is strong policy agreement between ATF and our trade that only the silencer tube should be marked in accordance with the marking requirements of Parts 478 and 479 of Title 27 of the Code of Federal Regulations.

We have also been further advised that the Bureau does not see how they would be able to take any adverse legal action against a person or entity that should decide to mark the end caps of a silencer without promulgating a change in the regulations. We believe that such a regulation is urgently needed. Allowing end caps to be the possible marking location for silencers does constitute a serious public safety issue in the areas of diversion, tracing and evasion of other NFA rules.

Accordingly, we are requesting that the Bureau immediately draft and propose to the Attorney General an emergency regulation prohibiting marking a silencer in a location other than the tube, unless a variance is granted by the Director on a case by case basis for good cause. We believe our suggesting emergency rulemaking is justified under the Administrative Procedures Act and such other laws and regulations that are directly pertinent to the Bureau's authorities.

We would respectfully request a preliminary response from your office to this request within 5 working days, as we consider this matter to be of a most urgent nature. Should you require further information, or should you or your staff have questions regarding this request, please feel free to contact John Brown, our President at 703-968-6250 x3504, or me at 202-626-0070.

Respectfully,

A handwritten signature in black ink, appearing to read "Mark Barnes", with a long horizontal flourish extending to the right.

Mark Barnes
Counsel to
National Firearms Act Trade
and Collectors Association

cc: John Brown, NFATCA President
Audrey Stucko, Acting Assistant Director (EPS)
William Hoover, Assistant Director (Field Operations)

JB:gg:tb

ATTACHMENT A

MARK BARNES & ASSOCIATES

ATTORNEYS AT LAW

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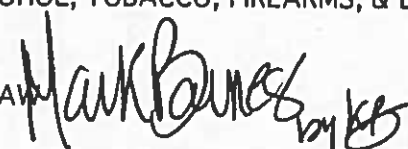
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⁴ALSO ADMITTED IN NEW YORK
⁵ADMITTED ONLY IN VIRGINIA

August 25, 2006

BY ELECTRONIC COMMUNICATION

MEMORANDUM TO: AUDREY STUCKO
DEPUTY ASSISTANT DIRECTOR
OFFICE OF ENFORCEMENT PROGRAMS AND SERVICES
BUREAU OF ALCOHOL, TOBACCO, FIREARMS, & EXPLOSIVES

FROM: MARK BARNES
ATTORNEY AT LAW 

SUBJECT: Request for Advisory Letter on ATF Policy Regarding
Silencer Markings and Repairs

The purpose of this memorandum is to request an advisory opinion letter, on behalf of the National Firearms Act Trade & Collectors Association, to clarify some points of confusion with respect to a series of letters from the Bureau of Alcohol, Tobacco, Firearms, & Explosives (ATF) concerning the required markings for silencers parts and regulations on repair or replacement of such parts.

We attach here for your reference copies of five letters from ATF, dated January 27, 1999, April 19, 1999, December 30, 2005, May 2, 2006, and June 19, 2006. These letters appear to make a number of irreconcilable statements with regard to silencer marking and repair regulations, and we would like to bring these statements to your attention in the hopes that you can clarify ATF's position on these issues, in accordance with what we believe is the standard understanding of the law.

1. Does ATF require the markings on a silencer to appear on the outer tube, or can they be marked on a part other than the outer tube?

The April 19, 1999, ATF letter appears to permit markings on parts other than the outer tube. It cites the outer tube as an example of an appropriate part to contain markings. However, the June 19, 2006, ATF letter, in answering a question about placing required markings on a silencer end cap, is in conflict when it states that "ATF has always held" that the markings must be placed on the outer tube. The statute and regulations do not specify which component of a complete firearm silencer must be marked. Additionally, there does not appear to be any ATF published ruling specifying

which component of a complete silencer must be marked. We believe the 1999 letter is correct on this point.

