



OVERVIEW OF NATIONAL FIREARMS ACT

ROLL-CALL TRAINING





Objectives: SA's and IOI's will be able to

- Identify relevant terms and definitions specific to the National Firearms Act (NFA)
- Identify NFA firearms
- Identify NFA tax classes
- Identify NFA Application and Transfer Registration Forms
- Articulate lawful possession and transportation
- Identify instances when an NFA weapon is subject to seizure and forfeiture
- Incorporate qualification and compliance inspection requirements for NFA dealers, manufacturers or importers
- Locate reference materials associated with NFA Firearms



INTRODUCTION

- In response to a meeting at the SHOT show involving representatives of ATF's executive staff and the National Firearms Act Trade and Collectors Association (NFATCA), the following Roll Call training has been developed to address NFA issues that are pertinent to both Special Agent and Industry Operations Investigator personnel.
- As you know, ATF is responsible for enforcing the provisions of the Gun Control Act of 1968 (GCA). The GCA establishes licensing requirements for firearm manufacturers, collectors, dealers and importers.



INTRODUCTION

Certain firearms that fall under the purview of the National Firearms Act (NFA) must be maintained in the National Firearms Registration and Transfer Record (NFRTR), the central registry of all NFA weapons in the United States. Industry members engaged in a firearms business (firearm manufacturers, dealers and importers) having paid Special Occupational Tax (SOT) are entitled to engage in business involving NFA weapons. The NFA was enacted in 1934 to control what Congress termed “gangster type weapons” such as machineguns and sawed-off shotguns.



INTRODUCTION

NFA weapons enter into commerce via licensed manufacturers and importers who have paid SOT. As such, all NFA weapons entering lawful commerce by way of importation or manufacture have associated tax information which is subject to disclosure restrictions pursuant to Chapter 53 of the Internal Revenue Code. Records associated with domestic manufacturer or importations into the United States are thus considered tax documents. Subsequent transfers (ATF F 3, F4, etc.) involving transfer tax are also considered tax information and subject to disclosure restrictions.



INTRODUCTION

Additionally, any information that would demonstrate that a person or company either did or did not pay a tax indicates tax liability; therefore, please contact counsel before disclosing this information to anyone other than the taxpayer.



THE NATIONAL FIREARMS ACT

TITLE 26, USC, CHAPTER 53

27 CFR, PART 479

The NFA is codified as part of the Internal Revenue Code (IRC) under Title 26, U.S.C., Chapter 53. The IRC, with the exception of the NFA, is administered and enforced by the Secretary of the Treasury. When ATF transferred to the Department of Justice under the Homeland Security Act of 2002, which went into effect January 24, 2003, all its authorities, including the authority to administer and enforce the NFA were transferred to the Attorney General.



NFA WEAPONS DEFINED

ALSO KNOWN AS TITLE II OR CLASS 3 FIREARMS.

- FIREARM
 - SHORT BARRELED SHOTGUN
 - A SHOTGUN HAVING A BARREL(S) OF LESS THAN 18" IN LENGTH





NFA WEAPONS DEFINED

ALSO KNOWN AS TITLE II OR CLASS 3 FIREARMS.

- FIREARM
 - WEAPON MADE FROM A SHOTGUN
 - A WEAPON MADE FROM A SHOTGUN IF SUCH WEAPON AS MODIFIED HAS AN OVERALL LENGTH OF LESS THAN 26" OR A BARREL(S) LESS THAN 18"





NFA WEAPONS DEFINED

- SHORT BARRELED RIFLE
 - A RIFLE HAVING A BARREL(S) OF LESS THAN 16” IN LENGTH





NFA WEAPONS DEFINED

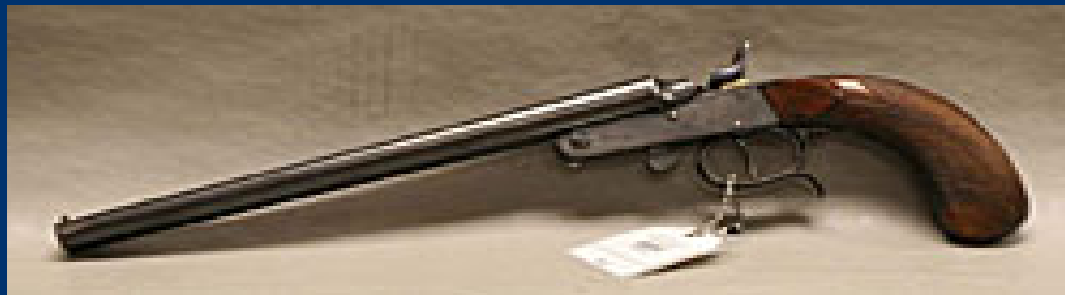
- WEAPON MADE FROM A RIFLE
 - A WEAPON MADE FROM A RIFLE IF SUCH WEAPON AS MODIFIED HAS AN OVERALL LENGTH OF LESS THAN 26" OR A BARREL(S) OF LESS THAN 16" IN LENGTH





