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FAQ ON NATIONAL FIREARMS ACT WEAPONS

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This is accurate, to the best of my knowledge, as of 12/30/2001. Nothing written here should be taken as legal advice. If you have a specific legal problem, you should talk to a lawyer.

Table of Contents

General Info on NFA weapons

- What is An NFA Weapon
- Owning or Making an NFA Weapon
- Taxpayer Privacy
- Tax Exemptions
- Additional Regulation of Certain Weapons
- Transporting NFA Weapons
- A lost or stolen NFA firearm
- Repairs to NFA Weapons
- Penalties for NFA Violations

Obtaining the law enforcement certification

- NFA weapons and the 4th amendment
- NFA weapon amnesties
- Machine gun sears and conversion parts
- DEWATS
- Any other weapons
- Destructive devices
- Sound suppressors (Silencers)
- Short barreled rifles
- Appendix - State NFA restrictions
- Note about California
- Note about North Carolina

ATF Forms, compiled by Trenton Grale

GENERAL INFO ON NFA WEAPONS

Key to Abbreviations

- AOW - any other weapon
- ATF - Bureau of Alcohol, Tobacco and Firearms
- ATT - Alcohol and Tobacco Tax Division of the IRS, the pre-68 administrators of the NFA
- C&R - curio and relic
- CFR - Code of Federal Regulations
- DD - destructive device
- FET - federal excise tax
- FFL - federal firearms license
- GCA - Gun Control Act
- NFA - National Firearms Act
- SOT - special (occupational) taxpayer
- U. S. C. - United States Code
- DEWAT - De-activated war trophy

What are NFA Weapons?

There are two kinds of firearms under U. S. (federal) law, title 1 firearms and title 2. Title 1 firearms are long guns (rifles and shotguns), handguns, silencer, and firearm frames or receivers. Most NFA weapons are also title 1 firearms. Title 2 weapons are NFA weapons. Title 2 of the 1968 Gun Control Act is the National Firearms Act (codified at 26 U. S. C. sec. 5801 et seq.), hence NFA.

Title 1 is generally called the Gun Control Act, (18 U.S.C. sec. 921 et seq.). NFA weapons are also sometimes called class 3 weapons, because a class 3 SOT (see below) is needed to deal in NFA weapons.

These weapons may also be further regulated by states or localities, and while these weapons can be legally owned under federal law, some states and localities further regulate ownership or prohibit it (see below). The NFA Branch of ATF administers the taxation of the guns, and the registration of them in the National Firearms Registration and Transfer Record.

NFA weapons are: machine guns, sound suppressors (a.k.a. silencers), short barreled shotguns, short barreled rifles, destructive devices and "any other weapons". Exactly what these weapons are is defined in the law, as well as in court cases interpreting the law. Without going into too much detail, these are what the categories encompass:

A machine gun is any gun that can fire more than one shot with a single pull of the trigger, or a receiver of a machine gun, or a combination of parts for assembling a machine gun, or a part or set of parts for converting a gun into a machine gun.

A silencer is any device for muffling the gunshot of a portable firearm, or any part or parts exclusively designed or intended for such a device (see discussion below).

A short barreled shotgun is any shotgun (which is defined as a shoulder fired, smooth bore firearm) with a barrel of less than 18" or an overall length of less than 26", or any weapon made from a shotgun falling into the same length parameters.

A short barreled rifle is a rifle (which is defined as a shoulder fired, rifled bore firearm) with a barrel length of less than 16", or an overall length of less than 26", or any weapon made from a rifle falling into the same length parameters (like a pistol made from a rifle). In measuring barrel length you do it from the closed breech to the muzzle, see 27 CFR sec. 179.11. To measure overall length do so along, "the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore." 27 CFR sec. 179.11. On a folding stock weapon you measure with the stock extended, provided the stock is not readily detachable, and the weapon is meant to be fired from the shoulder.

A destructive device (DD) can be two basic categories of things. It can be an explosive, incendiary or poison gas weapon, like a bomb or grenade. It can also be a firearm with a bore over 1/2", with exceptions for sporting shotguns, among other things (see discussion below). I call the second category large bore destructive devices. As a general rule only this second category is commercially available.

Any other weapons (AOW's) are a number of things; smooth bore pistols, any pistol with more than one grip, (but see below) gadget type guns (cane gun, pen gun) and shoulder fired weapons with both rifled and smooth bore barrels between 12" and 18", that must be manually reloaded (see discussion below).

These definitions are simplified, to see if a specific gun is a title 1 or 2 firearm one needs to refer to the specific definition under the statute(s), and possibly consult with the Technology Branch of ATF. There is also case law on the issue of whether a specific item falls into one of these categories. In addition, as a general rule, a parts kit, i.e. all of the parts to assemble an

NFA firearm, whether a parts kit is specifically included in the statute or not, is usually considered to be the same as the assembled firearm.

#### Owning or making an NFA weapon

It is illegal for anyone to have possession of an NFA weapon that is not registered to them in the NFA Registry. It is also not possible for anyone, except government entities, to register an existing NFA weapon that is not registered, except within 24 hours after one is made by a class 2 NFA manufacturer. An individual otherwise able to own any gun under federal law can receive and own any NFA weapon (local law permitting, ATF cannot approve a transfer where federal, state or local law would be violated by the transferee possessing the weapon in question, see 26 U.S.C. sec. 5812(a)(6)) on a Form 4, "Application for Tax Paid Transfer and Registration of Firearm". Non-FFL holders may only purchase an NFA weapon from a dealer or individual within their own state. If the weapon is located out of state it must be transferred to a class 3 dealer within the state, before transfer to the non FFL purchaser. C&R FFL holders (type 03) may purchase C&R NFA guns from out of state dealers and individuals. Type 01 FFL holders, who are not qualified to deal in nFA weapons, that is are not SOT taxpayers (see below) may purchase any fully transferrable (no dealer samples, see below) NFA weapon, from an out of state source. If the FFL holder is an individual he must submit fingerprints, photograph, and the law enforcement certification.

The transfer involves paying the transfer tax, which is \$200 for all the NFA weapons, except AOW's for which the tax is a mere \$5. Individuals also have to get one of several specified local chief law enforcement officers to sign the form (see below on the law enforcement certification for more information), submit their fingerprints in duplicate, and attach photos of the transferee to the form. While the transfer tax is levied by law on the transferor (seller), in practice the transferee (buyer) is expected to pay the tax. Initial transfers to individuals tend to take at least 4 months, although subsequent transfers can be quicker.

Or you can make any NFA weapon, except for machine guns (see below), by filing ATF Form 1, "Application to Make and Register a Firearm", and paying the \$200 making tax, which applies to all of these weapons, including AOW's. You may not make the proposed weapon until the Form 1 is returned to you approved. The law enforcement certification, photos and fingerprints also apply to Form 1's, and in fact to any transfer to an individual. Additionally the manufacturer of any NFA weapon, including an individual making one on a Form 1 must mark the receiver of the weapon with the maker's name and city and state. NFA Branch can grant exemptions from this for DD's. All types of corporations, including corporate type 01 FFL holders, need not do the certification, photo and fingerprint requirements. Any of the forms listed, and the fingerprint cards, are available for free from ATF, either in Washington, D. C. or your local office.

The original of the paperwork should be kept in a safe place, I suggest a safe deposit box. ATF can demand to see the form (see below on your 4th amendment rights). On a tax paid transfer, ATF puts a tax stamp, like a postage stamp (or like the one that caused the American colonists to take up arms), on the document. Once it is used you cannot get another. ATF can supply a copy of the form should you lose one, but is not unheard of for ATF to have no record in their computer of a weapon registered to you. Having the paperwork can avoid a lot of hassles. Every effort should be made to not lose it.

Additionally, if the gun in question is a machine gun, not having the paperwork can lead to being charged with a violation of 18 U.S.C. sec. 922(o), the ban on possessign machine guns made after May 19, 1986. All four of the federal circuit courts of appeals (U.S. v. Just, 74 F.3d 902 (CA8 1996), U.S. v. Gravenmeir, 121 F.3d 526 (CA9 1997), U.S. v. Gonzales, 121 F.3d 928 (CA5 1997) and U.S. v. Franklyn, 157 F.3d 90 (CA2 1998)) that have addressed the issue have ruled that sec. 922(o) prohibits possessing all machine guns, and it is an affirmative defense to such a charge that the weapon was legally possessed before it took effect. It is up to the defendant to prove an affirmative defense, although by a lower evidentiary standard than the government needs to prove to show a criminal violation (usually preponderance of the evidence versus beyond a reasonable doubt). It is not up to the government to prove the weapon was not registered, for a charge under sec. 922(o), at least according to all the appeals courts that have considered the question. If you don't have the paperwork, and it isn't in ATF's computer, (it is likely they will check, even though they don't have to prove non-registration, they don't want someone to wave a registration form in their face during a trial) you can have a serious problem.

#### Taxpayer privacy

The transfer paperwork is nominally a tax return; the purpose of the registration, and the National Firearms Registration and Transfer Record (NFRTR or Registry) is keeping track of who owes the tax. Taxpayer privacy laws apply to a transfer form, and ATF may not discuss a pending transfer with anyone but the taxpayer. They sometimes claim that the taxpayer on a tax paid transfer is the transferor (seller), as he is responsible for the tax by law. This also serves to allow ATF to refuse to discuss why a transfer is taking so long with the party who is most interested in that question, the transferee (buyer). However, in another context (releasing information under the Freedom of Information Act) ATF has decided that as to a Form 4, the tax form is a joint return between the transferor and transferee (see 1980 memo re Auto Ordnance Corp. FOIA request on my web page). The transferee should be entitled to the information about the status of the application on the same basis as the transferor. That is not ATF's usual practice, however with pending transfers.

These taxpayer privacy restrictions do not apply to disclosure of the form by other persons who might have access to it, a local LE chief who provided the certification, for example, and retained a copy of the form. Nor do they apply to a court ordered disclosure by anyone who might have a copy (buyer or seller for example), by subpoena or similar measure.

The NFA law also prohibits the use of Registry information obtained from natural persons (only) for any law enforcement purpose except prosecutions for making a false statement on a transfer form (26 U.S.C. sec. 5848). Other tax laws prohibit the release of transfer information by the Feds, as a tax return, except for certain narrow law enforcement type circumstances. See 26 U.S.C. sec. 6103. The Feds may not legally disclose whether someone has a registered NFA firearm, or not, to any state or local law enforcement agency or personnel.

However, as most NFA weapons are also regulated by the GCA, purchases from a dealer in NFA weapons requires the completion of the standard 4473 yellow form, as well as dealer bound book records, and this source of information is not so similarly restricted. ATF may release this information to local law

enforcement for a host of law enforcement purposes. See 18 U.S.C. sec. 923(g)(1)(D).

#### Tax exemptions

Law enforcement, states, and local governments are totally exempt from the making and transfer (either to or from) taxes, but must comply with the registration requirements. While the NFA only specifically provides that there is no transfer tax due when the U.S. government is the transferee, (26 U.S.C. sec. 5852(a)), or a state governmental entity (26 U.S.C. sec. 5853(a)), ATF has made up an exemption from the transfer tax where any U.S. or state governmental entity is the transferor, see ATF Chief Counsel Opinion numbers 20023 and 20400. Opinion 20023 is on my web page - ATF refuses to release number 20400, claiming it is privileged attorney-client work product. Abuses of this tax exemption, as in transferring guns through governmental entities so as to avoid transfer taxes, have been successfully prosecuted. See U.S. v. Fleming, 19 F.3d 1325 (CA10 1994).

