



FIREARM OWNERS AGAINST CRIME
INSTITUTE
PENNSYLVANIA'S PREEMINENT SECOND AMENDMENT ORGANIZATION
— MORE THAN 30 YEARS OF EDUCATION AND ADVOCACY —

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Dear Attorney General Sunday,

October 13th, 2026

We are writing on behalf of the members of Firearm Owners Against Crime – Institute for Legal, Legislative, and Educational Action (“FOAC-ILLEA”) to respectfully request that your Office investigate whether the Pennsylvania State Police’s enforcement of 18 Pa.C.S. § 908 is in compliance with the Bureau of Alcohol, Tobacco, Firearms, and Explosives’ (“ATF”) recent guidance regarding certain firearms coming under the purview of the National Firearms Act (“NFA”), 26 U.S.C. § 5801, *et seq.*

Specifically, on October 9, 2026, the ATF issued an *Open Letter to All Federal Firearms Licensees and the Public Regarding the National Firearms Act making and Transfer Requirements for Certain Firearms and Devices* (“Open Letter”), a copy of which is attached.¹ In that determination letter, the ATF informed Federal Firearms Licensees (“FFLs”) and the public that consistent with the decision in *Silencer Shop Found. v. ATF*, No. 6:25-CV-056-H, 2026 WL 2255460 (N.D. Tex. Aug. 5, 2026), short-barreled rifles, short-barreled shotguns, silencers, and “any other weapon[s]” as defined in 26 U.S.C. § 5845(e), no longer require registration under the NFA.²

Resultantly, concern has been raised by FOAC-ILLEA’s Pennsylvania members, including FFLs and individuals, who own, possess, sell, and wish to purchase or make NFA firearms covered by ATF’s Open Letter,³ regarding the PSP’s compliance with the Open Letter and enforcement policies/practices related thereto, given 18 Pa.C.S. § 908 and its potential application to certain firearms that are otherwise lawful to own in the Commonwealth.

As we are sure you are aware, Section 908 deals with prohibited offensive weapons, which are defined, in pertinent part to this request, as including a “sawed-off shotgun with a barrel less than 18 inches, [and] firearm specially made or specially adapted for concealment or silent discharge.”^{4, 5} Section 908 then goes on to provide

¹ Also available at, <https://www.atf.gov/media/30961/download>.

² As stated in the Open Letter, the decision does not impact the registration requirements, under the NFA, of machineguns or destructive devices.

³ Nothing in this letter should be considered to constitute a request for investigation into the PSP’s practices as they relate to machineguns or destructive devices.

⁴ A violation of Section 908 is a misdemeanor of the first degree, a conviction for which, the U.S. Government contends, triggers the prohibition of 18 U.S.C. § 922(g)(1); whereby, the individual would be prohibited in perpetuity from purchasing, possessing, and utilizing firearms and ammunition.

⁵ There exists no definition for what constitutes a “firearm specially made or specially adapted for concealment or silent discharge;” however, as explained *infra*, a silencer does not constitute a firearm under Pennsylvania’s Uniform Firearms Act and thus, is not covered by this provision.

two separate exceptions that we believe are applicable, in part, to this request. First, Section 908(b)(1) provides that “[i]t is a defense under this section for the defendant to prove by a preponderance of evidence that ... he complied with the National Firearms Act.” Thereafter, Section 908(b)(3) provides that “[t]his section shall not apply to any person who makes, repairs, sells or otherwise deals in, uses, or possess any firearms⁶ for purposes not prohibited by the laws of this Commonwealth.”

Returning to the ATF’s Open Letter and its intersection with Section 908, there are four main areas of concern of FOAC-ILLEA’s members as they relate to the PSP’s compliance and enforcement policies/practices:

Silencers: As silencers are not considered firearms under the Uniform Firearms Act, given the ATF’s Open Letter, an FFL in Pennsylvania may lawfully sell a silencer to a Pennsylvania resident, utilizing an ATF 4473 and performing the requisite background check through the National Instant Check System. Likewise, a Pennsylvania resident would be in compliance with the laws of this Commonwealth in possessing and utilizing a silencer that was purchased from a Pennsylvania FFL, provided the individual executed the ATF 4473 and passed the requisite background check.

