

## CHAPTER 9. TRANSFERS OF NFA FIREARMS

**Section 9.1 Definition of “transfer.”** The term “transfer” is broadly defined by the NFA to include “selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of” an NFA firearm.<sup>166</sup> The lawful transfer of an NFA firearm generally requires the filing of an appropriate transfer form with ATF, payment of any transfer tax imposed, approval of the form by ATF, and registration of the firearm to the transferee in the NFRTR. Approval must be obtained before a transfer may be made. See Section 9.5 for a discussion of certain NFA transactions not considered by ATF to be “transfers.”

**Section 9.2 Only previously registered firearms may be lawfully transferred.** ATF will not approve the transfer of an NFA firearm unless it has been registered to the transferor in the NFRTR. NFA firearms may only be registered upon their lawful making, manufacture, or importation, or upon the transfer of firearms already registered. Generally, unregistered firearms may not be lawfully received, possessed, or transferred. They are contraband subject to seizure and forfeiture. Violators are also subject to criminal prosecution. However, see Sections 2.4 and 3.3 on removing NFA firearms from the scope of the NFA because of their status as collectors’ items, modification, or elimination of certain component parts.

**Section 9.3 Interstate transfers of NFA firearms.** ATF will not approve the transfer of an NFA firearm to a non-FFL/SOT residing in a State other than the State in which the transferor’s licensed business is located or the transferor resides. Such interstate transfers would violate the GCA. However, See section 9.5.4 regarding the custody of firearms by employees of FFLs/SOTs.

### Section 9.4 ATF forms for use in transferring NFA firearms

**9.4.1 ATF Form 3.** Transfers by FFLs/SOTs to other FFLs/SOTs require the filing of ATF Forms 3, Application for Tax Exempt Transfer and Registration of a Firearm, to register firearms to the transferees.<sup>167</sup> See also Section 3.2.6.4. Appendix C contains a copy of the form. In these transactions, transferors have no liability for the transfer tax. As previously stated, Forms 3 must be approved by ATF before transfers may be made.

**9.4.2 ATF Form 4.** Forms 4, Application for Tax Paid Transfer and Registration of a Firearm, are for use in transferring serviceable NFA firearms in the following instances: transfers by non-FFLs/SOTs to other such persons; transfers by non-FFLs/SOTs to FFLs/SOTs; and transfers by FFLs/SOTs to non-FFLs/SOTs.<sup>168</sup> Appendix C contains a copy of the form. See also Sections 3.2.6.1 through 3.2.6.3. These transfers are subject to the NFA transfer tax, so the forms must be accompanied by the appropriate tax payment. Forms 4 transferring firearms to individuals other than FFLs/SOTs must also be accompanied by transferees’ fingerprints and photographs on FBI Forms FD-258. If the individual’s receipt or possession of the firearm would violate Federal, State, or local law, the form would be disapproved. In addition, an individual transferee must have an appropriate law enforcement official execute the certification on the form.<sup>169</sup> See Section 9.8 for more information on law enforcement certifications. Forms 4 must be approved by ATF before the transfers may be made. The completed

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<sup>166</sup> 26 U.S.C. 5845(j)

<sup>167</sup> 27 CFR 479.88(b)

<sup>168</sup> 27 CFR 479.84

<sup>169</sup> 27 CFR 479.85

Form 4, in duplicate, with fingerprint cards, photographs of the transferee, and payment of the applicable transfer tax should be mailed to:

National Firearms Act Branch  
Bureau of Alcohol, Tobacco, Firearms and Explosives  
P.O. Box 73201  
Chicago, Illinois 60673-7201

Payment of the transfer tax is to be in the form of a check or money order payable to the Bureau of Alcohol, Tobacco, Firearms and Explosives.

**9.4.2.1 Copies of transferees' State or local licenses or permits.** If State or local law requires the transferee to have a State or local license or permit to possess the firearm and the requirement is imposed upon the person prior to receipt, the Form 4 application should also be accompanied by a copy of the license or permit.