Federal government agencies, the military, and National Guard are exempt from the registration or tax requirements, and generally speaking NFA Branch removes weapons from transferrable status in the Registry once they are transferred to the federal government.

There is no tax on transfers to anyone of a weapon that is unserviceable. Making a weapon unserviceable means it is permanently altered so that it cannot work, and is not readily restorable. For example a gun can be made unserviceable by welding the chamber closed, and welding the barrel to the receiver or frame. An unserviceable weapon is sometimes called a DEWAT, for DE-activated WAR Trophy (see below).

There is no tax on a transfer to a lawful heir from the owner's estate. Lawful heir just means someone named in a will to get the weapons, or a person entitled to inherit under the applicable intestacy laws if there was no will, or the will did not apply. The heir must be able to own the weapon under state and federal laws. The heir will have to do all the other steps of a transfer to an individual, except that recently ATF has said they would not require the LE certification. Unless the heir is also a class 3 SOT he may not inherit pre-86 NFA firearms or post-86 machine guns (and would also need the police demo letter for the post-86 machine guns, see below). A weapon to an heir may also be transferred interstate directly to the heir, if need be; the gun need not be transferred to a dealer in the heir's state, if the deceased owner resided in another state.

Special (Occupational) Taxpayers (SOT's) under the NFA are exempt from some of the making or transfer taxes. All SOT's may transfer weapons between themselves tax free. However a transfer between an unlicensed individual and a SOT will require the tax. And unless one has a class 2 SOT, there is a tax on making an NFA weapon, except for making by or on behalf of a government entity. Sole proprietor SOT's need not get the law enforcement certification for any transfer, except DD's (unless they have the appropriate FFL), even for their own personal collection, although in that case they should pay the \$200 transfer tax. They also need not attach a photo to the transfer paperwork, nor submit fingerprints. The Crime Bill (effective 9/13/94) now requires these things with FFL applications, and SOT applications, however, and ATF was requiring them even before that became law, since early 1994. If one plans to engage in business in NFA weapons, one needs to be a SOT, just as one needs the FFL if they plan to engage in the business of dealing, making, or importing regular firearms.

The classes of SOT holders:

Class

- 1 - importer of NFA firearms
- 2 - manufacturer of NFA firearms
- 3 - dealer in NFA firearms

A class 1 or 2 SOT may also deal in NFA firearms. A class 3 SOT costs \$500 a year, due each July 1. A class 1 or 2 SOT costs \$1000 a year, except that SOT's who did less than \$500,000 in gross receipts in business the previous year qualify for a reduced rate of \$500 per year, also due July 1. One must also have the appropriate FFL to engage in the specific activity, as well as the SOT. This is because most NFA weapons are also title 1 weapons, and thus both the law regulating title 1 weapons (the GCA) and title 2 weapons (the NFA) must be complied with. As with the privacy of Registry information and transfer information, SOT status is also protected tax information, and ATF will not release lists of SOT holders, as they will of FFL holders.

A Class 2 SOT can make, tax free, machine guns, silencers, short rifles, short shotguns or AOWs. A Class 2 can also have weapons transferred to him tax free, by other SOT's. He also has to have a type 07 or type 10 FFL. He does not need to ask prior permission of ATF to make a weapon, he would notify ATF of its making within 24 hours after its making by filing Form 2 with ATF. He could also import foreign made NFA weapons, for R&D use. To import a machine gun (only) a Class 2 would need a letter from a governmental entity able to own the weapon requesting a demonstration. A weapon imported for R&D must be exported or destroyed when the R&D is completed, whereas a weapon imported for sale to a government entity would be considered pre-86 dealer samples. To import for sale to government entities you need a Class 1 SOT.

A sole proprietor SOT may keep any NFA weapon he has after surrendering his SOT, as his personal property, except post-86 machine guns, discussed below. If ATF thinks, based on the number of weapons retained and the timing, that your SOT status was used to evade the transfer taxes, they may demand transfer or making taxes on all or some of the guns. Conceivably you could also be prosecuted for tax evasion.

Additional regulations of certain weapons

Destructive devices are treated differently, in terms of manufacturing or dealing. One must have a special FFL, (type 9, 10 or 11, to deal, make or import respectively) and be a SOT to make one tax free or deal in them. But anyone can make them on a Form 1, tax paid.

Machine guns are also treated differently. In 1986, as part of the Firearm Owners' Protection Act (FOPA), Congress prohibited individuals from owning machine guns, and made it an affirmative defense that the machine gun was registered before the act took effect (which was 5/19/86). See 18 U.S.C. sec. 922(o) for the law. Thus as an individual you can only legally own a machine gun that was registered before that date. Any registered after that date can only be owned by SOT's, law enforcement, and government entities. A SOT may not keep these machine guns after surrendering his SOT. In order to transfer one of these machine guns, the SOT must have a request from an agency able to own one for a demonstration. Or an order from one of those agencies to buy one. A class 2 SOT can make machine guns for research and development purposes, or for sale to dealers as samples, or for sale to government entities. These are commonly called post-86 machine

guns.

On top of the FOPA machine gun restrictions, any NFA weapon imported into the U.S. after the Gun Control Act took effect (end of 1968) cannot be transferred to an individual. See 26 U.S.C. sec. 5844. They can be transferred to SOT's, although without any written police demonstration request, and kept by the SOT after surrendering his SOT. These are sometimes called "pre-86 samples", or "dealer samples", although dealer sample can be used to refer to either a post-86 machine gun or to any NFA weapon imported after 1968.

#### Transporting NFA firearms

In terms of moving the weapons around, the following applies. If you are transporting the weapons within your state, it is wise, but not required, that you keep a photocopy of the registration paperwork, whatever it is, with the gun. Some states do require this, state law bans all or some NFA weapons, and exempts from the ban only those possessed in compliance with federal law. In such a state you need the federal paperwork to be legal under state law. If you were a SOT you should keep a copy of your proof of being an SOT with the paperwork when you move the guns around. But an individual who surrenders his SOT can still have weapons that will be registered on a Form 2 or Form 3 legally, so not having a copy of the SOT with such paperwork proves nothing. You need not ask ATF for permission when you move to a new address within the same state, nor are you required to advise them of your new address.

To move weapons between states two rules apply. An individual must get permission from ATF to move machine guns, short rifles, short shotguns or destructive devices between states (or to temporarily export them) before doing so. This includes taking them somewhere to shoot them, or when permanently changing residences. There is a form called a 5320.20, and ATF will always approve them, and fairly quickly, assuming the purpose (generally stated) for the movement is legitimate, and the destination state allows the weapon in question. A licensed dealer can move weapons (except DD's) interstate at will, no permission is needed. But while most states that otherwise prohibit some or all NFA weapons have exceptions for SOT's, or FFL's, a few do not, and thus the dealer must make sure he will not be breaking any laws. An unlicensed individual need not ask permission to move AOW's or suppressor's interstate, again watch the laws at the target state. Having the approved 5320.20 form for a suppressor or AOW can avoid hassle while traveling. Lots of folks who think they know something about the NFA don't know you only need permission for interstate movement of some NFA weapons. ATF will approve a 5320.20 for suppressors and AOW's; they will approve a 5320.20 for an FFL also, even if he doesn't need it by law. A C&R FFL holder can move C&R NFA guns interstate without a 5320.20. See 18 U.S.C. sec. 922(a)(4) for the statute imposing the 5320.20 requirement.

#### A lost or stolen NFA firearm

A lost or stolen NFA firearm can be a real problem. It can be a very expensive loss, as well as endangering the continued lawfulness of owning NFA firearms, both at a state and federal level. Contrary to what you might hear, NFA firearms, machine guns and silencers in particular, are very rarely used in crimes, compared to regular handguns, rifles and shotguns. A significant source of NFA weapons used in crime are stolen firearms, from law enforcement, the military and civilian collectors. A crime spree with a stolen NFA firearm can lead to restrictive state or local legislation, as well as local law enforcement refusing to continue

providing the law enforcement certification needed for transfers to individuals. Safeguarding NFA firearms is not required, but seems to me to be extremely prudent, both to preserve the firearm, as well as its continued legal ownership. Reporting the theft of an NFA weapon to law enforcement is the only way to even have a chance at recovering the gun, and preventing its use (or further use) in crime. I think reporting its theft is a good idea. Below is what is required, as opposed to what is a good idea.

ATF has made up a rule, 27 CFR sec. 179.141, that requires the owner of a lost or stolen NFA weapon to make a report "immediately upon discovery" to ATF including the name of the registered owner, kind of firearm, serial number, model, caliber, manufacturer, date and place of theft or loss and "complete statement of facts and circumstances surrounding such theft or loss." However Congress has passed no law authorizing ATF to make such a requirement, and at a 1984 Congressional hearing then ATF Director Stephen Higgins admitted there is no penalty for not complying. See "Armor Piercing Ammunition and the Criminal Misuse and Availability of Machineguns and Silencers", Hearings Before the Subcommittee on Crime of the Committee of the Judiciary House of Representatives, Ninety-Eighth Congress, Second Session, May 17, 24 and June 27, 1984, Serial No. 153, G. P. O. 1986, page 129.

However, if one is a FFL holder, one is required by law to report the theft or loss to both local law enforcement and ATF. As part of P. L. 103-322 (Crime Bill) (effective 9/13/1994), 18 U. S. C. sec 923(g) was amended to require, "(6) Each licensee shall report the theft or loss of a firearm from the licensee's inventory or collection within 48 hours after the theft or loss is discovered, to the Secretary and to the appropriate local authorities."

ATF has created interim rules to implement P. L. 103-322, and they are a little more specific, and a little more onerous:

27 CFR Sec. 178.39a Reporting theft or loss of firearms.

Each licensee shall report the theft or loss of a firearm from the licensee's inventory (including any firearm which has been transferred from the licensee's inventory to a personal collection and held as a personal firearm for at least 1 year), or from the collection of a licensed collector, within 48 hours after the theft or loss is discovered. Licensees shall report thefts or losses by telephoning 1-800-800-3855 (nationwide toll free number) and by preparing ATF Form 3310.11, Federal Firearms Licensee Theft/Loss Report, in accordance with the instructions on the form. The original of the report shall be forwarded to the office specified thereon, and Copy 1 shall be retained by the licensee as part of the licensee's permanent records. Theft or loss of any firearm shall also be reported to the appropriate local authorities.

Sec. 178.129 Record retention.

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(b) Firearms transaction record, statement of intent to obtain a handgun, reports of multiple sales or other disposition of pistols and revolvers, and reports of theft or loss of firearms.

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Licensees shall retain each copy of Form 3310.11 (Federal Firearms Licensee Theft/Loss Report) for a period of not less than 5 years after the date the theft or loss was reported to ATF.

This reporting requirement only applies to FFL holders, that is folks licensed by ATF to make, sell, import or collect guns. This does not include folks who just own an NFA weapon.

#### Repairs to NFA weapons

While it is illegal for anyone to have possession of an NFA firearm that is not registered to them, ATF has carved out an exception for getting the guns repaired. In two writings of general circulation and availability, ATF has stated permission from them is not required in this situation. In ATF's "Federal Firearms Regulations Reference Guide," ATF P 5300.4 (01-00), on page 141, ATF writes:

"(I5) May a licensed gunsmith receive an NFA firearm for purposes of repair?"

"Yes, for the sole purpose of repair and subsequent return to its owner. It is suggested that the owner receive permission from ATF for the transfer by completing and mailing ATF Form 5 to the NFA Branch and receive approval prior to the delivery. The gunsmith should do the same prior to returning the firearm."

