SENIOR COUNSEL:
C. D. MICHEL

SPECIAL COUNSEL:
JOSHUA R. DALE
W. LEE SMITH

ASSOCIATE COUNSEL:
SEAN A. BRADY
SCOTT M. FRANKLIN
HILLARY J. GREEN
THOMAS E. MACIEJEWSKI
CLINT B. MONFORT
TAMARA M. RIDER
JOSEPH A. SILVOSO, III
LOS ANGELES, CA

MICHEL & ASSOCIATES, P.C.
Attorneys at Law
Firearms - Environmental - Land Use - Employment Law

OF COUNSEL:
DON B. KATES
SAN FRANCISCO, CA

RUTH P. HARING
LOS ANGELES, CA

GLENN S. MCROBERTS
SAN DIEGO, CA

AFFILIATE COUNSEL:
JOHN F. MACHTINGER
JEFFREY M. COHON
LOS ANGELES, CA

DAVID T. HARDY
TUCSON, AZ

MEMORANDUM FROM THE DESK OF
C. D. MICHEL

Re: ATF Interpretation of What Constitutes "Manufacturing" a Firearm; *Broughman v. Carver* (4th Cir. 2010) 624 F.3d 670

Date: May 5, 2011

I. WHAT CONSTITUTES "MANUFACTURING" A FIREARM

Over the years ATF has revised its interpretation of what constitutes "manufacturing" a firearm. California firearm "manufacturers" must get a federal manufacturer's license (in addition to a California license; Cal. Pen. §§ 12085 and 12086). Under ATF's most current interpretation of "manufacturing," such a license will now be required under circumstances where one was not previously required.

Whether this approach is a correction of an oversight ATF inadvertently allowed to happen over the years, or a deliberate policy change by the ATF, remains unclear. Regardless, the change has caused a great deal of concern and confusion within the firearm community.

In response to the change, a civil legal action was brought by Mr. Allan Broughman, operator of "Broughman's Gun Shop" and a federally licensed firearm dealer, against an ATF Agent Carver, who required Mr. Broughman to obtain a federal firearm manufacturer's license for conduct which Broughman contended did not necessitate such a license. The results of that case provide some guidance on how to comply with the law.

This memo reviews the facts of the *Broughman* case, analyzes the recent decision by the Fourth Circuit Court of Appeals, and reviews ATF's position on "manufacturing" in the *Broughman* case; including activities discussed in ATF information bulletins that further define the scope of what constitutes and the requirements for "manufacturing."

Hopefully, this memorandum will help individuals to better understand ATF's current

requirements.

II. THE CASE OF *BROUGHMAN V. CARVER*, (4th Cir. 2010) 624 F.3d 670 (See full case)

A. Facts

Mr. Broughman, operating out of the basement of his home, purchased complete firearm "actions" (frames or receivers with internal parts) from other firearm licensees (FFLS), and purchased rifled barrels from other sources. Broughman then threaded and chambered the barrels to fit the actions, blued (i.e. finished the surface coating)the actions, and made wooden stocks, which he fit to the actions and barrels. No machining, drilling, or other alterations were done to the actions during this process.

ATF issued Mr. Broughman a Federal firearms license as a dealer in firearms in September 27, 2001. In July 2006, Investigator Carver conducted a routine compliance inspection of Mr. Broughman's "gun shop." On July 31, 2006, Investigator Carver issued a Report of Violation to Mr. Broughman. One of the alleged violations, which prompted the law suit, was a citation for failure "to obtain a license to manufacture firearms." Mr. Broughman was cited because the investigator observed Mr. Broughman assemble a barrel, a receiver, and a stock for a customer, and Mr. Broughman admitted that he had assembled firearms and then sold them for several thousand dollars. The investigator informed Mr. Broughman that Mr. Brougham must discontinue the manufacturing activity until he applied for and received a license to manufacture firearms.

Mr. Broughman hired an attorney who asked the ATF to remove the violation from the Report of Violations, asserting Mr. Broughman did not need a manufacturer's license for what he was doing. ATF responded that "[i]t is ATF's long standing position that the business activities described in your letter and observed during the inspection of Mr. Broughman's premises are considered to be manufacturing activities, necessitating a manufacturer's license."

