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The National Firearms Act and P.L. 119-21: Issues for Congress

The [National Firearms Act of 1934](#) (NFA) established registration and tax requirements for specified items [defined](#) as “firearms” by the statute. Covered weapons include, among others, short-barreled shotguns and rifles, machineguns, silencers, destructive devices, and “any other weapon” that is “capable of being concealed on the person from which a shot can be discharged through the energy of an explosive.”

The NFA sets tax rates on the [transfer](#) or [making](#) of any covered firearm, with limited carveouts. In 1934, Congress [fixed](#) the stamp price for the transfer of listed weapons at \$200—the [average cost of a machinegun at that time](#)—to “discourage or eliminate transactions in these firearms.” The NFA was amended several times, including to [expand](#) the category of regulated weapons, [set](#) the transfer tax rate for firearms classified as “any other weapon” to \$5 for each firearm transferred, and [establish](#) a \$200 tax rate for each covered firearm made. In addition, the NFA provides a [special occupational tax](#) on most persons and entities engaged in the business of importing, manufacturing, or dealing in NFA weapons. Individuals who pay this tax are known as special occupational taxpayers (SOTs).

The NFA [requires](#) a background check of the purchaser of an NFA-regulated weapon prior to its transfer, and [registration](#) of all NFA weapons in a central registry. In most cases, upon payment of the transfer tax, [the purchaser submits](#) a fingerprint card and undergoes a [background check](#). After that, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) [processes](#) the purchaser’s application and, if approved, [issues](#) a tax stamp on the application that is returned to the transferor. The purchaser must receive the approved application with the tax stamp before taking possession of the weapon. Possession of an unregistered NFA firearm is a [criminal offense](#).

Effective January 1, 2026, [P.L. 119-21](#), commonly known as the One Big Beautiful Bill Act, will set a \$0 tax rate for the making or transfer of all NFA firearms that are not machineguns or destructive devices. P.L. 119-21 does not address other NFA requirements, including the special occupational tax or the registration of covered firearms.

NFA Requirements

Per [26 U.S.C. §5845](#), the NFA covers the following weapons:

- a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length;
- a rifle with a barrel or barrels of less than 16 inches in length;

- 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;
- “any other weapon,” [defined](#) to include, among other weapons, one that is “capable of being concealed on the person from which a shot can be discharged through the energy of an explosive”;
- a “machinegun,” [defined](#) as “any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger,” along with the frame or receiver of such weapon or a combination of parts from which a machinegun may be assembled or that are intended for use in converting a weapon into a machinegun;
- a “silencer,” as defined in [18 U.S.C. §921](#) to include “any device for silencing, muffling, or diminishing the report of a portable firearm,” including combinations of parts intended for use in assembling said device; and
- a “destructive device,” [defined](#) to include bombs, grenades, rockets, mines, and other listed items.

Even prior to enactment of P.L. 119-21, some transactions were exempted from NFA tax requirements, including making or transferring firearms for government [use](#).

To deal in NFA firearms, an individual is required to be a federal firearms license (FFL) holder under the Gun Control Act (GCA) and a SOT under the NFA, with limited exceptions. Individuals that hold an FFL and are SOTs are known as “[qualified manufacturers](#)” and are exempt from the making tax. Transfers between SOTs are [exempt](#) from the transfer tax. Making and transfers of NFA weapons must be [recorded](#) and [approved](#) by ATF, even if tax exempt.

Before taking possession of an NFA firearm of any type, most purchasers must complete and receive an approved [ATF Form 4](#), which requires a background and identity check, and serves to register the NFA firearm with a central registry—known as the National Firearm Registration and Transfer Record (NFRTR). [The NFRTR includes](#) (1) the identification of the firearm, (2) the firearm’s date of registration, and (3) the identification and address of the person entitled to possess the firearm.

NFA background checks are almost identical to background checks conducted [under the GCA](#) because the [categories of individuals prohibited](#) from possessing firearms under the GCA apply to NFA firearms. Those seeking to possess an NFA firearm must submit photographs and fingerprints to

ATF to [verify](#) their identity and undergo a background check using the [National Instant Criminal Background Check System \(NICS\)](#).

P.L. 119-21 and the NFA

[P.L. 119-21](#) removed the making and transfer taxes on all NFA firearms that are not machineguns or destructive devices. It did not repeal the NFA or its implementing regulations, and the other legal requirements of the NFA remain in place. The special occupational tax, requirements for approvals prior to making or transferring firearms, requirements for a purchaser to undergo a background check and have the firearm registered to them in the NFRTR, along with the criminal penalties for possessing an unregistered NFA firearm, all remain in place.

