

CHAPTER 6. MAKING NFA FIREARMS BY NONLICENSEE

Section 6.1 Requirements for making NFA firearms. Persons not otherwise prohibited from possessing firearms may submit an application to make an NFA firearm, other than a machinegun.⁹³ The application process requires submission of ATF Form 1, Application to Make and Register a Firearm, in duplicate, along with FBI FD-258, Fingerprint Card, in duplicate, and payment of the \$200 making tax. Appendix C contains a copy of Form 1.

Section 6.2 Preparation of Form 1. Every person (other than a licensed manufacturer who has also paid the required SOT to manufacture NFA weapons) must complete the Form 1.⁹⁴ Two identical copies of the application must be prepared. All entries must be made in ink. All required signatures must be original and entered in ink. Photocopies or other facsimile or carbon copy signatures are not acceptable. Under no circumstances will a form filled in by use of a lead pencil be accepted. All changes made on the form must be initialed and dated by the applicant.

6.2.1 Description of firearm. If an existing firearm or firearm receiver is being used, the name and location of the original manufacturer of the weapon should be entered in Block 4(a). If the applicant is making a completely new firearm, the applicant's name and location should be entered in Block 4(a). The type of firearm being made, i.e., short barrel rifle, short barrel shotgun, any other weapon, silencer or destructive device, is to be entered in Block 4(b). The caliber or gauge of the firearm is to be entered in Block 4(c). If a model designation has been assigned to the firearm, that designation is to be placed in Block 4(d). If the weapon has no model designation, enter "none" in Block 4(d). The length of the barrel is to be entered, in inches, in Block 4(e) and the overall length of the firearm is to be entered, in inches, in Block 4(f).

All NFA firearms must be identified by a serial number and other specified markings⁹⁵. If an existing firearm is being used in the making of the NFA weapon, and that firearm is serialized, the existing serial number should be used (unless it duplicates a serial number already used by the maker on Form 1) and entered in Block 4(g). If the weapon is of new manufacture, the applicant must assign a unique serial number and enter it in Block 4(g). For example, a unique serial number could be composed of at least 4 digits preceded by the initials of the maker. *NOTE:* alpha characters, e.g., a name, will not be accepted as a serial number. If a name is to be used, there must be at least one numeric character in addition to the alpha characters.

The serial number must be engraved or stamped on the receiver of the firearm and the caliber, model, and identification of the maker must be engraved on the barrel or frame or receiver of the weapon.⁹⁶ The marking and identification requirements for a maker are the same as for a manufacturer. Refer to section 7.4 for a detailed discussion of the requirements.

⁹³ 18 U.S.C. 922(o)

⁹⁴ 26 U.S.C. 5822

⁹⁵ 27 CFR 479.102

⁹⁶ Ibid

6.2.2 Photograph of applicant. An unmounted photograph of the applicant approximately 2 x 2 inches and taken within the past year must be affixed to the indicated space on each copy of the application. The photograph must be original. Photocopies of photographs are not accepted.

6.2.3 FBI Form FD-258, fingerprint card. A completed Form FD-258 containing the fingerprints of the applicant must be submitted in duplicate with the Form 1. The fingerprints should be taken by someone qualified to do so and must be clear, unsmudged and classifiable. The person taking the fingerprints must also enter the identification data regarding the applicant and must complete the fingerprint cards by signing as the person taking the fingerprints. *NOTE:* If the fingerprint cards are not properly prepared or the fingerprints are not legible, the application cannot be acted upon. If this situation occurs, ATF will contact the applicant for a new set of fingerprint cards.

6.2.4 Law enforcement certification. As provided by the regulations, the law enforcement certification located on the back of Form 1 must be completed and signed by the local chief of police or county sheriff, the head of the State police, the State or local district attorney or prosecutor, “or such other person whose certificate may in a particular case be acceptable to the Director.”⁹⁷ Examples of certifying officials, other than those specifically mentioned in the regulations, who have been found to be acceptable are State attorneys general, heads of district State police offices and certain State court judges. Judges’ certifications have been accepted if the judges preside over courts of general jurisdiction having original jurisdiction in all civil and criminal cases or the authority to conduct criminal jury trials in felony cases. Generally, State magistrates and constables do not have such authority. *NOTE: no official’s certification will be accepted unless the official has jurisdiction over the place where the applicant resides.* The signature on each copy of the certification must be an original signature in ink. *NOTE: if the Form 1 being submitted is to reactivate a properly registered unserviceable firearm, the law enforcement certification is not required.* See Section 6.6.