2. What markings, if any, does ATF require for suppressor parts, including tubes, which are shipped from one FFL/SOT manufacturer to another FFL/SOT manufacture for assembly and registration?

The December 30, 2005, ATF letter cites an example fact pattern (page 1, example 2) where Manufacturer A (FFL/SOT) and Manufacturer B (FFL/SOT) have a manufacturing contract for Manufacturer A to produce suppressor parts, including tubes, for Manufacturer B. Manufacturer A ships the parts as they come available to Manufacturer B for assembly into complete silencers and registration in the NFRTR. In such a situation, this letter states that "ATF does not require that Manufacturer A mark the parts before sending them to Manufacturer B, because they are simply parts being sent between licensed manufacturers for delivery." We believe this is the correct statement of the law.

However, the June 19, 2006, ATF letter on this same subject states (page 2, paragraph 2) that: "Because of the record keeping and manufacturing difficulties inherent in requiring the marking of all such components in that manner, ATF allows manufacturers to 'serialize' component parts intended for use in the fabrication of new silencers in bulk units (one box of 100, one box of 500, etc.). Licensed manufacturers may legally sell these serialized lots of component parts to other manufacturers, law enforcement agencies, or the military. However, any silencer component parts sold to unlicensed persons must be marked and serialized individually, as all such parts must be registered, identified, and transferred pursuant to NFA requirements." This conflicts with the December 30, 2005, letter, which specifically states that bulk silencer components sold by one manufacturer to another need not be serialized.

Perhaps the fact pattern referred to was one involving the importation of silencer parts, which would need to be serialized for purposes of registration in order to comply with National Firearms Act import requirements. However, such a policy for domestic SOT manufacturer to SOT manufacturer transfers is unnecessary, and the position of the trade is strongly in favor of the answer provided in the December 30, 2005, letter.

Moreover, the June 19, 2006, letter presents a second source of confusion, in that it can be interpreted to mean that silencer parts sold to law enforcement agencies need not be registered, marked, and transferred pursuant to the NFA. The last two sentences excerpted above suggest that only suppressor components transferred to non-licensees must be transferred in compliance with the NFA.

3. Does ATF require that repairs by an SOT manufacturer on a suppressor may not alter the suppressor's dimension or caliber?

The April 19, 1999, ATF letter (page 1, paragraphs 4 and 5) advises that a registered silencer may be transferred on an ATF Form 5, tax exempt, to any licensed manufacturer who has currently paid SOT as a manufacturer of NFA firearms, and that any such manufacturer may repair or replace unmarked silencer components such as baffles, wipes, end caps, or specially made packing material.

The May 2, 2006, letter addressing the same subject contains a requirement not previously mentioned in the previous ATF letters at issue. Paragraph 1, page 2 of the May 2 letter states: "A repair may not alter its dimensions or caliber." This new requirement is again stated and is further expanded on in the last sentence beginning on page 2, which states: "Again, any replacement must not alter the original dimensions, design, and configuration of the part replaced."

Again, none of the previous letters on this point mention such a requirement, and there does not seem to be any published ATF ruling setting out these new requirements. We believe that a manufacturer must have the ability to repair a silencer with modern or upgraded internal parts. To assert in 2006 that exactly the same parts for a 1985 silencer should be available is both unrealistic and not in accord with a plain reading of the law and regulations. The 1999 letter is therefore correct.

4. What types of repair may be performed on the marked outer tube of a silencer by an SOT manufacturer or the silencer's registered owner?

The January 1, 1999, ATF letter states that "a licensed manufacturer may repair or replace a defective silencer, with a new silencer bearing the same serial number as the defective silencer." This letter contains no restrictions on the types of repair that may be made to a marked silencer part, and it reflects the current understanding of the industry as to ATF policy. However, the May 2, 2006, ATF letter states (page 2, paragraph 1) that: "If the outer tube of a silencer has been damaged, it may be repaired either by any Special Occupational Tax manufacturer or the registered owner only. Additionally, any repair of the outer tube may not be conducted if that repair will alter or obliterate the serial number without first applying for a remarking variance." The term "remarking variance" does not appear in the applicable statute or regulations, and there does not appear to be any ATF published ruling concerning a remarking variance. The use of this terminology has caused considerable confusion among SOT manufacturers. We believe the 1999 letter is the correct policy; however, if this is not the case, please clarify what is meant by a "remarking variance."

