



800 N. 3rd St., Suite 402 • Harrisburg, PA 17102 • 717-321-8585 ext. 121

October 15, 2026

Via Email

The Honorable David W. Sunday
Attorney General of Pennsylvania
Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
info@attorneygeneral.gov

**Re: Request for Confirmation of the Proper Interpretation of 18 Pa.C.S. § 908,
and Guidance to the Pennsylvania State Police, Following *Silencer Shop
Foundation v. ATF* and ATF's October 9, 2026 Open Letter**

Dear Attorney General Sunday:

I hope that this letter finds you well. I am writing on behalf of Gun Owners of America, Inc. ("GOA") and its members and supporters throughout Pennsylvania. GOA respectfully asks that your Office (1) review and confirm GOA's reading of 18 Pa.C.S. § 908 in light of the decision in *Silencer Shop Foundation v. ATF*¹ and the October 9, 2026 Open Letter from the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") concerning the National Firearms Act ("NFA"),² and (2) to the extent the Pennsylvania State Police ("PSP") read the statute differently, that your Office advise the PSP of the correct interpretation.

GOA shares the concerns raised in recent letters to your Office from Firearm Owners Against Crime ("FOAC") and from Firearms Policy Coalition ("FPC"). GOA writes to add two points. First, because GOA is a plaintiff in *Silencer Shop*, its Pennsylvania members are protected by the court's permanent injunction, and not merely by ATF's enforcement policy, which ATF may change at any time. As to those members, the federal government is barred from requiring NFA registration or approval of the items covered by the judgment, a point that bears directly on the Section 908(b)(1) defense discussed below. Second, GOA agrees with FOAC that Pennsylvania law already makes clear that short-barreled rifles, short-barreled shotguns, silencers, and "any other weapons" may be lawfully made, sold, and possessed in the Commonwealth without NFA registration. Read according to its text, Section 908 either does not reach these items

¹ *Silencer Shop Found. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, No. 6:25-CV-056-H, 2026 U.S. Dist. LEXIS 174125 (N.D. Tex. Aug. 5, 2026) (consolidated with *Jensen v. ATF*, No. 6:26-CV-227) (hereinafter "*Silencer Shop*").

² ATF, *Open Letter to All Federal Firearms Licensees and the Public Regarding the National Firearms Act Making and Transfer Requirements for Certain Firearms and Devices* (Oct. 9, 2026), <https://www.atf.gov/media/30961/download> (hereinafter "Open Letter"); see 26 U.S.C. ch. 53. This letter does not address machineguns or destructive devices, which the Open Letter confirms remain fully regulated under the NFA.

at all or excepts them from its reach, and this letter sets out additional grounds leading to this conclusion.

Background

The One Big Beautiful Bill Act, signed into law on July 4, 2025, lowered the NFA's making and transfer taxes on short-barreled rifles, short-barreled shotguns, silencers, and "any other weapons" from \$200 to zero dollars, beginning January 1, 2026.³ On August 5, 2026, the United States District Court for the Northern District of Texas held that, "[b]ecause today's NFA does not generate any revenue from untaxed firearms, its regulatory provisions cannot be upheld under the taxing power," which was the only power Congress relied upon when it enacted the NFA in 1934.⁴ The court then permanently enjoined ATF and the Department of Justice from enforcing, as to those untaxed firearms, the NFA's registration, making, transfer, and approval requirements, along with the associated criminal provisions.⁵

GOA is a named plaintiff in that case. The court's judgment runs in favor of the plaintiffs and expressly extends to their members and customers, current and future.⁶ Thus, as to GOA's Pennsylvania members, the federal government is barred by court order, and not merely by its own discretion, from requiring NFA registration or approval for these items. Further, the Department of Justice has advised Congress that it will not appeal.⁷

On October 9, 2026, ATF went further. In its Open Letter, which is enclosed, ATF announced that, effective the date of the letter, it "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)," and "will also no longer require such items to be registered in the National Firearms Registration and Transfer Record."⁸ ATF made clear that these policies "apply uniformly to anyone otherwise subject to these requirements, not just to the plaintiffs in the litigation."⁹ ATF will continue to accept NFA applications, but only "on a voluntary basis."¹⁰ The Gun Control Act's background check, recordkeeping, and prohibited-person provisions remain in place.¹¹

However, the Open Letter does not decide whether these items are lawful under Pennsylvania law. ATF advised that individuals and dealers "should consult their local law enforcement authorities or seek legal advice for guidance on whether unregistered NFA items are

³ Pub. L. No. 119-21, 139 Stat. 72 (2025).