"Only the face of the form need be completed in each instance. ATF Forms 5 may be obtained from the Bureau of ATF, NFA Branch, Washington, DC 20226, (202) 927-8330."

(Emphasis added). This discussion was present in past editions of this publication as well.

Recently, similar advice was added to ATF's Internet Web page, at <http://www.atf.treas.gov/breakingnews/021800nfarepair.htm>:

"Repair of NFA Firearms"

"February 18, 2000"

"The National Firearms Act (NFA) Branch has received numerous questions concerning the repair of NFA firearms."

"The Bureau of Alcohol, Tobacco and Firearms (ATF) does not consider the temporary conveyance of an NFA firearm to a gunsmith for repair to be a "transfer" under the terms of the NFA. Thus, an ATF Form 5 application is not required."

"PLEASE BE AWARE THAT OTHER DISPOSITIONS, SUCH AS DEMONSTRATION OR SALE, ARE TRANSFERS AS DEFINED IN THE NFA AND MUST BE COVERED BY AN APPROVED APPLICATION TO TRANSFER AND REGISTER. TRANSFERS WITHOUT APPROVAL ARE VIOLATIONS OF FEDERAL LAW. ANY FIREARM INVOLVED IS SUBJECT TO SEIZURE AND FORFEITURE AND THE PARTIES TO THE TRANSFER ARE SUBJECT TO CRIMINAL PENALTIES OF UP TO 10 YEARS IMPRISONMENT."

"In order to avoid any appearance that a transfer has taken place, ATF strongly recommends that a Form 5 application be submitted for approval prior to conveying the firearm for repair. ATF believes this will provide protection to the parties involved as it will document the repair of the firearm and help ensure that a "transfer" did not take place. In addition, an approved Form 5 will assist Federal firearms licensees in establishing that their possession of the firearm is lawful."

"Accordingly, Item I5 in the 'Questions and Answers' section of ATF Publication 5300.4, Federal Firearms Regulations Reference Guide 2000, suggests that the owner obtain permission for the 'transfer'

of the NFA firearm by submitting a Form 5 application and that the gunsmith do the same for the return of the firearm "

"Federal firearms licensees must record the acquisition and disposition of the firearm as required by Part 179, Title 27, Code of Federal Regulations. "

One need not be an SOT to have NFA weapons transferred to him for repair. One does need to have a type 01 FFL to work as a gunsmith though. When submitting an optional Form 5 for repair, one checks the "Other" box in item 1, type of transfer, writes in "repair" next to the box, and submits a letter detailing what is to be done with the transfer in general terms, e.g. "The purpose of this transfer is to have [the weapon] refinished." The back of the form, with the certifications and photograph need not be completed. The turnaround time on Form 5's for this purpose seems to be at least a few weeks, or a minimum wait of a month or two, to transfer it to the 'smith and back. There is no transfer tax due.

#### Penalties for NFA violations

A conviction for a violation of the NFA will result in a felony conviction, punishable by up to ten years in prison, and/or a \$10,000 fine. See 26 U.S.C. sec. 5871. The U.S. Sentencing Guidelines ordinarily require prison time, even for a first offense with no prior criminal record, however various mitigating and aggravating factors can raise or lower the possible sentence range for a first offense.

The statute of limitations on violations of the NFA is three years. See 26 U.S.C. sec. 6531. The statute of limitations does not begin to run on possession offenses until the possession stops. As long as you possess the contraband item, you are in danger of being prosecuted.

In addition any NFA weapon EVER transferred or registered in violation of the Act is subject to civil forfeiture. See 26 U.S.C. sec. 5872. A forfeiture proceeding is separate from any criminal prosecution, and a resolution of a criminal proceeding in favor of the defendant will not preclude a forfeiture action. See *U.S. v. One Assortment of Eighty-Nine Firearms*, 465 U.S. 354 (1984). While the GCA was amended in 1986 to legislatively repeal Eighty-Nine Firearms (18 U.S.C. sec. 923(d)(1)), ATF has argued, and courts have agreed, that the protections in the GCA as to forfeiture do not apply to forfeitures of NFA weapons. See, for example, *U.S. v. One DLO Model A/C .30-06 Machine Gun, etc.*, 904 F.Supp. 622, n. 10 (N.D. Ohio 1995).

A violation of 18 U.S.C. sec. 922(o) of the GCA can also bring up to a ten year prison sentence, and or a \$10,000 fine. Again, prison time is likely, even on a first offense. Using a machine gun or a silencer in a crime of violence or drug crime can result in a sentencing enhancement of thirty years, even if there is no NFA prosecution. See 18 U.S.C. sec. 924.

#### Additional info sources

A good source of information is the ATF publication, "Federal Firearms Regulations Reference Guide" ATF P 5300.4 (01-00). It has a green cover, and contains the text of the GCA, NFA, and the regulations promulgated under those laws, as well as other useful information. As required by the GCA (18 U.S.C. section 921(a)(19)), ATF also publishes a compilation of state laws, "State Laws and Published Ordinances-Firearms", ATF P 5300.5. The current edition is #22 - 2000. Both are free for the asking from

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ATF. To get forms, or the books, you can write to ATF Distribution Center, P. O. Box 5950, Springfield, VA 22150-5950. Or phone them at (703) 455-7801. Your local ATF office may be able to supply them also.

There is also a magazine covering NFA weapons, which also has information on the legalities, Small Arms Review. See their web page, <http://www.smallarmsreview.com>, or drop them a note at [sareview@aol.com](mailto:sareview@aol.com) for more info. The author of this faq writes a column for the magazine, Legal Side, covering firearm laws and answering reader questions.

Some handy ATF phone numbers:

NFA Branch (202) 927-8330 - This is the office that handles all transfers of NFA weapons, and maintains the Registry.  
NFA Branch FAX (202) 927-8601 - You can fax Form 2's and 3's in, Form 5 transfers for repair, 5320.20's and probably others as well. Check with NFA Branch to be sure your faxed form will be acceptable and see ATF Ruling 89-1.  
Technology Branch (202) 927-7910 - This is the office that makes all determinations as to whether something falls into one of the NFA categories, as well as determinations as to importability, and many other technical issues to things regulated by ATF (at least as to firearms).  
Import Branch (202) 927-8320 - This office handles permits to import firearms, parts and other related items regulated by federal law.

#### GETTING THE LAW ENFORCEMENT CERTIFICATION

As noted above one administratively imposed requirement for an NFA transfer to an individual is a certification from a chief law enforcement officer with jurisdiction over where you reside. This (and the cost of the gun) is what usually keep interested, and otherwise qualified, persons from obtaining one. This process is what the law and ATF regulations contemplate as the way to get a signoff, if you need one.

Step 1: You ask the following persons if they would sign; the local chief of police (if any), the local sheriff, the local district (prosecuting) attorney, the chief of the state police, and the state Attorney General. The CLEO can delegate the signing duty, for his convenience, if he wishes. Ask that they refuse in writing, if that is what they will do. You may be surprised, one might sign. That list of persons comes from 27 CFR sec. 179.85, which is the regulation that created the law enforcement certification requirement for Form 4's. 27 CFR sec. 179.63 is the companion regulation for Form 1's. The requirement is NOT in any statute passed by Congress. Although not listed, and ATF will NOT designate federal officials as also acceptable (see below) other persons whose certification has been acceptable in the past include; local U.S. Attorney's, local federal judges, local U.S. Marshals, and local supervising F.B.I. agents. Other local federal law enforcement agents might also work.

It is helpful, in general, to quote the certification text for the CLEO, or provide a copy of the form. That way they know what you are asking them to certify. For a Form 4 it reads, "I certify that I am the chief law enforcement officer of the organization named below having jurisdiction in the area of residence of (name of transferee). I have no information that the transferee will use the firearm or device described on this application for other than lawful purposes. I have no information indicating that the receipt and/or possession of the firearm described in item 4 of this form

would place the transferee in violation of State or local law."

Step 2: Copy the refusal letters, and send the copies to the NFA Branch of ATF. Some CLEO's may refuse to even provide a response in writing. Just indicating that the CLEO refused to sign, and also refused to provide a written response, should be sufficient. Ask ATF to designate other persons whose signature would be acceptable, as the ones listed in the regulation would not sign. They are required to do this by the same regulation, it is the 'safety valve' for when none of the designated persons will sign. ATF will almost certainly say that they will accept the certification of a state judge who has jurisdiction over where you live (same as the chief, D.A. and sheriff in step 1, they have to have jurisdiction over where you live, although the regulation doesn't say that, just the Form 4) and who is a judge of a court of general jurisdiction, that is a trial court that can (by law) hear any civil or criminal case. No limit as to dollar amount in civil cases, or type of crime in criminal cases. No small claims court or traffic court type judges, in other words. Let's assume the judges refuse.

Step 3: get back to ATF, Send them copies of the rejection letters, if any, and ask that they accept a letter of police clearance, or a police letter saying you have no criminal record/history with them, in lieu of the certification, together with your certification that you are OK, and that the weapon would be legal for you to have where you live. They will either respond OK, or with more persons to try. If you reach the point where they will not accept the police clearance letter, and not designate someone who has not turned you down, you can sue, if the certification is for a Form 1, or the transferor (seller) on a Form 4 can sue.

There are several cases on this issue. The first is *Steele v. NFA Branch*, 755 F.2d 1410 (11th Cir. 1985), where the 11th circuit federal appeals court said a person trying to transfer a gun to one who was otherwise eligible to own the gun, but could not get the certification from anyone acceptable to ATF, could sue to force the transfer without it. In the *Steele* case (the plaintiff was a potential transferor in a Form 4 transfer) had not asked everyone acceptable to ATF, as well as not alleged, as part of his case, that the potential transferee was otherwise eligible by law to own the weapon, and the case was disposed of on those grounds. Note that the version of the regulation creating the certification requirement, reproduced in the footnotes of the *Steele* case, has a different list of acceptable persons. After some were named as defendants in the *Steele* case (including the then U.S. Attorney for the Miami, FL., area, Janet Reno, later anti-gun Attorney General during the reign of Pres. Clinton), all the federal law enforcement officials listed (U.S. Marshals and U.S. Attorney's) were removed from the regulation, supposedly at their request. See *Federal Register*, October 15, 1985, 50 Fed. Reg. 41680. Correspondence from ATF indicates they will not designate any federal officials as other acceptable persons either.

The *Steele* decision was followed in the case *Westfall v. Miller*, 77 F.3d 868 (5th Cir. 1996), in which a transferee, not transferor, sued over non-approval of a Form 4 without the certification. Again *Westfall* did not ask everyone listed in the regulation. Again his case was thrown out for lack of standing. The court said they could not tell if the reason he couldn't get the gun was an illegal requirement, the signoff, or his own failure to try and get a signoff.

This certification is not really a big deal for the chief law

enforcement officer (CLEO) making it, and it DOES NOT expressly make the CLEO legally responsible for the weapon or your use of it, or its theft. I have not heard of any successful lawsuit against a CLEO for signing the certification for a gun that was criminally misused. That is, in my opinion, a spurious excuse for not signing. There is even one case addressing this issue that I am aware of, *Searcy v. City of Dayton*, 38 F.3d 282 (6th Cir. 1994). The estate of a drug dealer murdered by an off duty Dayton, Ohio, police officer with his personally owned "Mac-11" machine gun sued the city that employed the cop. One of the grounds for suit was the police chief's having signed the transfer paperwork for the murder weapon. The court held that that claim should have been dismissed by the trial court. Without a showing by the plaintiff that somehow the act of signing was negligent (under Ohio law) and led to the harm (murder) complained of, there was no cause of action. Signing the form was not negligent in itself, nor was it a reckless or wanton act, as the trial court claimed the plaintiff could try to prove at trial. The case against the chief of police was later dismissed by the trial court. Although this case is only directly binding on federal courts in the area covered by the 6th circuit, and need not bind any state courts, the court recognized what common sense, and the certification say, the person signing does not open himself up to any liability by doing so.

