

## CHAPTER 3. REGISTRATION OF NFA FIREARMS

### Section 3.1 The National Firearm Registration and Transfer Record (NFRTR)

The NFRTR is the central registry of all NFA firearms in the U.S. which are not in the possession or under the control of the U.S. Government. The registry includes (1) the identification of the firearm, (2) date of registration, and (3) identification and address of the person entitled to possession of the firearm (the person to whom the firearm is registered).<sup>30</sup>

### Section 3.2 Who may register NFA firearms

**3.2.1 Amnesty registration.** When the NFA was amended in 1968, a 30-day amnesty period immediately following the law's effective date was established during which persons possessing unregistered firearms could register them in the NFRTR.<sup>31</sup>

The 1968 amendments also provided for the establishment of additional amnesty periods not exceeding 90 days per period.<sup>32</sup> To date, no additional amnesty periods have been declared. Requests for further amnesty periods have been denied, principally because additional periods could jeopardize pending ATF investigations and prosecutions of NFA violations.

**3.2.2 Registration by State and local agencies.** To be lawfully possessed by States and political subdivisions of the States (for example, local police departments), NFA firearms must be registered in the NFRTR. The regulations permit State and local police organizations acquiring unregistered NFA firearms for official use, by seizure, forfeiture, or abandonment, to register them in the NFRTR by filing ATF Forms 10. Appendix C contains a copy of the form. Firearms registered on Forms 10 are for official use only and subsequent transfers will be approved only to other government agencies for official use.<sup>33</sup> For example, they may not be traded to an FFL/SOT in exchange for other firearms or police equipment.

**3.2.3 Registration by makers.** Persons other than FFLs and SOTs desiring to make an NFA firearm are required to first register the firearm by filing Form 1 with ATF and obtaining approval of the form and registration of the firearm. Appendix C contains a copy of the form. ATF will approve a making application on Form 1 if the maker pays the \$200 making tax required by the NFA, identifies the firearm as the form requires, includes his/her fingerprints and photographs if the maker is an individual, and if the making and the maker's possession of the firearm would not place the maker in violation of any Federal, State or local law.<sup>34</sup> A law enforcement certification is also required if the maker is an individual. Note also that ATF will not approve the making of a machinegun it determines would violate 18 U.S.C. 922(o). Section 922(o) generally prohibits the possession of machineguns manufactured on or after May 19, 1986.

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<sup>30</sup> 26 U.S.C. 5841(a)

<sup>31</sup> Section 207(b) of the Gun Control Act of 1968, Public Law 90-618, approved October 22, 1968

<sup>32</sup> Section 207(d), *ibid*

<sup>33</sup> 27 CFR 479.104

<sup>34</sup> 26 U.S.C 5822; 27 CFR 479.62, 479.63, 479.64

**3.2.4 Registration by importers.** FFLs/SOTs qualified as importers must register imported firearms by filing ATF Forms 2, Notice of Firearms Manufactured or Imported, no later than 15 days from the date the imported firearms were released by Customs. Upon timely receipt by ATF of a Form 2 and a copy of Form 6A showing Customs' release of an imported firearm, ATF will register the firearm to the importer.<sup>35</sup> Appendix C contains copies of Forms 2 and 6A. Note that the NFA prohibits importation of NFA firearms unless they are being imported for the use of the United States or a State agency, for scientific or research purposes, or for testing or use as a model by a registered importer or solely for use as a sales sample by a registered importer or registered dealer.<sup>36</sup> In the case of an imported machinegun, Section 922(o) of the GCA would also apply.

**3.2.5 Registration by manufacturers.** FFLs/SOTs qualified as manufacturers must register manufactured firearms by filing ATF Form 2, Notice of Firearms Manufactured or Imported. All firearms manufactured during a single day must be listed on one Form 2. The form must be filed no later than the close of the next business day. Receipt of the form by ATF will serve to register the listed firearms to the manufacturer.<sup>37</sup> Appendix C contains a copy of Form 2.

**3.2.6 Registration to transferees.** Registered firearms may be transferred by their registered owners/possessors to transferees. Other than Form 10 registration, there is no mechanism in the NFA to lawfully transfer unregistered NFA firearms.

**3.2.6.1 Transfers by persons other than FFLs/SOTs to other such persons.** Transferors of registered firearms must file ATF Forms 4, Application for Tax Paid Transfer and Registration of a Firearm, to register the firearm to the transferee and pay the applicable transfer tax.<sup>38</sup> Appendix C contains a copy of the form. The form must be approved by ATF before the transfer may be made.<sup>39</sup> ATF will not approve the form if the transfer, receipt, or possession of the firearm would place the transferee in violation of any Federal, State, or local law.<sup>40</sup> A law enforcement certification is also required on ATF Form 4.

**3.2.6.2 Transfers by FFLs/SOTs to persons other than FFLs/SOTs.** Transferors of registered firearms must file ATF Forms 4, Application for Tax Paid Transfer and Registration of a Firearm, to register the firearm to the transferee and pay the applicable transfer tax. Appendix C contains a copy of the form. The form must be approved by ATF before the transfer may be made.<sup>41</sup> ATF will not approve the form if the transfer, receipt, or possession of the firearm would place the transferee in violation of any Federal, State, or local law.<sup>42</sup>

**3.2.6.3 Transfers by non-FFLs/SOTs to FFLs/SOTs.** Transferors of registered firearms must file ATF Forms 4, Application for Tax Paid Transfer and Registration of a Firearm, to register the firearm to

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<sup>35</sup> 27 CFR 479.112

<sup>36</sup> 26 U.S.C. 5844

<sup>37</sup> 27 CFR 479.103

<sup>38</sup> 26 U.S.C. 5812(a); 27 CFR 479.84

<sup>39</sup> 26 U.S.C. 5812(b); 27 CFR 479.86

<sup>40</sup> 26 U.S.C. 5812(a); 27 CFR 479.85

<sup>41</sup> 26 U.S.C. 5812(b); 27 CFR 479.86

<sup>42</sup> 26 U.S.C. 5812(a); 27 CFR 479.85

the transferee and pay the applicable transfer tax.<sup>43</sup> Appendix C contains a copy of the form. The form must be approved by ATF before the transfer may be made.<sup>44</sup> ATF will not approve the form if the transfer, receipt, or possession of the firearm would place the transferee in violation of any Federal, State, or local law.

