

Title II NFA Items

Title II NFA refers to certain firearms, firearm accessories and other devices that are specifically regulated on a federal level. These regulations are separate from, and in addition to, those which are dictated at the state level by Massachusetts. Many of these federal laws differ sharply from Massachusetts law, and involve processes which may seem foreign to those unfamiliar to how the acquisition of such items is done. Because violation of federal NFA laws can carry severe penalties (often harsher than the worst penalties for violating Massachusetts firearms law) it is extremely important that one understand exactly what they are getting into when they decide to dive into the “NFA world”.

Note: Federal firearms law, including title II NFA items, is very complex. It is so complex that an entire book could be written on the subject, probably even several. The following is a guide that in many ways covers the main topics and common issues and questions that arise insofar as Massachusetts gun owners are concerned. It should not be considered a comprehensive outline on every facet of federal firearms law; this is just the tip of the iceberg. One should always consult with a firearms attorney experienced in federal Class III and NFA items.

Historical Background

The National Firearms Act (NFA) was passed in 1934. According to the ATF’s website, its purpose was twofold; to collect tax revenue and heavily regulate the transfer of certain firearms and devices deemed by Congress to be overly dangerous. This was accomplished by instituting a \$200 tax applied to the transfer of all such items covered by the NFA. \$200 in 1934 is equivalent to about \$3,300 in 2012, an excessively high tax that accomplished what is often the sinister intent of gun control; to prevent average citizens from possessing firearms, and essentially make them reserved only for the wealthy and those able to pay a government tax to exercise a fundamental right. Indeed, the NFA was originally intended to also encompass handguns, but fortunately that version was not passed. Anyone who doubts such an interpretation of the NFA needs only visit the ATF’s website, where even they admit, “its underlying purpose was to curtail, if not prohibit, transactions in NFA firearms.”

The justification for such overbearing regulation? The claim that these firearms were frequently used in crime by infamous gangsters of the 1920’s and ‘30’s. While that may or may not be true (crime data of even questionable reliability is near non-existent from that era), it is certainly no excuse for robbing tens of millions of their right to possess firearms and related items that in reality pose little to no excessive danger. Again, should anyone doubt the validity of this mindset, one need only consider the fact that in 1986 the future manufacture of fully automatic firearms was banned, hence forcing civilians to pay increasingly high fees to possess grandfathered yet otherwise old, obsolete and used automatic firearms. The sick reality is that the end game of what began as a “reasonable tax” resulted in a near outright ban of a particular class of firearms.

Backtracking slightly, 1968 is another key year specifically for machine guns. In that year the Gun Control Act was passed, and in part it prohibited the importation of foreign machine guns and registration of live machine guns for and by civilians. A short 30 day amnesty period was provided during which individuals could legally register unregistered machine guns (the length was originally 90 days but it was cut short). No amnesty has since been provided, even though Congress has the authority to declare unlimited amnesties. The sad truth is that in 1968 with no internet or cellphones, limited television and when it often took weeks for printed material to circulate many people missed the amnesty and thus their machine guns were rendered illegal federal felony contraband forever (or at least until another amnesty is granted or the NFA repealed). The ATF claims that “additional [amnesty] periods could jeopardize pending ATF investigations and prosecutions of NFA violations”, despite the fact that there is only one confirmed instance of a registered machine gun being used to commit a crime...and it was committed by a police officer.

NFA Items

The entire provisions of the NFA can be found in 26 U.S.C.A. Subtitle E, Ch. 53. Specifically, § 5845 defines what is regulated under the NFA. One should realize that “firearms” insofar as defined and regulated by the NFA may not entirely coincide with common references of what constitutes a firearm. For instance, most would consider a suppressor to be an accessory to a firearm, yet the NFA refers to one as a “firearm”. In addition, common firearms that fall outside the scope of the NFA are not considered “firearms” insofar as regulation applies. For example, an 11.5” barreled AR15 is a “firearm” under the NFA, an 18” one is not.

Therefore, there are six categories of firearms, firearm’s accessories and devices (all of which are commonly referred to as either NFA Items, Class III weapons or title II firearms) covered under the 1934 NFA. The following are less technical explanations in layman’s terms, certain complexities will be discussed later:

Machine Guns

Machine guns are otherwise technically referred to as fully automatic firearms, meaning that one held pull of the trigger will cause the firearm to continuously fire until the magazine, belt or other feeding device expends all its contained ammunition. It is this NFA category that has probably led to the most controversy and grievances amongst gun owners, the reasons for which should be obvious after reading this section.

Suppressors

Suppressors, otherwise known as silencers, are devices that muffle or reduce the report of a firearm when it is fired.

Short Barreled Rifles (SBR)

Commonly referred to as SBR's, a short barreled rifle is a rifle whose barrel is less than 16", and/or total length is less than 26".

Short Barreled Shotgun (SBS)

Commonly referred to as SBS's, a short barreled shotgun is a shotgun whose barrel is less than 18", and/or total length is less than 26".

Destructive Devices (DD)

Explosives, rockets, grenades etc. By far the least common of the NFA items.

Any Other Weapons (AOW)

A catch-all for other types of firearms that don't fall neatly under the other categories but which the ATF seeks to regulate (Pistols with fore grips, certain shotguns, pen guns, cane guns, hidden gun devices etc.)