Mr. Broughman applied for and received a manufacturer's license, then allowed his dealer's license to expire in October 2006.

B. Fourth Circuit Court of Appeals Ruling in Favor of ATF

Under the Gun Control Act of 1968 (GCA), "[n]o person shall engage in the business of importing, manufacturing, or dealing in firearms ... until he has filed an application with and received a license to do so from the Attorney General." 18 U.S.C. § 923(a).

A "firearm" under the GCA includes "any weapon ... which will or is designed to or may be readily converted to expel a projectile by the action of an explosive," (18 U.S.C. § 921(a)(3)(A)), or "the frame or receiver of any such weapon... ." § 921(a)(3)(B).

Under the GCA, a firearms "manufacturer" is defined as "any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution." *Id*. § 921(a)(10). The statute does not further define the term "manufacturing firearms." In contrast, the GCA defines a firearms "dealer" in three distinct ways. See *id*. § 921(a)(11). The pertinent part of the statutory definition at issue here states that a "dealer" is "any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms." *Id*. § 921(a)(11)(B).

Because the GCA does not define the term "manufacturing," the court gave the words of a statute their "plain and ordinary meaning." *Carbon Fuel Co. v. USX Corp*., 100 F.3d 1124, 1133 (4th Cir.1996). The plain and ordinary meaning of the word "manufacture" is "to make into a product suitable for use." Merriam-Webster Online Dictionary (2010); see also *id*. (listing as related words "assemble, build, construct ... refashion, [and] remake"). The court therefore concluded that manufacturing firearms under § 923(a) entails assembling a firearm's individual components so as to render the firearm "suitable for use."

In applying the ordinary meaning of "manufacturing," the court concluded that an individual who builds custom bolt action rifles by assembling the component parts of a firearm, was a manufacturer. In the *Broughman* case, the dealer purchased actions and barrels, fitted the barrel to the action, blued the action, and attached a wooden stock. The result was a "weapon ... designed to ... expel a projectile by the action of an explosive, which was sold for commercial gain. § 921(a)(3)(B). Under these specific circumstances, the court concluded that Broughman was engaged in the business of manufacturing firearms and must, therefore, have a manufacturer's license to perform such work.

III. ATF's Position

The Gun Control Act of 1968, as amended, 18 U.S.C. 921 et seq., mandates that "[n]o person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Attorney General... ." 18 U.S.C. § 923(a).

A *dealer* in firearms is defined as "(A) any person engaged in the business of selling firearms at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker." 18 U.S.C. § 921(a)(11) (emphasis added). To be "engaged in the

business" as a dealer pursuant to subsection (B) means to be "[a] person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principle objective of livelihood and profit, but such a term shall not include a person who makes occasional repairs of firearms or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms." 18 U.S.C. § 921(a)(21)(D). Such a person is referred to as a "*gunsmith*." See 27 C.F.R. § 478.11(Definition of "Engaged in the business" at subparagraph (d), "Gunsmith")[1].

Per statute, a *manufacturer* is defined as one who is "engaged in the business of manufacturing firearms ... for purposes of sale or distribution." 18 U.S.C. § 921(a)(10). The term "engaged in the business" as a manufacturer means "[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." 18 U.S.C. § 921(a)(21)(A). The GCA and its implementing regulations do not presently define the term "*manufacturing*" or "*manufacture*."

ATF has interpreted section 921(a)(10) to mean that a person "should obtain a license as a manufacturer of firearms if the person is: 1. performing operations which create firearms or alter firearms (in the case of alterations, the work is not being performed at the request of customers, rather the person who is altering the firearms is purchasing them, making the changes, and then reselling them), 2. is performing the operations as a regular course of business or trade, and 3. is performing the operations for the purpose of sale or distribution of the firearms." See http://www.atf.gov/firearms/faq/faq2.htm#h6.

