

## NOTICE REGARDING MICHIGAN MACHINEGUN POSSESSION

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has reviewed Michigan Attorney General Opinion No. 7183, issued December 27, 2005, which sets forth the opinion of that office as to the State's criteria for lawful possession of machineguns by private individuals in the State of Michigan. As a result of that Opinion, applications to transfer certain machineguns from Michigan residents who do not possess a Federal firearms license can now be processed by ATF.

A machinegun is a "firearm" as defined by the Gun Control Act of 1968 (GCA) and the National Firearms Act (NFA). Firearms subject to the NFA are regulated more strictly than non-NFA firearms and as such, the transfer, possession, importation, registration and making of such firearms must be approved by ATF. Specifically, transfer of a machinegun under the NFA is controlled, in part, by 26 U.S.C. § 5812, which states, in relevant part, that to lawfully transfer a machinegun, a person must receive the appropriate approved application from ATF and an application shall be denied if the transfer, receipt, or possession of the firearm would place the transferee in violation of Federal, State or local law.

Furthermore, 18 U.S.C. §922(o), makes it unlawful for any person to transfer or possess a machine gun, except a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or any lawful transfer or lawful possession of a machinegun that was lawfully possessed before May 19, 1986.

In light of these provisions, in order to approve an application to transfer a machinegun to a resident of Michigan, ATF must determine that: (1) the subject machinegun was lawfully possessed before May 19, 1986; and, (2) the transfer and possession would not violate Michigan law on machinegun possession.

Michigan law (MCL 750.224) states, in part, that a person shall not manufacture, sell, offer for sale, or possess a machinegun or firearm that shoots or is designed to shoot automatically more than 1 shot without manual reloading, by a single function of the trigger unless they are a person manufacturing firearms, explosives, or munitions of war by virtue of a contract with a department of the government of the United States or ***a person licensed by the Secretary of the Treasury of the United States or the Secretary's delegate to manufacture, sell, or possess a machine gun, or a device, weapon, cartridge, container, or contrivance. (Emphasis added).***

OAG 7183 addresses what qualifies as a *person licensed by the United States* and concludes that the holder of an approved ATF application for transfer and registration of a machinegun is a *person licensed by the United States* for purposes of MCL 750.224. Therefore, a Michigan resident with an approved ATF application to transfer and register a machinegun submitted pursuant to 26 U.S.C. § 5812 may legally possess a machinegun under the "license" exception set forth in MCL 750.224.

The NFA Branch is now processing applications for transfer and registration of a machinegun received by ATF and the NFA Branch from Michigan residents will be processed according to the information provided above.

Please note that MCL 750.224 provides the prohibitions and exceptions for the manufacture, sale, offering for sale or possession of machineguns as well as mufflers, silencers and bombs. OAG No. 7183 however, only addresses the transfer and registration of a machinegun. ATF has formally requested clarification from the Michigan Attorney General on whether the rationale set forth in OAG No. 7183 also applies to other NFA firearms. Applications received by ATF from Michigan residents for items other than machineguns will be held until the requested clarification is received from the Michigan Attorney General.

For questions related to a new or pending ATF Form 4 Application, please contact:

National Firearms Act Branch  
Bureau of Alcohol, Tobacco, Firearms and Explosives  
244 Needy Road  
Martinsburg, West Virginia 25405  
(304) 616-4500