Short-Barreled Rifles and Any Other Weapons: As neither a short-barreled rifle nor “any other weapon”⁷ is regulated by Section 908, given the ATF’s Open Letter, an FFL in Pennsylvania may lawfully sell a short-barreled rifle or “any other weapon” to a Pennsylvania resident, utilizing an ATF 4473 and where such item constitutes a firearm pursuant to 18 Pa.C.S. § 6102, utilizing the Pennsylvania Record/Application of Sale form, as well as, performing the requisite background check through the Pennsylvania Instant Check System. Likewise, a Pennsylvania resident would be in compliance with the laws of this Commonwealth in possessing and utilizing a short-barreled rifle or “any other weapon” that was purchased from a Pennsylvania FFL, provided the individual executed the ATF 4473 and, if necessary, the Record/Application of Sale form, as well as, passed the requisite background check.

Short-Barreled Shotguns: Initially, it is important to point out that Section 908 is explicit that it only covers “sawed-off shotgun[s] with a barrel less than 18 inches.” The reason this is important is that, unlike in the definition of a firearm in 18 Pa.C.S. § 6102, the General Assembly, in relation to Section 908, only desired to regulate short-barreled shotguns that were sawed-off.⁸ Hence, there is only a small subset of short-barreled shotguns that come under the purview of Section 908. For example, a shotgun with a barrel length of less than 18 inches, which was originally manufactured with a barrel length of more than 18 inches but has since been sawed-off, would come under the purview of Section 908; whereas, a shotgun originally manufactured with a barrel length of under 18 inches would not. Resultantly, there are two separate analyses, depending on whether the short-barreled shotgun was sawed-off or not.

In relation to a short-barreled shotgun manufactured with a barrel of less than 18 inches, an FFL in Pennsylvania may lawfully sell it to a Pennsylvania resident, utilizing an ATF 4473 and the Pennsylvania Record/Application of Sale form, as well as, performing the requisite background check through the Pennsylvania Instant Check System. Likewise, a Pennsylvania resident would be in compliance with the laws of this Commonwealth in possessing and utilizing such a short-barreled shotgun that was purchased from a Pennsylvania

⁶ Pursuant to Section 908(c), the term “firearm” is defined as “[a]ny weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.”

⁷ As defined in 26 U.S.C. § 5845(e).

⁸ Cf. Section 6102’s language of “any shotgun with a barrel length less than 18 inches” with Section 908’s language of “sawed-off shotgun[s] with a barrel less than 18 inches.”

FFL, provided the individual executed the ATF 4473 and the Record/Application of Sale form, as well as, passed the requisite background check

In relation to a short-barreled shotgun that was not originally manufactured with barrel length of less than 18 inches and was subsequently sawed-off, for the reasons addressed *infra*, the exemptions of Section 908(b)(1), (3) would apply; whereby, an FFL in Pennsylvania may lawfully sell a sawed-off short-barreled shotgun to a Pennsylvania resident, utilizing an ATF 4473 and the Pennsylvania Record/Application of Sale form, as well as, performing the requisite background check through the Pennsylvania Instant Check System. Likewise, a Pennsylvania resident would be in compliance with the laws of this Commonwealth in possessing and utilizing a sawed-off short-barreled shotgun that was purchased from a Pennsylvania FFL, provided the individual executed the ATF 4473 and the Record/Application of Sale form, as well as, passed the requisite background check.

