

Machine Guns

Background

Machine guns are a class of firearms that are fully automatic, i.e., they continue to fire bullets as long as the trigger is depressed and ammunition is available. This feature makes them hazardous to the general public and appropriate for use only in the military.

Although federal law now prohibits the possession of newly manufactured machine guns, it permits the transfer of machine guns lawfully owned prior to May 19, 1986, if the transfer is approved by ATF. As a result, a substantial number of machine guns are still in circulation. As of November 2006, the national registry of machine guns contained registrations for 391,532 machine guns.¹ In 2006, ATF seized 1,280 unregistered machine guns.²

Federal Law³

For purposes of federal law, a machine gun is defined as:

[A]ny weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manually reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.⁴

The National Firearms Act of 1934: The National Firearms Act of 1934 (“NFA”) imposes a tax on the making and transfer of machine guns and certain other weapons, as well as a special occupational tax on persons and entities engaged in the business of importing, manufacturing and dealing in those weapons. (The NFA distinguishes between “making” a weapon, and “manufacturing” a weapon. Only a registered NFA manufacturer can “manufacture” a machine gun; other persons who construct machine guns are “making” them, according to the NFA.⁵) As detailed below, the law also requires the registration of all machine guns.

While the NFA was enacted by Congress as an exercise of its authority to tax, the underlying purpose of the law was to curtail, if not prohibit, transactions in machine guns

¹ Office of the Inspector General, U.S. Department of Justice, *The Bureau of Alcohol, Tobacco, Firearms and Explosives’ National Firearms Registration and Transfer Record*, Evaluation and Inspections Report I-2007-006, June 2007, available at: <http://www.usdoj.gov/oig/reports/ATF/e0706/back.htm>. For more information about what constitutes a “machine gun,” see Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Dept. of Justice, *National Firearms Act Handbook* 9-15, June 2007.

² *Id.*

³ LCAV has not completed an analysis of state and local laws governing machine guns.

⁴ 18 U.S.C. § 921(a)(23); 27 C.F.R. § 479.11. See also 26 U.S.C. § 5845(b).

⁵ 26 U.S.C. § 5845(i); 27 C.F.R. § 479.11.

and certain other weapons.⁶ Congress found these firearms pose a significant crime problem because of their frequent use in crime, and the \$200 making and transfer taxes were considered quite severe at the time and adequate to discourage or eliminate transfers in these firearms.⁷ The \$200 tax has not changed since 1934.

As described below, in 1986, Congress enacted a much stricter law, banning the possession and transfer of all machine guns except machine guns manufactured prior to May 19, 1986, and machine guns possessed by or manufactured for governmental entities.

Registration of machine guns: The NFA requires anyone manufacturing, making, importing, or transferring a machine gun (or certain other weapons also regulated by the NFA) to register it with the Secretary of the Treasury.⁸ The NFA requires the Secretary to maintain a central registry of all of these weapons that are “not in the possession or under the control of the United States,” i.e., machine guns owned by state or local entities, as well as those legally owned by private persons, are included in the registry.⁹

The Secretary has delegated the responsibility for maintaining this registry to the National Firearms Act Branch of the Bureau of Alcohol, Tobacco, Firearms & Explosives (“ATF”).¹⁰ The registry is known as the National Firearms Registration and Transfer Record.¹¹ For each registered machine gun, the registry includes:

- An identification of the machine gun, including serial number; name and address of the manufacturer, maker, or importer, if known; model; caliber, gauge or size; and any other identifying marks on the firearm;
- The date of registration; and
- The identification and address of the person entitled to possess the machine gun.¹²

A person possessing a machine gun must retain proof of registration, which shall be made available to ATF upon request.¹³

In 2007, the Office of the Inspector General issued a report finding that management and technical deficiencies have limited ATF’s ability to adequately address errors in the registry. ATF staff has not processed applications or entered database information uniformly, which has resulted in errors in records, reports, and queries as well as inconsistent decisions on NFA weapons registration and transfer applications. Further, ATF was not timely in correcting errors and discrepancies in the NFRTR database after

⁶ *National Firearms Act Handbook*, *supra* note 1, at 1.