5. Can a non-repairable marked silencer part be replaced, or is it an "unserviceable firearm"?

The January 1, 1999, ATF letter states that "a licensed manufacturer may repair or replace a defective silencer, with a new silencer bearing the same serial number as the defective silencer." This indicates that any SOT manufacturer may replace a marked silencer part and mark the replacement part with the same serial number as on the original part, without the need to register the item as a new firearm. This is understood by many in the trade to be a correct reflection of ATF policy.

The April 19, 1999, letter, on the other hand, states that, while any licensed manufacturer may repair or replace unmarked parts (page 2, paragraph 1), "[i]f the manufacturer did not originally make the silencer and must replace components bearing required markings, such as the outer tube, the new replacement parts would then require registration as a new firearm." The implication here is that only the *original* manufacturer of a silencer may replace a marked part and mark the replacement with the same serial number as the old part, without registering the repaired silencer as a new firearm. This is also a commonly held belief and practice in the industry.

However, the May 2, 2006, ATF letter states (page 2) that: "If a silencer tube (due to damage) can not be repaired, then it cannot simply be replaced. It should be considered an 'unserviceable firearm.'" The National Firearms Act, 26 U.S.C. § 584(h), defines the term "unserviceable firearm" as "a firearm which is incapable of discharging a shot by means of an explosives and incapable of being readily restored to a firing condition." But most non-repairable silencer tubes are damaged by a crack or perforation to the tube. In this condition, a silencer containing such a damaged tube will still function. Moreover, a firearm silencer does not discharge a shot by the action of an explosive, so it may be argued that a firearm silencer cannot meet the definition of an unserviceable firearm. Please advise if this is the final policy position of ATF on the matter, because we believe it to be incorrect. The January 1, 1999, letter is, we believe, the correct statement of policy.

We thank you in advance for your time in addressing each of these points of confusion with respect to prior ATF letters on silencer marking and repair. If you have any questions, please do not hesitate to call me at (202) 626-0070.

MB:th

December 26, 1998

Bureau of Alcohol, Tobacco and Firearms
Firearms Technology Branch
Washington, DC 20226

Greetings:

I had a question about the application of the National Firearms Act to firearm silencers. I am wondering if a licensed manufacturer of silencers may lawfully replace a broken or defective silencer, returned to him for repair, with a new silencer with the same serial number as the broken or defective one. In the process of replacement the original silencer would be destroyed.

Your advice on this issue would be appreciated.

Thank you,

DEPARTMENT OF THE TREASURY
Bureau of Alcohol, Tobacco and Firearms
Washington, D.C. 20226

[undated, but mailed 1/27/99]

901000:TN
179.101/99-7473

Dear Mr. :

This is in response to your letter dated December 26, 1998, regarding if a licensed manufacturer may replace a broken or defective silencer, returned for repair.

Yes, a licensed manufacturer may repair or replace a defective silencer, with a new silencer bearing the same serial number as the defective silencer.

The owner of the silencer should receive permission from Bureau of Alcohol, Tobacco and Firearms for the transfer by completing and mailing ATF Form 5 (Application for Tax Exempt Transfer and Registration of a Firearm), to the National Firearms Act Branch (NFA) and receive approval prior to the delivery. The manufacturer should do the same prior to returning the silencer. Only the face of the form need be completed in each instance.

We have enclosed blank Form 5, and instruction sheets which you will find helpful in completing the enclosed form.

If we can be of further assistance, please contact us at (202) 927-8330.

