

CHAPTER 11. EXPORTATION OF NFA FIREARMS

Section 11.1 Arms Export Control Act (AECA), 22 U.S.C. 2778. The AECA regulates the exportation of “defense articles,” including firearms and firearm parts. Authority to administer and enforce the exportation provisions of the AECA rests with the U.S. State Department. The articles subject to AECA control are listed under various categories in the State Department’s U.S. Munitions List contained in the regulations in 22 CFR 121.1. Firearms and component parts of firearms are listed under Categories I and II.

11.1.1 State Department regulations implementing the AECA. State Department’s regulations implementing the AECA are known as the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The regulations can be found on the internet by querying “U.S. State Department” and then “Directorate of Defense Trade Controls.” A hardcopy of the regulations is published annually and includes all amendments made to the ITAR from April 1 through March 31 of each year. The hardcopy can be obtained from the Government Printing Office.

11.1.2 Firearms and firearm component parts subject to the AECA. As stated in Section 11.1, firearms and component parts of firearms are included in Categories I and II of the U.S. Munitions List.

11.1.2.1 Category I. Category I covers nonautomatic and semi-automatic firearms to caliber .50 inclusive (12.7 mm), as well as fully automatic firearms to .50 caliber inclusive. This category also covers silencers, mufflers, sound and flash suppressors, and rifle scopes manufactured to military specifications. Excluded from Category I are non-combat shotguns with barrel lengths of 18 inches or longer. In other words, sporting shotguns not subject to the NFA are not defense articles subject to State Department export controls. Category I also covers components, parts, accessories and attachments for firearms. However, it excludes rifle scopes and sighting devices not manufactured to military specifications, as well as accessories and attachments (for example, belts, slings, after market rubber grips, cleaning kits) for firearms that do not enhance the usefulness, effectiveness, or capabilities of the firearm, components, and parts. The Department of Commerce regulates the export of firearms and parts not covered by Category I. Therefore, see the Commerce’s regulations in 15 CFR Parts 730-799 for export controls over those items.

11.1.2.2 Category II. This category covers guns over caliber .50, as well as all other components, parts, accessories, attachments and associated equipment specifically designed or modified for such guns.

Section 11.2 Registration of exporters and manufacturers under the AECA. As required by regulations in 22 CFR 122.1(a), any person engaged in the United States in the business of manufacturing or exporting defense articles on the U.S. Munitions List is required to register with State Department’s Office of Defense Trade Controls (ODTC). Persons engaged in the business of manufacturing firearms and other defense articles must register even if they do not export such items. Certain exceptions to the registration requirement are listed in Section 122.1(b).

11.2.1 Submission of registration form, DSP-9. As provided by 22 CFR 122.2, Department of State Form DSP-9 must be submitted by the registrant with a check or money order payable to the Department of State of one of the fees prescribed in section 122.3(a).

11.2.2 Transmittal letter must accompany Form DSP-9. Form DSP-9 must be accompanied by a transmittal letter signed by a senior officer, as well as documentation showing that the registrant is incorporated or otherwise authorized to do business in the United States. The letter must contain the statements required by section 122.2(b). In summary, the letter must state whether any senior officer or member of the board of directors:

- (1) Has ever been indicted or convicted of violating any criminal statute enumerated in 22 CFR 120.27;
- (2) Is ineligible to contract with, or to receive a license or other approval to import defense articles from, or receive an export license or other approval from, any U.S. agency; and
- (3) Whether the registrant is owned or controlled by foreign persons (as defined in 22 CFR 120.16). If the registrant is owned or controlled by foreign persons, the letter must also state whether the registrant is incorporated or otherwise authorized to engage in business in the United States. See Section 122.2(c) for definitions of “ownership” and “control.”

11.2.3 Notification of changes in information furnished by registrants. See 22 CFR 122.4 for the requirement to report changes to ODTC in the information provided in registering with the State Department on Form DSP-9.

Section 11.3 License requirement for permanent export of a defense article. Any person or entity intending to permanently export a defense article must obtain approval of ODTC prior to the export. Approval must be obtained by filing with ODTC Form DSP-5. For more detailed information, see State Department regulations in 22 CFR 123.1.

Section 11.4 License requirement for temporary export of a defense article. Any person or entity intending to temporarily export a defense article must obtain approval of ODTC prior to the export. Approval must be obtained by filing with ODTC Form DSP-73. No ATF approval is required for a temporary exportation. For more detailed information, see State Department regulations in 22 CFR 123.5.

Section 11.5 Prohibited exports and sales to certain countries. It is the policy of the United States to deny licenses to export defense articles destined for certain countries. Therefore, the State Department will deny applications for licenses to export such articles, including firearms, to those countries. A list of these countries can be found in State Department’s regulations in 22 CFR 126.1, for example, Cuba, Iran, Libya, North Korea, and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo, for example, Burma, China, and Liberia.

Section 11.6 ATF requirements relative to the exportation of firearms. Any person or entity desiring to permanently export an NFA firearm without payment of the transfer tax must file with ATF an application for a permit to export the firearm on ATF Form 9. Shipment may not be made until the permit is received. ATF will not act on the application unless it contains the information required by the regulations in 27 CFR 479.114. See ATF’s regulations in 27 CFR 479.114 – 479.121 for detailed information on ATF’s exportation requirements.

11.6.1 Applying for an export permit on ATF Form 9. Any person desiring to export an NFA firearm without paying the transfer tax must file with ATF a permit application to export the firearm on Form 9. Appendix C contains a copy of Form 9. The application requires submission of the following information:

- (1) Name and address of the foreign consignee;
- (2) Number of firearms covered by the application;
- (3) The intended port of exportation;
- (4) A complete description of each firearm to be exported (an attached list of serial numbers/descriptions may be used);
- (5) The name, address, State Department export license number (or date of application if not issued), and identification of the special (occupational) tax stamp of the transferor; and
- (6) The application must be supported by a certified copy of a written order or contract of sale or other evidence showing that the firearm is to be shipped to a foreign destination. However, a copy of a State Department export license on DSP-5 is acceptable in lieu of such certification.

11.6.2 Transfers to another person for export. Where is desired to make a transfer free of tax to another person who in turn will export the firearm, the transferor must likewise file an application on Form 9 supported by evidence that the transfer will start the firearm in the course of exportation. However, where both the transferor and exporter are FFLs/SOTs, the transferor is not required to file a Form 9 application.

11.6.3 Proof of exportation. Within a six-month period from the date of issuance of the permit on Form 9, the exporter must provide ATF with the evidence of exportation specified by the regulations in 27 CFR 479.118. Where such evidence is not furnished, the exporter will be assessed the transfer tax on the firearm.