The Searcy case is something to which you can point a CLEO who claims to refuse to do the signoff because of liability. Incidentally Stephen Halbrook, a leading lawyer in gun rights cases, and a longtime lawyer for the NRA, as well as an author, says in his *Firearms Law Deskbook* (published by Clark Boardman Callaghan) that this case is the only instance of a registered machine gun being criminally misused by its registered owner he is aware of.

#### Other Avenues to NFA Ownership

There are solutions to the law enforcement certification problem. They all require persistence, but less work than being a legitimate NFA dealer, in my opinion. Becoming a licensed dealer is one solution though. Another solution is to be incorporated. If you are already the owner of a corporation, as part of your business (doctor, lawyer or architect for example) your corporation can buy NFA weapons, and the photo, police signoff and fingerprints are not needed. Just a Form 4. The corporation might be buying weapons for an investment, or for security, or for another good reason. You could incorporate yourself just to get NFA weapons also, although you should talk to a lawyer or another knowledgeable person about the downsides of being incorporated before just doing it, as well as any income or other tax consequences in your location. As the weapons are registered to the company, and not the owner of the company, they will have to be transferred out, tax paid (unless the transfer is otherwise exempt from the tax, ie from a government entity, or for an unservicable weapon), if the corporation is ever dissolved. As corporate assets, creditors might get them in the event of bankruptcy of the corporation, or a judgment against the corporation. In my opinion the best thing is to have the weapons owned and registered to the person who actually owns them, and not an intermediary. I also am aware that in some areas of the country the incorporation route may be the only way to own NFA weapons, as a practical matter. Also be aware that corporations have no 4th amendment right against self-incrimination, and the restrictions the NFA law places on the use of information provided to ATF under the Act (26 U.S.C. sec. 5844) only apply to information provided by natural persons, not corporations. You are giving up some of the privacy provided by law to flesh and blood people when you acquire your guns through a

corporation.

Pretending you live in a jurisdiction where the CLEO will sign, when you do not, may be tempting, but cannot be recommended. ATF has prosecuted for this, claiming that putting a bogus address on the form is submitting false information to the feds, in violation of 26 U.S.C. sec. 5861(l). See *U.S. v. Muntean*, 870 F.Supp 261 (N.D.Ind. 1994), for a case of such a prosecution. However, it is possible to have more than one place you live, and it is permissible to obtain NFA weapons at an address, when you are actually living there. For example, if you have a summer home, you may get NFA weapons when you are living there, and have the CLEO for that place do the signoff. During the rest of the year, when you live elsewhere, you may obtain the weapons at the second home.

#### NFA WEAPONS AND THE 4TH AMENDMENT

As to surrendering your 4th amendment (search and seizure) rights, this is definitely true when one gets a Federal Firearms License. The law allows the ATF to inspect your records and inventory once every 12 months without any cause, and at any point during the course of a bona fide criminal investigation (18 U.S.C. sec. 923(g)). They may inspect without warning during business hours. The only modification of the above pertains to the C&R FFL (type 03) where ATF must schedule the inspection, (C&R FFL holders do not have business hours) and they must have the inspection at their office nearest the C&R FFL holders premises, if the holder so requests. ATF may look around the licensed premises for other weapons not on your records. This means they take the position that if your licensed premises are your home they may search it, as part of the annual compliance inspection. The constitutionality of the warrantless "administrative search" of licensees provided for in the Gun Control Act has been upheld by the US Supreme Court, see *U.S. v. Biswell*, 406 U.S. 311 (1972). *Biswell* was partially overturned by Congress by 1986 changes to the requirements for a warrant under the GCA, but the administrative search provisions remain.

In addition, if one is also a SOT, ATF claims to have the right to enter onto your business premises, during business hours, to verify compliance with the NFA. Their regulation to that effect is found at 27 CFR sec. 179.22. The regulation is apparently based upon 26 U.S.C. sec. 7606:

7606. Entry of premises for examination of taxable objects.

(a) Entry during day.

The Secretary may enter, in the daytime, any building or place where any articles or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects.

(b) Entry at night.

When such premises are open at night, the Secretary may enter them while so open, in the performance of his official duties.

(c) Penalties

For penalty for refusal to permit entry or examination, see section 7342.

26 U.S.C. sec. 7342 provides for the penalty for a refusal to

permit entry under section 7606:

7342. Penalty for refusal to permit entry or examination.

Any owner of any building or place, or person having the agency or superintendence of the same, who refuses to admit any officer or employee of the Treasury Department acting under the authority of section 7606 (relating to entry of premises for examination of taxable articles) or refuses to permit him to examine such article or articles, shall, for every such refusal, forfeit \$500.

They claims this right extends to examining your business records, and firearms. This would only apply to your NFA firearms, although they could presumably examine other guns to make sure they were not NFA firearms, and subject to the law. This is not subject to the controls found in the GCA, noted above, as the legal basis for the search is not found there. So they could claim a right to do this sort of search once a month, or once a week. I am not aware of any current abuse of the authority under this section. While the regulation made by ATF only applies this authority to SOT's, the statute itself is not so limited. At least one court case has suggested this power is available to search an FFL holder who is not an SOT. (U. S. v. Palmer, 435 F.2d 653 (1st Cir. 1970)).

As to one who is neither a FFL nor SOT, but only owns weapons regulated under the National Firearms Act, ATF may only compel you to show an agent upon request the registration paperwork, that is the Form 1, 2, 3, 4, 5 or whatever else might have been used to register the weapon. See 26 U.S.C. sec. 5841(e). They do not have any right to compel you to produce the weapon. As always the Fourth amendment applies, and ATF may not enter your home or other place of storage of the NFA weapon, nor seize the weapon, without a warrant, or without falling under an exception the Supreme Court has created to the operation of the Fourth amendment, or without your consent.

#### AMNESTIES FOR UNREGISTERED NFA WEAPONS

As part of the new and revised 1968 National Firearms Act, there was one amnesty where folks could register any NFA weapons. Registration was done on ATF Form 4467. It went from 11/02/68 to 12/01/68, although the paperwork backlog went on for a while after. ATF also permitted servicemen and other persons who could show they were overseas during the amnesty period, and that the weapon they sought to register was in the U.S. during the amnesty period, to register those weapons well after the amnesty period. The number of firearms ATF reports as having been registered during the 1968 amnesty goes up every year such statistics have been reported, since 1989 or so; however in 1975 ATF reported over 60,000 firearms registered during the amnesty, far more than they have reported since they began releasing annual statistics on NFA registrations. According to 1995 numbers, 57,216 weapons were registered on Form 4467 ("Registration of Certain Firearms during November of 1968"), which was the amnesty registration form. This would have included weapons newly subject to registration, when they had not been before, like DEWAT's and destructive devices, as well as unregistered firearms that should had always been subject to the NFA, and been registered before, and were not.

There was also a registration period after the enacting of the first NFA, from July 26, 1934 up to September 24, 1934. Anyone in possession of an NFA weapon as of the July 26 date was supposed to register it, even if they no longer had it, on Form 1 (Firearms) in duplicate, with the local IRS office. No tax was due. This was

not really an amnesty though, as the weapons were legal to have before the law was passed, at least under federal law. Before the changes to the NFA in 1968, a Form 1 was for a flat out registration of an existing gun, no tax. A Form 1A was for a tax paid making, in the way we understand a Form 1 now. Under various rules unregistered weapons were permitted to be registered, until 1971 or so.

Some states had prohibited or regulated some NFA weapons before 1934. In fact the Uniform Machinegun Act, which provided for registration of machine guns, adopted in a few states (Conn., Va., Md., Ark., Ohio and South Dakota) was developed with the support of the National Rifle Association, partly in an attempt to forestall the sort of regulation the feds ultimately adopted in 1934. As always, compromise brings no relief - history has repeated that lesson over and over in the gun control context.

Before the NFA was changed in 1968, as part of the Gun Control Act of 1968, one could register unregistered existing weapons, however it meant you were admitting to possessing an unregistered weapon. In fact the law required it, which was a reason the U.S. Supreme Court used in gutting the mandatory registration scheme of the pre-68 NFA in *Haynes v. U.S.*, 390 U.S. 85 (1968). (It violated the 5th amendment right against compelling self-incrimination.) However if there was no criminal intent to the possession (which tended to be demonstrated by attempting to register the weapon) then the Alcohol and Tobacco Tax Division of the Treasury Dept. would accept the application to transfer the weapon, or to register it. ATF generally sent an investigator to check out what was going on, and if deemed appropriate, to help the applicant fill out the Form 1. The Alcohol, Tobacco and Firearms Division of the IRS (created out of the '68 GCA, it became the Bureau of Alcohol, Tobacco and Firearms on July 1, 1972) continued this practice until 1971, with the transferor instead of the transferee admitting to possessing an unregistered weapon, when applying to transfer it.

The U.S. Supreme Court, in the case *U.S. v. Freed*, 401 U.S. 601 (1971), decided the amended NFA made existing unregistered weapons unregistrable, even voluntarily. The provisions mandating registration of existing (illegally possessed) weapons were removed from the NFA in 1968, among other changes. The Secretary of the Treasury is authorized to conduct additional amnesties (Sec. 207(e) of P.L. 90-618, the 1968 Gun Control Act), at his discretion, provided each is not longer than 90 days, and are announced in the Federal Register. There has never been one. ATF officials have stated they will never declare another Amnesty, because it would supposedly ruin all prosecutions in progress at the time, as well as increase the number of NFA guns overnight, because people will make guns that don't exist now, to register them.

In early 1994, ATF decided (in ATF Rulings 94-1 and 94-2) that three models of 12 gauge shotguns, the USAS 12, Striker 12, and Street Sweeper, were destructive devices, owing to their non-sporting character, and having a bore over 1/2 inch, as all 12 gauge shotguns do. ATF required owners of these guns to register them, as NFA weapons. This was not exactly an amnesty, as the weapons were not NFA weapons when made. This decision, as to the Striker 12 in particular, was upheld in a court challenge in the case *Demko v. U.S.*, 44 Fed. Cl. 83 (Ct. Cl. 1999). By ATF Ruling 2001-1, ATF ended the amnesty for these shotguns as arbitrarily as it began, effective 5/1/2001. Any not registered now are unregistrable contraband.

In all likelihood 18 U.S.C. sec. 922(o), the ban on civilian possession of machine guns registered after the law took effect, or

never registered, precludes an Amnesty (as provided for under existing law) for machine guns. You could register a machine gun at a hypothetical amnesty, and comply with the NFA, but you would still be in violation of sec. 922(o), because the gun would have been registered after that law took effect. The penalties are the same under either law. One could register all other categories of NFA guns at an Amnesty. Congress would probably need to pass a law providing for an Amnesty, and override sec. 922(o) in that manner.

#### MACHINE GUN SEARS AND CONVERSION PARTS

The definition of "machinegun" in the NFA (26 U.S.C. sec. 5845(b)) includes a part or parts to convert a gun into a machine gun. These parts are called registered sears, as well as "conversion kits".