ATF Interpretations and Enforcement

It would be impossible to fully appreciate the complexity of the regulation of NFA items without understanding the ATF's role in the matter. The ATF, technically known as the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) but commonly referred to as the ATF, is the agency responsible for oversight of NFA items, which is only one of their many roles. To say that they take a very heavy-handed approach would probably be an understatement. This is most exemplified in their regulation of machine guns, which in many ways is what they live and breath to do, perhaps because machine guns are the only NFA items that civilians cannot purchase new (The Hughes Amendment to the FOPA in 1986 banned future manufacture). The result is a chaotic mess of ATF interpretations (that carry the full weight of federal law) deciding what violates and what complies with NFA regulations, often with little predictability. Consider the following:

Inaccurate Registry

The National Firearms Registration and Transfer Record (NFRTR) is the registry holding all records for NFA items. For many years it has been widely speculated to be inaccurate, the degree to which is up for debate, but it is suffice to say that errors do occur and quite often. Incorrect serial numbers, owners names, addresses and other vital information often missing or incorrect. Such findings have been acknowledged and confirmed in more recent years due to sworn testimony at various trials by experts in the NFA field of law.

Furthermore, there have been many instances where registered and lawfully possessed machine guns have returned results indicating their nonexistence in the registry (it is therefore imperative that NFA owners keep their original papers and stamps, as well as copies), the consequences of which can be dire for legitimate NFA owners because an unregistered machine gun carries stiff penalties (\$10,000 and/or ten years – plus a loss of firearms rights for the rest of your life). Despite all this, the NFRTR is regularly utilized in the prosecution of individuals charged with violating the NFA.

Interpretation of Machine Guns

This is probably the most confusing area of NFA items (probably intentionally so). As mentioned, the ATF interprets the laws set down in the NFA, and their interpretations carry the full weight of federal law. The oppressiveness of NFA regulations might be mitigated a little if there was some predictability to the ATF's rulings, as should be the case with all legal rulings, but unfortunately such is not the case here. Below are just a few examples:

- Bumpfire stocks – Post 1986 machine guns are illegal for civilian possession. To fill this void devices have been developed that simulate automatic fire while not technically converting the firearm to a machine gun. One famous example is the Akins Accelerator; a device introduced and sold in the mid 1990's that simulated automatic fire by "bumping" the rifle rapidly forward and backward. The device was legal to purchase and not subject to any NFA regulations...it even included an ATF letter stating to such an effect. Then in 2006 (nearly ten years later) the ATF reversed their ruling and required Bill Akins to cease production of his device, turn in his products without compensation. Furthermore, all purchasers of the Akins Accelerator were required to neuter their devices so as to no longer function.

There is a similar device currently sold (Slidefire stocks) that like the Akins Accelerator is also accompanied by an ATF approval letter. It remains to be seen however if it too will share the same fate.

- Macs and pre-81 DIAS's – Another shining example of the ATF's willingness to enforce their rulings with ferocity are Mac10's and pre-81 DIASs (Drop-in auto-sears).

Up until 1982 Mac10s were manufactured using an open bolt instead of closed bolt design. The former is easier to convert to fully automatic fire than the later. As a result, the ATF required that the manufacturer cease production of open bolt versions, thus the closed bolt Mac10 was born. Open bolt Mac10's are legal to buy, sell and own without NFA regulations, but it is nonetheless an infamous example of how ATF

interprets “machine gun” not only to reference an actual fully automatic firearm but also one that could be readily converted to fully automatic fire.

Prior to 1981 it was legal to manufacture and own a DIAS, designed to be utilized in an AR15 to make it fully automatic. When the ATF decided such was no longer legal, they grandfathered in already produced and unregistered DIAS (hence the specific designation of a “pre-81” DIAS which differs from a registered DIAS) which could be sold and possessed without NFA regulation. It is however illegal to own both an AR15 and pre-81 DIAS, as such is considered intent to manufacture a machine gun.

Similarly, it is illegal to possess certain parts that are readily able to convert a firearm to fully automatic, for instance a post-81 unregistered DIAS. However, the ATF has determined that an AR15 full-auto bolt carrier group is legal to possess, so long as certain other parts required in making an AR15 fully automatic are not also possessed. Confused yet?

Prosecutions

One would at the very least hope that those being charged and convicted for possessing unregistered machine guns would be those who intended to possess such firearms. Not the case, at least not always. There have been cases where individuals firearms malfunctioned resulting in spurts of fully automatic fire for one technical reason or another. The ATF somehow finding out about such incidents often confiscates the firearms in question and “tests” (i.e. manipulates) the firearm until they are able to replicate the malfunction. The result is the individual being charged with unlawful possession of a machine gun.

ATF Controversies

As if all the above wasn't bad enough, the agency itself has been known for employing shady tactics, highly questionable techniques and outright violations of individuals' rights. This includes intimidating lawful gun owners at gun shows, failed sting operations and suppression and threatening of whistleblowers within the agency. Most recently was the infamous Fast and Furious scandal where hundreds of unregistered machine guns (illegal by the ATF's very own admission and policies) will willingly handed over to criminal organizations. These firearms were then (big surprise!) used to commit crimes, including the tragic murder of a U.S. federal border agent. A cover-up ensued, with attorney general Eric Holder refusing to reveal consequential documents relating to the scandal. His contempt was not prosecuted by the Justice Department.