A. "For Purposes of Sale or Distribution"

ATF is focusing on "for purpose of sale or distribution" prong of the above definition. This activity, according to ATF takes a dealer out of subpart B of the *dealer* definition (i.e., the "gunsmith" subsection). ATF states that a dealer cannot make or fit special barrels, stocks, or trigger mechanisms to firearms as stated in 18 U.S.C. § 921(a)(11)(B), *and* sell the end product. This is an activity not contemplated in subsection (a)(11)(B).

Subsection (B) of the dealer definition includes gunsmiths, those who repair firearms or

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[1] 27 C.F.R. § 478.11 states in pertinent part: Engaged in the business -- (d) Gunsmith. A person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such a term shall not include a person who makes occasional repairs of firearms or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;

customize firearms (by attaching barrels, stocks, etc.) owned by a third party; there is no change of ownership in the firearm. This distinction is borne out by the definition of "engaged in the business" found in 18 U.S.C. § 921(a)(21). To be engaged in the business as a manufacturer includes the "sale or distribution of the firearms manufactured." 18 U.S.C. § 921(a)(21)(A). This phrase is noticeably absent from the "engaged in the business" definition for dealers as defined in section 921(a)(11)(B). See 18 U.S.C. § 921(a)(21)(D) (which does not require "the sale or distribution of the firearms" repaired/customized); see also 27 C.F.R. 478.11 (defining engaged in the business as a "gunsmith"). The manufacturer is being compensated for his product, while the gunsmith is being compensated for his services. See ATF Chief Counsel Opinion 21684 (5/31/73):

> "Typically, a 'gunsmith' is a dealer who receives possession of firearms brought in by customers for the purposes of repair, customizing or altering, and then returns the firearms to the customer charging for his labor and any parts used. Usually, a gunsmith does not obtain ownership of the firearm but merely custody of it.
>
> A manufacturer, on the other hand, is generally a person who creates a new weapon from parts he has purchased in his own name. Section 921(a)(10) of Title 18, defines a manufacturer as a person who manufactures firearms for sale or distribution. This definition takes into consideration the fact that the manufacturer is a person who owns the firearms created, and attempts to sell his ownership interest in it, rather than a person who repairs, alters, or modifies firearms owned by other persons."

A dealer could thread and fit barrels and make and attach stocks to receivers as a gunsmith with a dealer's license if the dealer does not then sell the firearm.

This difference between manufacturers and gunsmiths dates back to 1955. In Revenue Ruling 55-342, ATF's predecessor agency interpreted the meaning of the terms "manufacturer" and "dealer" for purposes of firearms licensing under the Federal Firearms Act, the precursor to the Gun Control Act. The ruling states that a licensed dealer could assemble firearms from component parts on an individual basis, but could not do so for purposes of sale or distribution without a manufacturer's license. See Rev. Rul. 55-342, 1955 WL 9842.

However, this definition is not clear as to whether a dealer may sell a firearm that the dealer had previously manufactured, but did so for purposes other than the sale or distribution of the firearm. For example, a customer may bring components to a dealer to assemble into a functioning firearm for the customer; however, thereafter, the customer decides he wants to sell the assembled firearm to the dealer, cannot pay the dealer for his services, never returns for the assembled firearm and cannot be contacted, or some other situation that results in the dealer obtaining ownership of the newly assembled firearm. The dealer did not assemble the firearm for

the purpose of selling or distributing it originally. Thus, the question is: whether a dealer may ever sell a firearm procured by the dealer under such circumstances.

B. Creating or Altering Firearms

Both ATF's historical and present interpretations of the term "manufacture" include a variety of alterations made to a firearm, regardless of the extent thereof. Included as "manufacturing" is the assembly of parts, see Rev. Rul. 55-342, *supra* (in order to "assembl[e] firearms from component parts in quantity lots for purposes of sale or distribution" a "license as a manufacturer of firearms must be procured"); fitting barrels to receivers acquired from independent sources to be offered to the general public for sale, see ATF Chief Counsel Opinion 21142-1 (1/11/71); phosphatizing and black anodizing, see ATF Chief Counsel Opinion 21177 (2/11/71), the adding of stocks to create, and sell, custom-made sporting rifles, see ATF Chief Counsel Opinion 21684 (5/31/73), and heat treating, see Chief Counsel Opinion 22661 (11/27/78). (See generally ATF Chief Counsel Opinion 24267 (Aug. 7, 1989) ("While we agree that modifications made to a firearm which transform the firearm into a new product having a name, character, or use different from the original article amount to manufacture, it is ATF's longstanding position that more minor alterations to firearms intended for sale or distribution are also 'manufacture' under the GCA")).

