

CHAPTER 14. GOING OUT OF BUSINESS

Section 14.1 Disposition of GCA records.

14.1.1 “Records” for purposes of this section. Reference to the term “records” in this chapter refers to the acquisition and disposition records required by GCA and NFA regulations, Forms 4473, Forms 3310.4 (Report of Multiple Sale or Other Disposition of Pistols and Revolvers), ATF Forms 3310.11 (Federal Firearms Licensee Theft/Loss Report), records of transactions in semiautomatic assault weapons, records of importation (ATF Forms 6 and 6A), and law enforcement certification letters. If the licensee was granted a variance to use a computerized recordkeeping system, this term also refers to the required printout of the all A & D records, as required by the variance approval.²¹⁵ As required by the regulations, these records must be surrendered to the ATF Out-of-Business Records Center (OBRC) or transferred to any successor of the firearms business within 30 days of the discontinuance of such business.²¹⁶ [Handwritten changes add cite “27 C.F.R. § 478.129” but may just be the above referenced forms]

14.1.2 Transfer of the firearms business to a new owner. In the event that the firearms business is transferred to a new owner (i.e. successor), the FFL going out of business may dispose of the records in one of two ways: (1) close all open A & D Record disposition entries by recording the date of transfer, as well as the name and FFL of the succeeding licensee (or record that the firearm was transferred to the discontinued FFL’s personal inventory), underline the final entry in each bound book, and deliver all records to the business successor; or (2) deliver the records to the ATF Out-of-Business Records Center, 244 Needy Road, Martinsburg, West Virginia 25405, or to any ATF office in the division in which the business was located. A successor licensee, who receives the records from the original licensee, may choose to forward the records to the ATF Out-of-Business Records Center.²¹⁷

14.1.3 Discontinuance of the business. If the firearms business is discontinued and there is no successor, within 30 days of business’ discontinuance, the FFL must ship the records to the ATF Out-of-Business Records Center or to any office in the ATF division in which the business was located. If the FFL was granted a variance to use a computerized recordkeeping system, the FFL must provide a complete printout of the acquisition and disposition records as stipulated in the variance approval.²¹⁸

Section 14.2 Disposition of NFA firearms (other than “post-‘86 machineguns”).

14.2.1 Sole proprietors. FFLs licensed as sole proprietors, who have been qualified to deal in NFA firearms and who go out of the NFA business, may lawfully retain their inventory of these firearms, including imported NFA “sales samples”, in their individual capacity. No NFA transfer occurs that would require an ATF-approved transfer because the firearms are still possessed by the same person to whom they were previously transferred and registered. However, any firearm registered to the individual as a “sales sample” would continue to bear the “sales sample” restriction on any subsequent transfer, unless the firearm is being transferred to a government agency. Thus, the transfer of a “sales

²¹⁵ ATF P 5300.4 (09/05), Question C-7, Page 180

²¹⁶ 18 U.S.C. 923(g)(4); 27 CFR 478.127

²¹⁷ Ibid.

²¹⁸ Ibid.

sample” to other than a government agency will only be approved if the transferee is an FFL/SOT qualified to receive such samples.²¹⁹ Since the registered owner of the firearm is no longer an FFL/SOT, the owner’s subsequent transfer of the firearm to other than a government agency would be subject to transfer tax and require approval of an ATF Form 4. *NOTE: If an NFA firearm registered to a sole proprietor as a “sale sample” becomes part of the person’s estate upon his/her death, the firearm may not be registered to a beneficiary of the estate unless the beneficiary is qualified to deal in NFA sales samples.*

14.2.2 Corporations, partnerships, and associations. FFLs licensed as corporations, partnerships, or associations, who have been qualified to deal in NFA firearms and who go out of the NFA business, may lawfully retain their inventory of these firearms, including imported NFA “sales samples,” as long as the entity does not dissolve but continues to exist under State law. No NFA transfer occurs that would require an ATF-approved transfer because the firearms are still possessed by the same entity to which they were previously transferred and registered. However, any firearm registered to the entity as a “sales sample” would continue to bear the “sales sample” restriction on any subsequent transfer, unless the firearm is being transferred to a government agency. Thus, the transfer of a “sales sample” to other than a government agency will only be approved if the transferee is an FFL/SOT qualified such samples.²²⁰

14.2.2.1 Effect of dissolution of a corporation, partnership, or association. If an FFL licensed as a corporation, partnership, or association goes out of business and dissolves (ceases to exist under State law), the firm’s NFA firearms will be considered to have been “transferred” to whomever takes custody of the firearms and possesses them after dissolution. To be lawful, such transfers must be approved in advance by ATF on ATF Forms 4 and are subject to NFA transfer tax. *However, ATF will not approve the transfer of an NFA “sales sample” unless the transfer is to a government agency or to an FFL/SOT qualified to receive such samples.*²²¹

14.2.3 Avoiding NFA transfer tax. An FFL/SOT going out of business and contemplating the transfer of an inventory of NFA firearms or NFA “sales samples” should be mindful of the tax consequences of such transfers. If the FFL/SOT wishes to transfer the firearms to another such person or entity, the transfers may be made on approved ATF Forms 3 transfer tax free if both the transferor and transferee are licensed under the GCA and hold NFA special tax stamps. *Thus, a person or entity going out of business who allows his/her FFL or special tax stamp to expire before the transfers would be subject to the transfer tax on each firearm transferred and the transfers would have to be made on ATF-approved Forms 4.*²²²

Section 14.3 Disposition of “post-86 machineguns.” Section 479.105(f) requires the FFL/SOT going out of business to transfer machinegun(s) manufactured after May 19, 1986 to a Federal, State or local government entity, qualified manufacturer, qualified importer, or, subject to the provisions of 479.105(d), to a qualified dealer. The transfers must be completed prior to the FFL/SOT going out of business. The transfer to a government entity would be on Form 5 and the transfer to a qualified

²¹⁹ Item 10g, ATF Pub. 5300.4 (9/05), Federal Firearms Regulations Reference Guide, p. 164

²²⁰ Ibid.

²²¹ Ibid.

²²² 26 U.S.C. 5852(d)

manufacturer, importer, or dealer would be on Form 3. The transfer of a machinegun manufactured after May 19, 1986 to a qualified manufacturer or qualified importer can be done without the 'law enforcement letters of interest' when the possessing FFL/SOT is going out of business. That fact that the transferring FFL is discontinuing business must be documented with the submission of the transfer applications. Transfer of a machinegun manufactured after May 19, 1986 from an FFL/SOT going out of business to a qualified dealer requires compliance with section 479.105(d).

The FFL/SOT going out of business may also choose to destroy the machinegun(s), transfer them to State or local government agencies, or abandon them to ATF or State or local government agencies. If the firearms will be destroyed, ATF's Firearms Technology Branch can be contacted for procedures to properly destroy a machinegun. Once the destruction has been accomplished, notify the NFA Branch of the destruction in writing, including a description of the machinegun(s) and the means of destruction. For abandonment to ATF, contact the local ATF office.²²³

²²³ 27 CFR 478.36, 479.105; Item 10g, ATF Pub. 5300.4 (Sept. 2005), p. 164