Dealers vs. Individuals

Different regulations apply to various classifications of dealers and individuals; this goes for both title I (common pistols, rifles, shotguns) and title II firearms. However in terms of our discussion regarding NFA items we will focus on only some of the FFL types and ignore others (such as the FFL type 3 C&R license).

Dealers

Simply put, certain dealers may possess items such as post-1986 machine guns as well as manufacture of NFA items. These dealers are most commonly referred to as FFL type 1/7/8/9/10/11 plus Class 1, 2 or 3 SOT. Think of this like buying a car; you start out with the base version of various models (i.e. the FFL types) and then for each model you have optional sports packages, each providing greater performance (i.e. Class 1/2/3 SOT). You begin with an FFL and then add an SOT Class to your business, which allows you to delve in addition types of firearms and ammunition. Below is a technical breakdown of the structure of this system:

FFL (Federal Firearms Licensed dealer)

- Type 1 FFL – Allows one to deal in title I firearms as well as act as a gunsmith. (The most common FFL)
- Type 7 FFL – Allows one to manufacture and deal in title I firearms and ammunition, excluding DDs, DD ammunition and armor piercing (AP) ammunition.
- Type 8 FFL – Allows one to import title I firearms and their ammunition.
- Type 9 FFL – Allows one to deal in title I firearms as well as DDs and their ammunition, but no other NFA items.
- Type 10 FFL – Allows one to manufacture title I firearms, their ammunition and their ammunition components, including DDs but excluding AP ammunition.
- Type 11 FFL – Allows one to import title I firearms and their ammunition, including DDs and DD ammunition, but no other NFA items.

As you can see, none of the aforementioned FFL types allows for manufacturing, dealing or importing of NFA items such as machine guns, suppressors or SBR/SBS. For those FFLs who wish to conduct business with those firearms, they must possess one of the three SOT Classes. SOT stands for special occupational tax and is a required tax that must be paid in order to deal in title II firearms.

SOT Classes

- Class 1 SOT – Allows one to import NFA items.
- Class 2 SOT – Allows one to manufacture NFA items.
- Class 3 SOT – Allows one to deal in NFA items.

To receive a particular SOT Class you must already hold a specific FFL type:

- Class 1 SOT – FFL type 8 or 11
- Class 2 SOT – FFL type 7 or 10
- Class 3 SOT – FFL type 1, 2 (pawnbroker), 7, 8, 9, 10, or 11

That is a basic breakdown of whom and how NFA items are allowed to be imported, sold and manufactured. There are many caveats throughout the entire structure pertaining to technical aspects of NFA items that goes far beyond the scope of this section. For those interested in pursuing an FFL or SOT occupation as their business they should consult with a firearms attorney who specifically deals with this specialized area of law.

If you've been reading carefully you may be wondering where pre and post-1986 machine guns fall into this. A Class 3 dealer would be able to possess and deal in either; however post-1986 machine guns could only be sold to other Class 3 dealers, hence the designation of "dealer sample" that you may see when viewing certain machine guns. To put this in real-world economic terms, a pre-1986 registered machine gun that an individual citizen (non-dealer) could legally purchase could cost tens of thousands of dollars. Basically the same firearm but manufactured post-1986 and thus a dealer only sample could very well cost a mere fraction of its pre-1986 counterpart. For example, a pre-1986 HK MP5 could be anywhere from \$10,000-15,000, whereas a dealer sample MP5 is probably worth about \$1,500. That is the reality of a government ban that creates artificial inflation of particular product.

There is another distinct and little known category is referred to as pre-may dealer samples. These are foreign (or domestic exports that were imported back) machine guns imported between 1968 and 1986 for law enforcement or government use, that only SOT dealers may possess. The caveat is that a pre may dealer sample may be retained in the private collection of an SOT after they allow their license to lapse or expire, but such machine guns may only be sold to other SOTs and never individuals.

One of the most common questions I see asked is along the lines of "How do I become an SOT so I can own post-1986 machine guns?"; of course the main interest being able to purchase new, far cheaper post-1986 machine guns. In actuality becoming an SOT with the sole purpose of building a machine gun collection is simply not going to happen as the ATF won't allow it. In terms of machine guns, the purpose of an SOT is to deal in either pre-1986 machine guns (largely for the civilian market) or post-1986 machine guns for law enforcement use and/or demonstration or research. That is why it is often required that an SOT demonstrate proof of purpose for each post-1986 machine gun they buy, often via what is called an LE demo letter.

The SOT is not a loophole that allows an individual to build a machine gun collection for cheaper or to include newer machine guns (remember – the ATF lives and breaths to enforce strict machine gun regulations, they are not about to allow civilians easy access to newer post-1986 machine guns). In addition, if an SOT dealer decides to let their license lapse and expire they must sell and transfer all their post-1986 machine guns, as well as other NFA items under certain circumstances, to another SOT dealer, or surrender them to the ATF for destruction.

Forms

There are numerous forms that each serves a different purpose. Note that these forms are utilized by both dealers and individuals.