As stated above, the activities of fitting barrels to frames and attaching stocks are without question alterations, according to the ATF, and have expressly been deemed to qualify as "manufacturing." See ATF Chief Counsel Opinion 24267 ("For example, ATF has previously held that attaching shoulder stocks to firearms amounts to manufacturing which requires a manufacturer's license under the GCA. Similarly, we have held that a company engaged in the business of manufacturing barrels and fitting them to frames or receivers which are then offered to the general public for sale must be licensed as a manufacturer.").

The Supreme Court has defined "manufacture" in the patent context as "the production of articles for use from raw or prepared materials by giving to these materials new forms, qualities, properties, or combinations, whether by hand labor or by machinery; also anything made for use from raw or prepared materials." *American Fruit Growers, Inc. v. Brogdex Co.*, 283 U.S. 1, 11 (1931) (internal quotation marks omitted). That a dealer performs no "machining [or] drilling" is irrelevant, as the *American Fruit Growers'* definition encompasses production by "hand labor or machinery."(emphasis added).

Thus, regardless of whether a barrel is "manufactured" by a dealer and attached to a receiver or obtained from another source and attached to a receiver, both activities are deemed to be "manufacturing" and require a manufacturers' license to engage in either.

C. ATF's Interpretation of "Manufacturing" Appears to Be Generally Consistent with the Law and Regulations

A firearm is defined as "(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm." 18 U.S.C. § 921(a)(3). Despite the fact frames and receivers are the only parts of a firearm regulated by statute, and a dealer does not produce frames or receivers from raw or prepared materials, but only takes existing ones (with internal parts) and fits barrels and stocks to them, the dealer, according to ATF, is manufacturing firearms. While the frame or receiver alone is considered a firearm, see 18 U.S.C. § 921(a)(3)(B), a firearm is also defined as "any weapon ... which will or is designed to or may readily be converted to expel a projectile by the action of an explosive," see 18 U.S.C. § 921(a)(3)(A). It is the opinion of the ATF that by creating stocks or barrels and attaching them to receivers to create a "weapon ... which will ... expel a projectile by the action of an explosive;" is manufacturing.

ATF has held since the inception of the Gun Control Act that companies engaged in the business of making or manufacturing of barrels, fitting them to frames or receivers acquired from independent sources to be offered to the general public for sale must be licensed as a manufacturer under the GCA. See *Magnesium Casting Co. v. United States*, 323 F.2d 952, 953 (1st Cir. 1963) ("[A]n article is being manufactured through all of its stages and this does not cease to be so simply because at an earlier stage it had already achieved the described status."); see also ATF Chief Counsel Opinion 21684 (May 31, 1973), (Finding that a licensee who purchases receivers and then attaches a stock is manufacturing a firearm because "even if one of the components [the licensee] uses in the building of a custom rifle is defined in the Gun Control Act as a 'firearm,' ... the actual custom-made rifle that is created by [the licensee] is a separate and distinct firearm."); *Reynolds v. Freightliner*, No. 4:07-cv-1, 2007 WL 2220569, at 6 (W.D. Va. Aug. 2, 2007) (Under Virginia's Lemon Law, the definition of motor vehicle includes the "motorized chassis of motor homes." Defendant argued that because it received a completed chassis and simply added the motor home's cabin, it was not a manufacturer of motor vehicles. The court rejected this interpretation to "avoid[] curious results.")

