

The Secrets of NFA Compliance

August 12, 2024

NSSF[®]
*The Firearm Industry
Trade Association*



Additional NSSF Compliance Resources



Industry Compliance courses:

- “Zero Tolerance” Policy
- Winning at ATF Inspections
- Completing the Form 4473
- Multiple Sales Report
- and more

[NSSF.org/Education](https://nssf.org/education)



The Secrets of NFA Compliance

August 12, 2024

NSSF[®]
*The Firearm Industry
Trade Association*



What You Need to Know

to Ensure that Your
NFA Operations and Records Meet the Requirements
of The National Firearms Act
and The Gun Control Act of 1968

Today's Agenda

- ✓ Brief NFA Overview
- ✓ Traits of Successful NFA Dealers
- ✓ General Compliance Guidelines
- ✓ Paper Forms versus eForms
- ✓ Avoiding Violations
- ✓ Special Compliance Considerations for Manufacturers
- ✓ “Fatal” Errors on NFA Forms
- ✓ Common (but not fatal) Errors on NFA Forms
- ✓ Error-Proofing Your NFA Forms and Records
- ✓ Safeguarding and Filing of Registration Documents

National Firearms Act of 1934

- ✓ The NFA was enacted to regulate “Gangster” type weapons by a system of registration of firearms falling under its purview.
- ✓ It is a tax statute and is part of the Internal Revenue Code, the same law that requires you to file an income tax return.
- ✓ There are criminal penalties for possession of unregistered NFA firearms.
- ✓ The Supreme Court struck down part of the NFA in the 1968 Haynes Decision.
- ✓ At the same time Congress was considering the Gun Control Act.
- ✓ As a result, the NFA was amended and added as Title II to the GCA of 1968.
- ✓ The terms Title I and Title II firearms resulted from this legislation.

Traits of Successful NFA Importers/Manufacturers/Dealers

- ✓ **Patience and forbearance** – The processing time for NFA forms is what it is, and there is not much an FFL can do about it, other than not calling the NFA Division every day about pending transfers. Using the correct forms and submitting everything properly will help facilitate approval.
- ✓ **Communications** – The ability to communicate with customers purchasing NFA firearms to let them know, early in the process, there could be a lengthy wait.
- ✓ **Precision and accuracy** – FFLs must maintain complete, accurate, and timely records to stay in business. All SOT, Making and Transfer taxes must be paid timely. The NFA is a criminal statute with three remedies: Prosecution, Assessment of unpaid taxes and Forfeiture of firearms.
- ✓ **Hope and Optimism** - Hope for shorter processing times in the future.

General Compliance Guidelines

- ✓ Sweat the Details;
- ✓ Take firearms descriptions off the firearms themselves, not other places;
- ✓ Ensure that firearm descriptions on Forms 3 and Forms 4 agree with the actual firearms and report any discrepancies to the NFA Division;
- ✓ Follow the instructions on all ATF forms, especially NFA forms;
- ✓ Take frequent physical inventories of all NFA firearms in your possession;
- ✓ Compare your physical inventory results with the NFRTR by getting a listing from ATF of what is registered to your FFL (NOTE: Your request must be via email or snail mail; telephone requests will not be honored due to privacy concerns);
- ✓ Establish and enforce standard operating procedures for the receipt, storage and sale of NFA firearms and associated transfer forms;
- ✓ Review all records at least quarterly for accuracy, because they are reviewed during the ATF on-site compliance inspection.

Paper Forms Versus e-Forms

- ✓ Paper forms are familiar and “comfortable”
- ✓ Electronic forms raise privacy concerns with some buyers
- ✓ For some, paper forms are “real” things you can put your hands on
- ✓ For some, electronic transmission of sensitive personal information is a risk

BUT

- ✓ eForms 3 process in one-fourth the time of paper on average
- ✓ eForms 4 for trusts process in about one-third the time of paper on average
- ✓ eForms 4 for individuals process in less than one-fourth the time of paper on average

(Based on ATF Processing times as of July 1, 2024)

Avoiding Violations

- ✓ Complete all ATF forms according to the instructions on the form;
- ✓ Review every form twice prior to timely submitting or filing it;
- ✓ When reviewing forms, **read what is on them**; don't just look for ink in a box;
- ✓ When reviewing forms, review them from the end in reverse order – verifying NFA registrant is accurate;
- ✓ Set a monthly schedule to have all records and forms reviewed by an individual not involved in the initial review(s);
- ✓ During your monthly reviews of your forms, ensure that no forms are missing – missing transactions may be confirmed with the NFA Division;
- ✓ Ensure that you have an ATF Form 3 for every NFA firearm in your inventory.