⁷ *Id.*

⁸ 26 U.S.C. § 5841(b).

⁹ 26 U.S.C. § 5841(a).

¹⁰ As part of the Homeland Security Act of 2002, ATF was transferred from the Treasury Department to the Department of Justice, effective January 24, 2003. *National Firearms Act Handbook*, *supra* note 1, at 3.

¹¹ Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Dept. of Justice, *Brochure of the National Firearms Act Branch*, at <http://www.atf.gov/pub/nfab/>.

¹² 26 U.S.C. § 5841(a). *See also* 27 C.F.R. §§ 479.84, 479.101, 479.105.

¹³ 26 U.S.C. § 5841(e); 27 C.F.R. § 479.101(e).

problems were identified by ATF investigators during compliance inspections of federal firearms licensees.¹⁴

Transferring a machine gun: With certain limited exceptions, the NFA requires anyone transferring a machine gun to register it with ATF. (The NFA put this responsibility, along with the \$200 tax discussed below, on the transferor, rather than the transferee, in an effort to deter all transfers of machine guns.¹⁵) In order to register a machine gun, a transferor must obtain authorization from ATF prior to the transfer in accordance with ATF regulations.¹⁶

Except when a federally licensed manufacturer, importer, dealer or collector transfers a machine gun to an unlicensed person,¹⁷ ATF may deny a transfer of a previously registered machine gun only if the transfer, receipt or possession of the machine gun would place the transferee in violation of federal, state or local law.¹⁸ As a result, ATF regulations require a specified law enforcement officer to certify that the receipt and possession of the firearm will not place the transferee in violation of state or local law.¹⁹ Note that federal law generally prohibits transfers of all firearms across state lines unless the transferee is a federally licensed manufacturer, importer, dealer or collector, so ATF will not generally approve interstate transfers.²⁰

Due to a 1968 change in the law, it is unlawful for any federally licensed manufacturer, importer, dealer or collector to sell or deliver a machine gun except as specifically authorized by the Attorney General “consistent with public safety and necessity.” This provision does not apply if the recipient is another federally licensed manufacturer, importer, dealer or collector, or a research organization designated by the Attorney General.²¹ The Attorney General has delegated enforcement of this provision to ATF. As a result, ATF regulations require a manufacturer, importer, or dealer selling or delivering a machine gun to a member of the public to first obtain from the recipient a sworn statement stating the reasons why there is a reasonable necessity for such person to acquire the machine gun, and that such person's receipt or possession of the machine gun would be consistent with public safety.²²

¹⁴ Office of the Inspector General, U.S. Department of Justice, *Semiannual Report to Congress: Bureau of Alcohol, Tobacco, Firearms, & Explosives*, April 1, 2007-September 30, 2007, available at: <http://www.usdoj.gov/oig/semiannual/0711/atf.htm>.

¹⁵ *National Firearms Act Handbook*, *supra* note 1, at 1.

¹⁶ 26 U.S.C. § 5841(b). The procedure for obtaining authorization from ATF for a transfer of a machine gun and registering a transferred machine gun is set forth at 26 U.S.C. § 5812(a); 27 C.F.R. § 479.84 *et seq.*

¹⁷ See 18 U.S.C. § 922(b)(4).

¹⁸ 26 U.S.C. § 5812(a).

¹⁹ 27 C.F.R. § 479.85.

²⁰ 18 U.S.C. § 922(a)(3), (5), (b)(3); *National Firearms Act Handbook*, *supra* note 1, at 55.

²¹ 18 U.S.C. § 922(b)(4).

²² 27 C.F.R. §§ 478.98, 478.145.