Likewise, according to ATF, it would be a curious result to read the definition of firearm to only include frames or receivers. "[U]nder 18 U.S.C. § 921(a)(3), both fully assembled guns, as well as major components of guns (i.e. the frame or receiver), qualify as 'firearms.'" *United States v. Romero-Martinez*, 443 F.3d 1185, 1190 (9th Cir. 2006) (rejecting defendant's argument that "the slide and barrel are not part of the firearm because they may be detached from the gun and are not part of the 'frame or receiver' of the weapon" and finding that, under defendant's interpretation, "the only objects meeting the federal definition of 'firearm' would be those

incapable of firing a projectile by themselves. Congress did not intend such a limitation"). Currently, each manufacturer that contributes to the manufacturing process must have a license. For instance, one company may produce the frame or receiver of the firearm, another company may assemble the firearm, and another company may then heat-treat or finish the firearm. All of these companies are required to have manufacturers' licenses. Few companies are able to perform all of these functions "in house."

Under the ATF opinion, the idea that dealers should be allowed to engage in almost all facets of the manufacturing process (without having to pay the requisite taxes), while manufacturers are limited to only those who manufacture receivers runs counter to the very purposes of the GCA, which was to tighten controls on the commerce of firearms. See H.R. Rep. No. 1577, 90th Cong., 2nd Sess. (1968); 1968 U.S.C.C.A.N. 4410, at 4411; 1968 WL 5325 (The "principal purpose" of the Gun Control Act was "to strengthen Federal controls over interstate and foreign commerce in firearms and to assist the States effectively to regulate firearms traffic within their borders."); *United States v. Biswell*, 406 U.S. 311, 315 (1972) ("close scrutiny of this traffic [in firearms] is undeniably of central importance to federal efforts to prevent violent crime and to assist the States in regulating the firearms traffic within their borders"). Allowing the frame or receiver to be the "only" part of a firearm regulated by statute would hinder the "comprehensive regulatory scheme on the manufacture and distribution of firearms" imposed by the GCA. *National Rifle Ass'n v. Magaw*, 132 F.3d 272, 277 (6th Cir. 1997).

D. "Occasional" Repairs

Federal law in 18 USC sec. 921(a)(21)(D) appears to provide at least some protection to a dealer "who makes occasional repairs of firearms, or who *occasionally* fits special barrels, stocks, or trigger mechanisms to firearms." However, once again there is a vague standard involved: "occasionally." There is no guidance on at what point the activity is no longer simply "occasional." In *Broughman*, the court pointed out that the dealer involved there did not even assert that he was only engaged in *occasional* firearm building activities, and thus did not address what constitutes "occasional."

However, the *Broughman* court did address the "gunsmith" exception to manufacturing, stating: "Under the GCA, a gunsmith who repairs a firearm is not a manufacturer because the gunsmith is only servicing a fully-manufactured 'weapon...designed to...expel a projectile by the action of an explosive'." Sec. 921(a)(3)(B). The same is true for a gunsmith who purchases a fully-manufactured weapon, "fits special barrels, stocks, or trigger mechanisms" to it, and then resells the firearm for commercial gain; it might be said that no manufacturing occurs in that situation because the gunsmith is only modifying a fully-manufactured weapon." This seems to suggest that had Mr. Broughman purchased the receivers with affixed barrels and stocks and simply switched them out for different ones, that would not be "manufacturing."

Also unclear by the language of 18 USC sec. 921(a)(21)(D) is whether a dealer may occasionally fit barrels or stocks on receivers obtained elsewhere for the purpose of selling the finished product; however when considered in light of the ruling in the *Broughman* case, such activity likely would require a manufacturer's license.

E. There Are Some Express Exemptions to the "Manufacturers" License Requirement

The ATF has released two Rulings from its Office of Director, ATF Ruling 2009-1 and ATF Ruling 2009-2, each detailing a separate activity that is expressly exempted from the definition of "manufacture" and thus legal for mere firearm dealers to do without obtaining a manufacturers' license.

1. ATF Ruling 2009-1 Allows Dealers to Make Cosmetic Changes to Firearms Before Selling Them

Any person who engages in an activity or process that primarily adds to or changes a firearm's appearance, by camouflaging a firearm by painting, dipping, or applying tape, or by engraving the external surface of a firearm, does not need to be licensed as a manufacturer under the Gun Control Act. Any person who is licensed as a dealer/gunsmith, and who camouflages or engraves firearms as described in this ruling does not need to be licensed as a manufacturer under the Gun Control Act. Any person who is engaged in the business of camouflaging or engraving firearms as described in this ruling must be licensed as a dealer, which includes a gunsmith, under the Gun Control Act.