⁴ *Silencer Shop*, slip op. at 1. The court further held that the provisions could not be sustained under the Commerce Clause, because "Congress did not invoke the Commerce Clause in enacting the NFA." *Id.* at 38.

⁵ Final Judgment, *Silencer Shop*, Nos. 6:25-CV-056-H & 6:26-CV-227 (N.D. Tex. Aug. 5, 2026), ECF No. 137 (enjoining enforcement, as to untaxed firearms, of 26 U.S.C. §§ [5812\(a\)-\(b\)](#), [5822](#), [5841\(a\)-\(c\)](#), [\(e\)](#), and [5861\(b\)-\(f\)](#), and 27 C.F.R. §§ [479.62\(a\)-\(d\)](#) and [479.84\(a\)-\(d\)](#)).

⁶ *Id.* The court declined to enter universal relief, citing *Trump v. CASA, Inc.*, 145 S. Ct. 2540 (2025), which is why GOA's status as a plaintiff matters for its members.

⁷ Letter from D. John Sauer, Solicitor General, to Sen. Charles Grassley, Chairman, Senate Committee on the Judiciary (Sept. 24, 2026), filed in *Silencer Shop*, ECF No. 145-1.

⁸ Open Letter at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* (citing 18 U.S.C. §§ [921\(a\)\(3\)](#), [922\(d\)](#), [\(g\)](#), [\(n\)](#), [\(t\)](#), [923\(g\)](#)).

lawful in their jurisdictions,” and it reminded federal firearms licensees (“FFLs”) that federal law prohibits them from transferring a firearm in violation of state law.¹² This creates a problem for Pennsylvania dealers and gun owners alike, because a Pennsylvania FFL who does not know how the PSP reads Section 908 cannot know whether a transfer is lawful under state law, and therefore cannot know whether it is lawful under federal law. GOA’s Pennsylvania members, both dealers and individual gun owners, have been asking us this very question: may they now lawfully sell, buy, and possess these items in Pennsylvania without NFA registration?

Section 908

Section 908 makes it a first-degree misdemeanor, “except as authorized by law,” to make, repair, sell, deal in, use, or possess a prohibited offensive weapon.¹³ The statute defines “offensive weapons” by listing specific items. Of the items addressed in the *Silencer Shop* judgment and the Open Letter, only two kinds appear on that list: a “sawed-off shotgun with a barrel less than 18 inches” and a “firearm specially made or specially adapted for concealment or silent discharge.”¹⁴ Section 908 also contains its own definition of “firearm”: a weapon that is designed to, or may readily be converted to, expel a projectile by the action of an explosive, or the frame or receiver of such a weapon.¹⁵

The statute also contains two exceptions. Under Section 908(b)(1), a defendant has a defense if he proves, by a preponderance of the evidence, that “he complied with the National Firearms Act.” And under Section 908(b)(3), the section “shall not apply” to a person who makes, sells, deals in, uses, or possesses a firearm “for purposes not prohibited by the laws of this Commonwealth.”

The text is equally notable for what it leaves out. Section 908 says nothing about short-barreled rifles, “any other weapons,” or silencers, and it does not reach every short-barreled shotgun. The General Assembly knows how to reach every short-barreled rifle and shotgun when it wants to. In the Uniform Firearms Act, it defined “firearm” to include “any shotgun with a barrel length less than 18 inches or any rifle with a barrel length less than 16 inches.”¹⁶ In Section 908, by contrast, it named only “sawed-off” shotguns and did not mention short-barreled rifles at all. Because Section 908 is a penal statute, that narrower language must be strictly construed.¹⁷

That narrow reading is consistent with the statute’s purpose. Section 908 is modeled on Section 5.07 of the Model Penal Code, and the Pennsylvania Supreme Court has explained that it is aimed at items that, like bombs and grenades, “generally have no common lawful purpose.”¹⁸ Weapons with lawful uses are left to other provisions of the Crimes Code, such as Section 907, which requires proof of criminal intent.¹⁹ For that reason, the Court has refused to expand Section

¹² *Id.* at 3 (citing [18 U.S.C. § 922\(b\)\(2\)](#)).

¹³ [18 Pa.C.S. § 908\(a\)](#).

¹⁴ [18 Pa.C.S. § 908\(c\)](#).

¹⁵ *Id.*

¹⁶ [18 Pa.C.S. § 6102](#).

¹⁷ [1 Pa.C.S. § 1928\(b\)\(1\)](#).