- Form 1: 5320.1 – This form is submitted for manufacturing purposes. An individual must submit a form 1 and await approval prior to manufacturing their NFA item (for instance attaching a buffer tube that accepts a stock, and the stock, to an SBR AR15). An SOT dealer does not need to submit a form 1 to receive permission prior to manufacturing an NFA item, but they must submit a form 2.*
- Form 2: 5320.2 – This form is used by SOT manufactures (and SOT importers) only. An SOT manufacturer must submit this form by the next business day after an NFA item has been manufactured; an SOT importer must submit this form within 15 days of the item officially entering the county (after receiving an approved form 6).
- Form 3: 5320.3 – This form is used when an NFA item is transferred between SOT dealers. It is a tax exemption form where the \$200 NFA tax is not required.
- Form 4: 5320.4 – This form is used for the transfer of NFA items. If you receive an NFA item you must pay the transfer tax. This includes purchasing an NFA item from out of state; it must first be transferred to an SOT dealer (\$200 tax unless the seller is also an SOT dealer) and then your in-state SOT dealer transfers it to you (\$200 tax). The wait time for two approvals also doubles. For the above reasons it may make sense to purchase your NFA item in-state if at all possible.*
- Form 5: 5320.5 – This form is used for a tax exempt transfer of NFA items. This is limited to;
 - Transfer to or from a gunsmith for repair
 - Transfer to an heir
 - Transfer to or from a government agency
- Form 6: 5330.3A – This form is used by an SOT to import an NFA item.
- Form 9: 5320.9 – This form is used by an SOT for exportation of an NFA Item.
- Form 10: 5320.10 – Used by the government to register an unregistered NFA item.

- Form 20: 5320.20 – This form is most commonly used to receive permission for the interstate transport of a machine gun, SBR, SBS and DD and is valid for one year. Note that no permission is needed for interstate travel of suppressors and AOWs.

* Note that when the transferee is an individual (forms 1 and 4) a set of fingerprints, photographs and CLEO signoff must be included.

Individuals

Individuals do not need to hold an FFL or SOT Class license to possess or even manufacture NFA items (excluding machine guns). Let me repeat that because there is a fair amount of misinformation on this point; individuals do not need a license to own NFA items. What is often confused as a license is in actuality a tax stamp (remember: the NFA is an excise tax collection) that one must pay before they can transfer or manufacture an NFA item. Such taxes are paid via the forms mentioned above that one submits to the ATF to receive approval.

Application Process (Individuals)

For those residing in Massachusetts, the intrusive application procedure may feel eerily familiar. Unfortunately, unless you use an NFA trust (more on this later) you will need to complete the entire process to legally own NFA items.

1. Verify you meet all the legal requirements (at least 21 years old with no criminal record) and that the item you wish to purchase is legal in your state. In the case of Massachusetts, this will require holding a green card for machine gun ownership (more on this later).
2. CLEO Signoff – This is the most contentious step in the NFA application. Unless you use a trust, you must obtain approval from your chief law enforcement officer to possess the NFA item for which you are applying for. This could be your county sheriff, town's chief of police, head of state police, even the district attorney or local judge. The problem is that some CLEO's refuse to sign a form 1/4, and there is no requirement that they sign it either. Fortunately you can go to another CLEO for approval, or go the trust route.*
3. Prepare photographs and fingerprints for submission with your application. The photographs can be taken at any location that takes pictures (drug store, shopping mall etc.). The fingerprints must be on an FD-258 FBI fingerprint card.
4. Submit two copies of your completed application, plus \$200, two sets of prints, two photo's, as well as two copies of the Certification of Compliance (stating that you are a U.S. citizen).
5. Wait. Wait some more. Keep waiting. Wait times as of late have been around 6 months to receive back your approved form.
6. Once approved, go pick up your NFA item from your SOT dealer.

* Lately discussion has circulated of the CLEO signoff requirement going away. This may be due to the fact that some CLEOs are known to arbitrarily deny signing off. Another explanation may well be that the CLEO signoff is an antiquated step, from an era lacking computers and centralized databases containing criminal records, when the local law enforcement officer's word that you lacked a criminal record was the best "background check" available to the ATF. However, it is also rumored that in exchange for doing away with the CLEO signoff local law enforcement will instead be notified of your acquisition of an NFA item. In addition, NFA trusts would need to submit background checks, prints and photos. The real issue is that the ATF has probably always frowned upon NFA trusts and is trying to make them a less attractive option in exchange for making the individual application process easier.

NFA Trusts

In recent years NFA trusts have become a popular alternative to going the individual application route, largely thanks to attorney Bob Howell who pioneered the technique in the late 1990's. A trust is a legal entity that one creates into which NFA items are transferred. For many gun owners a trust provides advantages that the individual application process lacks, yet there are still some issue's that one need be aware of before deciding to go the trust route.

It seems to me that NFA owners most often cite the lack of a CLEO signoff, fingerprints and photographs as the main benefits of an NFA trust. This is because an NFA trust (the actual owner of the NFA items) is not an "alive person" therefore there are no prints or photos to be taken. In addition, you do not need to secure a CLEO signoff for your trust, as a CLEO obviously cannot testify that a non-alive trust has no criminal record.

In addition, an NFA trust allows multiple persons to possess the NFA item(s) in the trust. Multiple individuals can be named trustees of the trust and therefore able to possess the NFA item(s) in the trust, for instance on the way to/from the range. This would not be possible with an individual ownership, as only the individual transferee may legally possess the NFA item as per the form 1/4. ATF processing times for an NFA item on a trust are also reported to be quicker due to lack of fingerprint processing and no CLEO signoff.