Section 908(b)(1), (3) Exceptions: Starting with the latter, Section 908(b)(3) excludes from the purview of Section 908, all forms of firearms – which would include those limitedly covered NFA firearms – provided that a person makes, repairs, sells, uses, or possesses them for a purpose not prohibited by the laws of the Commonwealth. As Section 908 is the only provision of the Crimes Code that regulates the possession and use of certain, limited types of firearms, provided the individual is not committing a violation of another section of the Crimes Code, even those firearms are generally exempt from the application of Section 908. Or stated slightly differently, as long as an individual is not committing a separate criminal act, the mere possession or use of firearms covered by Section 908 is lawful. The exception found in subsection (1), on the other hand, addresses a different scenario, where, for example, an individual utilizes a short-barreled shotgun or other NFA firearm covered by Section 908, for purposes of lawful self-defense, as such would constitute a criminal offense – albeit a justifiable criminal offense. In this situation, as it relates to the ATF Open Letter, as long as the individual, in purchasing the covered firearm, executed the ATF 4473 and, if necessary, the Record/Application of Sale form, as well as, passed the requisite background check, he would be excepted from the purview of Section 908 based upon his compliance with the NFA, as directed by ATF’s Open Letter.

For these reasons, we believe that the possession, use, sale, and making of silencers, short-barreled rifles, “any other weapons” and originally manufactured short-barreled shotguns, beyond being lawful, are outside the purview of Section 908, and that possession, use, sale, and making of sawed-off short-barreled shotguns, provided that they are not possessed in furtherance of a separate criminal offense, are both lawful under § 908(b)(1), (3) and in compliance with the NFA, as set-forth previously. Accordingly, we are respectfully asking that your Office investigate the PSP’s current compliance and policies/practices as they relate to the ATF’s Open Letter and its intersection with Section 908.

Respectfully,



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U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms, and Explosives

Office of the Director

October 9, 2026

OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES AND THE PUBLIC REGARDING THE NATIONAL FIREARMS ACT MAKING AND TRANSFER REQUIREMENTS FOR CERTAIN FIREARMS AND DEVICES

The purpose of this open letter is to notify all federal firearm licensees (FFLs) and the public of guidance from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regarding the applicability of certain provisions of National Firearms Act (NFA) to firearms that are no longer taxed pursuant to the One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72 (2025). Congress reduced the transfer and making taxes to \$0 in the One Big Beautiful Bill Act for certain weapons and devices. These include short-barreled rifles, short-barreled shotguns, silencers and “any other weapon[s]” as defined in 26 U.S.C. § 5845(e).

On August 5, 2026, a U.S. district judge in the Northern District of Texas enjoined ATF from enforcing certain provisions of the National Firearms Act (NFA), 26 U.S.C. ch. 53, effective August 12, 2026. *See generally Silencer Shop Found. v. ATF*, No. 6:25-CV-056-H, 2026 WL 2255460 (N.D. Tex. Aug. 5, 2026). Based on the reduction of the tax, the district court held that the NFA’s registration and transfer provisions were no longer an exercise of Congress’s taxing power with respect to those firearms. *Id.* at *1, *13–14. The district court also held that the challenged NFA provisions could not be upheld as an exercise of Congress’s power over interstate commerce because Congress did not rely on its power over interstate commerce when it first passed the NFA in 1934. *Id.* at *18–19.

The district court enjoined ATF from administering a variety of NFA provisions. These include the requirements to approve the making or transfer of firearms, the requirement to register all NFA firearms, and the associated criminal provisions for making, transferring, receiving, or possessing unregistered NFA firearms as applied to the \$0 tax items. *Id.* at *30. The injunction applies only to the plaintiffs and to NFA firearms for which the One Big Beautiful Bill Act eliminated existing taxes. *Id.* at *31.

Since the district court’s injunction, ATF has received requests for guidance from litigants, Members of Congress, state Attorneys General, the industry, and the general public. Forty-seven Members of the U.S. House and Senate have also requested that ATF apply the ruling nationwide

to all regulated parties.¹ This open letter will provide an overview of the path forward, and it will be accompanied by a “Frequently Asked Questions” on ATF’s website that will provide more detail.