Sincerely yours,

[signed]

Kent M. Cousins
Chief, National Firearms Act Branch

Enclosure



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

901040:GS
5320/99-7473

19 APR 1999

Mr. James O. Bardwell
P.O. Box 101141
Denver, CO 80250

Dear Mr. Bardwell:

This is to clarify the advice contained in our response of January 27, 1999, to your letter of December 26, 1998, regarding the replacement of a broken or defective silencer that had been returned for repair.

You asked if a licensed manufacturer of firearms may lawfully replace a broken or defective silencer, returned to him for repair, with a new silencer with the same serial number as the broken or defective one. You added that the original silencer would be destroyed in the process of replacement.

A complete firearm silencer or muffler is a "firearm" subject to the provisions of the National Firearms Act (NFA). In addition, certain silencer parts and components also qualify as a "firearm" and are subject to NFA controls. Repair or replacement of silencer components can result in the creation of a new firearm which would be subject to additional registration and transfer tax requirements.

A person who possesses a registered silencer may transfer the silencer for repair on ATF Form 5, tax exempt, to any licensed manufacturer of firearms who has currently paid special (occupational) tax (SOT) as a manufacturer of NFA firearms.

Any such manufacturer may repair or replace unmarked silencer components such as baffles, wipes, end caps, or specially made packing material. If such components are replaced on an exchange basis and the original components are destroyed, there is no registration of a new firearm required and the silencer may be returned on Form 5, tax exempt.

Mr. James O. Bardwell

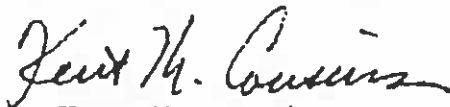
If the manufacturer did not originally make the silencer and must replace components bearing required markings, such as the outer tube, the new replacement components would then require registration as a new firearm and would be subject to marking requirements under 27 CFR § 179.102. Return of the new components would incur applicable transfer tax.

If the original defective components were not destroyed and were returned to the customer in addition to replacement components, the replacement components would also require registration as a new firearm and would be subject to transfer tax.

A silencer which is unusable due to a manufacturer's defect, may be replaced without incurring transfer tax, only if the silencer is returned to the original manufacturer for repair and the original manufacturer is licensed as a manufacturer of firearms and has currently paid SOT as a manufacturer of firearms. The original manufacturer may then mark the replacement with the same serial number used on the defective silencer and then return the replacement silencer on ATF Form 5 without incurring transfer tax. The original defective silencer components must be destroyed.

We apologize for any inconvenience and trust that this clarifies the matter. Should any additional information be needed, please contact Gary Schaible at (202) 927-8330.

Sincerely yours,



Kent M. Cousins
Chief, National Firearms Act Branch



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington, DC 20226

www.atf.gov

CC-89,664 FE:AR

DEC 30 2005

Ms. Katherine Bugbee
1350 Eye Street, NW
Suite 1255
Washington, DC 20005

Dear Ms. Bugbee:

This is in response to your November 22, 2005 memorandum requesting an Advisory Opinion regarding any marking requirements for suppressor parts as it applies to the shipment of suppressor parts, including tubes, between one FFL/SOT manufacturer to another FFL/SOT manufacturer for final assembly. More specifically, the memorandum asked the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to comment on three scenarios contained in the memorandum.

1. Manufacturer A (FFL/SOT) produces suppressor parts, including tubes. Manufacturer B (FFL/SOT) orders certain suppressor model parts sets and various single suppressor parts (either through standing monthly orders, or single orders via email or phone) from Manufacturer A. Manufacturer A ships the order in stages as the parts become available. Manufacturer B assembles into suppressors and marks the same.

ATF does not require that Manufacturer A mark the parts before sending them to Manufacturer B, because they are simply parts being sent between licensed manufacturers for assembly.