NFA WEAPONS DEFINED

- ANY OTHER WEAPON AS DEFINED IN 26 USC 5845(e)
 - The **National Firearms Act (NFA)**, 26 U.S.C. § 5845(e), defines “**firearm**” to mean, in part, “**any other weapon**”; this phrase, in turn, means any “*weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive.*”





NFA WEAPONS DEFINED

- **A MACHINEGUN - 26 USC, Chapter 53, § 5845(b)**
 - Any weapon which shoots, is designed to shoot, or can be readily restored to shoot *automatically*, more than one shot, without manual reloading, by a single function of the trigger.
 - The frame or receiver of any such weapon.
 - Any part designed and intended solely and exclusively, for use in converting a weapon into a machinegun.





A MACHINEGUN (Continued)

- **A MACHINEGUN - 26 USC, Chapter 53, § 5845(b)**
 - Any combination of parts designed and intended, for use in converting a weapon into a machinegun.
 - Any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of the person.





NFA WEAPONS DEFINED

- A MUFFLER OR SILENCER FOR ANY FIREARM
 - Any combination of parts designed for a silencer or designed for manufacturing or assembling a silencer (baffles, internal components).





NFA WEAPONS DEFINED

- ANY DESTRUCTIVE DEVICE (to include certain explosive devices, such as missiles, rockets, grenades, flash bangs, barrel over .50 caliber, etc.)





NFA DEALERS, MANUFACTURERS, IMPORTERS

- All NFA dealers, manufacturers or importers must be properly licensed as an FFL.
- An employer identification Number (EIN) is required.
- The NFA requires annual payment of SOT by licensees engaged in the business of manufacturing, dealing in, or importing NFA firearms and, also, imposes tax on the making and transfer of NFA firearms.



NFA TAX CLASSES

- CLASS 1 - Importer pays \$1,000 SOT a year (\$500 – reduced rate)
- CLASS 2 – Manufacturer pays \$1,000 SOT a year (\$500 – reduced rate)
- CLASS 3 – Dealer pays \$500 SOT a year

(Reduced Rate = Gross receipts less than \$500,000 for previous tax year (July 1-June 30))



NFA TAX CLASSES

- **Special Exemption:** Any person required to pay SOT may request relief through the Director, ATF, if he establishes that his business is conducted exclusively with, or on behalf of, the U.S. or any department, independent establishment, or agency thereof.
- The Director may relieve any person manufacturing firearms for or on behalf of the U.S. from compliance with any provision of 27 CFR, Part 479 in the conduct of the business with respect to such firearms.
 - These are done on an annual basis.
- Note: The Director has delegated exemption authority to the NFA Branch Chief, who authorizes the exemption of SOT via a signed letter.



FIREARMS REGISTRATION REQUIREMENTS

- Manufacturers, importers and makers of firearms must register each firearm manufactured, imported or made.
- All transferred firearms must be registered to the transferee by the transferor on the appropriate ATF form.
- The NFRTR is maintained by the NFA Branch and contains the identification of the firearm, date of registration, identification and address of the person to whom the firearm is registered.



POSSESSOR OF NFA WEAPONS

- Persons possessing an NFA weapon must retain proof of lawful registration and make it available to any ATF officer upon request.



LAWFUL POSSESSION OF MACHINEGUNS

- Machineguns manufactured or imported on or before May 19, 1986 are lawful if originally registered with ATF before May 19, 1986. These machineguns should be currently registered in the NFRTR as well.
- Machineguns manufactured or imported after May 19, 1986, can only be transferred to a Federal, State or local government entity and can only be possessed by an FFL/SOT for use as a sample. These are known as “post-1986 samples.”
- Qualified manufacturers may manufacture machineguns on or after May 19, 1986, for sale to Federal and State agencies or to FFLs as “sales samples” for demonstration to prospective governmental customers. However, their registration and subsequent transfer are conditioned upon and restricted to sales only to government agencies or “sales samples.”