Although the district court’s injunction applies only to plaintiffs and certain other specified persons, the Department has determined to exercise its enforcement discretion to create greater uniformity, consistent with the Attorney General’s statement today. Consequently, effective October 9, 2026, ATF will no longer require individuals to seek ATF approval under the NFA before making or transferring short-barreled rifles, short-barreled shotguns, silencers, and “any other weapon[s]” as defined in 26 U.S.C. § 5845(e). ATF will also no longer require such items to be registered in the National Firearms Registration and Transfer Record. These policies apply uniformly to anyone otherwise subject to these requirements, not just to the plaintiffs in the litigation.

ATF will continue to administer the NFA on a voluntary basis. ATF will accept Form 1 applications to make or register these firearms and devices by those making such items. ATF will also accept Form 3 or Form 4 applications to transfer or register such items. Manufacturers are allowed to report the manufacture of these items on a Form 2.

Interested parties, however, should note five limits of this change in enforcement policy. *First*, the NFA still imposes special (occupational) taxes on any person engaged in the business of manufacturing, importing, or dealing in all NFA firearms and devices, including short-barreled rifles, short-barreled shotguns, silencers, and “any other weapon[s]” as defined in 26 U.S.C. § 5845(e). The district court’s injunction does not affect these taxes. Consequently, those engaged in the business must continue to pay applicable taxes on their businesses.

Second, the injunction does not disturb the NFA’s application to machineguns and destructive devices. The One Big Beautiful Bill Act maintained the \$200 tax on such items. Consequently, all NFA provisions still apply to machineguns and destructive devices.

Third, the district court did not enjoin any provision of the Gun Control Act of 1968 (GCA). The GCA’s definition of “firearms” includes all firearms and suppressors and thus extends to short-barreled rifles, short-barreled shotguns, silencers, and “any other weapon[s].” Because these NFA firearms and devices are statutory “firearms” under the GCA, they may not be possessed by prohibited persons, and all recordkeeping and background check requirements under the GCA remain in place. *See, e.g.*, 18 U.S.C. §§ 921(a)(3); *id.* § 922(d), (g), (n), (t); *id.* § 923(g); 27 C.F.R. § 478.121, *et seq.*

Fourth, the district court did not enjoin the GCA’s restrictions on the transportation and sale of short-barreled rifles and short-barreled shotguns. *See* 18 U.S.C. § 922(a)(4), (b)(4). Individuals transporting short-barreled rifles and short-barreled shotguns should continue to file Form 20s, even if the firearms are not registered in the National Firearms Registration and Transfer Record. ATF is working as quickly as possible to issue new regulations to authorize federal firearms

¹ *See* Letter from Congressman Andrew S. Clyde, et al., to Attorney General Todd Blanche, Aug. 11, 2026, https://clyde.house.gov/uploadedfiles/clyde_blancheletter_nfaruling_aug26.pdf.

licensees to transfer short-barreled rifles and short-barreled shotguns under the GCA. In the interim, ATF will not enforce the provisions in 18 U.S.C. § 922(b)(4).

Fifth, the district court's injunction and the enforcement policy announced by this Open Letter do not affect state or local laws that govern NFA weapons. Most states have general criminal prohibitions on the possession of some or all NFA items. These laws often have exceptions for those NFA items possessed in compliance with or registered under federal law. Individuals, including dealers, should consult their local law enforcement authorities or seek legal advice for guidance on whether unregistered NFA items are lawful in their jurisdictions. Because interpretations of state law may vary, local authorities should also be contacted, or other advice sought, before transporting an unregistered NFA item into or through another jurisdiction. Additionally, it is unclear whether state courts will apply the safe harbor created by 18 U.S.C. § 926A to interstate transportation of unregistered NFA items. Consequently, individuals should exercise caution before transporting unregistered NFA items through states in which such items are prohibited by law, even if the items are not prohibited in the originating and destination states. The GCA also continues to prohibit federal firearm licensees from transferring statutory firearms in violation of state or local law. 18 U.S.C. § 922(b)(2). The GCA defines "firearm" to include all NFA items for which Congress eliminated the tax, including silencers. 18 U.S.C. § 921(a)(3).

Questions pertaining to this Open Letter should be directed toward ATF's Firearms Industry Programs Branch (FIPB) at fipb@atf.gov.

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Robert Cekada
Director