Some allege that the trust route also avoids the background check step. I find this difficult to believe, because at the very least a check is done on the granter of the trust, since one is still required to fill in the trustee information on their form 1/4. Furthermore some believe that an NFA trust provides greater anonymity as the CLEO in your area are not made away of your NFA item(s). Again I question whether law enforcement are totally blind to such information. Indeed, as mentioned the ATF has signaled that if the CLEO signoff goes away there will still be a notification made to law enforcement in your area when an NFA item is transferred to an individual. I suspect that may also be the case for trustees.

This is not to say that a trust is the perfect option however. One still needs to pay the \$200 tax stamp for each NFA item. Furthermore, although some NFA owners do it themselves, the cost of establishing an NFA trust can often run in the hundreds of dollars, especially if one requires the services of an attorney. This is especially true for an individual whom only sees themselves purchasing one, maybe two NFA items; a trust simply doesn't make financial sense. A copy of the trust must also be submitted with each form 1/4.

There is another issue which is often seldom mentioned. Some NFA owners have expressed trepidation regarding the fact that their approved form 1/4's don't have their names listed, which instead list the trust. The concern is that a run-in with law enforcement (especially law enforcement unfamiliar with NFA items) may cause issues to arise because they [NFA owner] are unable to assert direct possession and lawful ownership of the NFA item based solely on the ATF form. Obviously in the eyes of the ATF and NFA law their possession would be legal, but it is still a potential problem that worries some gun owners.

Whether this is a legitimate concern is ultimately up to the gun owner to decide. I personally find it highly unlikely that a local or state level law enforcement officer would give an NFA owner trouble over an NFA trust, and find it difficult to imagine a scenario in which this would occur. Even under some hypothetical scenario with a random run-in with a federal agent it is highly likely that they, or their superiors, would be aware of the legality of an NFA trust. Just keeping your approved form(s) and trust papers with you when you visit the range (as any NFA owner should do) should be more than sufficient.

Lastly, as mentioned previously there is the possibility of the ATF requiring fingerprints and photographs of NFA trustee's in the near future.

Massachusetts and NFA Items

Like all matters firearms-related, Massachusetts takes a heavy handed approach to NFA items. This involves allowing some, restricting others and outright banning one.

Machine Guns

Surprisingly, Massachusetts has not (yet) prohibited civilian possession of machine guns. The commonwealth does however add its own additional component into the mix for an individual to lawfully possess such a firearm in the state. M.G.L. c. 140, §§ 131(o) states:

No person shall be issued a license to carry or possess a machine gun in the commonwealth, except that a licensing authority or the colonel of state police may issue a machine gun license to:

(i) a firearm instructor certified by the municipal police training committee for the sole purpose of firearm instruction to police personnel;

(ii) a bona fide collector of firearms upon application or upon application for renewal of such license.

This means that in addition to the federal ATF NFA process for obtaining a machine gun, a citizen residing in Massachusetts must also apply for and receive a machine gun license, commonly referred to as a “green card” (many years ago the machine gun license application was green paper, and the current wallet-sized license has the license type on a green background).

Like the LTC, it is dependant on the town/city in which you reside whether or not the police chief will issue you a green card (I am unaware of the state police colonel ever issuing a green card). Because few fall within category (i), it is the collector requirement in category (ii) that many must meet. To accomplish this many applicants decide to apply for an FFL type 3 C&R license, an explanation of which is necessary to understand why it often satisfies and proves one is a collector of firearms:

- Type 3 FFL – This is known as a C&R – Curios and Relics – license. It is issued by the ATF and allows one to collect certain firearms, usually those older than 50 years or of a type deemed to be valuable primarily because of their collector status, without going through the typical process required to purchase title I firearms (yes, title I, not II). It does not allow one to engage in the business of dealing and selling in firearms, but instead allows such interstate firearms purchases to be shipped directly to one’s home instead of to a gun dealer (usually a type 1 FFL) for transfer. Furthermore, a C&R license does not supercede ATF regulations (a C&R holding buying a machine gun still needs to follow all applicable NFA regulations). It is basically a license to collect old guns without jumping through the loops typically required to buy a title I firearm.

So, if a green card applicant holds a federal C&R license, especially if they have held it for a number of years and can demonstrate having collected firearms (often by showing their purchases that must be recorded in their bound book), many police chiefs will consider the collector requirement to have been met. Some will not even ask/care if you have a C&R and will issue a green card regardless; vice versa some will not issue a green card even though you hold a C&R. Again it is dependant on the police chief in your town/city.

A green card does not supersede the need to hold an LTC, as an LTC covers all firearms while a green card covers only machine guns. While nothing in the MGL’s precludes one from owning solely a machine gun(s) with just a green card, it is unlikely state officials would interpret the law such a way.

Suppressors

Unfortunately, this will be a short sub-section, as Massachusetts bans civilian possession of silencers, a.k.a. suppressors. Since 1926, M.G.L. c. 140, §§ 10A has been in effect, which states:

Any person...[other than law enforcement and dealers]... who sells or keeps for sale, or offers, or gives or disposes of by any means...or uses or possesses any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearm to be silent or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearm shall be punished by imprisonment for not more than five years in state prison or for not more than two and one-half years in a jail or house of correction.

Short Barreled Rifles

Massachusetts does not prohibit civilian possession of rifles with barrels less than 16". One need simply follow the NFA regulations to manufacture or possess one. No special "SBR" license exists or is needed (beyond the required FID or LTC depending on the rifle you are SBR-ing).

