

CHAPTER 8. IMPORTING NFA FIREARMS

Section 8.1 Qualifying to import NFA firearms

8.1.1 Licensing under the GCA. Persons intending to engage in the business of importing NFA firearms that also meet the definition of “firearm” in the GCA must first apply for and obtain a GCA importer’s license.¹³⁰ The license application is ATF Form 7.¹³¹ Appendix C contains a copy of the form. Licenses are issued for a period of 3 years. See Section 5.1 for a discussion of the license fees, licensing standards, and other provisions of the GCA related to licensing.

8.1.1.1 Engaging in business at multiple locations. A separate license must be obtained for each location where business will be conducted.¹³²

8.1.1.2 Engaging in business as both an importer and a manufacturer. Persons intending to engage in business as firearms importers and manufacturers, even if the business will be conducted from the same premises, must have both an importer’s license and a manufacturer’s license.¹³³

8.1.1.3 Do importers and manufacturers need a dealer’s license to deal in the firearms they import or manufacture? Licensed importers and manufacturers are not required to have a separate dealer’s license to deal in firearms they import or manufacture. A license as an importer or manufacturer authorizes the FFL to deal in the types of firearms authorized by the license to be imported or manufactured.¹³⁴

8.1.1.4 Importers of destructive devices. Importers are reminded that if the firearms they import include destructive devices, or if they solely import destructive devices, they must apply for and obtain a license as an importer of destructive devices. They should also note that the fee for such license is \$1,000 per year, rather than \$50 per year for a license to import firearms other than destructive devices. Qualifying to import destructive devices also entitles the FFL to import and deal in firearms other than destructive devices.¹³⁵

8.1.2 Payment of special (occupational) tax to do business in NFA firearms. Every person who engages in the business of importing NFA firearms must pay a special tax.¹³⁶ The tax must be paid on or before the date of commencing the taxable business and every year thereafter on or before July 1. The tax is paid by filing ATF Form 5630.7, Special Tax Registration and Return, together with a check or money order for the amount of the tax.¹³⁷ Appendix C contains a copy of the form. The special tax

¹³⁰ 18 U.S.C. 923(a)

¹³¹ 27 CFR 478.44(a)

¹³² 27 CFR 478.50

¹³³ 27 CFR 478.41(b)

¹³⁴ *ibid*

¹³⁵ *ibid*

¹³⁶ 26 U.S.C. 5801

¹³⁷ 27 CFR 479.34(a)

must be paid for each premises where business will be conducted.¹³⁸ See Section 5.2 for a more thorough discussion of NFA’s requirements relative to the special tax.

8.1.3 Registration by importers of U.S. Munitions Import List articles with ATF. ATF has the responsibility of enforcing the provisions of the Arms Export Control Act (AECA) relating to the importation of firearms and other defense articles on the U.S. Munitions Import List. Any person engaged in the U.S. in the business of importing firearms or other defense articles is required to register with ATF. Form 4587, Application to Register as an Importer of U.S. Munitions Import List Articles, must be submitted to ATF by the registrant with a check or money order payable to the Bureau of Alcohol, Tobacco, Firearms and Explosives of one of the fees prescribed by 27 CFR 447.32. Appendix C contains a copy of Form 4587. See Section 5.4 for a more detailed discussion of the registration requirement.

Section 8.2 What is an “importer?”; What is “importation?”

8.2.1 “Importer.” As defined by the GCA, an “importer” is any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution.”¹³⁹ Similarly, the NFA defines the term to mean any person “who is engaged in the business of importing firearms into the United States, that is, firearms subject to the NFA.”¹⁴⁰

8.2.2 “Importation.” Importation is defined in the regulations as the bringing of a firearm within the limits of the United States or any territory under its control or jurisdiction, from a place outside thereof (whether such place be a foreign country or territory subject to the jurisdiction of the United States), with the intent to unlade.¹⁴¹ However, bringing a firearm from a foreign country or a territory subject to the jurisdiction of the United States into a Foreign Trade Zone (FTZ) for storage pending shipment to a foreign country or subsequent importation into this country shall not be deemed importation.

Section 8.3 Importation of NFA firearms.