Overview of the Second Amendment

Regulation of NFA firearms potentially implicates the [Second Amendment](#). In 2008, the Supreme Court in *District of Columbia v. Heller* [held](#) that the Second Amendment protects an individual right to possess firearms for certain purposes, including for self-defense in the home. In 2022, the Court in *New York State Rifle & Pistol Association v. Bruen* [ruled](#) that the Second Amendment's protections extend beyond the home, generally, to places of confrontation. The *Bruen* Court also announced [a standard](#) for assessing Second Amendment challenges to firearm laws: when the plain text of the Second Amendment covers the regulated conduct, the Constitution “presumptively protects” it. To regulate that conduct, the government must [demonstrate](#) that the measure is “consistent with the Nation’s historical tradition of firearm regulation.” In 2024, the Court in *United States v. Rahimi* [clarified](#) that, under *Bruen*, a court must assess whether a challenged law is “relevantly similar” to laws from the country’s regulatory tradition, adding that “why and how” the challenged law burdens a Second Amendment right are “central” considerations.

NFA Lawsuits

Following the Supreme Court’s decision in *Bruen* and Congress’s enactment of P.L. 119-21, constitutional challenges have been brought against the NFA. The plaintiffs in two legal challenges argue that with the enactment of P.L. 119-21, the purported constitutional basis for the NFA is now lacking with respect to untaxed firearms, and that the NFA regulation of those firearms also violates the Second Amendment.

In the first case, seven organizations along with an [individual](#) prospective firearms purchaser [filed](#) a lawsuit in a federal district court on July 4, 2025, [against](#) the ATF, the Attorney General of the United States, and the Acting Director of the ATF. On August 8, 2025, the plaintiffs [filed](#) an amended complaint, adding [15 states](#) to the list of plaintiffs. In their complaint, the plaintiffs [point](#) out that P.L. 119-21 eliminated the transfer and making taxes for silencers, short-barreled rifles, and short-barreled shotguns. The plaintiffs [claim](#), however, that the ATF continues to enforce the NFA’s registration provisions as to these untaxed firearms. According to the plaintiffs, Congress [relied](#) on its [Taxing Clause](#) power to enact the NFA. Because [P.L. 119-21](#) eliminates this particular tax and any

revenue that could be generated therefrom, the plaintiffs contend that Congress can no longer predicate the NFA’s registration requirements on the taxing power.

The plaintiffs also maintain that the NFA requirements violate the Second Amendment with respect to many covered weapons. The plaintiffs [argue that](#) silencers, short-barreled rifles, and short-barreled shotguns are all “arms” covered by the Second Amendment, and as a consequence any regulatory requirements are “presumptively unconstitutional.” Moreover, the plaintiffs [state](#) that “[n]o historical tradition supports the regulation of these firearms.” The plaintiffs therefore [seek a declaratory judgment](#) from the district court that the NFA and any corresponding regulations are (1) an unconstitutional exercise of Congress’s authority insofar as the untaxed firearms are concerned and (2) unconstitutional under the Second Amendment. In addition, the plaintiffs [request](#) an order enjoining the defendants from enforcing the NFA and the regulations regarding untaxed firearms.

On August 1, 2025, two individuals and five entities, including the National Rifle Association of America, [filed a lawsuit](#) in federal district court against the same defendants, raising similar arguments that the NFA and associated regulations are not valid exercises of the taxing power and that these laws violate the Second Amendment. In their complaint, these plaintiffs [contend](#) that the only purported constitutional authority for these laws lies in the taxing power, and there is no alternative constitutional basis, such as the [Commerce Clause](#), for the laws.

These two cases are in early stages and, as of the date of this In Focus, the government has not yet filed its response.

Congressional Considerations

While the outcome of legal challenges to the NFA remains to be seen, Congress could, if it deemed it warranted, take action to bolster the NFA against constitutional challenge.

To the extent that constitutional challenges allege that the NFA is not a valid exercise of Congress’s taxing power, legislation might be considered to add some dollar amount to the tax on covered NFA firearms. Alternatively, Congress might expressly identify a separate constitutional basis for the NFA, such as a covered firearm’s connection to interstate commerce, which already serves as a primary basis for [other](#) firearms laws. Congress could also legislate to remove the NFA’s registration requirements or eliminate any funding for their enforcement.

Congress’s ability to legislatively address the Second Amendment component of the lawsuits is unclear at this time, as a court’s analysis of the Second Amendment question will depend on the arguments put forward by the parties. Members of Congress could, however, submit a friend of the court brief in either or both cases to make arguments related to the *Bruen* framework.

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