Avoiding Violations (cont.)

- ✓ Take regularly-scheduled physical inventories of your NFA firearms and reconcile the inventories with both the A&D records and the ATF Forms 3;
- ✓ Report the theft or inventory loss of any firearm to ATF and your local authorities not less than 48 hours after discovery – especially any losses involving NFA firearms;
- ✓ Report missing NFA registration documents to ATF immediately upon discovery via email;
- ✓ Do not accept a used NFA firearm in trade without going through the proper process and ensuring the person trading the firearm is the person identified on the tax stamp for that firearm;
- ✓ Be sure to conduct a background check (or list a NICS exemption) if a person buying an NFA firearm also buys another firearm at the same time (e.g., an AR receiver added to the purchase before or while executing the ATF F 4473);
- ✓ SWEAT THE DETAILS!!!

Special Compliance Considerations for Manufacturers

- ✓ Ensure that all NFA firearms manufactured are appropriately marked not later than close of the next business day following the date the entire manufacturing process has ended for the weapon or device, or prior to disposition, whichever is sooner;
- ✓ For silencers, if more than one part of it attaches to the barrel, each part must be marked;
- ✓ For silencers too, parts transferred between qualified manufacturers for further manufacture or to complete new devices, and silencer replacement parts transferred to qualified manufacturers, need not be marked at the time of transfer. Any new device completed with such a part must be registered by the manufacturer;
- ✓ A subpart of a silencer that is not a component part of a complete weapon at the time it is sold must be identified by an individual serial number;
- ✓ Each part or modular subpart defined as a machinegun (frame, receiver, or conversion part) that is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of must be identified not later than close of the next business day following the date the entire manufacturing process has ended for the part, or prior to distribution, whichever is sooner;
- ✓ Ensure that ATF Form 2, Notice of Firearms Manufactured or Imported, is filed for every NFA firearm manufactured in a day by the close of business the next business day;
- ✓ Importers must file Form 2 not later than 15 days from the date the firearm(s) was released from Customs custody.

“Fatal Errors” on NFA Forms

- ✓ We use the term “Fatal Errors,” in the context of NFA filings, to describe errors that would cause the transfer application to be returned immediately without action:
- ✓ **Examples of these errors include:**
 - ✓ Using an outdated version of ATF Form 4;
 - ✓ Not making two sided copies of all forms;
 - ✓ Submitting an unsigned form;
 - ✓ Failure to submit NFA Responsible Person Questionnaire for all listed RPs;
 - ✓ Failure to include tax payment;
 - ✓ Failure to submit fingerprint cards or the submission of illegible or unusable fingerprints;
 - ✓ Failure to affix pictures on forms where required;
 - ✓ Failure to include documentation to prove existence and validity of trust or other entity.

Common (but not fatal) Errors on NFA Forms

- ✓ Form 4, Application for Tax Paid Transfer and Registration of Firearms (October 2023 edition):
 - ✓ Missing Photos;
 - ✓ Fingerprint Cards incomplete (FD-258 personal descriptors);
 - ✓ Trust/Individual names do not match on form;
 - ✓ Item 4d-incorrect models;
 - ✓ Item 4g-incorrect serial number;
 - ✓ Item 9 – Missing Transferor signature/date;
 - ✓ Item 12 – Law Enforcement Notification information not provided;
 - ✓ Item 13 – Transferee Necessity Statement left blank (Not required for silencer.);
 - ✓ Certification – Missing Transferee signature/date;
 - ✓ No RPQs submitted at all or for all RP's listed on the Form 4;
 - ✓ RPQs submitted for persons not listed on Form 4;
 - ✓ Missing RPQ signature.
- ✓ Do not file a Form 4 until the Form 3 transferring the firearm to your FFL has been approved and the firearm has been received in your FFL inventory. (easily verified by ATF and citable if executed incorrectly)

Error-Proof Your ATF Forms 4 & 5320.23

- ✓ ATF has stated that 40 percent of all Form 4 applications submitted to the NFA Division are incomplete and/or contain errors. Resolving errors will lead to significant delays in processing.
- ✓ In these cases, the applicant is issued an error letter and given a period of 30 days to respond to ATF. (Some are disapproved immediately and returned.)
- ✓ Failure to respond in a timely manner will result in the application being disapproved.
- ✓ Submitting FBI UPIN data to assist with problematic, non-prohibited background checks (common names etc.) can help lessen processing times; (NOTE: background checks entered into perpetual rechecks are voided after 80 days by FBI)
- ✓ Please take your time when completing NFA forms. The delays are long enough without adding to them because of an FFLs' preventable errors.
- ✓ We recommend the development and use of a check sheet that must be signed off by a reviewer who is not the person who completed the forms. (NOTE: e-Forms will not allow you to proceed to the various submission bus-stops if data is inaccurate)
- ✓ The check sheet should be retained with other records kept while the transfer is pending.