**9.4.2.2 Transfers to entities other than individuals that are not FFLs/SOTs.** To establish the legitimacy of the entity and the transfer, ATF requires that the Form 4 application be accompanied by a copy of the articles of incorporation or other documentation establishing the entity and the authority of the person signing the form on the entity's behalf. ATF will pay particular attention to the reasons stated on the form for the transfer.

**9.4.3 ATF Form 5.** Transferors of NFA firearms to government entities, Federal, State, or local, must file ATF Forms 5, Application for Tax Exempt Transfer and Registration of a Firearm, to transfer the firearms to such entities.<sup>170</sup> (*Note: The applicant may wish to include details regarding the receiving agency if the agency is obscure. Note also that there are no transfers to task forces.*) Although Forms 5 are generally required to be filed and approved for transfer of firearms to U.S. agencies, firearms owned or possessed by Federal agencies are not required to be registered. Appendix C contains a copy of the form. In these transactions, the transferor has no liability for the transfer tax. As previously stated, the form must be approved by ATF before the transfer may be made. As discussed in more detail below, Forms 5 are also used to transfer unserviceable firearms tax free, transfer firearms to FFLs for repair and for their return, and for distribution of estate firearms to lawful heirs.

## **Section 9.5 Conveyances of NFA firearms not treated as "transfers" under the NFA**

**9.5.1 Repair of firearms.** ATF does not consider the temporary conveyance of an NFA firearm to an FFL for repair to be a "transfer" under the NFA. Thus, a transfer application is not required to convey the firearm for repair or to return the repaired firearm to its owner/possessor. Nevertheless, in order to avoid any appearance that a "transfer" has taken place, ATF recommends that a Form 5 application be submitted for approval prior to conveying the firearm for repair. It is also recommended that the FFL making repairs obtain an approved Form 5 to return a repaired firearm. If Forms 5 are not used to convey a firearm for repair or return the repaired firearm to the owner, the parties should maintain documentation showing that the conveyance was for purposes of repair, identifying the firearm, and showing the anticipated time for repair. Approved Forms 5, or the recommended documentation, will show that an unlawful "transfer" did not take place and that the FFL making the repairs is not in

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<sup>170</sup> 27 CFR 479.90

unlawful possession of the firearm. A non-FFL who proposes to transport a destructive device, machinegun, or short-barrel shotgun or rifle interstate to an FFL for repair should first obtain an approved ATF Form 5320.20 before transporting the firearm.<sup>171</sup>

**9.5.1.1 Repair of firearm silencers.** Please see the forthcoming ATF Ruling on silencer repair and replacement issues.

**9.5.2 Possession of firearms by employees of FFLs/SOTs for employers' business purposes.** No "transfer" under the NFA occurs when an FFL/SOT permits a bona fide employee to take custody of its registered NFA firearms for purposes within the employee's scope of employment and for the business purposes of the FFL/SOT. Therefore, no approved ATF transfer form is required when employees take custody of firearms under these circumstances. In addition, the interstate delivery of a firearm to the employee and the employee's receipt of the firearm would not violate the GCA.

**9.5.3 Distribution of estate firearms.** A decedent's registered NFA firearms may be conveyed tax-exempt to lawful heirs. These distributions are not treated as voluntary "transfers" under the NFA. Rather, they are considered to be involuntary "transfers by operation of law." Under this concept, ATF will honor State court decisions relative to the ownership and right to possess NFA firearms. So, when State courts authorize the distribution of estate firearms to decedents' lawful heirs, ATF will approve the distribution and registration to the heirs if the transactions are otherwise lawful. A lawful heir is anyone named in the decedent's will or, in the absence of a will, anyone entitled to inherit under the laws of the State in which the decedent last resided.