¹⁸ *Commonwealth v. Fisher*, 485 Pa. 8, 400 A.2d 1284 (1979); see also *Commonwealth v. Adams*, 245 Pa. Super. 431, 369 A.2d 479 (1976) (Section 908 reaches weapons that are “offensive in themselves”).

¹⁹ *Fisher*, 485 Pa. 8, 400 A.2d 1284; see also *Commonwealth v. Harper*, 485 Pa. 572, 403 A.2d 536 (1979) (handgun is not a prohibited offensive weapon); *In re R.B.G.*, 932 A.2d 166 (Pa. Super. Ct. 2007) (same).

908 by reading into it words the General Assembly did not include.²⁰ Silencers and short-barreled rifles are used every day for lawful purposes, including hunting, target shooting, and protecting the shooter's hearing. They are not the kind of item Section 908 was written to reach.

Analysis

In GOA's view, the items covered by the *Silencer Shop* judgment and the Open Letter fall into two groups under Section 908: those Section 908 does not reach at all, and those it reaches only subject to its exceptions.

A. Items Section 908 Does Not Reach

Silencers. Section 908 regulates certain firearms, and a silencer is not one. A silencer does not expel a projectile, so it is not a "firearm" under Section 908(c), and it falls outside the Uniform Firearms Act's definition in Section 6102 as well.²¹ A silencer standing alone, then, is not an "offensive weapon."

Short-Barreled Rifles and "Any Other Weapons." Neither short-barreled rifles nor "any other weapons" appear anywhere in Section 908. A short-barreled rifle is not a sawed-off shotgun, and nothing about the length of its barrel makes it "specially made" for concealment or silent discharge. The same is true of the typical "any other weapon," such as a smooth-bore handgun or a pistol fitted with a vertical foregrip.

Factory-Made Short-Barreled Shotguns. Section 908 reaches only a "sawed-off" shotgun with a barrel under 18 inches. The General Assembly's choice of "sawed-off" in Section 908, set against "any shotgun" in Section 6102, must be given meaning. A shotgun built at the factory with a barrel under 18 inches has never been sawed off. Thus, it is not an offensive weapon.

B. Items Within Section 908 That Fall Within Its Exceptions

Three kinds of items arguably fall within Section 908's text: a shotgun whose barrel was cut below 18 inches after it was made; a firearm with a silencer attached, if one reads that combination as "specially adapted for ... silent discharge"; and the uncommon "any other weapon" that is disguised as something else, such as a pen gun or cane gun, which could be described as "specially made ... for concealment." Even as to these items, both exceptions in Section 908(b) apply.

²⁰ *Fisher*, 485 Pa. 8, 400 A.2d 1284 (declining to read the words "under the circumstances" into Section 908(c)).

²¹ Pennsylvania law does not define, or even use, the term "silencer." When a legislature intends to regulate silencers, it says so expressly. Federal law, for example, defines "firearm silencer" and "firearm muffler" to mean "any device for silencing, muffling, or diminishing the report of a portable firearm," [18 U.S.C. § 921\(a\)\(25\)](#), and expressly includes "any firearm muffler or firearm silencer" within the definition of "firearm." *Id.* [§ 921\(a\)\(3\)\(C\)](#); see also [26 U.S.C. § 5845\(a\)\(7\)](#). Louisiana goes further. It defines "muffler" or "silencer" to include "any device for silencing or diminishing the report of any portable weapon," [La. R.S. 40:1781\(7\)](#), and provides that its definition of "firearm" "includes a muffler or silencer for any firearm, whether or not the firearm is included within this definition," [La. R.S. 40:1781\(3\)](#). Other states do the same. See, e.g., [Mo. Rev. Stat. § 571.010\(9\)](#) (defining "firearm silencer" as "any instrument, attachment, or appliance that is designed or adapted to muffle the noise made by the firing of any firearm"); [Ohio Rev. Code § 2923.11\(K\)\(5\)](#) (including "[a]ny firearm muffler or suppressor" within "dangerous ordnance"); [Mich. Comp. Laws § 750.224\(1\)\(b\)](#) (prohibiting "[a] muffler or silencer"). The General Assembly included no comparable language in Section 908 or in Section 6102.

Section 908(b)(3). This exception removes from the statute any person who deals with “any firearm” for purposes Pennsylvania law does not prohibit. Read according to its plain terms, “any firearm” includes the NFA items that Section 908 otherwise covers. Outside of Section 908 itself, GOA is aware of no Pennsylvania statute that prohibits these items. Thus, a person who makes, buys, sells, keeps, or uses one of them without committing some other crime is acting “for purposes not prohibited by the laws of this Commonwealth,” and Section 908 does not apply to him.