Note that conversion parts are not included in the definition of "firearm" under the Gun Control Act, one of the few things that is a firearm under the NFA, but not the GCA. Thus the purchaser of a conversion part from an FFL need not do a 4473 form, unlike other NFA weapons. Of course the host gun, if purchased from an FFL, will require the 4473. This reading of the law is based on opinion letters from ATF, and the definition of "firearm" under the GCA, which requires it be able to expel a shot. However, at least one judge has decided that somehow the definition of "firearm" in the GCA "incorporates" the definition of "machine gun" under the GCA (even though the law doesn't say that) and that a machine gun conversion part is a "firearm" under the GCA as well as the NFA. I think the judge is clearly wrong, even ATF reads the law better than that, but the point is to be careful. The case is *U.S. v. Hunter*, 843 F.Supp 235 (E.D. Mich. 1994), and see also the same judge's second opinion in the same case, at 863 F.Supp. 462 (E.D. Mich. 1994). As the U.S. dropped that prosecution, and the defendants were not convicted, there was no review of that determination by an appeals court.

In every case, the conversion part(s) are installed into a semi-automatic gun, and without converting the semi-auto gun's receiver to machine gun specification, the new part(s) will allow the gun to fire as a machine gun. If the registered conversion part breaks or wears out it cannot be replaced, only repaired, if possible. BATF considers replacing it with a new part to be the manufacture of a machine gun, and a civilian could not own it, as it would have been made after the effective date of 18 U.S.C. sec. 922(o). This wear/breakage thing is also true of the receiver on a gun where that is the registered part, but in general the receiver is less subject to wear or breakage than a small part, like a sear. Being larger, a receiver may also be easier to repair. The sear conversion will most likely not be just like the factory machine gun version; it will be working in the semi-auto version of the gun. A registered receiver conversion can (and should, but isn't always) be mechanically identical to the original full auto version of the gun, and factory spare parts may be used. Some sear conversions require altered parts, in addition to the registered sear.

A conversion sear that does require alteration to the host gun's receiver is not legally a conversion part, and is not able to be registered as such. Some were permitted by ATF, in particular AK-47 "sears" that required a hole be drilled in the gun's receiver, like a regular receiver conversion of the semi-auto AK. Such "sears" in the hands of innocent buyers were left on the Registry, with the requirement that they were not to be removed from the host gun. However any in the possession of the persons who made and registered them were disallowed, and removed from the

Registry. See *Vollmer v. Higgins*, 23 F.3d 448 (D.C. Cir. 1994) for mention of the AK sears. Also see FFL Newsletter, Summer Issue 1988, Bureau of Alcohol, Tobacco and Firearms, page 2, Washington, D. C.

Some examples of conversion parts; a SWD Auto Connector (for AR rifles), an AR-15 drop-in auto sear, an HK sear, as made by Fleming Firearms, J. A. Ciener, and S&H Arms, among others, a AUG sear as made by F. J. Vollmer and Qualified Manufacturing, an FN-FNC sear, as made by S&H, an M-2 conversion kit for the M-1 carbine, registered by many manufacturers, a slotted UZI machine gun bolt, made by Group Industries and many others, or a Ruger 10/22 trigger pack, as made by John Norell. There are also sears to convert Glock and Beretta 92 pistols into machine guns, but I believe all of them are post-86 manufacture, and thus unavailable to civilians.

As the sears do turn the host gun into a machine gun, the host gun is no longer regulated as a semi-auto, and is not subject to 18 U.S.C. sec. 922(v), (assault weapon law) or sec. 922(r) (ban on domestic assembly from imported parts of an unsporting semi-auto rifle or shotgun), for example. Thus you may put an HK sear in a post 1989 import ban SAR-8 rifle, for instance, and then put a regular pistol grip stock set on that otherwise thumbhole gun, as well as a regular slotted flash hider. The host gun need not even have been on the planet when the sear was made. As long as the sear is in there you may also have the barrel cut down to below 16 inches; a machine gun is not also a short barreled rifle.

HOWEVER, if the sear is placed into a second gun, the first gun is no longer a machine gun, and must comply with the laws regulating it as a semi-auto. In my example, the barrel must grow back, and the thumbhole stock needs to return. If the sear in question is a AR-15 drop-in auto sear, the gun needs to have the M-16 internal parts needed for the sear removed as well, lest it be induced to fire more than one shot at a time, as was done in the *U.S. v. Staples* case.

NFA Branch desires that folks who install sears into guns where the sear is not very accessible, HK guns in particular, tell them the make, model and serial number of the gun into which the sear is installed, and put this information on the Form 4. This makes it easier on anyone inspecting the gun, as they do not have to open the gun up to see the sear, if they know that gun is the one with the sear in it. This is called "marrying" the sear to the gun. It is especially useful when the host semi-auto has been modified so as to make it potentially illegal without the sear, like putting a shoulder stock on an HK SP-89 pistol, or cutting the barrel of an HK-94 to less than 16 inches. You may "divorce" the two, but don't do that if the host gun will end up an unregistered short barreled rifle, or other unregistered NFA weapon. This marriage info is in box 4(h) on the Form 4, so anyone who looks at the paperwork can see the sear is in that gun; local law enforcement, for instance.

If the gun is a sear conversion you may not alter the receiver to full auto configuration, in particular you may not install a push pin lower on your HK. You may alter a push pin lower shell to accommodate your clip-on trigger pack, so it looks authentic, but don't alter the receiver. You may also alter one of the MG burst packs to fit on your semi-auto receiver, provided it is also modified internally so it no longer just uses the MG trigger pack with the original MG trip. Making an unaltered MG trigger pack fit the semi-auto is making a new conversion device; some registered HK conversion parts are MG trigger packs modified to fit right on the semi-auto receiver.

#### FAQ\_NFA.txt

This is an area with a variety of items registered; many in the frenzy of registration after the 1986 making ban was being passed into law, similar to the frenzy of making seen in 1994 during Congressional deliberation on the ban on new manufacture of "semi-automatic assault weapons" for sale to civilians.

A few notes: before November, 1981, BATF did not consider the drop-in AR-15 sear to be a machine gun in itself, because you had to replace all the internal parts with M-16 parts, as well as install the sear, and thus it didn't convert the AR by itself. However in ATF Ruling 81-4, BATF changed its mind about what a thing had to do in order to be a conversion part, grandfathered all AR sears made before the ruling, and decided all made after that needed to be registered. HOWEVER, the fact that the sear itself, if made before 11/81, and sold through ads in Shotgun News to this day (they sure made a lot of 'em back then, or maybe not) is not required to be registered, DOES NOT mean you may install it in an AR-15, or even possess it with an AR-15 rifle, or with other M-16 parts. Either scenario is considered a machine gun also, and also subject to the NFA, and sec. 922(o). Indeed one court has held that ATF's grandfathering is not effective, and that even a pre-81 sear may not be sold or possessed after 11/81 without complying with all laws applicable to machine guns.

Likewise an M-1 carbine receiver and an M-2 carbine receiver are identical, and all the parts to convert a gun from an M-1 to an M-2 are available on the surplus market. HOWEVER having all the parts, and an M-1, or even just enough of the M-2 parts to get an M-1 to fire full auto as a kit, constitutes a machine gun under the NFA.

#### DEWATs

A DEWAT is an unserviceable gun that has an intact receiver, thus, as the GCA of 1968 is construed, it is a machine gun. In 1955 the ATT decided that a gun that was a registered war souvenir (or for a time, a contraband unregistered gun) could be removed from the coverage of the NFA if it was rendered unserviceable by steel welding the breech closed, and steel welding the barrel to the frame. All this was to be done under the supervision of an ATT inspector. See Revenue Ruling 55-590. The gun became a wall hanger, ornament, like parts sets now. This was not the same as an unserviceable gun, which was still subject to the NFA, but exempt from the transfer tax. These steel welded guns were DEWAT's. DEWAT stands for DEactivated WAR Trophy; it was regularly done for servicemen who wished to bring home NFA weapons as war souvenirs. It was also done to WWI and WWII era guns imported as surplus by companies like ARMEX International, and Interarmco, and then sold through the mail in ads in gun magazines. The glory days before 1968. A DEWAT must now be registered to be legal, there is no longer a legal difference between a DEWAT and an unserviceable weapon. A few states only allow individuals to own DEWAT machine guns, Iowa and Kansas come to mind.

A DEWAT machine gun transfers tax free, as a "curio or ornament", on a Form 5. To be a DEWAT, a gun should have a steel weld in the chamber, and have the plugged barrel steel welded to the frame or receiver. Having said that, a gun may be registered as unserviceable and not be de-activated in this manner. It may have cement or lead in the barrel, or a piece of rod welded, soldered or brazed in the barrel. Despite the repeated warnings from ATT, apparently DEWATs were made or imported that did not have steel welds. And a weapon registered as "unserviceable" before 1968 was not held to these standards. One (ostensible) reason machine gun receivers were redefined as machine guns in 1968, thus bringing DEWATs under the NFA regulation, was that folks were

regularly and easily making their DEWATs live guns w/o complying with the law. Some barrel plugs were so poor they would fall out with little coaxing.

To re-activate the gun, ATF requires you file a fully completed Form 1 (ie you get the gun on a Form 5, including the law enforcement certification, photo and fingerprints. You have to do all that again for the Form 1), and pay the \$200 tax the gun was exempt from before. Then when that is returned approved you can install a replacement barrel, or get the weld out of the barrel, if possible. In the alternative, a Class 2 manufacturer may re-activate the gun, and file a Form 2 reflecting the gun is now live. ATF considers re-activating to be manufacturing, and requires the re-activator to mark the gun with his name and address, whether done on a Form 1 or Form 2. If you sent your DEWAT to a Class 2 to make live he would have to transfer it back to you on a fully completed Form 4, as a tax paid transfer. These procedures are not in the NFA law nor the regulations. They are apparently based in part on the Revenue Rulings that created the DEWAT program in the 1950's. As a DEWAT was not a NFA firearm, before 1968, requiring the making tax made sense then as you were making a machine gun out of something that was the equivalent of a door stop, legally. Now that is not true, the DEWAT is a machine gun, and no making tax should attach, as you are not "making" anything, merely changing the gun from unserviceable to serviceable.

Folks who are around NFA guns for very long will find there are still a lot of DEWAT guns that were never registered during the Amnesty, and are now contraband unregistered machine guns. Folks have them in closets, up over the mantle... The only safe course is to abandon an unregistered NFA weapon to law enforcement.

#### ANY OTHER WEAPONS

An AOW is:

"...any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12" or more, less than 18" in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any weapon which may be readily restored to fire. Such term shall not include a pistol or revolver having a rifled bore, or rifled bores, or weapons designed, made or intended to be fired from the shoulder and not capable of firing fixed ammunition." 26 U. S. C. sec. 5845(e).

Thus the question to be answered in deciding if a weapon is an AOW would be, does it fit into any of the three categories below:

1) Is the weapon both not a pistol or revolver, and capable of being concealed on the person?

2) Or is it a smooth bore pistol or revolver? Examples of this include the H&R Handy-Gun, or Ithaca Auto-Burglar gun. This does not include weapons made from a shotgun. That would be a short barreled shotgun. The receiver of a smooth bore pistol, in order to be an AOW, must not have had a shoulder stock attached to it, ever. The shoulder stock attachment deal on a very few H&R Handy Guns, together with a stock, will make them into a short barreled shotgun.

3) Or is it a combination gun, a shoulder fired gun with both rifled and smooth barrels between 12" and 18" long, and which has to be manually reloaded? Examples of this include the M-6 military survival gun, with a single shot barrel in .22 Hornet, and a companion .410 shotgun barrel, as well as most models of the Marble's Game Getter.

