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Certain National Firearms Act Requirements Will Not Be Administratively Enforced Following Court Ruling That These Provisions Exceed Congress's Constitutional Powers

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The National Firearms Act (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 prospective 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," set a $0 tax rate for the making or transfer of all NFA firearms that are not machineguns or destructive devices. The law 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.

Prior to the 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, with limited exceptions, to be a federal firearms license (FFL) holder under the Gun Control Act (GCA). 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 the entity is 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 the ATF to

verify their identity and undergo a background check under 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. The other statutory legal requirements of the NFA—including the special occupational tax, requirements for approvals prior to making or transferring firearms, and 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.

Federal Court Ruling

Following Congress's enactment of P.L. 119-21, constitutional challenges have been brought against the NFA. As most relevant here, in *Silencer Shop Foundation v. ATF*, the plaintiffs ("a coalition of individuals, businesses, associations, and states") claim that—although P.L. 119-21 eliminated the transfer and making taxes for four categories of firearms, including silencers, short-barreled rifles, the NFA category of "any other weapon," and short-barreled shotguns—ATF had continued 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 eliminated this corresponding 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.

On August 5, 2026, the federal district court, sitting in the Northern District of Texas, agreed with the plaintiffs' facial challenge, holding that Congress cannot base the untaxed regulatory provisions on its taxing power. Citing circuit precedent, the district court reasoned that, "without a tax that raises at least some revenue, Congress cannot enact a statute under its taxing power." "Put differently," the court added, the challenged provisions "are no longer obviously supportable as in aid of a revenue purpose—the essential requirement for any taxing-power statute."

The Supreme Court has made clear that every law enacted by Congress must be traced to a power in the Constitution. The district court examined whether other constitutional powers support the untaxed provisions of the NFA. The court determined that these provisions cannot be predicated on the Necessary and Proper Clause, because this clause effectively expands the scope of another applicable enumerated power but does not serve as a stand-alone source of constitutional authority. According to the court, the clause cannot be invoked where the provisions are not independently sustained on another constitutional basis. The court cautioned that the government's reading of the clause would raise federalism concerns, as the clause does not give the "federal government all-encompassing authority to regulate matters that lack a 'plain connection' to an enumerated power." The government also contended that the challenged provisions would be useful in the collection of the special occupational tax; however, the court wrote that Congress intended for the challenged provisions to support the "transfer and making taxes—and those taxes alone." The court rejected the Commerce Clause as a constitutional foundation for the challenged provisions, explaining that the text and structure of the NFA suggest that Congress relied on the taxing power—not the Commerce Clause—in passing the NFA. As the court found the untaxed provisions to be an invalid use of Congress's constitutional powers, the court declined to address the plaintiffs' claim that the untaxed provisions are inconsistent with the Second Amendment.

ATF Open Letter

On October 9, 2026, the Director of the ATF issued an open letter to FFLs and the public following the *Silencer Shop Foundation* decision. In the letter, the Director, citing the Department's interest in uniformity in enforcement, stated that

> [E]ffective October 9, 2026, ATF will no longer require individuals to seek ATF approval under the NFA before making or transferring short-barreled rifles, short-barreled shotguns, silencers, and "any other weapon[s]" as defined in 26 U.S.C. § 5845(e). ATF will also no longer require such items to be registered in the National Firearms Registration and Transfer Record.

Congressional Considerations

Because NFA-regulated firearms are covered under the provisions of the Gun Control Act, the invalidation of these provisions would likely result in the firearms being federally regulated in the same way as other firearms, without the tracking and registration requirements of NFA-regulated firearms and associated penalties. Congress could, if it so wished, take action to bolster these provisions of the NFA against constitutional challenges. For example, 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, particularly as the court in *Silencer Shop Foundation* declined to reach the Second Amendment claim.

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