With certain exceptions, NFA firearms may only be imported for the use of the United States or any State or possession or political subdivision thereof such as a law enforcement agency; for scientific or research purposes; solely for testing or use as a model by a registered manufacturer; or solely for use as a sample by a registered importer or registered dealer.¹⁴² Importers may not import NFA firearms for stockpiling or warehousing them at their licensed premises for the purpose of filling future orders from qualifying agencies or dealers requesting sales samples. Imported NFA firearms may be stored in a Customs Bonded Warehouse (CBW) or a Foreign Trade Zone (FTZ). NFA firearms may only be withdrawn from these facilities to fill specifically approved purchase requests.

8.3.1 Importation of machineguns. Section 922(o), Title 18, U.S.C., makes it unlawful to possess or transfer a machinegun, except for transfers to or possession by Federal and State agencies or the transfer or possession of a machinegun lawfully possessed before the effective date of the statute, May 19, 1986.

¹³⁸ 27 CFR 479.31(b)

¹³⁹ 18 U.S.C. 921(a)(9)

¹⁴⁰ 26 U.S.C. 5845(i)

¹⁴¹ 27 CFR 479.11

¹⁴² 26 U.S.C. 5844

So, machineguns “lawfully possessed” before the effective date are those manufactured before May 19, 1986 and registered in the NFRTR. Notwithstanding the prohibition in Section 922(o), licensed importers may import machineguns on or after May 19, 1986 for sale to Federal and State agencies or to FFLs/SOTs as “sales samples” for demonstration to prospective governmental customers. The weapons may be imported and stockpiled in CBWs or in FTZs in contemplation of future sales, but their registration and subsequent transfer are conditioned upon and restricted to sales only to government agencies or as “sales samples.” See Chapter 9 for a discussion of the required documentation supporting these sales. Due to the restrictions in Section 922(o), machineguns may not be imported for other purposes, such as transfer to government defense contractors, security purposes, testing, research or use as a model by registered manufacturers.

8.3.2 Importation for use of the United States, qualifying political subdivisions, and law enforcement agencies. NFA firearms may be imported for sale to Federal, State, or local government agencies. To import NFA firearms for this purpose, an ATF Form 6, Application and Permit for Importation of Firearms, Ammunition and Implements of War, must be submitted to ATF in triplicate. Appendix C contains a copy of Form 6. The Form 6 must include the agency’s letter or purchase order reflecting the purchase of the firearms.¹⁴³ Appendix E contains a sample letter for use by an agency ordering imported firearms.

8.3.3 Importation for use by Nuclear Regulatory Commission (NRC) licensees and authorized contractors. Congress recently amended the Atomic Energy Act of 1954 with passage of the Energy Policy Act of 2005.¹⁴⁴ Although the new provision does not amend the GCA or the NFA, it does allow for the possession of machineguns by NRC licensees and authorized contractors that provide security to these licensees at nuclear facilities. This new provision, 42 U.S.C. 2201a, is a departure from legal restrictions in Federal firearms laws that do not allow for machineguns to be imported for, transferred to, or possessed by non-government entities. The law states that before the new statute may take effect, the NRC must establish guidelines for implementation that are approved by the Attorney General. As of January 30, 2006, the guidelines have not been prepared or approved. Therefore, ATF does not yet have the authority to process import or transfer applications filed pursuant to 42 U.S.C. 2201a.

8.3.4 Importation for authorized scientific or research purposes. NFA firearms, except machineguns, may be imported for authorized scientific or research purposes. To import NFA firearms for this purpose, a Form 6 must be submitted in triplicate. The Form 6 must include a statement describing the specific scientific or research purpose for which the firearm is needed.¹⁴⁵ The statement must also include a detailed explanation of why the importation of the firearm is needed for scientific or research purposes

8.3.5 Importation for use as a model by a registered manufacturer. NFA firearms, except machineguns, may be imported for use as a model by a registered manufacturer. To import NFA firearms for this purpose, a Form 6 must be submitted in triplicate. The Form 6 must include a detailed explanation of why the importation of the firearm is needed for use as a model.¹⁴⁶

¹⁴³ 27 CFR 479.111

¹⁴⁴ Public Law 109-58

¹⁴⁵ 27 CFR 478.112(b)(vii)(A)

¹⁴⁶ 27 CFR 479.111

8.3.6 Importation for use as a “sales sample.” NFA firearms may be imported for use as sales samples by qualified NFA importers and dealers to demonstrate the firearms to government agencies and generate possible future sales to such agencies. To import NFA firearms for this purpose, a Form 6 must be submitted to ATF, in triplicate. Information must be submitted with the Form 6 establishing that the firearm is suitable or potentially suitable for an agency’s use; the expected governmental customers requiring a demonstration of the firearm; information as to the availability of the firearm to fill subsequent orders; and letters from agencies expressing a need for a particular model or interest in seeing a demonstration of a particular firearm.¹⁴⁷ Appendix D contains sample letters for use in acquiring imported sales samples.