Weapons that fit the first category above are commonly called gadget guns; pen guns, stapler guns, cane guns, alarm clock guns, flashlight guns, the list of objects is pretty long. A few have been removed from the scope of the law because their collector status makes them unlikely to be misused; original Nazi belt buckle guns for example. See the C&R list for these.

ATF has made the decision that a handgun (but not a machine gun, since a machine gun is not also an AOW) with more than one hand grip at an angle to the bore is an AOW. This is based on the gun a) being concealable on the person, and b) not meeting the definition of a "pistol" in the regulations promulgated under the NFA, since they say a pistol has a single grip at an angle to the bore. However, at least one federal magistrate has decided that if the grip is added later, the gun is not "originally designed" to be fired by holding in more than one grip, and thus putting a second grip on a pistol does not make it an AOW. ATF does not regard the decision as binding. The case is U.S. v. Davis, Crim No. 8:93-106 (D. S. C. 1993) (Report of Magistrate, June 21, 1993). The prosecution was dismissed at the request of the Government before any review of that determination by the trial judge.

By the same thinking ATF has decided that "wallet" holsters for small guns, from which the gun can be fired, and which disguise the outline of the gun, are AOW's. This would affect, for example, the North American Arms mini-revolver and the wallet holster NAA used to sell for the gun, as an accessory. Or the wallet holster Galco used to make for the Beretta model 21 pistol. ATF seems to be thinking that the grip has disappeared, and thus it fits into the first category.

In all likelihood, the wallet holster decision was an outgrowth of calling the combination of a briefcase from which the gun can be fired, and the gun, an AOW. The cases were usually meant for the SMG version of the gun, which was fine, but could accommodate the semi-auto pistol version of the MAC, or HK MP5K as well, and that combo of the case and semi-auto pistol was considered the AOW.

27 CFR sec. 179.11 - "pistol. A weapon originally designed, made and intended to fire a projectile (bullet) from one or more barrels when held in one hand, and having: a) a chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s); and b) a short stock designed to be gripped by one hand at an angle to and extending below the line of the bore(s). The term shall not include any gadget device, any gun altered or converted to resemble a pistol, any gun that fires more than one shot without manual reloading, by a single function of the trigger, or any small portable gun such as: Nazi belt buckle pistol, glove pistol, or a one-hand stock gun designed to fire fixed shotgun ammunition."

There is also a revolver definition, but it does not add anything except a provision for guns with revolving cylinders, rather than permanent chambers.

Note that this definition is only in the rules for the NFA, and

not the GCA. It is designed to interact with the AOW definition. For example even though this definition excludes such things as the .410 T/C Contender pistol from the pistol definition, it is also not an AOW as it has a rifled bore. And it is also a handgun under the GCA. The NFA statute does not define "pistol" or "revolver".

#### DESTRUCTIVE DEVICES

26 U. S. C. sec. 5845(f) "The term destructive device means

1) any explosive, incendiary or poison gas

A) bomb

B) grenade

C) rocket having propellant charge of more than four ounces

D) missile having an explosive or incendiary charge of more than one-quarter ounce

E) mine, or

F) similar device

2) any type of weapon by whatever name known which will, or may be readily converted to, expel a projectile by the action of a explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary or his delegate finds is generally recognized as particularly suitable for sporting purposes; and

3) any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled. The term 'destructive device' shall not include any device which is neither designed nor redesigned for use as a weapon; any device although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device; surplus ordnance sold, loaned or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685 or 4686 of title 10 of the United States Code; or any other device which the Secretary of the Treasury or his delegate finds is not likely to be used as a weapon, or is an antique or is a rifle which the owner intends to use solely for sporting purposes. "

Secretary in the above refers to the Secretary of the Treasury, unless it says otherwise. The fee for the FFL to deal in DD's is \$1000 a year (type 09), and one must also be a special taxpayer, add another \$500 a year. Making them requires a different \$1000 a year FFL (type 10), although an individual may make them on a Form 1, tax paid (\$200). Transfers require the whole routine just like full-autos; a form 4, \$200 tax, a law enforcement sign-off, pictures and fingerprints. Most class 3 dealers don't have the \$1000 a year FFL to deal in DD's. Note that antiques are excluded. Thus the definition of an antique NFA firearm is important.

26 U. S. C. sec. 5845(g) "Antique firearm -The term 'antique firearm' means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replicas thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade. "

Some examples of what is a DD and what is not:

Muzzle loading cannon - NOT, as it is an antique design, unless it has some special features allowing breech loading.

Explosive grenade - is a DD

Molotov cocktail - is a DD

M-79 or M-203 40mm grenade launcher - is a DD

Smooth bore 37mm projectile launcher - not a DD. Not even a title 1 firearm. This item falls under the "not a weapon" (signaling device) exception. Generally a large bore device for which no anti-personnel ammo has ever been made will NOT be a DD. This used to be true of the 37mm guns. However, according to ATF, some folks have started making anti-personnel rounds for these guns, and ATF has ruled that possession of a 37mm launcher and a bean bag or rubber shot or similar round is possession of a DD, and at that point the launcher needs to be registered. Put another way, before you make or buy anti-personnel rounds for your 37mm launcher, register it as a DD. The rounds themselves, not being explosive, incendiary or poison gas, are not regulated in themselves either. It is just the two together. See ATF Ruling 95-3.

40mm grenade for an M-79 or M-203 - a DD.

Non-explosive 40mm practice ammo - not a DD. Commercial making of it would require a type 10 FFL though, as although the ammo is not itself classified as a DD, making ammo for a DD requires the FFL.

Non-sporting 12 gauge shotgun - is a DD, because it has a bore over 1/2", and is not exempted unless it meets the "sporting use" test. Check out the case Gilbert Equipment Co., Inc., v. Higgins, 709 F. Supp. 1071 (D. Ala. 1989) for how the sporting use test has been re-interpreted from what it meant when the law was enacted to having ATF be arbiters of what is "sport".

Flame Thrower - not a DD, nor even a firearm. Unregulated as to possession, under federal law. Great way to clear snow off the driveway.

Japanese Knee Mortar - A DD. Even though there is no available ammo for it, explosive or otherwise, and hasn't been since 1945, because anti-personnel ammo was made for it in the past, it is a weapon. As it has a bore over 1/2" and isn't sporting, it is a DD.

#### FIREARM SILENCERS

While the statute calls these devices "silencers" or "mufflers", the US NFA industry term is "sound suppressor", as the word silencer has been given a negative connotation, and because it is inaccurate, as these devices do not eliminate all sound from firing a gun. However you can point the folks who get all high and mighty about the use of the word "silencer" to this definition; it is the legal term.

18 U.S.C. sec. 921(a)(24) "The term 'firearm silencer' or 'firearm muffler' means 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."

As can be seen this covers improvised sound suppressors, and component parts of a sound suppressor. There is no threshold level of sound reduction for something to fall under this definition. ATF used to require the device "appreciably" lower the sound (see Revenue Ruling 57-38) In general recoil compensators and

flash hiders do not fall under this definition, but some designs could fall into the category. As with any borderline device the thing to do is to get a written opinion from the Technology Branch of ATF.

Note that the silencer definition applies only to devices for firearms, i.e. powered by an "explosive". An air gun silencer is not covered. But if it can be used on a firearm it would be. Thus an airgun silencer permanently attached to the airgun, or too flimsy to be used on a firearm, should be exempt. If you have an interest in pursuing this line of thought submit a sample or drawings to ATF Tech. Branch. I am not aware of any airgun silencer currently made, or determined to be exempt from this definition. But clearly there is room under the definition for such a gadget. Likewise, since antique guns, as defined in the GCA, are not "firearms", a silencer for such a gun is not, or should not be, covered. Perhaps one fitted permanently to a pre-1899 gun?

### SHORT BARRELED RIFLES

A short barreled rifle (SBR) is defined in the law as:

26 U.S.C. sec. 5845(a)

\* \* \* \*

(3) a rifle having a barrel or barrels less than 16 inches in length;

(4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; \* \* \*

The NFA law also defines "rifle":

26 U.S.C. sec. 5845(c) "The term 'rifle' means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned or made or remade to use the energy of an explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

Thus you can see why a machine gun is not also a short barreled rifle; it is not a rifle. And you can see why a barrel is not subject to regulation, or registration, in itself. It is a barrel, it cannot discharge a shot. A receiver alone is also not a short rifle; a short rifle is only a complete weapon that fits into the length parameters outlined.

ATF takes the position that this definition includes any combination of parts from which a short barreled rifle can be assembled. And they said this included a set of parts with dual uses. In the Supreme court case of U.S. v. Thompson/Center Arms Co., 504 U.S. 505 (1992) ATF said a set consisting of a receiver, a 16"+ barrel, a pistol grip stock, a shoulder stock, and a barrel less than 16 inches long was a short barreled rifle. The idea of the kit was that you needed only one receiver, and you could have both a rifle and pistol in one gun. While making a pistol out of a rifle is making a short rifle, ATF has approved of converting a pistol into a rifle, and then converting it back into a pistol, without "making" a short barreled rifle when it is converted back into a pistol; that was not an issue. See, for example Revenue Rulings 59-340, 59-341 and 61-203. T/C made one set on a Form 1, then sued for a tax refund, claiming the set was not a SBR, unless it actually was assembled with the shoulder stock, and short barrel, something they instructed the purchaser of the set not to

do. The Supreme court disagreed with ATF, and agreed with Thompson/Center.

The Court said that a set of parts was not a short barreled rifle, unless the only way to assemble the parts was into a short barreled rifle. As this set had a legitimate, legal, use for all the parts it was OK. However they also approved of lower court cases holding that the sale by one person, at the same place, of all the parts to assemble an AR-15, with a short barrel, was sale of a SBR, even if they weren't assembled together at the moment of the bust, and had in fact never been assembled. See U.S. v. Drasen, 845 F.2d 731 (7th Cir. 1988). This was because the only use for the parts in that case was a SBR. If the person in that case also had a registered M-16, then there would be a legitimate use for the SMG barrel, and there shouldn't be a problem. And the Court agreed, of course, that a fully assembled rifle with a barrel less than 16", or an overall length of less than 26" was also subject to registration. Although it was not addressed in the case, the rule is that an otherwise short barreled rifle that is very easily restored to firing condition (readily restorable); e.g., one missing a firing pin, but for that pin one may substitute a nail or other common object, is also subject to the law.

#### APPENDIX STATE NFA RESTRICTIONS

Here is my attempt to list what state allows what in terms of NFA weapons. The "Y" indicates state law allows private individuals to own the weapon in question. Most of the "Y" states require the weapons be possessed in compliance with federal law to be legal under state law. Some of the "N" states may allow only police officers to possess them, or dealers, or neither. Basically if the privileged class was so narrow, by statute, I said "N". In many states the class of folks able to own NFA weapons is narrow by practice (California), or because no law enforcement officers will sign the certification needed for a transfer to an individual. Some of the "N" states may also have grandfathered weapons, the "N" applies to a current transaction. Some "N" states may also allow unserviceable weapons. Some states may regulate one or more of these weapons as handguns.

