

CHAPTER 1. INTRODUCTION

Section 1.1 History of the National Firearms Act (NFA)

1.1.1 The NFA of 1934. The NFA was originally enacted in 1934.¹ Similar to the current NFA, the original Act imposed a tax on the making and transfer of firearms defined by the Act, as well as a special (occupational) tax on persons and entities engaged in the business of importing, manufacturing, and dealing in NFA firearms. The law also required the registration of all NFA firearms with the Secretary of the Treasury. Firearms subject to the 1934 Act included shotguns and rifles having barrels less than 18 inches in length, certain firearms described as “any other weapons,” machineguns, and firearm mufflers and silencers.

While the NFA was enacted by Congress as an exercise of its authority to tax, the NFA had an underlying purpose unrelated to revenue collection. As the legislative history of the law discloses, its underlying purpose was to curtail, if not prohibit, transactions in NFA firearms. Congress found these firearms to pose a significant crime problem because of their frequent use in crime, particularly the gangland crimes of that era such as the St. Valentine’s Day Massacre. The \$200 making and transfer taxes on most NFA firearms were considered quite severe and adequate to carry out Congress’ purpose to discourage or eliminate transactions in these firearms. The \$200 tax has not changed since 1934.

As structured in 1934, the NFA imposed a duty on persons transferring NFA firearms, as well as mere possessors of unregistered firearms, to register them with the Secretary of the Treasury. If the possessor of an unregistered firearm applied to register the firearm as required by the NFA, the Treasury Department could supply information to State authorities about the registrant’s possession of the firearm. State authorities could then use the information to prosecute the person whose possession violated State laws. For these reasons, the Supreme Court in 1968 held in the *Haynes* case that a person prosecuted for possessing an unregistered NFA firearm had a valid defense to the prosecution - the registration requirement imposed on the possessor of an unregistered firearm violated the possessor’s privilege from self-incrimination under the Fifth Amendment of the U.S. Constitution.² The *Haynes* decision made the 1934 Act virtually unenforceable.

1.1.2 Title II of the Gun Control Act of 1968. Title II amended the NFA to cure the constitutional flaw pointed out in *Haynes*.³ First, the requirement for possessors of unregistered firearms to register was removed. Indeed, under the amended law, there is no mechanism for a possessor to register an unregistered NFA firearm already possessed by the person. Second, a provision was added to the law prohibiting the use of any information from an NFA application or registration as evidence against the person in a criminal proceeding with respect to a violation of law occurring prior to or concurrently with the filing of the application or registration.⁴ In 1971, the Supreme Court reexamined the NFA in the *Freed* case and found that the 1968 amendments cured the constitutional defect in the original NFA.⁵

Title II also amended the NFA definitions of “firearm” by adding “destructive devices” and expanding the definition of “machinegun.”

¹ National Firearms Act, Public Law 474, approved June 26, 1934.

² *Haynes v. U.S.*, 390 U.S. 85 (1968).

³ Gun Control Act of 1968, Public Law 90-618, approved October 22, 1968.

⁴ 26 U.S.C. 5848

⁵ *U.S. v. Freed*, 401 U.S. 601 (1971)

1.1.3 Firearm Owners' Protection Act. In 1986, this Act amended the NFA definition of "silencer" by adding combinations of parts for silencers and any part intended for use in the assembly or fabrication of a silencer.⁶ The Act also amended the GCA to prohibit the transfer or possession of machineguns.⁷ Exceptions were made for transfers of machineguns to, or possession of machineguns by, government agencies, and those lawfully possessed before the effective date of the prohibition, May 19, 1986.

Section 1.2 Meaning of terms. Certain terms and abbreviations used in this book are defined as follows:

1.2.1 "AECA" means the Arms Export Control Act, 22 U.S.C. 2778.

1.2.2 "ATF" means the Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

1.2.3 "ATF Ruling" means a formal ruling published by ATF stating its interpretation of the law and regulations as applied to a specific set of facts.