2. Manufacturer A (FFL/SOT) and Manufacturer B (FFL/SOT) have a manufacturing contract for Manufacturer A to produce suppressor parts, including tubes, for Manufacturer B. Manufacturer A (FFL/SOT) produces suppressor parts, including tubes. Manufacturer B (FFL/SOT) orders certain suppressor model parts sets and various single suppressor parts (either through standing monthly orders, or single orders via email or phone) from Manufacturer A. Manufacturer A ships the order in stages as the parts become available. Manufacturer B assembles into suppressors and marks the same.

ATF does not require that Manufacturer A mark the parts before sending them to Manufacturer B, because they are simply parts being sent between licensed manufacturers for assembly.

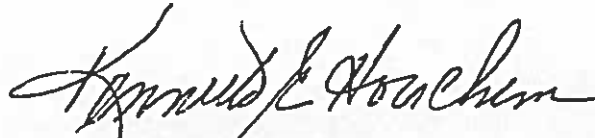
Ms. Katherine Bugbee

3. Manufacturer A (FFL/SOT) produces suppressor parts. Manufacturer B (FFL/SOT) orders tubes and requests that on some Manufacturer A mark serial numbers that are provided by Manufacturer B; the rest of the tubes in the order are to remain unmarked. Manufacturer A places only the serial numbers provided by Manufacturer B on the tubes and ships both the serialized and the unserialized tubes to Manufacturer B. Manufacturer B receives and assembles the same into suppressors. All other required markings are made by Manufacturer B.

This scenario would not require a marking variance from ATF. While ATF does not require that Manufacturer A mark parts before sending them to Manufacturer B in this scenario, the regulations do not prohibit Manufacturer A from marking parts.

We hope this has been responsive to your questions. Please let me know if you have any additional questions.

Sincerely yours,



Kenneth E. Houchens
Chief, National Firearms Act Branch

replacement must not alter the original dimension, design and configuration of the part replaced.

"3. Assuming scenario 2 above is considered in compliance, can he do the same work if he is not the original manufacturer (as in the case where the original manufacturer is no longer in business)? Common belief and practice is mixed on this issue."

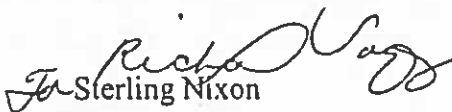
- No. Only the original currently licensed SOT manufacturer is authorized to replace a serialized part and only for a manufacturer's defect. Any currently licensed SOT manufacturer may replace the internal non-serialized parts on a one for one basis (for repair or defect) and only if the replacement does not alter the original dimension, design and configuration of the part replaced.

"4. Can an original manufacturer "upgrade" his older suppressor to the most current version if so doing requires that he replace all parts (including the outer marking-bearing tube) and simply transfer the original markings to the new product while totally destroying all of the original components? Common belief and practice is mixed on this issue."

- If a manufacturer were to "upgrade" an existing "firearm silencer" or "firearm muffler" to a newer model or version, he/she would be manufacturing a new NFA firearm not registered in accordance with the provisions of the NFA.
- Additionally, replacing damaged internal components of a silencer with upgraded components such as are offered in a newer or improved model of silencer would constitute altering a firearm from its original form and would be the manufacture of a new NFA firearm not registered in accordance with the provisions of the NFA.

We trust that the foregoing has been responsive to your request for information. If we can be of any further assistance, please contact us.

Sincerely yours,


Sterling Nixon
Chief, Firearms Technology Branch



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, WV 25401
www.atf.gov

903050:MSK
3111/2006-744

JUN 19 2006

Ms. Katherine Bugbee
Mark Barnes & Associates
Suite 1255 1350 Eye Street, Northwest
Washington, D.C. 20005

Dear Ms. Bugbee:

This refers to your letter dated May 1, 2006, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Branch (FTB), on behalf of [REDACTED] in which you ask for clarification on two questions.

1. Can the markings required under the National Firearms Act (NFA) be applied to the end cap of an assembled silencer rather than the outer tube?
2. Do individual silencer tubes qualify as "firearms" under the NFA: would a silencer tube sold in conjunction with an assembled and serialized silencer or on its own with no other silencer components require a serial number and other markings as noted in the NFA?