LAWFUL POSSESSION OF MACHINEGUNS

- Particularly with respect to registered ownership of “sales sample” machineguns and machineguns manufactured and registered in the NFRTR before May 19, 1986, are eligible for individual ownership.
- A machinegun imported after 1968 and prior to May 19, 1986, which was imported under 26 USC 5844 is typically referred to as a “pre-1986 sample.”
- “Pre-1986 samples” are transferred without letters and may be retained when the FFL terminates NFA business.



LAWFUL POSSESSION OF MACHINEGUNS

- “Post-1986 samples” must be transferred to a qualified party prior to the person going out of business. A qualified party must be GCA licensed and SOT under the NFA.
- LE letters requesting demonstration of the particular firearm of interest are required for the transfer of a “post-1986” machinegun to an NFA dealer, but not if the transfer is to an NFA manufacturer or importer.
- If the “post-1986 sample” cannot be transferred, it must be seized for forfeiture and forfeited before destruction, or abandoned, or in some cases, such as an imported sample, it may be returned to the importer.



TRANSFERS OF NFA FIREARMS

- All transferors must complete and submit appropriate ATF form to the NFA Branch, and receive ATF approval showing firearm registration to the transferee prior to disposing of any NFA weapon.
- For most transfers a \$200 transfer tax paid by transferee must accompany the ATF Transfer form.
 - \$5 transfer tax for any other weapon



EXCEPTIONS TO TRANSFER TAX

- FFL to FFL when both have paid SOT
- Transfers to or from government agencies



FORMS REVIEW

- Form 1 (5320.1) – Application to Make and Register a Firearm
- Form 2 (5320.2) – Notice of Firearms Manufactured or Imported
- Form 3 (5320.3) - Application for Tax-Exempt Transfer of Firearm and Registration to Special Occupational Taxpayer
- Form 4 (5320.4) – Application for Tax Paid Transfer and Registration of Firearms
- Form 5 (5320.5) – Application for Tax Exempt Transfer and Registration of Firearms
- Form 9 (5320.9) – Application and Permit for Permanent Exportation of Firearms
- Form 10 (5320.10) – Application for Registration of Firearms Acquired by Certain Governmental Entities
- ATF Form 20 (5320.20) – Application to Transport Firearms Interstate or Temporarily Export Certain Firearms



MAKING OF NFA FIREARMS (FORM 1)

- Must file Form 1 (Application to Make and Register Firearm) and obtain approval (can be used by individuals, corporations or government entities to include licensees and non-licensees).
- Making cannot violate Federal, State or local law.
- If the Form 1 is filed by an individual private citizen, the making is taxable (always \$200) and the applicant must provide his/her fingerprints and photographs and have the local chief law enforcement official certify that the CLEO has no information that the applicant will use the firearm for unlawful purposes and that the making and possession of the firearm is not in violation of State law. The applicant must also answer the questions on the form about being a prohibited person.



EXEMPTIONS FROM THE MAKING TAX

- **QUALIFIED MANUFACTURERS** - A manufacturer who has paid the SOT is exempt from payment of the making tax.
- **MAKING FOR UNITED STATES** is exempt from the making tax.
- **CERTAIN GOVERNMENT ENTITIES** are exempt from the making tax.



NOTICE OF FIREARMS MANUFACTURED OR IMPORTED (FORM 2)

- Used by a qualified manufacturer to register NFA firearm(s) manufactured during a business day; or by a qualified manufacturer to register any firearm reactivated during a business day; or by a qualified importer to register firearm(s) released from Customs bond on a specific import permit.
 - “Reactivation is the restoration of a registered unserviceable NFA firearm to a functional condition. This action incurs the making tax liability.”



NOTICE OF FIREARMS MANUFACTURED OR IMPORTED (FORM 2)

- Payment of the appropriate SOT required or making tax liability exists.
- Must be filed by the close of the next business day after manufacture by a manufacturer. Must be filed by the importer within 15 days of the release of firearm(s) from Customs.
- The filing of the Form 2 effectuates the registration of the firearm in the NFRTR.



Application for Tax-Exempt Transfer of Firearm and Registration to Special Occupational Taxpayer (Form 3)

- To be used when transferring NFA Firearm(s) from one SOT Taxpayer to another.
- No tax liability



Application for Tax Paid Transfer and Registration of Firearms (Form 4)

- This is a single purpose form used to apply for the tax paid transfer (either \$5 or \$200) of a firearm. Taxable transfers occur between parties where one of the parties is not eligible for an exemption, that is, dealer to individual, individual to dealer, individual to individual, non-SOT FFL, etc.
- Form 4 – The transferee must submit two FD-258 Fingerprint Cards and 2x2 photograph (individuals only).
- Form must be certified by head of State or local law enforcement agency (individuals only).