The transferee of a firearm shall not take possession of the firearm unless ATF has approved the transfer and registration of the firearm to the transferee.²³ The NFA also requires the transferor of a machine gun to pay a \$200 tax for each transfer of a machine gun.²⁴ ATF may make exceptions to this tax in certain circumstances.²⁵

The term “transfer” includes selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of the machine gun.²⁶ When a machine gun is being transferred from the estate of a deceased person who lawfully possessed it to the person’s lawful heir, the executor or administrator of the estate must register the machine gun by seeking ATF’s approval prior to the transfer, but this transfer is not subject to the tax.²⁷

The Firearm Owners’ Protection Act of 1986: On May 19, 1986, as part of the Firearm Owners’ Protection Act (“FOPA”), Congress banned the transfer and possession of machine guns with two exceptions:²⁸

- Machine guns that were lawfully possessed prior to May 19, 1986 may continue to be possessed and transferred provided they are registered in accordance with requirements of the National Firearms Act of 1934 (“NFA”).²⁹
- Machine guns may be transferred to or by, or possessed by or under the authority of, the federal government or a state, or a department, agency, or political subdivision thereof.³⁰

As a result, a person may not make, manufacture, or import a machine gun unless it is for a governmental entity.³¹ (Although there is no explicit ban on the manufacture of machine guns, FOPA’s ban on possession of newly manufactured machine guns makes it impossible to manufacture a machine gun lawfully unless it is specifically intended for a governmental entity.) Unregistered machine guns are contraband, and there is no way to register a previously unregistered machine gun.³²

Manufacturers, importers, and dealers of machine guns: Each person or entity engaged in business as an importer, manufacturer, or dealer of machine guns must register with ATF as a Class 1, 2, or 3 licensee, respectively.³³ Any importer, manufacturer, or dealer

²³ 26 U.S.C. §§ 5812(b), 5841(c). It is unlawful to transfer a machine gun in violation of the NFA, or to receive or possess a machine gun that is not registered to that person in compliance with the NFA, or that was transferred to the person in violation of the NFA. 26 U.S.C. § 5861.

²⁴ 26 U.S.C. § 5811.

²⁵ 26 U.S.C. §§ 5851-5853.

²⁶ 26 U.S.C. § 5845(j); 27 C.F.R. § 479.11.

²⁷ *National Firearms Act Handbook*, *supra* note 1, at 57-58.

²⁸ 18 U.S.C. § 922(o).

²⁹ 18 U.S.C. § 922(o)(2)(B). *See also* 26 U.S.C. § 5861(d); 27 C.F.R. §§ 478.36, 479.105.

³⁰ 18 U.S.C. § 922(o)(2)(A); 27 C.F.R. §§ 478.36, 479.105.

³¹ 27 C.F.R. § 479.105.

³² *National Firearms Act Handbook*, *supra* note 1, at 25. State and local police organizations may register machine guns acquired through seizure, forfeiture, or abandonment. *National Firearms Act Handbook*, *supra* note 1, at 23.

³³ 26 U.S.C. § 5802; 27 C.F.R. § 479.31 *et seq.* An “importer” is any person who is engaged in the business of importing or bringing firearms into the United States. 26 U.S.C. § 5845(l). A “manufacturer” is

of machine guns must pay a “special occupational tax” for each place of business of \$1,000 a year.³⁴

As a result of the FOPA, machine guns may only be imported by a registered importer, and only if they are being imported for sale or distribution to a federal or state agency or political subdivision thereof, or for use by a registered dealer as a sales sample.³⁵ The NFA requires anyone importing a machine gun to first obtain authorization from, and register the machine gun with, ATF.³⁶ It is unlawful for any person to receive or possess a machine gun that was imported in violation of the NFA.³⁷