**9.5.3.1 Distributions to heirs.** Although these distributions are not treated as "transfers" for purposes of the NFA, Form 5 must be filed by an executor or administrator to register a firearm to a lawful heir and the form must be approved by ATF prior to distribution to the heir. The form should be filed as soon as possible. However, ATF will allow a reasonable time to arrange for the transfer. This generally should be done before probate is closed. When a firearm is being transferred to an *individual* heir, his or her fingerprints on FBI Forms FD-258 must accompany the transfer application. The application will be denied if the heir's receipt or possession of the firearm would violate Federal, State, or local law. The law enforcement certification on the form need not be completed. The form should also be accompanied by documentation showing the executor's or administrator's authority to distribute the firearm as well as the heir's entitlement to the firearm. Distributions to heirs should not be made until Forms 5 are approved. Executors and administrators are not required to have estate firearms registered to them prior to distribution to lawful heirs.

**9.5.3.2 Distributions to persons outside the estate.** Distributions of NFA firearms by executors or administrators to persons outside the estate (not beneficiaries) are "transfers" under the NFA and require an ATF-approved transfer form. Transfers of serviceable firearms to other entities or persons require an approved Form 4. Form 4 applications must be accompanied by the applicable transfer tax, and, if the transferee is an individual, the transferee's fingerprints on FBI Forms FD-258. Applications will be denied if transferees' receipt or possession of the firearms would violate Federal, State, or local law. Also, Form 4 applications to transfer firearms to individuals must contain the law enforcement certification of an appropriate law enforcement official. See Section 9.8 for further information on these certifications. Form 4

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<sup>171</sup> 18 U.S.C. 922(a)(4); 27 CFR 478.28

applications to transfer firearms to non-FFLs residing outside the State in which the estate is being administered will be denied. Form 4 transfers should not be made until the transfers are approved.

**9.5.3.3 Uncertainty about the registration status of decedents' firearms.** In some cases, an executor or administrator of an estate may be uncertain whether the decedent's firearms are registered to the decedent in the NFRTR. Perhaps the executor or administrator is unable to locate the decedent's registration documents. As discussed in Section 9.2, if the decedent's firearms are not registered to him/her in the NFRTR, the firearms are contraband and may not be lawfully possessed or transferred. If the executor or administrator cannot locate the decedent's registration documents, he/she should contact the NFA Branch in writing and inquire about the firearms' registration status. This inquiry should be accompanied by documents showing the executor's or administrator's authority under State law to represent the decedent and dispose of the decedent's firearms. Although ATF is generally prohibited from disclosing tax information, including the identity of persons to whom NFA firearms are registered, ATF may disclose such information to persons lawfully representing registrants of NFA firearms.

**9.5.3.4 Unregistered estate firearms.** Should an estate contain NFA firearms not registered to the decedent, these firearms are contraband that may not be lawfully possessed or transferred. Where these are found within an estate, the executor or administrator should contact his/her local ATF office and arrange for their disposal.

**9.5.3.5 Distribution of decedents' "sales samples."** If NFA firearms in a decedent's estate are "sales samples," that is, they were imported and distributed to the decedent as sales samples or were domestically manufactured machineguns distributed to the decedent as sales samples, the sale sample restriction continues in effect and lawful possession of the firearms requires that the firearms be held as "sales samples" for demonstration to government agencies.<sup>172</sup> Therefore, these firearms within an estate must be transferred to government agencies or FFLs/SOTs as sales samples for demonstration to such agencies.

**Section 9.6 Manufacturers' use of contractors to perform work on firearms.** As part of the manufacturing process to produce firearms for subsequent sale, some manufacturers contract with other persons to perform steps in the manufacturing process. As discussed in Chapter 7, these contractors are also manufacturers subject to licensing as firearms manufacturers and payment of NFA special tax. In addition, a manufacturer's transfer of an NFA firearm to such a contractor and the return of the firearm to the manufacturer are transfers required to be approved by ATF. These transfers require approved Forms 3.

