

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.²¹⁷ 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.²¹⁸ [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.²¹⁹

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.²²⁰

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 sample” to other than a government agency will only be approved if the transferee is an FFL/SOT

²¹⁷ ATF P 5300.4 (09/05), Question C-7, Page 180

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

²¹⁹ Ibid.

²²⁰ Ibid.

qualified to receive such samples.²²¹ 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 "sales 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 to receive such samples.²²²

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.*²²³

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.*²²⁴

Section 14.3 Disposition of "post-'86 machineguns." This term refers to those machineguns manufactured or imported on or after May 19, 1986, the effective date of 18 U.S.C. 922(o), which generally prohibits the transfer and possession of machineguns manufactured or imported on or after that date. The law and regulations provide a number of exceptions, including exceptions for qualified manufacturers to manufacture and stockpile machineguns for sale to government agencies and for the manufacture and importation of machineguns for use as "sales samples" to generate sales to such entities. An FFL/SOT who goes out of business and whose GCA license or NFA special tax stamp has expired violates section 922(o) by continuing to possess these

²²¹ Item 10g, ATF Pub. 5300.4 (9/05), Federal Firearms Regulations Reference Guide, p. 164

²²² Ibid.

²²³ Ibid.

²²⁴ 26 U.S.C. 5852(d)

machineguns and the machineguns are subject to seizure and forfeiture. To avoid the violation and forfeiture, the FFL/SOT going out of business must, prior to the expiration of the license and tax stamp, transfer the firearms on an approved ATF Form 3 to an FFL/SOT qualified to possess them or on an approved ATF Form 5 to a government agency. Otherwise, the firearms should be surrendered to ATF.²²⁵

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