Similarly, as a result of the FOPA, machine guns may only be manufactured by a registered manufacturer, and only if they are being manufactured for sale or distribution to a federal, state, or local agency, for use by a registered dealer as a sales sample, or for exportation.³⁸ The NFA requires anyone manufacturing a machine gun to register it with ATF.³⁹ A manufacturer of a machine gun may register it by notifying ATF of the manufacture as ATF regulations prescribe.⁴⁰

Applications to transfer and register machine guns manufactured or imported after May 19, 1986 to a registered machine gun dealer as sales samples will be approved only if the manufacturer or importer establishes by specific information:

- The expected governmental customers who would require a demonstration of the weapon;
- The availability of the machine gun to fill subsequent orders;
- A need for a particular model or interest in seeing a demonstration of a particular weapon, as expressed in letters from governmental entities; and
- The dealer’s need for the quantity of samples sought to be transferred (if more than one).⁴¹

ATF officers are authorized to enter during business hours the premises, including the places of storage, of any manufacturer, importer, or dealer of machine guns, to examine

any person who is engaged in the business of manufacturing machine guns. 26 U.S.C. § 5845(m). A “dealer” is any person, not a manufacturer or importer, who is engaged in the business of selling, renting, leasing, or loaning machine guns and includes pawnbrokers who accept machine guns as collateral for loans. 26 U.S.C. § 5845(k).

³⁴ 26 U.S.C. § 5801; 27 C.F.R. § 479.31 *et seq.* If the importer’s or manufacturer’s gross receipts per taxable period are less than \$500,000, this tax may be reduced to \$500. It is unlawful to engage in business as an importer, manufacturer, or dealer of machine guns without having paid this tax or registered with ATF. 26 U.S.C. § 5861(a).

³⁵ 18 U.S.C. § 922(o); 27 C.F.R. § 479.105(c). With respect to machine guns, the NFA’s more lenient provisions regarding importation were superseded by the FOPA. *See* 26 U.S.C. § 5844.

³⁶ 26 U.S.C. § 5841(b). The procedure for obtaining ATF authorization for the importation of a machine gun and for registering a newly imported machine gun is set forth at 27 C.F.R. § 479.112.

³⁷ 26 U.S.C. § 5861(k).

³⁸ 18 U.S.C. § 922(o); 27 C.F.R. § 479.105(c).

³⁹ 26 U.S.C. § 5841(b).

⁴⁰ 26 U.S.C. § 5841(c). The procedure for obtaining authorization from ATF for the manufacturer of a machine gun and for registering a newly manufactured machine gun are available at 27 C.F.R. § 479.103.

⁴¹ 27 C.F.R. § 479.105(d).

any books, papers, or records required to be kept by the NFA or implementing regulations, and any machine guns kept by such manufacturer, importer or dealer on such premises, and may require the production, of any books, papers, or records necessary to determine the observance of these laws.⁴²

The exportation of machine guns is also regulated.⁴³ Where ATF has issued a permit to export a machine gun, the exporter must furnish proof of the exportation of the machine gun within six months from issuance of the permit.⁴⁴

Makers of machine guns: The term “make” includes manufacturing (by someone other than by a manufacturer registered under the NFA), putting together, altering, any combination of these, or otherwise producing a machine gun.⁴⁵

The NFA requires anyone making a machine gun to register it with ATF.⁴⁶ A maker of a machine gun may register it by obtaining authorization from ATF prior to making it in accordance with ATF regulations.⁴⁷ It is unlawful for any person to make a machine gun, or receive or possess a machine gun that was made, in violation of the NFA.⁴⁸

As a result of the FOIPA⁴⁹ applications to make and register machine guns made on or after May 19, 1986, will be approved only if it is established by specific information that the machine gun is particularly suitable for use by federal, state or local governmental entities and that the making of the weapon is at the request and on behalf of such an entity.⁵⁰

A person making a machine gun must pay a \$200 tax for each machine gun made.⁵¹ However, ATF may make exceptions to this tax in certain circumstances.⁵²

Identifying marks: The NFA requires anyone manufacturing, importing or making a machine gun to identify it by:

- A serial number which may not be readily removed, obliterated or altered;
- The name of the manufacturer, importer or maker; and
- Any other identification as the secretary by regulation has prescribed.⁵³

⁴² 27 C.F.R. § 479.22.