#### KEY

MG - machine gun

SI - sound suppressor (silencer)

SR - short barreled rifle

SG - short shotgun

AOW - any other weapon

LBDD - large bore destructive device

EXPDD - explosive, incendiary or poison gas destructive device

STATE	MG	SI	SR	SG	AOW	LBDD	EXPDD	Comments
AK	Y	Y	Y	Y	Y	Y	Y	
AL	Y	Y	N	N	Y	Y	?	
AR	Y	Y	Y	Y	Y	Y	?	(state registration of pistol cal. MG's over .30)
AZ	Y	Y	Y	Y	Y	Y	Y	
CA	Y	N	Y	Y	Y	Y	Y	(requires discretionary and rarely issued permit for mg, lbdd or expdd from state Dept. of Justice; no AOW pen guns; C&R sg, sr only)
CO	Y	Y	Y	Y	Y	Y	Y	(requires state explosives permit for expdd)
CT	Y	Y	Y	Y	Y	Y	?	(no select fire mg's-full auto's only, after 1993 assault weapon ban, state registration of mg's)
DE	N	N	Y	N	Y	Y	N	(no smooth bore pistol AOW's)

FAQ\_NFA.txt

FL	Y	Y	Y	Y	Y	Y	Y	
GA	Y	Y	Y	Y	Y	Y	Y	(no incendiary expdd' s)
HI	N	N	N	N	N	N	N	
IA	N	Y	Y	Y	Y	Y	Y	(only si, sr, sg, lbdd and expdd designated as collector's items by the Comm'r of Public Safety - they use the ATF C&R list)
ID	Y	Y	Y	Y	Y	Y	Y	
IL	N	N	N	N	Y	?	N	
IN	Y	Y	Y	N	Y	Y	N	
KS	N	N	Y	N	Y	Y	N	DEWAT machine guns are OK.
KY	Y	Y	Y	Y	Y	Y	?	
LA	Y	Y	Y	Y	Y	Y	Y	(mg' s require a permit to purchase - war relics only; mg' s, sr, si, sg and some expdd' s require a permit to purchase)
MA	Y	N	Y	N	N	Y	N	(license for mg' s required; 1998 law bans covert firearms (AOW' s), short shotguns)
MD	Y	Y	Y	Y	Y	Y	N	(mg' s must be registered)
ME	Y	Y	Y	Y	Y	Y	Y	
MI	Y	N	Y	Y	Y	Y	Y	(FFL needed to own machine guns; no incendiary expdd; C&R sr, sg only)
MN	Y	N	Y	Y	Y	Y	?	(C&R mg, sg only, registration required)
MO	Y	N	Y	Y	Y	N	N	(C&R mg, sr, sg only to non-FFL holders; FFL holders (including C&R) any mg, sr, sg)
MS	Y	Y	Y	Y	Y	Y	Y	(as of 7/1/00, silencers are legal, but must be registered with the state)
MT	Y	Y	Y	Y	Y	N	N	(state law banning silencers and requiring pistol cal. mg' s over .30 be registered with state repealed 4/23/99)
NE	Y	Y	Y	Y	Y	Y	N	
NC	Y	Y	Y	Y	Y	Y	Y	(sheriff' s permit required for mg' s; must be FFL holder (including C&R) for mg, si, sr, sg lbdd and expdd, or fall into another exception, see comments below)
ND	Y	Y	Y	Y	Y	Y	Y	(fed. "licensees" required to register all NFA weapons with state when possessed for "protection or sale")
NH	Y	Y	Y	Y	Y	Y	Y	
NJ	Y	N	N	N	Y	N	N	(mg requires discretionary and rarely issued permit from state court)
NM	Y	Y	Y	Y	Y	Y	Y	
NV	Y	Y	Y	Y	Y	Y	Y	
NY	N	N	N	N	Y	Y	N	(AOW smooth bore handguns are allowed, on a state pistol license)
OH	Y	Y	Y	Y	Y	Y	Y	
OK	Y	Y	Y	Y	Y	Y	Y	
OR	Y	Y	Y	Y	Y	Y	Y	(no incendiary expdd' s)
PA	Y	Y	Y	Y	Y	Y	N	
RI	N	N	N	N	Y	Y	?	
SC	Y	Y	Y	Y	Y	Y	?	In 2001, S.C. law was changed to permit all Federally registered items
SD	Y	Y	Y	Y	Y	Y	Y	
TN	Y	Y	Y	Y	Y	Y	?	
TX	Y	Y	Y	Y	Y	Y	Y	
UT	Y	Y	Y	Y	Y	Y	Y	
VA	Y	Y	Y	Y	Y	Y	Y	(state registration of all mg' s)
VT	Y	N	Y	Y	Y	Y	Y	
WA	N	Y	N	N	Y	Y	N	(silencer may not be used on a gun)
WI	Y	Y	Y	Y	Y	Y	Y	(permit required for expdd, no incendiary expdd' s; no pistol caliber mg' s w/o permit)
WV	Y	Y	Y	Y	Y	Y	?	
WY	Y	Y	Y	Y	Y	Y	?	

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A Note about NFA Weapons and California

As a general rule the definitions of NFA weapons, as regulated in California, track exactly the federal definitions, and categories.

Cal. Penal Code Sec. 12020(a) prohibits the possession of, among other things, AOW's (Any other Weapons) and short shotguns and short rifles. Subsection (b) lists exemptions to the application of (a).

Subsection (b)(7) of section 12020 exempts any "firearm or ammunition" lawfully possessed under federal law and on the C&R list. Subsection (b)(8), exempts ALL AOW's except "pen guns." Subsection b(2) is the exemption for the movie permit for short shotguns and short rifles with the procedure for its issuance found at section 12095.

In short, Californians can legally possess any AOW, except a pen gun, as long as it is possessed in compliance with federal law, and as long as it isn't classified as an assault weapon (SB 23 treats some semi auto pistols with dual pistol grips, AOWs under federal law, as prohibited assault weapons). Likewise they can possess any C&R listed short rifle or short shotgun.

Short shotguns and short rifles are defined at (c)(1) and (c)(2) respectively; the definitions are essentially the same as federal law. HOWEVER, unlike the feds, California courts have ruled that the length of a rifle with a folding stock is measured with the stock folded, not extended, as the feds do. So a gun that is not a short rifle under federal law may be one under California law. See People v. Rooney, 17 Cal. App. 4th 1207 (1 Dist. 1993).

Any firearm whose possession is otherwise prohibited by subsection (a) is ok, under b(7), if the gun is a C&R one and lawfully possessed under federal law. This would not provide an exemption to the requirement for a state permit for a machine gun, as 12020(a) does not regulate mg's. That is section 12220 (ban) and 12230 et seq. (permits). Rules for DD's are at section 12301 et seq. Silencers are regulated at section 12500 et seq. The state Department of Justice has discretionary authority to issue permits to possess DD's or machine guns, and does not issue them to collector-civilians. Civilians are totally prohibited from owning silencers.

#### NORTH CAROLINA LAW ON NFA WEAPONS

North Carolina regulates machine guns in two areas of their law, both as machine guns, and lumped in to a category of all NFA weapons (and some other, non-NFA weapons as well), which they call "weapons of mass death and destruction". The respective statutory sections are 14-409, and 14-288.8.

In order to be exempted from the general ban on possessing "weapons of mass death and destruction", found at section 14-288.8, you need to be either an FFL holder (including a collector's FFL, type 03), OR be one of apparently many "inventors, designers, ordnance consultants and researchers, chemists, physicists, and other persons lawfully engaged in pursuits designed to enlarge knowledge or to facilitate the creation, development, or manufacture of weapons of mass death and destruction intended for use in a manner consistent with the laws of United States and the State of North Carolina." While there are a few other exceptions, they do not apply to most people.

In addition to machine guns being regulated as weapons of mass death and destruction, section 14-409 of the North Carolina statutes regulates machine guns in particular. It says that it is

illegal to have one, unless you fall into one of several categories:

1. Banks, merchants and recognized businesses that have obtained a permit for the gun from their county sheriff;
2. persons in the U.S. military, while engaged in their duties;
3. persons in the state militia, while engaged in their duties;
4. peace officers, while engaged in their duties;
5. "the manufacture, use or possession of such weapons for scientific or experimental purposes when such manufacture, use or possession is lawful under federal laws and the weapon is registered with a federal agency, and when a permit to manufacture, use or possess the weapon is issued by the sheriff of the county in which the weapon is located";
6. persons who possessed such guns as a war souvenir before the law was passed may also keep them legally if they register them with their sheriff.

Since the law suggests you need the "permit" after you acquire the machine gun, not before, ATF should not require proof of a state permit that only applies after you take delivery to approve a Form 4. However, as of January, 2000, I understand that, after the N.C. A.G. got interested in this law and discussed it with NFA Branch, ATF is requiring proof of a permit before they will approve a machine gun transfer form, including a transfer to a dealer.

A permit from the sheriff of the county where the machine gun is located, in addition to the Form 4, is required to possess a machine gun legally, under the law. Arguably, possession of a machine gun under the permit exception requires a permit from any county where the machine gun is located, at any time, including moving the gun with your personal property from one residence to another, or even transporting it. See the email from the A.G.'s office, below, indicating in an informal opinion that no permit is needed to move it through counties from place of purchase to its place of storage, although a permit is needed for where it will be stored, and if it is to ever be stored in a new county, a permit from the sheriff of that county will be needed.

The permit would be for "scientific or experimental" purposes, unless you fall into one of the other categories. However, your sheriff may consider the approved Form 4 to be your "permit". Whether the D.A. would agree that a Form 4 signed by the sheriff is a "permit" is another issue, and whether collecting and fun shooting is possessing for scientific or experimental purposes is yet another issue. In addition, to comply with the "weapon of mass death and destruction" statute you need to either have an FFL, or have the gun for purposes listed as lawful in that statute.

Until the late 1980's North Carolina law defined any firearm which was set up to fire 31 or more rounds without reloading as a machine gun, regardless of whether it fired more than one shot with a single pull of the trigger. See State v. Lee, 877 N.C. 242 (1970), for a discussion of the prior statute. Lee possessed an apparently semi-automatic Universal M-1 carbine with a 30 round magazine, and was prosecuted, the prosecutor apparently counting 30 rounds in the magazine and one in the chamber to reach 31. This prior definition excluded some machine guns, since it was dependent solely on magazine capacity, and as shown by the Lee case, included some guns which are not usually considered machine guns. As a result, many

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persons have machine guns in N. C., for which they do not have a permit, and arguably do not qualify for a permit either - they don't have the gun for the extremely limited reasons in the law. A push has started (1/2000) to get section 14-409 repealed, or amended to permit any Federally registered machine gun.

James H. Jeffries III, a attorney who practices firearms law in North Carolina and in various federal courts, offers these additional thoughts:

You may wish to point out that (1) where two statutes inconsistently address the same subject matter (e. g., the collector's exception for weapons of mass death and destruction), the specific statute (the MG statute) will be deemed to prevail over the general; (2) the great bulk of MGs legally registered in NC occurred before 1989 when the statute defined a MG as anything with a 31-round capacity or greater, regardless of type of fire (it has now been amended to use the federal definition); (3) many of the 100 NC sheriffs have no knowledge of the law and are conditioned by our pistol permit scheme to sign gun permits; (4) the NC AG's office for a long time was equally ignorant; (5) BATF continued to believe that NC is a MG state because many sheriff's continue to (erroneously) sign Forms 4 and 5; (6) some of the urban sheriffs and the state AG are beginning to wake up; (7) we have a general firearms forfeiture statute which makes seizable any firearm used (possessed) in violation of the law.

I refrained for years from disseminating this info because of the potentially devastating effect on MG owners, but the word is now out. I have advised NC clients for several years that purchasing a MG in NC is a risky proposition and that only legislation can change the situation.