Safeguarding and Filing of Registration Documents

- ✓ The Form 3 that comes with your firearm(s) is the only proof of registration you have for that firearm. Copies can be made for store use. Many stores keep a copy with the firearm. Where multiple firearms are on a single Form 3, a copy can be made for each firearm.
- ✓ ATF regulation 27 CFR 479.131 states that registration documents shall be maintained in chronological order. We recommend filing chronologically by the date of the ATF approval.
- ✓ Maintain all NFA firearm registration and transfer documentation in a large three-ring binder, or in three separate three-ring binders. Place the documents inside plastic sheet savers within the binders.
- ✓ Divide a single binder into three sections: On Hand and Available for Sale; Sold but Awaiting ATF Form 4 Approval; Transferred/Sold; or use a separate binder for each of those categories.

Safeguarding and Filing of Registration Documents (cont.)

- ✓ In the first section, place all original ATF Forms 3 for every NFA firearm you have in inventory and available for sale.
- ✓ In the second section, place a copy of the Form 3 for every NFA firearm that has been sold/purchased and for which you have submitted the Form 4 and are awaiting its approval. In the same plastic sheet with the copy of the Form 3, place a copy of the Form 4 and RPQ(s) and a copy of any trust documents that were submitted.
- ✓ After the Form 4 has been approved by ATF and the Tax Stamp issued, move the original Form 3 (or copy as appropriate), the copy of the Form 4, RPQ(s) and trust documents (if any), and a **copy** of the ATF Form 4473 on which that NFA firearm was transferred to section three.

This procedure takes a bit of time and effort, but it will pay dividends when ATF comes in to do an inspection. It will substantially decrease the time they need to spend ensuring your compliance with NFA laws and regulations; **AND** if maintained with care, it will significantly lower the likelihood of a recordkeeping violation regarding your NFA operations.

Current Processing Times: NFA Forms

Source: ATF

ATF Form	Processing Office	Paper	eForms
Form 1 Application to Make and Register a Firearm	NFA Division	141 days	112 days
Form 2 Notice of Firearms Manufactured or Imported	NFA Division	18 days	1 day
Form 3 Application for tax-Exempt Transfer of Firearm and Registration to Special Occupational Taxpayer (SOT)	NFA Division	8 days	2 days
Form 4 Application for Tax Paid Transfer and Registration of Firearm	NFA Division	247 days	155 days
Form 5 Application for Tax-Exempt Transfer and Registration of Firearm	NFA Division	17 days	1 day
Form 9 Application and Permit for Permanent Exportation	NFA Division	1 day	2 days
Form 10 Application for Registration of Firearms Acquired by Certain Governmental Entities	NFA Division	62 days	7 days

NSSF Compliance Consultant Team

ATF Consultants



Judy Bender
judybender73@gmail.com
630-418-0141



Bill Napier
lpcbill@gmail.com
308-249-0131



John "JB" Bocker
jb@fflconsultants.com
720-336-0028



Wally Nelson
nels4947@outlook.com
703-505-2617



Harry McCabe
harry@mccabeconsultingllc.com
931-505-3638



Judyth Ledoux
ledoux.judyth@gmail.com
202-528-9465



Andrew Graham
andy@grahamia.com
720-670-0096

ATF & OSHA Consultant



John "JC" Clark
jc@fflconsultants.com
720-431-8821

CA DOJ Consultant



Renee Lewis
rlewis.consultant@gmail.com
916-717-5304

OSHA Consultant



Dale Krupinski
oshacoach@ontargetsafetyacademy.com
303-351-7915

Federal Excise Tax Consultant



Richard M. Weimer
akrich246@yahoo.com
704-641-0531

Questions?



Harry McCabe

harry@mccabeconsultingllc.com

(931) 505-3638



Andy Graham

andy@grahamia.com

(720) 670-0096

NSSF[®]
*The Firearm Industry
Trade Association*

NSSF.ORG

