



F.A.I.R. TRADE GROUP

FireArms Import/Export Roundtable

August 27, 2015

Mr. Tom Brandon
Acting Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
U.S. Department of Justice
99 New York Avenue NE
Washington, DC 20226

Re: Petition for Rulemaking Pursuant to 5 U.S.C. § 553(e)

Dear Director Brandon:

This is a petition for rulemaking submitted pursuant to section 553(e) of the Administrative Procedure Act, 5 U.S.C. 551 et seq. As discussed in more detail below, the FireArms Import/Export Roundtable Trade Group (“F.A.I.R.”) seeks amendment of regulations in 27 C.F.R. Part 479, Subpart H, so that the ATF Form 9, Application and Permit for Permanent Exportation of Firearms, is a notice submitted following lawful exportation, rather than an application submitted prior to export.

F.A.I.R. is a nonprofit organization dedicated to protecting the interests of the firearms and ammunition import and export communities. F.A.I.R. works with many U.S. government agencies, including the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) and the Departments of State and Homeland Security, to provide solutions to the concerns of F.A.I.R. members. Our membership includes importers of firearms, ammunition, and other defense articles who rely on licenses issued by ATF to legally import these commodities into the United States. Many members also hold Type 07 or Type 10 licenses as manufacturers of firearms. Members provide equipment to law enforcement agencies and the military who require such items to carry out their public safety and national security missions and sell the articles they import to distributors for general commercial sale. A number of our members produce firearms and ammunition that are exported to foreign governments for their national defense, consistent with the foreign policy of the United States.

Existing Law and Regulations

The National Firearms Act, (“NFA”), 26 U.S.C. Chapter 53, controls “firearms” as defined in 26 U.S.C. § 5845. Section 5845 defines the term “firearm” to include machineguns, short barrel shotguns, short barrel rifles, silencers, destructive devices, and other concealable weapons. Firearms subject to the NFA must be registered by their maker, manufacturer, or importer¹ and transfers of NFA firearms must be approved in advance by ATF.² The NFA provides that firearms

¹ See 26 U.S.C. §§ 5822, 5841.

² See 26 U.S.C. § 5812.

may be exported without payment of the transfer tax provided that proof of exportation is furnished in accordance with implementing regulations.³

Regulations in 27 C.F.R. § 479.114 provide that exports of registered NFA firearms must be accomplished by filing ATF Form 9 (Firearms), Application and Permit for Exportation of Firearms. The Form 9 must include information about the registrant, the foreign consignee, a complete description of the firearms, intended port of exportation, and the State Department license number (or date of application if not issued). The regulations also provide for a tax-free transfer of registered firearms to another person who in turn will export the NFA firearms. Section 479.115 provides that if the Form 9 application is acceptable, the Director will suspend assertion of transfer tax liability for a period of 6 months from the date of issuance. Section 479.116 of the regulations provides that no shipment of NFA firearms may be made until the Form 9 is received from the Director. Section 479.117 provides that the Form 9 must be presented to the District Director of Customs to effect export. Following export, Customs must execute the certificate of exportation (Part 3 of the approved Form 9) and transmit it to ATF. Finally, regulations in 27 C.F.R. § 479.118 require the exporter to furnish to ATF a copy of the certificate of exportation executed by Customs or other acceptable proof that the firearms were in fact exported. The exporter must also provide a certificate of landing executed by a Customs officer of the foreign country to which the firearm is exported. Such evidence must be provided within 6 months from the date of approval of the Form 9.

Proposal to Amend Regulations

F.A.I.R. proposes ATF amend the regulations in 27 C.F.R. §§ 479.114-479.122 so that the Form 9 is processed as a notice the exporter may submit to ATF following lawful exportation, rather than processed as an application submitted prior to export. F.A.I.R. believes revising the Form 9 (and the applicable regulations) to make it a notice rather than an application is more consistent with section 5854, which merely requires proof of exportation. F.A.I.R. members advise that in the vast majority of cases, exported firearms are not “transferred” to the foreign consignee until they are received outside the territory of the United States. If there is no “transfer” within the United States, the provisions of 26 U.S.C. § 5812 do not apply. Accordingly, we do not believe ATF is required to treat the export of registered NFA firearms as transfers that must be approved in advance.