Application for Tax Exempt Transfer and Registration of Firearms (Form 5)

- Transfer to or from Federal, State, or local government entities (Form 5)
- Unserviceable firearms
- Estate Transfers
- No tax liability



Application and Permit for Permanent Exportation of Firearms (Form 9)

- Used for the exportation of NFA firearms
- Filed subsequent to the issuance of the State Department of Defense Trade Controls (DDTC) license.
- Within 6 months of exportation, the exporter must file proof of exportation to relieve the transfer tax liability.



Application for Registration of Firearms Acquired by Certain Governmental Entities (Form 10)

- Used by State or local government agencies to register unregistered NFA firearms.
- This is the only means by which an unregistered firearm may be registered.
- The registration is limited to official use only and the firearm may only be transferred to another government agency with the same restriction.
- Federal agencies do not need to register NFA firearms.



Application to Transport Firearms Interstate or Temporarily Export Certain Firearms (Form 20)

- Used by a non-FFL/SOT Taxpayer (i.e., typically an individual registrant), to apply for permission to transport a machinegun, short barreled rifle or shotgun, or destructive device interstate (27 CFR 478.28).
- The request may be for either a permanent or temporary move.
- No permission is required to move a silencer or “any other weapon.” If the move is permanent, the registrant shall file a letter with us advising of the new address.
- A letter is specified in the regulations, but the form covers all the needed information.



NFRTR

- E-Request can be utilized to obtain access to the National Firearms Registration and Transfer Record (NFRTR) System. Choose “NFA” from the Production Apps menu in E-Request, and at the drop down menu select “read-only role.”
- Regarding individuals or FFLs, this system can be used to
 - Query weapons registration
 - Conduct name, trade name or serial number query
 - Run reports



NFRTR

- The NFRTR System is an effective investigative tool in determining whether an inquiry is worth pursuing; however, an “official” NFRTR must be obtained for purposes of “probable cause” for a warrant or for conducting a compliance inspection of an NFA dealer, manufacturer or importer.
- The “official” NFRTR is only available from the NFA Branch.
- Sealed certificates must be requested for Court.



PROCEDURES FOR REQUESTING AN NFRTR PRINTOUT FROM THE NFA BRANCH

- Use ATF F 5320.22 to request an NFRTR printout.

Requests can be made by:

- Telephone: (304) 616-4490
- FAX: (304) 616-4499
- EMAIL to the “NFA LOOKUP” mailbox

ALL urgent requests should be made by telephone



NFA INSPECTIONS

IOI's should refer the IOI Handbook, ATF H 5030.2C, prior to conducting any qualification inspection involving an applicant who wishes to deal, manufacture or import NFA weapons OR conducting a compliance inspection involving an FFL who has paid SOT to deal, manufacture or import NFA weapons.



QUALIFICATION INSPECTION

- Determine the applicant's conduct of business pertaining to NFA firearms and what type of license(s) is required. A Federal Explosives License is required if acquiring, distributing, importing or manufacturing certain destructive devices.
- Applicant will need to complete:
 - IRS Form SS-4 – Employer Identification Number
 - ATF Form 5630.7 – Special Occupational Tax (SOT)
- Explain payment of SOT
- Discuss NFA laws and regulations, in addition to the GCA



QUALIFICATION INSPECTION

Explain the NFA Record Keeping requirements and Forms:

- ATF Form 1 (5320.1) – Application to Make & Register a Firearm
- ATF Form 2 (5320.2) – Notice of Firearms Manufactured and Imported
- ATF Form 3 (5320.3) – Tax Exempt Transfer to another SOT payer
- ATF Form 4 (5320.4) – Tax Paid Transfer
- ATF Form 5 (5320.5) – Tax Exempt Transfer to other than SOT payer
- ATF Form 9 (5329.9) – Application for Permanent Export of a Firearm
- ATF Form 10 (5320.10) – Application for Registration of Firearms Acquired by Certain Government Entities
- ATF Form 20 (5320.20) – Application to Transport Firearms Interstate or Temporarily Export Certain Firearms