**3.2.6.4 Transfers by FFLs/SOTs to other FFLs/SOTs.** Transferors must file ATF Forms 3, Application for Tax-Exempt Transfer of Firearm and Registration to Special Occupational Taxpayer, to register the firearm to the transferee.<sup>45</sup> Appendix C contains a copy of the form. In these transactions, the transferor has no liability for the transfer tax. The form must be approved by ATF before the transfer may be made.<sup>46</sup> ATF will not approve the form if the transfer, receipt, or possession of the firearm would place the transferee in violation of any Federal, State, or local law.

**3.2.6.5 Transfers to State and local government agencies.** Transferors must file ATF Forms 5, Application for Tax Exempt Transfer and Registration of a Firearm, to register the firearm to such agency.<sup>47</sup> Appendix C contains a copy of the form. In these transactions, the transferor has no liability for the transfer tax. The Form must be approved by ATF before the transfer may be made.<sup>48</sup>

### **Section 3.3 Status of unregistered firearms**

Firearms not lawfully registered as required by the NFA may not be registered and legitimized by their possessors. They are contraband and unlawful to possess.<sup>49</sup> However, see Section 2.4 for information on removing NFA firearms from the scope of the NFA because of their status as collectors' items, modification, or elimination of certain component parts.

### **Section 3.4 ATF disclosure of NFA registration information**

**3.4.1 Restrictive use of information.** The NFA provides that no information or evidence obtained from an application, registration, or records required to be submitted or retained by a natural person (individual) in order to comply with the NFA or the NFA regulations shall be used directly or indirectly 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.<sup>50</sup> Filing false information is an exception to this prohibition.<sup>51</sup>

**3.4.2 Prohibition on ATF's disclosure of tax returns or tax return information.** NFA forms are treated as tax returns and registration information in the NFRTR is considered to be tax return

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<sup>43</sup> 26 U.S.C. 5812(a); 27 CFR 479.84

<sup>44</sup> 26 U.S.C. 5812(b); 27 CFR 479.86

<sup>45</sup> 26 U.S.C. 5812(a); 27 CFR 479.88

<sup>46</sup> 26 U.S.C. 5812(b); 27 CFR 479.88(b)

<sup>47</sup> 26 U.S.C. 5812(a); 27 CFR 479.90

<sup>48</sup> 26 U.S.C. 5812(b); 27 CFR 479.90(b)

<sup>49</sup> U.S. v. Freed, 401 U.S. 601 (1971)

<sup>50</sup> 26 U.S.C. 5848(a)

<sup>51</sup> 26 U.S.C. 5848(b)

information. ATF is generally prohibited from disclosing tax returns and tax return information.<sup>52</sup> However, firearms registration information may be disclosed to registered owners/possessors of the firearms.

**3.4.3 Determining the registration status of an NFA firearm.** The situation may arise when a person finds in his or her possession an NFA firearm and is uncertain whether the firearm is lawfully registered. Naturally, the person will want to query the NFA Branch to determine the registration status of the firearm. Because of the restriction on disclosure of NFA registration information discussed in section 3.4.2, ATF will not respond to the person's telephone request for the registration status of the firearm. To communicate with the person, the NFA Branch will respond to the request if the person verifies his or her identity to the Branch in writing. If the firearm is registered to the person in the NFRTR, the Branch will so advise the person and, if the circumstances warrant, provide the person with a copy of the registration. See also Section 3.5 on lost or stolen registration documents.

**Section 3.5 Lost or stolen registration documents.** A person possessing a firearm registered as required by the NFA must retain proof of registration, that is, the registration form showing registration of the firearm to the person, which must be made available to ATF upon request.<sup>53</sup> If a registrant discovers that a Form 1, 2, 3, 4, 5, 6A, or 10 is stolen, lost or destroyed, the registrant must immediately report the theft, loss, or destruction in writing to the NFA Branch.<sup>54</sup> The report must contain the details of the situation. ATF will issue a duplicate copy of the registration document as the circumstances warrant.

**Section 3.6 Correcting incorrect registration documents.** Occasionally, the registered possessor of an NFA firearm may notice that the registered firearm does not match the registration document. Perhaps the serial number is slightly different. In this situation, the registrant should take a photograph of the markings on the firearm (or a rubbing) and send it to the NFA Branch with a written request to correct the serial number as documented on the NFRTR. ATF will respond to the request by letter stating that the NFRTR has been corrected and advising the registrant to keep the letter with the registration document as evidence of proper registration.

**Section 3.7 Maintaining registration documents.** A person possessing an NFA firearm registered as required by law must retain proof of registration, that is, the document showing the person's registration, which must be made available to ATF upon request.<sup>55</sup>

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<sup>52</sup> 26 U.S.C. 6103

<sup>53</sup> 26 U.S.C. 5841(e)

<sup>54</sup> 27 CFR 479.142

<sup>55</sup> 26 U.S.C. 5841(e)