Short Barreled Shotgun

Massachusetts does not prohibit civilian possession of shotguns with barrels less than 18" or less. One need simply follow the NFA regulations to possess one. No special "SBS" license exists or is needed (beyond the required FID or LTC depending on the capacity shotgun you possess).

However, an individual may not manufacture their own SBS on a form 1 in Massachusetts. This is because of two sections in the MGL's. M.G.L. c. 269, §§ 10(c):

...whoever owns, possesses or carries on his person, or carries on his person or under his control in a vehicle, a sawed-off shotgun, as defined in said section one hundred and twenty-one of said chapter one hundred and forty, shall be punished by imprisonment in the state prison for life, or for any term of years...

M.G.L. c. 140, §§ 121 defines a "sawed-off shotgun" (lingo for an SBS) as:

"Sawed-off shotgun", any weapon made from a shotgun, whether by alteration, modification or otherwise, if such weapon as modified has one or more barrels less than 18 inches in length or as modified has an overall length of less than 26 inches.

Careful reading of §§ 121 clearly states “made from a shotgun, whether by alteration, modification or otherwise”. This clause would only apply to shotguns that were SBS-ed after being manufactured, not shotguns originally manufactured less than 18” in barrel length (or 26” total). So an individual in Massachusetts could still purchase an SBS that was originally manufactured in such configuration.

Destructive Devices

Yes and No. Some DD’s (such as the DAO-12 street sweeper) may be purchased and possessed in MA but must be preban because they are named and banned in the MA AWB. Other devices, such as explosives, are specifically banned in other obscure areas of MA law.

This is truly an area of the law where you need to find a specialized NFA attorney who is very familiar with both federal and MA firearms/explosive/destructive device law.

Any Other Weapons

Again, yes and no. There are various categories of AOW’s, some of which must comply with MA AWB regulations, SBS regulations, covert weapon regulations etc. For example, a shotgun from the factory less than 18” but having never had a stock attached is an AOW, with a stock it is now an SBS. Different regulations will apply.

An AOW purchase can quickly become a complicated endeavor, so again it is imperative that one find an NFA attorney who is particularly experienced in this area of law.

Frequently Asked Questions

What is the process to submit and have approved an ATF form 20?

Filing a form 20 is somewhat different than the other forms an individual or trust would typically deal with. For starters, a form 20 does not require the payment of any tax since no NFA item is being transferred. Second, the processing time is typically much faster (many NFA owners report a turn around of several weeks instead of months).

A form 20 needs to be approved for every NFA item you wish to take across state lines, and you also must submit a form 20 for each respective state you are visiting. Once approved it is valid for one year. As an added bonus, if you hold a type 3 FFL (C&R) license and the NFA item you wish to take across state lines is also a C&R eligible firearm, no form 20 is required.

If I hold a type 3 FFL (C&R) license and I am purchasing an NFA item that is C&R eligible do I still need to go through the NFA process?

Generally, yes, with one exception: after submitting the required paperwork for a form 4 NFA item that is also a C&R firearm and being approved, the item can be shipped directly to the C&R holder without needing to be transferred through an SOT. Otherwise, all other NFA requirements such as photos and prints (unless doing an NFA trust) are still required.

On a side note, there are some states which prohibit “regular” machine gun ownership whereas C&R machine guns are allowed for civilians. That, along with their ability to be shipped directly to your home, and of course that they tend to be less common, results in elevated C&R machine gun prices.

Can I occasionally sell C&R firearms with my type 3 FFL (C&R) license?

Yes. The ATF recognizes that collectors sometimes sell, trade or buy firearms to enhance their collection. Therefore the occasional, legal sale of a firearm should be fine.

However, one is not allowed to be engaged in the business of selling, trading or buying firearms, which is defined by the ATF as;

a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms

What should one do if they encounter an unregistered machine gun in an attic/basement/closet after a loved one passes away?

Find a firearms attorney who is very well versed in federal firearms law.

If I have a pre-1986 approved form 1 for a semi-auto receiver/firearm that was never converted, can I still go ahead and convert the receiver/firearm to fully automatic?

No. The ATF has interpreted the '86 ban to require that all work (i.e. conversions) must have been completed prior to the ban. So even though approval was given, it is now (way!) too late. This was before my time so I don't know how much truth there is to it, but I have heard that immediately following the ban in 1986 the ATF went to dealers and individuals alike and canceled approved forms to manufacture machine guns where the item in question had not already been made/converted.

If I have a registered sear/receiver/full auto fire control parts can I modify them for use in a different host firearm with the purpose of making it fully automatic?

This can be a confusing question for some, so I'll clarify. This question typically arises when an individual has a registered machine gun (or part) that they want to use in a different firearm platform to make it legally fully automatic. For example, over the years individuals have attempted to modify registered MAC's (the cheapest of NFA machine guns) to be used in a wide array of totally different platforms, such as belt fed machine guns like the MG-42 and M60.

The problem is that the ATF doesn't allow such modifications based on their interpretation of the NFA and Hughes Amendment (their interpretation is not written in the law). Their claim is that not only did the 1986 ban freeze the NFA machine gun registry; it also froze what firearms the registered parts could be used in. In addition, such modifications (in their opinion) amount to manufacture of a post-1986 machine gun. Therefore a registered machine gun part/receiver can only be used in the platform for which it was designed. This remains true even when walking a very fine line, for example the AR10 and AR15 platforms, which although alike utilize different calibers, thus a registered AR15 DIAS cannot legally be used in an AR10.