6.2.4.1 What if the proposed maker is unable to find any official in his or her jurisdiction willing to sign the law enforcement certification? The inability to find any official to sign the certification will not excuse the requirement for the certification. In that event, the proposed maker will not be able to obtain an approved Form 1 to lawfully make an NFA firearm.

Section 6.3 Submission of Form 1. The completed Form 1, in duplicate, with fingerprint cards, photographs of the applicant, and payment of the \$200 making tax should be mailed to:

National Firearms Act Branch
Bureau of Alcohol, Tobacco, Firearms and Explosives
244 Needy Road
Martinsburg, West Virginia 25405

Payment of the making tax is to be in the form of a check or money order payable to the Bureau of Alcohol, Tobacco, Firearms and Explosives.

6.3.1 State permit or license for possession of an NFA weapon. If the applicant’s state of residence

⁹⁷ 27 CFR 479.63

requires a permit or license for the possession of an NFA weapon before the applicant takes possession, a certified copy of the license or permit should be submitted with the Form 1 application.

Section 6.4 Approval of Form 1. Non-FFL/SOT's may seek approval to manufacture an NFA firearm (e.g., short-barreled rifles, short-barreled, shotguns, wallet guns, etc.) via submission of an ATF Form 1. Upon receipt of the completed Form 1, ATF will process the application and, if approved, a tax stamp will be affixed to the original of the form and the approved application will be returned to the applicant. Approval by ATF will effect registration of the firearm to the applicant. Upon receipt of the approved application, the applicant may make the firearm described on the approved Form 1. The approved form must be retained by the applicant and made available at all times for inspection by ATF officers or investigators. *Note: Under no circumstances may the firearm in question be made prior to receipt of the approved Form 1.*

The approval of the Form 1 application authorizes the applicant to make the firearm. The approval does not authorize the applicant to convey or ship the firearm to another person to manufacture the NFA firearm. If another person will manufacture the NFA firearm, the other person would be the maker and the application must be submitted by that person. Subsequent to the making, the firearm could then be transferred, subsequent to an approved Form 4 application, to the person who wanted the modification to be made.

If the applicant on the Form 1 lacks the skill, ability, and/or equipment to manufacture the NFA firearm, the applicant, after receipt of the approved Form 1, can have the firearm created or modified at a premises other than shown on the approved Form 1 as long as the creation or modification was done under the direct oversight of the applicant, thus having the applicant retain custody and control of the firearm. If the location is outside the applicant's State and the firearm being made is a short barreled rifle, short barreled shotgun, destructive device, or an unserviceable machinegun which is being reactivated, the applicant will also need to request permission to transport the firearm interstate as required by 27 CFR 478.28.

Section 6.5 Disapproval of Form 1. If the submitted application is disapproved, ATF will advise the applicant, provide a reason(s) for the disapproval, and return the making tax payment.

Section 6.6 Reactivation of a registered unserviceable NFA firearm. The Form 1 may be used to reactivate a properly registered unserviceable firearm, including registered unserviceable machineguns. Block 4(i) of the form should indicate that a registered unserviceable weapon is being reactivated. The remainder of the form should be prepared and submitted with the making tax in the same manner as described above except that a law enforcement certification is not required. The existing serial number on the unserviceable firearm should be used. If the reactivation will be performed by a Class 2 manufacturer, see Chapter 7 for additional information.

Section 6.7 Incorrect Description of Firearm. If the original registration document for the unserviceable firearm contains incorrect descriptive information for the weapon, a letter should be written to the NFA Branch providing the proper description and/or indicating what portions of the description need to be changed. The letter should contain photographs of the actual markings on the firearm. If a correction of the recorded serial number is needed, a photograph or pencil rubbing of the serial number is required. ATF will provide a response indicating that the NFRTR has been amended to

reflect the correct information. This confirmation from ATF should be retained with the registration document for the firearm.

Section 6.8 Withdrawal or Cancellation of an ATF Form 1 and Refund of Making Tax. The Form 1 applicant may withdraw the application by submitting a request, in writing, to the Chief, NFA Branch. The applicant may also cancel an approved Form 1 application by submitting a request, in writing, to the Chief, NFA Branch. The request for cancellation must state that the firearm was not made and must include the approved Form 1 with the stamp affixed. The NFA Branch will amend the NFRTR to reflect the withdrawal or cancellation of the application and arrange for the refund of the making tax. A request for cancellation may only be done if the firearm has not already been manufactured. If the firearm is made, the tax liability is incurred and the applicant cannot seek a cancellation.