Thus, any person who changes a firearm's appearance by camouflaging or external engraving need not be a licensed firearm manufacturer, however, such a person must be a licensed firearm dealer or gunsmith.

2. ATF Ruling 2009-2 [LINK] Allows Dealers to Install "Drop-In" Replacement Parts to Firearms Before Selling Them

Any person who installs "drop in" replacement parts in or on existing, fully assembled firearms does not manufacture a firearm, and does not need to be licensed as a manufacturer under the Gun Control Act. A "drop in" replacement part is one that can be installed in or on an existing, fully assembled firearm without drilling, cutting, or machining. A replacement part, whether factory original or otherwise, has the same design, function, substantially the same dimensions, and does not otherwise affect the manner in which the weapon expels a projectile by the action of an explosive. Any person who is licensed as a dealer, which includes a gunsmith, and who installs "drop in" replacement parts in or on existing, fully assembled firearms as

described in this ruling does not need to be licensed as a manufacturer under the Gun Control Act. Any person who is engaged in the business of installing "drop in" replacement parts in or on existing, fully assembled firearms as described in this ruling must be licensed as a dealer, which includes a gunsmith, under the Gun Control Act.

Thus, a licensed firearm dealer, which includes a gunsmith, may only install "drop-in" replacement parts in or on existing, fully assembled firearms. If the installation is not for replacement parts or the firearm is not already a fully assembled firearm at the time of the installation of replacement parts, such activity requires a manufacturers' license to perform.

Of course, the provided explanation by ATF for "drop-in" parts is ambiguous and will almost certainly cause confusion. For example, if the barrel on a shotgun wears or is damaged, it is unclear whether the replacement barrel would be considered a "drop-in" replacement part, because, in order to install the new barrel, one would have to remove the old barrel, thereby making it an unassembled firearm at that point. The same applies to replacement parts within the action that may be worn or damaged, as one would likely have to disassemble the gun to reach the part.

Of interest to California firearm dealers, the installation of a "bullet button" (a generic term for a device that attaches to a firearm which causes the firearm to require a tool or bullet tip in order to release the firearm's magazine) has been determined to be a "drop-in" part by ATF Technology Branch.

3. ATF Ruling 2010-10 Dealers and Gunsmiths are not Required to Possess a Manufacturer's License when they Assemble Firearms on Behalf of Manufacturers and Importers

To muddy the waters further, ATF has determined that when firearms are sent to a dealer/gunsmith for repairs, modification, embellishment, refurbishment or installing parts from licensed manufacturers or importers the dealer/gunsmith is not required to possess a manufacturer's license if the firearms are:

(1) not owned, in whole or in part, by the dealer/gunsmith;
(2) returned by the dealer/gunsmith to the importer or manufacturer upon completion of the "manufacturing" process, and not sold or distributed to any person outside the "manufacturing" process; and
(3) already properly identified/marked by the importer or manufacturer in accordance with Federal law and regulations.

In other words manufacturers and importers who send their firearms to a dealer/gunsmith

for installation of parts, and the firearms are returned to the manufacturer or importer, the dealer/gunsmith is not considered a "manufacturer."

This conclusion has to do with where the firearms end up after the "manufacturing" process. Because the work being done on the firearms by the dealer/gunsmith is not for the purpose of sale by the dealer/gunsmith the dealer/gunsmith is not considered 'engaged in the business' of manufacturing because the firearms being produced are not owned by the dealer-gunsmith, and he/she does not sell or distribute the firearms manufactured." In returning the firearms to the original manufacturer or importer the dealer/gunsmith and does not selling the firearms to someone outside of the" manufacturing" process, the dealer/gunsmith is not "engaged in the business" of manufacturing firearms (firearm "identification" requirements and suggested bookkeeping practices are also included in the Ruling).