As you are aware, the NFA, 26 U.S.C. 5845(a), defines the term "firearm", in part, as ... (7) *any silencer (as defined in section 921 of title 18, United States Code)....*

Additionally, the Gun Control Act of 1968 (GCA), 18U.S.C. 921(a)(24), defines "firearm silencer," along with "firearm muffler," as follows: *...any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.*

Finally, the NFA, § 5842(a), "Identification of firearms," states the following:

"...(a) Identification of firearms other than destructive devices. - Each manufacturer and importer and anyone making a firearm shall identify each firearm, other than a destructive device, manufactured, imported, or made by a serial number which may not be readily removed obliterated, or altered, the name of the manufacturer, importer, or maker, and such other identification as the Secretary may by regulations prescribe.

Ms. Katherine Bugbee

Based on the above Federal firearms statutes, a complete firearm silencer or muffler is a "firearm" subject to the provisions of the NFA. In addition, silencer parts and components including outer tubes, baffles, end caps, or wipes, which are designed as components of a silencer, also qualify as "firearms" and are subject to NFA controls.

It has always been the position of ATF that silencer components made and held by a manufacturer and intended for use in the assembly of new silencers need not be individually marked or serialized. Because of the record keeping and manufacturing difficulties inherent in requiring the marking of all such components in that manner, ATF allows manufacturers to "serialize" component parts intended for use in the fabrication of new silencers in bulk units (one box of 100, one box of 500, etc.). Licensed manufacturers may legally sell these serialized lots of component parts to other manufacturers, law enforcement agencies, or the military. However, any silencer component parts sold to unlicensed persons must be marked and serialized individually as all such parts must be registered, identified, and transferred pursuant to NFA requirements.

Please note that if a device incorporates the parts of a firearm silencer, i.e., expansion chamber, baffles, spirals, wipes, etc., it would constitute a "firearm silencer" as defined, regardless of whether or not it is attached to a firearm. Thus, a silencer tube sold by your client in conjunction with an assembled and serialized silencer, or on its own with no other silencer component parts, would have to bear a unique serial number and all other markings required under the NFA; it would constitute a distinct "firearm" as defined in the NFA and be subject to all NFA provisions and implementing regulations.

Regarding placement of markings on a silencer, while 26 U.S.C. 5842(a) does not specify which external component of an assembled silencer will bear the required markings, ATF has always held that the outer tubular body—being both the largest external component and the "key" or "main" component in that it contains or retains all the other component parts of the silencer both external and internal, essentially forming the "complete" silencer—is the part which must contain the required markings and serial number. The only exception would be in cases where the end caps are permanently attached to the outer tube via full fusion welding or pinning, resulting in a single-unit "sealed" silencer. In such cases, if your client preferred, the markings could be placed on one of the end caps.

We thank you for your inquiry and trust the foregoing has been responsive to your request for guidance.

Sincerely yours,



Sterling Nixon
Chief, Firearms Technology Branch

Q3: May the outer tube of a registered silencer be repaired due to damage? If so, may the repair be done by someone other than the original manufacturer?

A damaged outer tube may be repaired by any Federal firearms licensee qualified to perform gunsmithing or by the registered owner. The repair may not alter the dimensions or caliber of the silencer, except that the length of the outer tube may be reduced, as set forth above. The repair may not be performed if it results in the removal, obliteration, or alteration of the serial number, as this would violate 18 U.S.C. § 922(k). In that case, the silencer may be returned to the registered owner in its original, damaged condition or destroyed. A replacement silencer must be registered and transferred to the registrant of the damaged silencer in the same manner as a new silencer, subject to the registration and transfer procedures of the NFA and GCA.

Q4: If the outer tube is destroyed or damaged beyond repair, may it be replaced?