In addition, a correspondent sent me this email he received from the N. C. Attorney General's office on the permit requirement. While not formal guidance from that office, it ay help pooint N. C. residents in the right direction:

Subject: Fw: Response to Machine Gun Questions  
Date: Tue, 14 Dec 1999 21:18:02 -0500  
From: "Victor Au" <vicdoc@earthlink.net>  
To: <jbardwell@uswest.net>

Mr. Bardwell,

I have responses from the NC AGs office regarding the transportation of MGs in NC, as well as the need for a permit where the MG (the machine gun owner) is "located". It would appear that to transport the gun from one point to another across county lines does not require permits from each County Sheriff. However, when you move, you need a permit from the Sheriff where you move to, as you have pointed out in previous posts. Thanks for your efforts on behalf of NFA firearms owners.

Victor Au.

----- Original Message -----

From: Criminal Div. NC Dept of Justice  
<CRIMDIV@MAIL.JUS.STATE.NC.US>

To: <vicdoc@nr.infi.net>

Sent: Tuesday, December 14, 1999 7:01 PM

Subject: Response to Machine Gun Questions

> Dear Mr. Au:

>

> The Attorney General has received your inquiry via e-mail, and I am happy to respond. As I understand your questions, you are

trying to resolve two (2) issues. First, you want to know if a person lawfully entitled to possess a machine gun has to obtain a permit from the sheriff of each county through which the machine gun must pass in order to be transported from the place of purchase to the ultimate destination. Second, you have asked whether or not a lawful machine gun owner has to obtain a permit from the sheriff of a county to which the machine gun owner has moved.

>

> The relevant statute for purposes of evaluating the lawfulness of the possession of a machine gun is N.C. Gen. Stat. section 14-409. If you are going to attempt to possess a machine gun, I commend this statute to you for your review. This statute also provides answers to your two (2) questions.

>

> N.C. Gen. Stat. section 14-409 specifies that the statute's prohibitions on the possession of a machine gun do not apply to citizens who have properly acquired a permit to possess such a weapon. This statutory language speaks of the term "permit" in a singular manner. Thus, if a person properly possesses a permit for the possession of a machine gun pursuant to the provisions of N.C. Gen. Stat. section 14-409, that person can lawfully transport the machine gun from the place of purchase to the weapon's ultimate destination.

>

> An analysis of the language found in N.C. Gen. Stat. section 14-409 is also instructive for purposes of answering your second question. This statute requires a permit for the possession of a machine gun to be obtained from the sheriff of the county where the machine gun (machine gun owner) is located. Thus, if the lawful owner of a machine gun takes the weapon to a different county, a new permit will have to be obtained from the sheriff of the county where the weapon is currently located.

>

> I hope this information is helpful to you. If this response to your inquiry is not satisfactory, please feel free to contact me by telephone at (919) 716-6725.

>

> Sincerely,  
> Jeffrey C. Sugg  
> Associate Attorney General  
> Law Enforcement Liaison Section

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## ATF Forms and Descriptions, by Category and Number

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### ATF Firearms Forms (in Numerical Order by Form)

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[Note: My thanks to James O. Bardwell for corrections.]

Form	Title
1	(5320.1) - Application to Make and Register a Firearm
2	(5320.2) - Notice of Firearms Manufactured or Imported
3	(5320.3) - Application for Tax-Exempt Transfer of Firearm and

- 4 (5320. 4 ) - Application to Special (Occupational) Taxpayer  
Registration to Special (Occupational) Taxpayer  
Firearm
- 5 (5320. 5 ) - Application for Tax Exempt Transfer and Registration of  
a Firearm
- 6 (5330. 3A) - (Part I) Application and Permit for Importation of  
Firearms, Ammunition and Implements of War: Not for Use  
by Members of the United States Armed Forces
- 6 (5330. 3B) - (Part II) Application and Permit for Importation of  
Firearms (Military)
- 6A (5330. 3C) - Release and Receipt of Imported Firearms, Ammunition and  
Implements of War
- 7 (5310. 12) - Application for License
- 7CR (5310. 16) - Application for License (Collector of Curios and Relics)
- 8 (5310. 11) - Federal Firearms License
- 9 (5320. 9 ) - Application and Permit for Permanent Exportation of  
Firearms
- 10 (5320. 10) - Application for Registration of Firearms Acquired by  
Certain Governmental Entities
- 11 - [OBSOLETE--Used to be return for SOT. See 5630. 7.]
- 3310. 4 - Report of Multiple Sale or Other Disposition of Pistols  
and Revolvers
- 3310. 6 - Interstate Firearms Shipment Report of Theft/Loss
- 3310. 11 - FFL Theft/Loss Report
- 3310. 11A - FFL Theft/Loss Report (Continuation)
- 4467 - Registration of Certain Firearms During November 1968
- 4473 (5300. 9) - (Part I) Firearms Transaction Record--Over the Counter
- 4473 (5300. 9) - (Part II) Firearms Transaction Record--Non-over the  
Counter
- 4473 (5300. 24)- (Part I) (LV) Firearms Transaction Record Part I Low  
Volume--Over the Counter
- 4473 (5300. 24)- (Part II) (LV) Firearms Transaction Record Part II Low  
Volume--Non-over the Counter
- 5300. 34 - [OBSOLETE.] Questionnaire for Responsible Persons
- 5300. 35 - Statement of Intent to Obtain a Handgun(s)
- 5300. 36 - Notification of Intent to Apply for a Federal Firearms  
License
- 5300. 37 - [OBSOLETE.] Certification of Compliance with State and  
Local Law
- 5300. 38 - [Replaces 5300. 34 and 5300. 37.]
- 5320. 20 - Application to Transport Interstate or to Temporarily  
Export Certain National Firearms Act (NFA) Firearms
- 5630. 6A - Special Tax Stamp
- 5630. 7 - Special Tax Registration and Return: National Firearms  
Act (NFA)

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National Firearms Act

Form	Title
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1 (5320. 1 )	- Application to Make and Register a Firearm
2 (5320. 2 )	- Notice of Firearms Manufactured or Imported
3 (5320. 3 )	- Application for Tax-Exempt Transfer of Firearm and

FAQ\_NFA.txt

- Registration to Special (Occupational) Taxpayer
- 4 (5320.4) - Application for Tax Paid Transfer and Registration of Firearm
  - 5 (5320.5) - Application for Tax Exempt Transfer and Registration of a Firearm
  - 9 (5320.9) - Application and Permit for Permanent Exportation of Firearms
  - 10 (5320.10) - Application for Registration of Firearms Acquired by Certain Governmental Entities
  - 11 - [OBSOLETE--Used to be return for SOT. See 5630.7]
  - 4467 - Registration of Certain Firearms During November 1968
  - 5320.20 - Application to Transport Interstate or to Temporarily Export Certain National Firearms Act (NFA) Firearms
  - 5630.6A - Special Tax Stamp
  - 5630.7 - Special Tax Registration and Return: National Firearms Act (NFA)

Title I Transfers

- | Form           | Title   |
|----------------|---|
| 3310.4         | - Report of Multiple Sale or Other Disposition of Pistols and Revolvers               |
| 4473 (5300.9)  | - (Part I) Firearms Transaction Record--Over the Counter                              |
| 4473 (5300.9)  | - (Part II) Firearms Transaction Record--Non-over the Counter                         |
| 4473 (5300.24) | - (Part I) (LV) Firearms Transaction Record Part I Low Volume--Over the Counter       |
| 4473 (5300.24) | - (Part II) (LV) Firearms Transaction Record Part II Low Volume--Non-over the Counter |
| 5300.35        | - Statement of Intent to Obtain a Handgun(s)  |

Federal Firearms Licensees

- | Form          | Title  |
|---------------|--|
| 7 (5310.12)   | - Application for License  |
| 7CR (5310.16) | - Application for License (Collector of Curios and Relics)         |
| 8 (5310.11)   | - Federal Firearms License   |
| 3310.6        | - Interstate Firearms Shipment Report of Theft/Loss                |
| 3310.11       | - FFL Theft/Loss Report  |
| 3310.11A      | - FFL Theft/Loss Report (Continuation)                             |
| 5300.34       | - [OBSOLETE.] Questionnaire for Responsible Persons                |
| 5300.36       | - Notification of Intent to Apply for a Federal Firearms License   |
| 5300.37       | - [OBSOLETE.] Certification of Compliance with State and Local Law |
| 5300.38       | - [Replaces 5300.34 and 5300.37.]                                  |

Export/Import

- | Form         | Title   |
|--------------|---|
| 6 (5330.3A)  | - (Part I) Application and Permit for Importation of Firearms, Ammunition and Implements of War: Not for Use by Members of the United States Armed Forces |
| 6 (5330.3B)  | - (Part II) Application and Permit for Importation of Firearms (Military)   |
| 6A (5330.3C) | - Release and Receipt of Imported Firearms, Ammunition and Implements of War  |
| 9 (5320.9)   | - Application and Permit for Permanent Exportation of Firearms [NFA]  |

5320.20 - Application to Transport Interstate or to Temporarily  
Export Certain National Firearms Act (NFA) Firearms

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Federal Firearms Licenses and Special (Occupational) Tax Stamps  
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Federal Firearms Licenses: Types, Fees, and Descriptions

All fees are for a 3-year license.

Type FeeDescription

- 
- 01 \$200/ - Dealer, Including Pawnbroker, in Firearms Other than  
\$90 Destructive Devices  
[Note: \$200 for initial license; \$90 for subsequent  
renewals.]
  - 03 \$30 - Collector of Curios and Relics
  - 06 \$30 - Manufacturer of Ammunition for Firearms Other than  
Ammunition for Destructive Devices or Armor Piercing  
Ammunition
  - 07 \$150 - Manufacturer of Firearms other than Destructive Devices
  - 08 \$150 - Importer of Firearms other than Destructive Devices or  
Ammunition for Firearms other than Destructive Devices, or  
Ammunition other than Armor Piercing Ammunition
  - 09 \$3000 - Dealer in Destructive Devices
  - 10 \$3000 - Manufacturer of Destructive Devices, Ammunition for  
Destructive Devices or Armor Piercing Ammunition
  - 11 \$3000 - Importer of Destructive Devices, Ammunition for  
Destructive Devices or Armor Piercing Ammunition

Special (Occupational) Taxes: Classes, Taxes, and Descriptions

All taxes are for a 1-year tax period beginning July 1.

Class TaxDescription

- 
- 1 \$1000 - Importer of Firearms
  - \$ 500 - Importer of Firearms (Reduced) [\$500,000 or less]
  - 2 \$1000 - Manufacturer of Firearms
  - \$ 500 - Manufacturer of Firearms (Reduced) [\$500,000 or less]
  - 3 \$ 500 - Dealer in Firearms

Table of Required FFLs and SOT Stamps

Required federal firearms license types and special (occupational) tax classes related to collecting, dealing, manufacturing, and importing firearms. A manufacturer may also operate as a dealer without payment of additional fees. An importer may also operate as a dealer without payment of additional fees. A collector's license is not required, but does allow a licensed collector to receive curio and relic (C&R) firearms directly interstate.

Collector		Dealer		Manufacturer		Importer	
FFL	SOT	FFL	SOT	FFL	SOT	FFL	SOT
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		FAQ_NFA.txt						
Title I firearms	(03)	-	01	-	07	-	08	-
NFA firearms except DDs	(03)	-	01	3	07	2	08	1
Destructive Devices	(03)	-	09	3	10	2	11	1
Ammunition	-	-	-	-	06	-	08	-
Armor piercing ammunition	-	-	01	-	10	-	11	-
Ammunition for DDs	-	-	01	-	10	-	11	-

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End- of- Document