**Section 9.7 Transfers of unserviceable NFA firearms.** "Unserviceable firearms" are firearms "incapable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition."<sup>173</sup> They are still "firearms" for purposes of the NFA and must be registered in the NFRTR to be lawfully possessed and transferred. However, their transfer is not subject to transfer tax.<sup>174</sup> To lawfully transfer unserviceable firearms, Form 5 transfer applications must be filed with ATF and approved. Appendix C contains a copy of the form. Form 5 applications to transfer the firearms to

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<sup>172</sup> 26 U.S.C. 5844(3)

<sup>173</sup> 26 U.S.C. 5845(h)

<sup>174</sup> 27 CFR 479.91

individuals must be accompanied by transferees' fingerprints and photographs on FBI Forms FD-258. Applications will be disapproved if receipt or possession of the firearms would place transferees in violation of Federal, State, or local law. In the case of transfers to individuals, the transferees must have an appropriate law enforcement official sign the law enforcement certification on the form. See Section 9.9 for further information on the law enforcement certification. A Form 5 transfer application will not be approved if the transferee is an individual residing outside the State in which the transferor resides; however, as previously discussed, there is an exception for FFLs' over-the-counter transfers of rifles and shotguns to non-residents if the laws of the transferors' and transferees' States are complied with. Transfers pursuant to Forms 5 may not be made until approved.

**Section 9.8 U.S. Government-owned firearms.** Conveyances of government-owned NFA firearms to FFLs/SOTs for repair, modification, or performing other work such as incorporating the firearms into a weapons system require no approved ATF transfer or registration. The same is true for the return of the firearms to government entities.

**Section 9.9 Law enforcement certifications.** These certifications on Forms 1 and 4 must be signed by an appropriate law enforcement official when the forms seek the transfer or making of an NFA firearm to or by an individual. However, as stated in Section 9.5.4.1, the certifications are not required when estate firearms are distributed to lawful heirs. As provided by regulations, the certificate must state that the certifying official is satisfied that the individual's fingerprints and photographs accompanying the application are those of the applicant and that the official has no information indicating that the receipt or possession of the firearm would place the transferee in violation of State or local law or that the transferee will use the firearm for other than lawful purposes. Acceptable certifying officials include chiefs of police, county sheriffs, heads of State police, State or local district attorneys, or "such other persons whose certificates may in a particular case be acceptable to the Director."<sup>175</sup> Examples of other officials whose certifications have been found acceptable include State attorneys general and judges of State courts having authority to conduct jury trials in felony cases.

If another official is proposed as an acceptable certifying official, the transferor may, in advance of filing the transfer form, submit a written request to the NFA Branch whether the official is an acceptable certifying official. Alternatively, the transfer form may be filed with the official's certificate. If the certification is unacceptable, ATF would disapprove the form and return it to the proposed transferor.

**9.9.1 Is a law enforcement officer required to sign the certification?** In some jurisdictions, officers whose certifications on a transfer form would be acceptable will not sign the certifications for reasons of their own. These officials cannot be compelled to sign the certifications.

**9.9.2 Is a law enforcement certification acceptable if signed by an official outside the jurisdiction where the transferee resides?** No. The certification must be signed by an official having jurisdiction where the transferee resides.

## **Section 9.10 Transfers of imported NFA firearms**

**9.10.1 Firearms imported for government agencies.** As discussed in Chapter 8, NFA firearms may be imported for sale to Federal, State, or local government agencies. For approval of these imports, the importer's Form 6 permit application must be accompanied by the agency's letter or purchase order

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<sup>175</sup> 27 CFR 479.85

reflecting the purchase of the firearms. Appendix D contains a sample letter for use by an agency ordering imported firearms. Transfer of the firearms to the purchasing agency requires an approved Form 5. If a qualified NFA dealer received the agency's order and placed it with the importer, the importer may transfer the firearms to the dealer on an approved Form 3 and the dealer, in turn, would use an approved Form 5 to transfer the firearms to the agency.

**9.10.2 “Sales samples.”** As discussed in Chapter 8, 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. As provided by the regulations, a Form 6 application to import such sample will be approved if it is established by specific information attached to the application 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.<sup>176</sup> Appendix D contains sample letters for use in acquiring imported sales samples, including a qualified NFA dealer's letter ordering a sales sample from an importer and an agency's letter requesting a demonstration of a sales sample. An importer's transfer of a sales sample to a dealer requires an approved Form 3.