⁴³ See 27 C.F.R. §§ 479.110 *et seq.*, 479.193.

⁴⁴ 27 C.F.R. § 479.118.

⁴⁵ 26 U.S.C. § 5845(i); 27 C.F.R. § 479.11.

⁴⁶ 26 U.S.C. § 5841(b).

⁴⁷ 26 U.S.C. § 5841(c). The procedure for obtaining authorization from ATF for the making of a machine gun and for registering a newly made machine gun are available at 26 U.S.C. § 5822; 27 C.F.R. § 479.62 *et seq.*

⁴⁸ 26 U.S.C. § 5861.

⁴⁹ 18 U.S.C. § 922(o).

⁵⁰ 27 CFR 479.105(e).

⁵¹ 26 U.S.C. § 5821; 27 C.F.R. § 479.61.

⁵² 26 U.S.C. §§ 5851-5853.

⁵³ 26 U.S.C. § 5842(a).

A person who possesses a machine gun that lacks this information must identify it with a serial number and other information as ATF prescribes.⁵⁴

It is unlawful for any person to receive or possess a machine gun that is not identified by a serial number as required by the NFA or that has the serial number or other identification required by the NFA obliterated, removed, changed or altered.⁵⁵

Record-keeping and reporting: The NFA gives ATF authority to prescribe regulations requiring importers, manufacturers and dealers to keep records of the importation, manufacture, making, receipt, sale or other disposition of machine guns.⁵⁶ Whenever any machine gun is stolen or lost, the person losing possession must immediately upon discovery of the theft or loss make a report to ATF.⁵⁷ It is unlawful to knowingly make or cause to make a false entry in any application, return, or record required by the NFA.⁵⁸

The NFA prohibits using information obtained from an application, registration or records required to be submitted or retained by a natural person to comply with the NFA as evidence against the person in a criminal proceeding for a violation of law prior to or simultaneous with the application, registration, or records.⁵⁹ However, this information may be used in a prosecution for furnishing false information.⁶⁰

Transportation of machine guns: It is unlawful for anyone other than a federally licensed manufacturer, importer, dealer or collector⁶¹ to transport a machine gun in interstate or foreign commerce except as specifically authorized by the Attorney General, through ATF, consistent with public safety and necessity.⁶² It is also unlawful to transport, deliver, or receive a machine gun in interstate commerce that has not been registered in accordance with the NFA.⁶³

Forfeiture of unregistered machine guns: Any machine gun involved in a violation of the NFA is subject to seizure and forfeiture. Forfeited machine guns cannot be sold at public sale, but may be destroyed or transferred within the federal government, or to a state or local government.⁶⁴

(Last updated: January 21, 2009.)

⁵⁴ 26 U.S.C. § 5842(b). See 27 C.F.R. § 479.102.

⁵⁵ 26 U.S.C. § 5861.

⁵⁶ 26 U.S.C. § 5843. ATF's regulations regarding these records are set forth at 27 C.F.R. § 479.131.

⁵⁷ 27 C.F.R. § 479.141.

⁵⁸ 26 U.S.C. § 5861.

⁵⁹ 26 U.S.C. § 5848(a); 27 C.F.R. § 479.23.

⁶⁰ 26 U.S.C. § 5848(b); 27 C.F.R. § 479.23.

⁶¹ "Collectors" of firearms are licensed pursuant to 18 U.S.C. § 923.

⁶² 18 U.S.C. § 922(a)(4); 27 C.F.R. § 478.28.

⁶³ 26 U.S.C. § 5861.

⁶⁴ 26 U.S.C. §§ 5871-5872; 27 C.F.R. § 479.182.