COMPLIANCE INSPECTION

- Obtain a list of all NFA items currently registered to the licensee from the NFA Branch, utilizing ATF Form 5320.22, NFA Records Search
- Examine and verify the ATF Form 5630.6A, Special Tax Stamp, and dates of special tax for all periods of liability
- Determine if there have been any unreported changes in trade name, control, responsible persons, or business entity. **Note: A change in ownership may require the transfer of all NFA weapons.**



COMPLIANCE INSPECTION

Inventory all NFA firearms on hand

- Verify that all firearms on hand are recorded in records of acquisition and disposition
- Examine registration forms for all firearms on hand
- Examine transfer forms and ATF F 4473 for all firearms disposed of
- Compare all NFA Firearms on hand to the NFRTR
- Verify markings
- Verify compliance with restricted transfers



COMPLIANCE INSPECTION

- Reconcile inventory with NFRTR
 - Reconcile discrepancies between the NFRTR and the inventory/records on hand with the NFA Branch upon return to the office.
 - Any suspected criminal activity should be referred to ATF Criminal Enforcement
 - Include all information in the inspection report



INVENTORY RECONCILIATIONS

- Inventory discrepancies should be reported to the NFA Branch via email (NFRTR Update Request mailbox) or by fax to 304 616-4501
- See memo to all DIOs dated 12/4/2007
- Work notes are generally sufficient to resolve discrepancies.



INVENTORY RECONCILIATIONS

- Inventory discrepancies should be reported to the NFA Branch via email (NFRTR Update Request mailbox) or by fax to 304 616-4501
- See memo to all DIOs dated 12/4/2007. Seizures for forfeiture must be conducted by a federal law enforcement officer.
- Work notes are generally sufficient to resolve discrepancies.



WEAPONS SUBJECT TO SEIZURE AND FORFEITURE

- In conjunction with the amendment of the NFA in 1968 as Title II of the GCA, an amnesty period was held, after which no unregistered firearm could be registered. Accordingly, an unregistered firearm is subject to the seizure and forfeiture provisions of the NFA.
 - Refer to ATF O 3310.4b, Firearms Enforcement Order, for guidance.
- If an FFL and Special Tax Stamp were obtained in order to avoid transfer tax on NFA weapons purchased for the FFL's personal collection, these firearms may be subject to seizure or forfeiture for failure to pay transfer tax.
 - Refer to ATF H 5030.2C, IOI Handbook



VIOLATIONS OF NFA

- 10 years' imprisonment
- Fine of up to \$250,000 or both
- Statute of limitations is 3 years after the act was committed



RESTRICTIVE USE OF INFORMATION

- 26 U.S.C. 5848(a) - No information or evidence obtained from an application, registration, or records required to be submitted or retained by a natural person in order to comply with any provision of this chapter or regulations issued there under, shall, except as provided in subsection (b) of this section, be used, directly or indirectly, as evidence against that person in a criminal proceeding with respect to a violation of law occurring prior to or concurrently with the filing of the application or registration, or the compiling of the records containing the information or evidence.

In other words, DO NOT disclose any information related to an NFA applicant or licensee, or registered possessor. Always defer any and all requests for information to ATF Counsel.



NFA FIREARMS REFERENCE LINKS

- **NFA HANDBOOK**

<http://www.atf.gov/publications/firearms/nfa-handbook/>

- **NFA SHORT BARRELED RIFLES AND SHOTGUNS FAQ'S**

<http://www.atf.gov/firearms/faq/national-firearms-act-short-barreled-rifles-shotguns.html>



NFA REFERENCE LINKS

- IDENTIFICATION OF NFA FIREARMS

http://intraweb/docs/Identification_of_Firearms_pt_1_print.pdf

http://intraweb/docs/Identification_of_Firearms_pt_2_print.pdf



IOI QUESTIONS AND CONTACTS

All questions related to NFA requirements should go through the Area Supervisor or Field Division Firearms POC.

The Area Supervisor or Firearms POC's will contact the Firearms Industry Programs Branch (FIPB) or Explosives Industry Program Branch (EIPB) for guidance. Contact with the Firearms Technology Branch (FTB) or Explosives Technology Branch (ETB) will be made through FIPB or EIPB.

FIBP or EIPB will provide guidance on all questions submitted through the POC mailbox to the field.



ATF HQ AND WV POINTS OF CONTACT

- National Firearms Act Branch
Gary Schaible – (202) 648-7165
- Firearms Industry Programs Branch
Adam Rogers – (202) 648-7295
- Explosives Industry Programs Branch
(202) 648-7120
- Firearms Technology Branch (304) 616-4300
- Explosives Technology Branch (202) 648-7100