Section 908(b)(1). This defense matters most where the use of the item is itself the subject of a charge, such as a homeowner who uses a sawed-off shotgun in lawful self-defense. The defense turns on whether “he complied with the National Firearms Act.” Some may read that phrase to require NFA registration. However, the General Assembly did not write “registered under” the NFA; it wrote “complied with” the NFA. A person complies with a statute by doing what it requires of him. Today, the NFA requires no registration or approval for these items. For GOA’s members, and other members of the plaintiff class, a federal court has permanently barred the federal government from enforcing those requirements. For everyone else, ATF has announced that it “will no longer require” them and will accept registration only “on a voluntary basis.” A person cannot fail to comply with a requirement that no longer applies to him, and declining to do something voluntary is not a failure to comply with anything.

This point matters in practice. Because Section 908(b)(1) is an affirmative defense that the defendant must prove, a law-abiding Pennsylvanian could be arrested and charged before ever having the chance to raise it. Clear guidance to the PSP would prevent that from happening.

C. Transfers by Pennsylvania Dealers

The practical result for Pennsylvania FFLs is straightforward. For any of these items, the dealer completes ATF Form 4473 and conducts the background check that federal law requires. Where the item is also a “firearm” under Section 6102, as short-barreled rifles, short-barreled shotguns, and many “any other weapons” are, the dealer also completes the Pennsylvania Application/Record of Sale and runs the check through the Pennsylvania Instant Check System.²² A Pennsylvanian who acquires one of these items through that process, and who is not otherwise prohibited, would commit no offense under Section 908 by owning or using it.

Request

In short, GOA believes that silencers, short-barreled rifles, “any other weapons,” and factory-made short-barreled shotguns fall outside Section 908 altogether, and that sawed-off shotguns and the other items discussed in Part B fall within its exceptions so long as they are not used to commit a separate crime.

GOA therefore respectfully requests that your Office:

- (i) review the interpretation of Section 908 set out in this letter and, if your Office agrees with it, confirm that interpretation in writing;

²² See [18 Pa.C.S. § 6111](#). Federal law separately restricts FFL sales of short-barreled rifles and short-barreled shotguns absent ATF authorization, [18 U.S.C. § 922\(b\)\(4\)](#). ATF has stated that it will not enforce that provision while it issues new regulations. Open Letter at 2–3.

- (ii) determine whether the PSP's current policies and enforcement practices are consistent with that interpretation; and
- (iii) where they are not, advise the PSP of the correct interpretation of Section 908 and recommend that its policies and practices be conformed to it.

We recognize that, under the Commonwealth Attorneys Act, your Office's legal advice becomes binding on a Commonwealth agency when the head of that agency requests it.²³ Should the PSP's interpretation differ from the one your Office confirms, we would ask that your Office encourage the Commissioner to request that advice, so that the PSP has a binding answer it may follow without risk of liability. We would also ask that your Office share its conclusions with the Commonwealth's district attorneys and with Pennsylvania FFLs, so that the law is applied the same way throughout the Commonwealth.

We understand that a review of this kind can take time, particularly when it involves coordination with the PSP. That being said, Pennsylvania FFLs are receiving these requests from their customers now. Every day without clear guidance leaves law-abiding Pennsylvanians exposed to a first-degree misdemeanor charge and the lifetime federal firearms prohibition that may follow.²⁴ GOA would welcome the opportunity to assist your Office in any way that would be helpful. Please feel free to contact me at 717-321-8585 ext. 121 or val.finnell@gunowners.org at your convenience. Thank you for your time and consideration.

Respectfully,



Val Finnell
Pennsylvania State Director
Gun Owners of America, Inc.

Enclosure: ATF Open Letter (Oct. 9, 2026)

²³ Act of Oct. 15, 1980, P.L. 950, No. 164, § 204(a)(1), [71 P.S. § 732-204\(a\)\(1\)](#) (providing that, upon the request of the Governor or the head of any Commonwealth agency, the Attorney General shall furnish legal advice, which "shall be followed," and that the recipient "shall not in any way be liable for doing so").

²⁴ A first-degree misdemeanor in Pennsylvania carries a maximum term of five years of imprisonment. [18 Pa.C.S. § 1104\(1\)](#). The federal government takes the position that a conviction for such an offense bars the person from possessing firearms under [18 U.S.C. § 922\(g\)\(1\)](#). See [18 U.S.C. § 921\(a\)\(20\)\(B\)](#).



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