8.3.7 Importing multiple quantities of the same model firearm as sales samples. An application to import two or more NFA firearms of a particular model for use as a sales sample by the importer or a qualified dealer will be approved if documentation shows the necessity for demonstration to government agencies.¹⁴⁸ A Form 6 must be submitted to ATF, in triplicate, along with documentation that the firearm is needed by the importer or dealer to demonstrate the weapon to all of the officers of a police department, SWAT team, or special operations unit. ATF may authorize the importation of more than 2 of the same model if an importer provides specific documentation to justify the need for additional weapons.

8.3.8 Importation of NFA weapons classified as curios or relics. An NFA firearm may not be imported as a sales sample for demonstration to a law enforcement agency if it is a curio or relic unless it is established that it is particularly suitable for use as a law enforcement weapon.¹⁴⁹ Suitability for law enforcement use may be established by providing detailed information as to why the weapon is particularly suitable for such use, the expected customers who would require a demonstration of the weapon, and information as to the availability of such firearms to fill subsequent orders. To import NFA firearms classified as curios or relics, a Form 6 must be submitted to ATF, in triplicate, including a statement showing that the weapons meet the above discussed criteria.

8.3.9 Conditional importation. ATF may impose conditions upon any application to import firearms.¹⁵⁰ In most cases, a conditional import permit is issued for the purpose of examining and testing a firearm to determine whether the weapon in question will be authorized for importation. The conditions to the permit will normally authorize only one sample of a particular firearm and require that the firearm be shipped directly from Customs to FTB for testing and examination. The importer must agree to either export or destroy the weapon if a final determination is made that the weapon may not be imported. If the weapon is found to qualify for importation for one of the authorized purposes, the firearm will be returned to Customs for release to the importer.

8.3.10 Temporary importation of NFA firearms. ATF has adopted an alternate procedure for importers to use when temporarily importing NFA weapons for inspection, testing, calibration, repair, or incorporation into another defense article.¹⁵¹ This procedure requires that importers:

¹⁴⁷ 27 CFR 479.105(d)

¹⁴⁸ ATF Ruling 2002-5

¹⁴⁹ ATF Ruling 85-2

¹⁵⁰ 27 CFR 479.113

¹⁵¹ ATF Rul. 2004-2

1. Must be qualified under the GCA and NFA to import the type of firearms at issue.
2. Obtain a temporary import license, DSP-61, from the Department of State in accordance with the ITAR (22 CFR 122.3) or qualify for a temporary import license exemption pursuant to 22 CFR 123.4.
3. Within 15 days of the release of the firearms from Customs custody, file an ATF Form 2. The DSP-61 must be attached to the Form 2. If the importation is subject to a licensing exemption under 22 CFR 123.4, the importer must submit with the Form 2 a statement, under penalties of perjury, attesting to the exemption and stating that the weapon will be exported within four years of its importation.
4. Maintain the firearm(s) in a secure place and manner to ensure that the firearm(s) is not diverted to criminal or terrorist use.
5. Export the firearm(s) within four years of importation.

NFA weapons temporarily imported may be temporarily provided to a contractor in the United States for the purposes stated above by obtaining advance approval of an ATF Form 5, Application for Tax Exempt Transfer and Registration of Firearm. As an alternative, the transfer may be accomplished with a letter from the importer to the contractor, who must be qualified to engage in an NFA firearms business, stating the following:

1. The weapon is being temporarily conveyed for inspection, testing, calibration, repair, or incorporation into another defense article; and
2. The approximate time period the weapon will be in the contractor's possession.

The above alternate procedure became effective on April 7, 2004.