Regarding the previous question, what about vice versa (modifying a different host firearm to accept an unaltered registered machine gun part)?

Generally, no. An example would be this; a registered AR15 DIAS usually sells for upwards of \$15,000, whereas an FNC sear for use in an FNC rifle typically sells for under \$5,000. So, if one were so mechanically inclined it is possible to convert an AR with modifications to accept and utilize a registered FNC sear thus making the AR fully automatic...for \$10,000 less.

However, there are some exceptions. There are certain uppers for the MAC family that are legal, some that are illegal, and some that were originally ruled legal only to have that ruling overturned and made illegal (RPD uppers). When legal the interpretation is basically that the upper is an attachment (think accessory) and doesn't modify the machine or require modification for the machine gun to operate. This is also rumor that the engineers of such uppers who continually conferred with the ATF during development to ensure legal compliance have had greater success in having their uppers approved.

This area of the NFA is extremely complex. So when you start becoming this deeply involved in machine guns and such you really need to be 110% sure what you are getting into is legal. It's of the utmost importance you speak with a firearms attorney who is very well versed in this area of the NFA and understands ATF approval and interpretation policies.

If I have a registered machine gun and want to SBR it, add a suppressor or add a destructive device to it, do I need to submit a form for each additional NFA item?

That depends on what exactly you want to do:

SBR – A firearm cannot be both a machine gun and SBR at the same time, because in legal terms it is a machine gun and not a rifle. Obviously in common gun reference a firearm could clearly be both, but in the twisted NFA world such cannot be the case.

Thus, the registered fully automatic MACs with stocks that you may come across transfer on one stamp because their machine gun status renders their SBR length irrelevant. Likewise, an AR15 with a DIAS installed can have the 16” upper swapped out to a 10.5” upper without needing to submit a form 1 for manufacture of an SBR...because the installation of the DIAS in the AR15 trumps its status as an SBR. But if the DIAS is removed the 10.5” upper must also be removed, unless the host AR was also registered as an SBR (which is unnecessary if the DIAS is always installed when the 10.5” upper is installed). Basically, machine gun status trumps SBR status...when the machine gun part is installed.

Suppressor – Because the suppressor is a separate item that is almost always detachable from the firearm, a suppressor is considered a separate item and requires an additional NFA item that needs to be registered and tax paid for. Interestingly, if you were to have for example an AR15 with a barrel under 16” also with a permanently affixed suppressor that brought the length of the barrel to over 16”, only one NFA item would exist and only one stamp need to be paid (the suppressor). However, if the suppressor was removable two NFA items would exist. Also, if the barrel was under 16” even with the suppressor permanently (or remove-ably) affixed two NFA items would exist.

Destructive Device – A DD, just like a suppressor, would be a separate NFA item. An example would be an M203 grenade launcher attached to a registered receiver/DIAS AR15...you would still need to register the M203.

On a side note, every “true” grenade for the M203 would also need to be individually registered as a DD. That means that every one-time use grenade would need a \$200 tax stamp, which is obviously incredibly expensive. That is why many gun owners who have M203’s usually shoot training rounds, flares etc since the actual grenades are prohibitively expensive to purchase, much less actually shoot.

What fully automatic parts can I legally own?

This is a very delicate area of NFA firearms law that can become very complex and confusing very quickly. Basically the ATF has held that possession of parts that can readily convert a semi-automatic firearm to fully automatic are illegal unless a) they are registered or b) are for replacement/repair of parts used in a registered receiver. For example, if you owned a registered AR15/M16 receiver you could legally possess the M16 full auto fire control group parts, unless you also owned a semi-automatic unregistered AR15 because according to ATF interpretation that could be considered intent and possession of two machine guns even if you never and didn't intend to install the parts in the semi-auto AR15.

You may be wondering why it is legal to possess and use a full-auto bolt carrier group in an AR15 (See ATF letter #903050:MSK 3311/2008-468). The reasoning is that an AR15 FA BCG cannot readily convert an AR15 into a machine gun, nor is it defined as a firearm under the NFA. It would however be illegal to utilize said part in conjunction with other parts that would make an AR15 fully automatic (assuming said firearm was not registered).

When in doubt, consult with an attorney.

What's the deal with AR15 pistols, and rifles with collapsible stocks? Are they SBR's?

These are two distinct categories of firearms, so it's necessary to address them separately.

AR15 pistols are just that, pistols. Although they may resemble AR15 rifles, they are not rifles in a legal or technical sense. To qualify as a pistol, the AR15 must not be able to accept a stock. That is why the buffer tube on an AR15 pistol is smooth without notches for a stock, or sometimes the buffer tube is absent if the pistol is piston driven. Furthermore, to build an AR15 pistol a virgin receiver must be utilized that has never before been built into a rifle.

Rifles with collapsible stocks are still rifles and not SBR's so long as the rifle measures 26" even with the stock collapsed/folded; i.e. you measure the rifle in its shortest configuration. Similarly, if you have a rifle with a fixed stock, you remove the stock and it now measures less than 26" you are in violation of NFA regulations as it would need to be registered as an SBR. Even if you took off the stock and removed its ability to accept a stock it is still considered a rifle, as you cannot make a pistol out of a rifle. Once a pistol has had a stock attached to it, it is forever a rifle.

What is the status and regulation of pre-1899 machine guns, suppressors, SBR/SBS, destructive devices and AOWs?