A: Unless the outer tube is replaced by the manufacturer prior to its removal from the manufacturing premises for purposes of sale or distribution (see Q6), the replacement of the outer tube amounts to the making of a new silencer. For the registered owner to fabricate a new outer tube, he or she must submit an ATF Form 1, Application to Make and Register a Firearm, pay the making tax of \$200, and receive ATF approval. The application to make should indicate that the new tube is being fabricated for use in replacing a damaged outer tube on a registered silencer, and the application should indicate the make, model and serial number of the registered silencer. It would be helpful for the applicant to include a copy of the approved registration for the silencer. Assembly of the newly fabricated tube with the other parts of the registered silencer does not require an additional application to make nor payment of another making tax, as the one Form 1 will provide permission to fabricate the new tube and to assemble it with the old silencer parts. The replacement tube must be marked in accordance with 27 C.F.R. § 479.102. The registrant may use the same serial number that appeared on the damaged tube.

If the registered owner wishes to acquire a replacement tube from a person other than a qualified manufacturer, the replacement tube must be registered as a new silencer by the other person and transferred to the registered owner in accordance with the NFA and GCA. The other person must submit an ATF Form 1, pay the \$200 making tax, and receive ATF approval to make the replacement tube. The replacement tube must be marked in accordance with 27 C.F.R. §§ 478.92 and 479.102. The other person would then transfer the replacement tube to the owner of the damaged silencer, subject to the transfer tax, in accordance with the NFA and GCA. The new tube may be then be assembled with the other parts. The original damaged silencer should be reported to the NFA Branch as destroyed.

Alternatively, a qualified manufacturer may replace the tube, report the manufacture on ATF Form 2, Notice of Firearms Manufactured or Imported, and transfer the replacement tube to the owner in accordance with the NFA and GCA. The transfer must comply with the \$200 transfer tax and all other provisions of the NFA, as it would be a new silencer. The replacement tube must also be marked in accordance with 27 C.F.R. §§ 478.92 and 479.102. The required markings include an individual serial number and the name, city, and State of the manufacturer who replaced the tube. The replacement tube may not be marked with the name, city, and State of the original manufacturer of the silencer, as this would be a false marking. Although the new tube is a new silencer for purposes of the NFA, it would be a replacement firearm of the same type as the original silencer, and it may be returned directly to the registrant in interstate commerce in accordance with 18 U.S.C. § 922(a)(2). The original damaged silencer should be reported to the NFA Branch as destroyed.

Q5: May a repair change the dimensions or caliber of a silencer?

A: If alterations to a silencer would increase the overall length or change the diameter or caliber of a silencer, this is the making of a new silencer, as opposed to a repair. The new silencer must be registered and transferred in accordance with the NFA and the GCA. Alterations to a registered silencer that result in a minimal reduction in the overall length for purposes of rethreading are permissible as repairs. However, the reduction in length may not result in the removal, obliteration, or alteration of the existing serial number, as this would violate 18 U.S.C. § 922(k). If such a repair is necessary, the damaged silencer should be destroyed or returned to the registrant. If it is destroyed, destruction should be reported to the NFA Branch. Any replacement silencer must be registered and transferred in accordance with the NFA and the GCA. See Q2 and Q3 for further information on repairs.

Q6: If a silencer is found to be defective due to the manufacturing process, may it be replaced?

A: A silencer may be replaced only under the following circumstances:

- (1) A manufacturer of silencers licensed as a manufacturer under the GCA who has paid special (occupational) tax under the NFA;
- (2) prior to the time the silencer has left the manufacturer's premises;
- (3) determines that a silencer of its own manufacture is defective.

If all the above criteria are satisfied, the manufacturer may destroy the defective silencer and replace it with another silencer. If the silencer has already been registered, the replacement silencer may be marked with the same serial number and markings as the original silencer. If the destruction is prior to registration on Form 2, the replacement silencer may be marked with the same serial number or another serial number. See also Q2, Q3, and Q4.