8.3.11 Re-importation of NFA firearms temporarily exported from the United States by nonlicensees. A properly registered NFA firearm that has been temporarily exported from the United States may be re-imported by the same person who temporarily exported the firearm. The firearm may be returned to the United States without submission of a Form 6 or Form 2, provided that ATF Form 5320.20, Application to Transport Interstate or to Temporarily Export Certain National Firearms Act Weapons, has been submitted to and approved by ATF prior to the temporary exportation of the firearm. The firearm must be registered to the person who is re-importing the weapon.¹⁵²

8.3.12 What is the difference between a Customs Bonded Warehouse (CBW) and a Foreign Trade Zone (FTZ)?

8.3.12.1 Customs Bonded Warehouse. A Customs Bonded Warehouse is a building or other secured area in which dutiable goods may be stored without payment of duty. Bringing items into a CBW is an importation. To bring NFA firearms into a CBW for storage requires an

¹⁵² 27 CFR 479.111(c)

approved ATF Form 6, Application and Permit for Importation of Firearms, Ammunition and Implements of War. NFA weapons stored in a CBW may be manipulated, destroyed or otherwise altered in the CBW. To withdraw stored NFA firearms stored from a CBW, an additional Form 6 is required. NFA weapons may only be withdrawn from a CBW for the purposes discussed in Section 8.3.

8.3.12.2 Foreign Trade Zone. A Foreign Trade Zone is a specially designated area, in or adjacent to a U.S. Customs Port of Entry, which is considered to be outside the Customs Territory of the United States. For the purposes of the GCA and NFA, bringing items into an FTZ is not treated as an import because the FTZ is considered foreign soil. However, under the import provisions of the AECA, an FTZ is considered to be part of the United States. As a result, a Form 6 is required by AECA regulations to bring NFA firearms into an FTZ. Firearms stored in an FTZ may be manipulated, repackaged, destroyed, otherwise altered or exported. Moving an NFA firearm from an FTZ to a CBW for storage or for delivery to a qualifying customer is an “importation” requiring an additional approved Form 6.

8.3.13 Preparation of ATF Forms 6. The form and its contents are prescribed by ATF regulations.¹⁵³ The importer must also establish to the satisfaction of ATF that the importation is for one of the purposes authorized by the statute. A detailed explanation of why the importation falls within the standards must be attached to the application. Acceptable documentation may include purchase orders from government agencies, a letter from a government agency requesting a demonstration of the firearm, or a letter from a dealer requesting an NFA weapon as a sales sample. Examples of the above letter requests can be found in Appendix D. The Form 6 must be submitted in triplicate.

8.3.14 “eForm6.” eForm6 is the system used to electronically file the Form 6 and track the status of permit applications submitted for approval. In order to use the eForm6 system a user ID and password must be obtained from ATF. To register for eForm6, a registration form, eForm6 Access Request (ATF E-form 5013.3),¹⁵⁴ must be submitted to the following address:

Firearms & Explosives Imports Branch
Bureau of Alcohol, Tobacco, Firearms and Explosives
244 Needy Road
Martinsburg, West Virginia 25405

Additional information concerning eForm6 may also be found on the ATF website, www.atf.gov .

8.3.15 Preparation of ATF Forms 6A. This form and its contents are also prescribed by ATF regulations.¹⁵⁵ Upon release of the firearm(s) from Customs custody, the importer will prepare ATF Form 6A, in duplicate, and furnish the original to the Customs officer releasing the firearm(s). The Customs officer will, after certification, forward the Form 6A to the address specified on the form. Within 15 days of the date of release from Customs, the importer must forward to the address specified

¹⁵³ 27 CFR 478.112(b)

¹⁵⁴ See Appendix C

¹⁵⁵ 27 CFR 478.112(c)

on the form a copy of the Form 6A on which must be reported any error or discrepancy appearing on the Form 6A certified by Customs and serial numbers if not previously provided on Form 6A.

Section 8.4 Registering the importation of NFA firearms. The importer must report and register each firearm imported by filing with the NFA Branch an accurate notice of the importation on ATF Form 2, Notice of Firearms Manufactured or Imported, executed under the penalties of perjury.¹⁵⁶ Appendix C contains a copy of Form 2. ATF's receipt of the form effectuates the registration of the firearms listed on the form.¹⁵⁷

8.4.1 Preparation of ATF Forms 2. The form and its contents are prescribed by ATF regulation.¹⁵⁸ The regulation states that the form must set forth the name and address of the importer, identify the importer's special tax stamp and license, import permit number, the date of release of the firearm from Customs custody, the type, model, length of barrel, overall length, caliber, gauge or size, serial numbers and other marks of identification, and place where the firearms are kept. The Form 2 should list only firearms imported on one specifically approved Form 6.