Very few true fully automatic machine guns existed prior to 1899, perhaps only the Maxims and Colt M1895 (Gatling guns are not machine guns by the way). Even so, the NFA makes no exemption for such machine guns and they too would have required registration prior to the 1968 cutoff. Likewise, you cannot take any pre-1899 receiver and modify it into a machine gun, as this would be manufacturing a civilian machine gun which has been illegal for 26 years.

I do not believe suppressors existed until the later half of the first decade of the twentieth century when Hiram Maxim developed his silencer.

Exceptions are made in certain cases for pre-1899 SBRs and SBSs that were originally produced in short configuration, or cut down, before 1899. However, if you took a pre-1899 rifle or shotgun and shortened it you would be manufacturing an SBR/SBS and thus the NFA regulations would apply. Certain exemptions are also made for firearms that do not shoot rimfire or conventional centerfire fixed ammunition, or that do shoot the aforementioned ammunition but it is not readily available (including replicas). Muzzleloaders (pre or post-1899) are also exempt from NFA SBR/SBS regulations. On a side note, legally SBR/SBS-ing a title I C&R firearm disqualifies its status as a title I C&R firearm and renders it title II. This area can be complex, thus one should consult with a firearms attorney experienced in this field of NFA law.

The destructive device category is very complex with many additional laws and regulations that govern explosives, so I'll keep this simple. I can think of such examples as civil war cannons and such that may be possessed without involving NFA regulations so long as they are either inert or fire unconventional ammunition. This is truly an area of the law where one should consult with a firearms attorney experienced in NFA law.

Most of the AOW category of firearms did not exist prior to 1899, perhaps with the exception of cane guns. Here again if it doesn't use fixed ammunition, or used ammunition which is not readily available, it may be exempt from NFA regulation. One should consult with a firearms attorney experienced in this field of NFA law.

Can I un-register an NFA item?

Yes, you can. The most common scenario in which this occurs (currently) is when someone wants/needs to sell their SBR AR15 but can't find a buyer willing to undergo the NFA process, so they swap back onto the rifle a 16"+ barrel and un-register it as an SBR.

Believe it or not, many decades ago (prior-'68 GCA) when machine guns were readily accessible and the \$200 stamp often eclipsed their value several fold, many NFA owners found they were unable to sell their machine guns so they destroyed and un-registered them. You could still do this today but obviously no one does. There are also avenues to destroy the receiver of a machine gun and rebuild the rest of the firearm on a new, semi-auto receiver. However there is no way to un-register a machine gun, convert it to semi-automatic and sell it as a title I firearm, as the ATF interprets such along the lines of "once a machine gun, always a machine gun".

To un-register a suppressor one would need to nearly totally destroy the suppressor, as the tube and almost all components in and of themselves are considered an NFA item.

I am not sure of the process to un-register an AOW or DD, or if one even exists.

Does an SBR negate the MA AWB?

This question comes up fairly often and basically asks: If I register an SBR in Massachusetts do I still need to comply with the Massachusetts Assault Weapons Ban? (The implication being that the NFA regulations would overrule the MA AWB). The answer is yes and no. Here's why.

The MA AWB is refers to the definition of an assault rifle as written in the old federal ban, which stated rifles 16" in length or longer. So if you SBR an AR15 in MA it no longer falls under the definition of an assault rifle insofar as the MA AWB is concerned, therefore one could argue that the regulations set forth in the MA AWB don't apply.

On the other hand, during the original federal AWB it was ATF policy that any post-1994 SBR also needed to comply with the federal AWB. A preban SBR would not.

There is no definite answer here. The safe way to go about it, for instance with an AR15, would be to use a preban receiver to build your SBR with the "evil" features prohibited by the MA AWB.

Does a machine gun trump the MA AWB?

Yes, but only because all civilian machine guns are preban.

Does one need a green card even to only hold/ shoot a machine gun under the supervision of a green card holder?

If you asked this question 5 years ago most would say “Of course not, as long as you’re supervised your fine”, especially since that exemption is written into law for rifles, shotguns and handguns. Unfortunately in 2008 at a machine gun shoot in western MA a young boy was firing an Uzi when it somehow shot him in the head, killing him. Since then several sources, notably Ron Glidden and the Executive Office of Public Safety have taken a closer look at the law and determined that no one other than a green card holder may even touch a machine gun.

These interpretations come out of a close examination of M.G.L. c. 140, §§ 129C(m), which states:

The temporary holding, handling or firing of a firearm for examination, trial or instruction in the presence of a holder of a license to carry firearms, or the temporary holding, handling or firing of a rifle or shotgun for examination, trial or instruction in the presence of a holder of a firearm identification card, or where such holding, handling or firing is for a lawful purpose;

Again we must remember that in much of the M.G.L.’s firearm refers to a pistol, and since clause (m) makes no reference to a machine gun, some have concluded that such exclusion amounts to prohibition of all but green card holders from handling and shooting machine guns. The penalties for possessing a machine gun without a license range from 10 years to life in prison.

Can I hunt with a machine gun?

No. M.G.L. c. 131, §§ 64 states:

A person shall not use for hunting purposes any type of full automatic firearm, machine gun or submachine gun...

The law does not differentiate between a machine gun in semi-automatic or burst/fully automatic mode, so by the very nature of a firearm being capable of select fire it is thus prohibited for use in hunting.