**9.10.3 Transferring multiple quantities of the same firearm model as “sales samples.”** As provided by the regulations, applications to import or transfer more than one firearm of a particular model for use as a sales sample by an importer or dealer must establish the importer's or dealer's need for the quantity of samples sought to be imported.<sup>177</sup> In the case of machineguns imported on or after May 19, 1986 (as well as machineguns domestically manufactured after that date), ATF Ruling 2002-5 holds that if an FFL needs to demonstrate a particular model of machinegun to an entire police department or SWAT team, ATF will approve the transfer of two machineguns of that model to the dealer as sales samples. Additional quantities will be allowed if an FFL can document the need for more than two machineguns of a particular model.

## **Section 9.11 Transfers of machineguns imported or manufactured on or after May 19, 1986**

**9.11.1 Machinegun prohibition in 18 U.S.C. 922(o).** This statute makes it unlawful to transfer or possess a machinegun, except for transfers to or by, or possession by or under the authority of, the United States or a State, or machineguns lawfully possessed before May 19, 1986 (that is, machineguns in the U.S. and registered in the NFRTR). Regulations implementing the statute allow domestic manufacturers to lawfully manufacture and stockpile machineguns for future sale to Federal and State agencies, for distribution to FFLs/SOTs as sales samples for demonstration to such agencies, or for exportation.<sup>178</sup> The procedures discussed in Section 9.8 for transferring imported firearms to government agencies or to FFLs for use as sales samples apply as well to domestically manufactured machineguns.

**9.11.2 May machineguns subject to section 922(o) be transferred to government contractors?** The statute provides no exception for the lawful possession of these machineguns by government contractors for use in testing, research, design, or other work in fulfilling government contracts. One specific exception to this general rule appears in the Atomic Energy Act of 1954, 42 U.S.C. 2201a. This

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<sup>176</sup> 27 CFR 479.112(c) and (d)

<sup>177</sup> Ibid. See also 27 CFR 479.105(d)

<sup>178</sup> 27 CFR 479.105(c)

recently enacted provision allows for machinegun possession by security personnel engaged in the protection of Nuclear Regulatory Commission facilities or radioactive materials. Note also that although the NFA provides for the importation of NFA firearms for scientific or research purposes or for testing or use as a model by a registered manufacturer, the prohibition in Section 922(o) contains no exception that would permit the lawful possession of machineguns in the U.S. for those purposes; thus, applications to import machineguns for those purposes would be denied.

**Section 9.12 Are FFLs/SOTs required to initiate a background check of the transferee under the Brady Law in connection with the transfer of an NFA firearm?** Section 922(t), Title 18, U.S.C. (the Brady Law), prohibits an FFL from transferring a firearm to a non-FFL without initiating a background check of the transferee under the National Instant Criminal Background Check System. However, the law in Section 922(t)(3)(B) excepts ATF-approved transfers of NFA firearms from the background check requirement. *However*, if the NFA firearm approved by ATF for transfer is supplied with a conventional firearm as defined by the GCA, for example, a silencer with a pistol, the NICS check must be made before the transfer of the pistol.

**Section 9.13 May an FFL/SOT transfer a personally owned destructive device without qualifying to do business in destructive devices?** Persons engaged in the business of dealing in firearms must have a GCA license authorizing them to deal in the type of firearms in which they deal. If they engage in the business of dealing in destructive devices, they must have a license to do so as required by 18 U.S.C. 923(a)(3)(A). However, ATF recognizes that persons licensed to deal in firearms other than destructive devices may lawfully maintain a personal collection of destructive devices and *occasionally* dispose of them as personal firearms on Forms 4 without having a license to deal in such devices. But if the dealer's receipt and disposition of these devices become *repetitive*, ATF may infer that the dealer is engaged in the business of dealing in the devices and require him/her to be licensed as a dealer in such devices. There is no precise number of transactions that would trigger the license requirement.