1.2.4 "CFR" means the Code of Federal Regulations in which Federal firearms regulations are published.

1.2.5 "DIO" means an ATF Director of Industry Operations responsible for regulating the firearms industry within an ATF field division.

1.2.6 "FFL" means a Federal firearms licensee, person or entity having a license to import, manufacture, or deal in firearms under the GCA.

1.2.7 "FTB" means ATF's Firearms Technology Branch.

1.2.8 "GCA" means the Gun Control Act of 1968, 18 U.S.C. Chapter 44.

1.2.9 "NFA" means the National Firearms Act, 26 U.S.C. Chapter 53.

1.2.10 "NFRTR" means the National Firearms Registration and Transfer Record containing the registration of NFA firearms.

1.2.11 "SOT" means a special occupational taxpayer, a person or entity qualified to import, manufacture, or deal in NFA firearms by having paid the special (occupational) tax to do so under the NFA.

1.2.12 "U.S.C." means the United States Code in which Federal firearms laws are codified.

⁶ Firearm Owners' Protection Act, Public Law 99-308, approved May 19, 1986.

⁷ 18 U.S.C. 922(o)

Section 1.3 Administration and enforcement of Federal firearms laws

Until January 24, 2003, authority to administer and enforce Federal firearms laws was the responsibility of the Bureau of ATF within the U.S. Department of the Treasury. As a result of enactment of Section 1111 of the Homeland Security Act of 2002, ATF and its firearms authorities were transferred to the U.S. Department of Justice, effective January 24, 2003. ATF's name was also changed to the Bureau of Alcohol, Tobacco, Firearms and Explosives. ATF continues to have the authority to administer and enforce Federal firearms laws. The Department of State retained its authority over the enforcement of the export provisions of the AECA that relate to firearms.

Section 1.4 What are regulations and rulings?

1.4.1 Regulations. Regulations interpret the statutes (the law) and explain the procedures for compliance. The Administrative Procedure Act (APA) generally requires agencies to publish proposed regulations in the Federal Register as a notice of proposed rulemaking, giving the public the opportunity to comment on the proposals before they may be issued as final regulations. The APA provides no specific comment period for proposed rules under the NFA.⁸ As specifically provided for in the GCA, GCA regulations require a comment period of at least 90 days.⁹ An exception in the APA eliminates the need to provide any notice or comment period with respect to AECA regulations. Regulations have the force and effect of law. Courts will uphold a regulation if they find reasonable legal basis for it and if it generally is within the scope of the statute.

1.4.2 Rulings. ATF publishes rulings in its periodic bulletins and posts them on the ATF website. These contain ATF's interpretation of the law and regulations as they pertain to a particular fact situation. Rulings do not have the force and effect of law but may be cited as precedent with respect to substantially similar fact situations. Courts will recognize and apply such rulings if they are determined to correctly interpret the law and regulations.

Section 1.5 Other ATF publications

1.5.1 ATF's internet website. This is the best source for up to date information on ATF's firearms administration and enforcement activities, including amendments to the law, rulings, regulations, and open letters to firearms industry members. The website address is <http://www.atf.gov>.

1.5.2 ATF P 5300.4. This is ATF's publication, "Federal Firearms Regulations Reference Guide." ATF supplies the publication to all FFLs and SOTs. It contains all Federal firearms laws and regulations (except those pertaining to the firearms and ammunition excise tax and State Department export regulations), ATF firearms rulings, articles on various firearms issues, and questions and answers. The publication can be found on ATF's website, <http://www.atf.gov>, and downloaded.

⁸ 5 U.S.C. 552

⁹ 18 U.S.C. 926(b)

Section 1.6 ATF points of contact

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Section 1.7 ATF Forms

ATF forms may be ordered from ATF's Distribution Center by use of the Center's order form on ATF's website at <http://www.atf.gov>. After entering the website, click on "Forms." They may also be obtained by calling the Center at (703) 455-7801 or writing the Center at P.O. Box 5950, Springfield, VA 22150-5950.