V. DIFFERENCES BETWEEN A GUN DEALER'S LICENSE AND A GUN MANUFACTURER'S LICENSE

Under the GCA, there are differences between the obligations that accompany a manufacturer's license and a dealer's license, of which those wanting to become manufacturers should be aware. For example, the licensing fees are slightly more expensive in the long-term for manufacturers, *compare* 19 U.S.C. § 923(a)(1)(B) (manufacturers of firearms other than destructive devices must pay a licensing fee of fifty dollars per year) *and* 27 C.F.R. § 478.42(a)(2) (same) *with* 18 U.S.C. § 923(a)(3)(B) (dealers in firearms other than destructive devices must pay a two hundred dollar licensing fee for the first three years, with a ninety dollar renewal fee every three years thereafter) *and* 27 C.F.R. § 478.42(c)(2) (same); manufacturers have additional record keeping obligations, *compare* 27 C.F.R. § 478.123 (record keeping obligations specific to manufacturers) *with* 27 C.F.R. § 478.124 (firearms transaction record required for all licensed importers, manufacturers, and dealers) *and* 27 C.F.R. §§ 478.124a, .125(e) (firearm receipt and disposition records for dealers); and manufacturers must engrave each manufactured firearm with a serial number, *see* 18 U.S.C. § 923(*I*); 27 C.F.R. § 478.92, although ATF regulations permit manufacturers to apply for a variance, 27 C.F.R. § 748.92(a)(4).

As to the last requirement listed (i.e. engraving serial numbers), ATF has very recently released a ruling, ATF Ruling 2009-5, which provides for licensed firearms manufacturers who perform a manufacturing process on firearms for, or on behalf of, another licensed manufacturer to forego the requirement of placing their serial numbers and other identification markings on firearms as required by 27 CFR 478.92(a) and 479.102(a), provided the following conditions have been met:

(1) The manufacturer is receiving the firearms, including frames or receivers, from another manufacturer.

(2) The manufacturer is performing a manufacturing process on the firearms as directed by another manufacturer before distributing those firearms to another manufacturer or into the wholesale or retail market.

(3) All manufacturers involved in the manufacturing process possess a valid Federal firearms manufacturer's license issued by ATF and are performing only the manufacturing processes authorizes under that license.

(4) The firearms, including frames and receivers, are already properly marked with a serial number and all other identifying markings in accordance with 27 CFR 478.92(a) and, if applicable, 479.102(a).

(5) Prior to engaging in the manufacturing process, the manufacturer desiring not to mark must submit to ATF the following information:

(a) The manufacturer's name, address, and license number, and the name, address, and license number of the manufacturer for which the manufacturing process is being performed;
(b) A copy of the license held by each manufacturer;
(c) A description of the type of manufacturing process to be performed by the manufacturer desiring not to mark;
(d) The model(s), if assigned, of the firearms subject to the manufacturing process described;
(e) The serial numbers of the firearms in sequential order;
(f) The calibers or gauges of the firearms; and
(g) Any other information concerning the firearms manufacturer(s) or manufacturing process that ATF may require.

(6) The manufacturer desiring not to mark must maintain copies of its submission to ATF of the information required by this ruling with its permanent records of manufacture. The manufacturer availing itself of this ruling should retain proof of its submission to ATF (e.g., certified return receipt mail or tracking number). This proof of submission should show that it was sent to ATF's Firearms Technology Branch, or any other office that ATF may designate as the proper recipient of such information. Additionally, the manufacturer must allow ATF representatives to inspect such documents upon request at any time during business hours without a warrant.

(7) All manufacturers involved in the manufacturing process must maintain all records required by Federal law and regulation.

Once the manufacturer has submitted the necessary documentation to ATF pursuant to

ATF Ruling 2009-5, and provided the manufacturer has complied with all other conditions set forth in that ruling, no "non-marking variance" approval from ATF is required, and the manufacturer may engage in the manufacturing process for, or on behalf of, another licensed manufacturer without placing its identifying markings on the firearms in accordance with 27 CFR 478.92(a) and 479.102(a).

VI. CONCLUSION

Dealers who wish to conduct activities the same or similar to Mr. Broughman's should familiarize themselves with what constitutes "manufacturing" according to the ATF, and keep watch on this site for future updates on this issue. And before becoming a manufacturer, one should familiarize himself with what it entails.

If you have any questions or concerns contact our office at: (562) 216-4444.