8.4.2 Filing ATF Forms 2. A Form 2 must be filed by the importer no later than 15 days from the date the firearm was released from Customs custody. If the importation involves more than one import permit, a separate Form 2 must be filed to report those firearms imported under each permit. The importer must prepare the form in duplicate, file the original with the NFA Branch, and keep the copy with the records required to be kept.

Section 8.5 The identification of firearms.

8.5.1 Serial numbers. Each importer of a firearm must legibly identify it by engraving, stamping (impressing), or otherwise conspicuously placing on the firearm's frame or receiver an individual serial number not duplicating any serial number placed by the importer on any other firearm.¹⁵⁹ An importer may adopt the serial number placed on the firearm by the foreign manufacturer provided that such serial number does not duplicate a number previously adopted or assigned by the importer to any other firearm. The requirement that the marking be "conspicuously" placed on the firearm means that the marking must be wholly unobstructed from plain view. For firearms imported on or after January 30, 2002, the serial number must be marked to a minimum depth of .003 inch and in a print size no smaller than 1/16 inch.

8.5.1.1 What is an acceptable serial number? Alpha characters (letters), for example a name, are not acceptable as a serial number. A proper serial number may contain such characters or letters, but it must have at least one numeric character (number). ATF takes the view that marking "legibly" means using exclusively Roman letters (A, B, C, and so forth) and Arabic numerals (1, 2, 3, and so forth).¹⁶⁰ Deviations from this requirement have been found to seriously impair ATF's ability to trace firearms involved in crime.

¹⁵⁶ 27 CFR 479.112(a)

¹⁵⁷ 27 CFR 112(a)

¹⁵⁸ *ibid*

¹⁵⁹ 27 CFR 479.102

¹⁶⁰ ATF Ruling 2002-6

8.5.2 Additional information. Certain additional information must also be conspicuously placed on the frame, receiver, or barrel of the firearm by engraving, casting, stamping (impressing), that is, they must be placed in such a manner that they are wholly unobstructed from plain view. For firearms imported on or after January 30, 2002, this information must be marked to a minimum depth of .003 inch. The additional information includes:

- (1) The model, if such designation has been made;
- (2) The caliber or gauge;
- (3) The name of the importer;
- (4) The name of the foreign manufacturer;
- (5) The country in which the firearm was manufactured;
- (6) The city and State (or recognized abbreviation) where the importer maintains its place of business.¹⁶¹

8.5.3 Measuring the depth of markings. The depth of all markings is measured from the flat surface of the metal and not the peaks or ridges. The height of serial numbers is measured as the distance between the latitudinal ends of the character impression bottoms (bases).

8.5.4 Obtaining variances to the marking requirements. Requests for variances from the marking requirements should be submitted by letter to ATF's Firearms Technology Branch (FTB) in duplicate. The requests should state the proposed variance and the reasons for the variance.

8.5.4.1 Variances in the name and location of the importer. As stated above, the regulations require firearms to be marked with the importer's name, city, and State or a recognized abbreviation of the information. If other than complete names or recognized abbreviations are proposed to be used, a variance must be obtained from ATF.

8.5.4.2 Marking frames or receivers that are not complete weapons at the time of disposition. Firearms frames or receivers that are not components of complete firearms at the time of disposition must be identified with all the required markings, that is, serial numbers and all the additional markings discussed in Sections 8.5.1 and 8.5.2.¹⁶²

8.5.4.3 Marking destructive devices. In the case of a destructive device, ATF may authorize alternate means of identification upon receipt of an importer's letter application, in duplicate. The application should show that engraving, casting, or stamping the weapons would be dangerous or impractical.¹⁶³

¹⁶¹ 27 CFR 479.102

¹⁶² *ibid*

¹⁶³ *ibid*

8.5.4.4 Marking parts, other than frames or receivers, defined as NFA firearms. ATF may authorize alternate means of identifying such parts, for example, parts defined as mufflers or silencers, upon receipt of the importer's letter application, in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of the regulations.¹⁶⁴

8.5.5 When must markings be applied to imported NFA firearms? All of the markings discussed in this section must be applied to imported NFA firearms no later than 15 days from the date the firearms were released from Customs custody. If the required markings cannot be applied within the 15 day period due to the quantity of weapons being imported or other factors, ATF may grant a variance extending the time for application of the markings. A request for an extension of the time should be submitted in the same manner as discussed in Section 8.5.4.

¹⁶⁴ 27 CFE 479.102