We recognize ATF has an interest in obtaining proof of export so that the National Firearms Registration and Transfer Record can be annotated to reflect the export of the registered firearms. However, it is needlessly duplicative and burdensome for exporters to obtain an export authorization from ATF in addition to an export license from the Department of State.⁴ There is

³ See 26 U.S.C. § 5854.

⁴ Pursuant to Section 38 of the Arms Export Control Act (22 U.S.C. 2778), as amended, exports of NFA firearms are subject to the license requirements and restrictions of the Department of State’s *International Traffic in Arms Regulations*, 22 C.F.R. Parts 120-131 (“ITAR”). The United States Munitions List (22 C.F.R. § 121.1, “USML”) identifies all articles the President has designated as “defense articles.” USML Cat. I includes non-automatic and semi-automatic firearms to caliber .50 inclusive; fully automatic firearms to .50 caliber inclusive, firearms or other

no compelling policy reason why the United States should require two export authorizations for the same shipment of firearms.

The Department of State licensing process is often lengthy due to the congressional notification procedures required for exports of firearms totaling \$1 million or more.⁵ The process often takes six months or more, making it difficult to export firearms in accordance with import authorizations, which often have periods of validity of one year. Our members inform us that once they have the State Department license in hand, they often are left with only a few weeks of validity on the import authorizations. This puts them in the uncomfortable position of contacting ATF to request expedited approval of the Form 9. If the Form 9 becomes a notice filed with ATF after the firearms are lawfully exported, this problem will be avoided, benefitting both ATF and exporters.

The additional costs associated with obtaining an approved ATF Form 9 in addition to the State Department export license can and do result in the loss of sales to non-U.S. customers, including government and official entities. This results in a loss of revenue to U.S. businesses and loss of jobs. Changing ATF's requirements to make the Form 9 a notice submitted after lawful export will decrease costs and avoid unnecessary licensing duplication and redundancy. Further, we emphasize that revising the regulations as proposed is consistent with the President's ongoing Export Control Reform initiative, as it will reduce duplication between ATF and State and decrease costs to U.S. firearms manufacturers.

We also question the regulatory requirement that the exporter provide to ATF proof of export under 27 C.F.R. § 479.118. Defense articles exported from the United States are already subject to filing and reporting requirements and must be electronically reported using the Automated Export System (AES) administered by Customs and Border Protection.⁶ ATF has access to AES and can readily verify exports of NFA firearms through that system.

To the extent ATF is concerned about possible diversion of firearms shipped abroad, the ITAR requires license applications for the export of "significant military equipment" include non-transfer and use assurances.⁷ Firearms regulated under USML Cats. I, II, and IV are defined as "significant military equipment."⁸ Accordingly, export licenses for firearms must include a Form DSP-83 executed by the foreign consignee, foreign end user, and the exporter, certifying that, except as specifically authorized by prior written approval of the Department of State, the foreign consignee and foreign end user will not reexport, resell or otherwise dispose of the significant military equipment enumerated in the application outside the country named as the location of the foreign

weapons having a special military application regardless of caliber, combat shotguns, and silencers for the foregoing weapons. USML Cat. II covers guns over caliber .50, including howitzers, mortars, cannons, recoilless rifles, and grenade launchers. USML Cat. IV covers rockets, missiles, bombs, torpedoes, depth charges, mines, and grenades. Accordingly, exports of all NFA firearms are regulated under the ITAR and are therefore subject to the State Department's export license requirements. *See* 22 C.F.R. § 123.1.

⁵ *See* 22 C.F.R. § 123.15 (congressional certification pursuant to Section 36 of the Arms Export Control Act).

⁶ *See* 22 C.F.R. § 123.22 (filing of export information).

⁷ *See* 22 C.F.R. § 123.10 (non-transfer and use assurances).

⁸ *See* 22 C.F.R. § 120.7(b)(1) (definition of "significant military equipment").

end use, or to any other person.⁹ The Department of State has a variety of penalties available to punish persons who submit false certifications or retransfer firearms without State Department approval.¹⁰ These controls should be more than adequate to address any risk of diversion of exported firearms. ATF's regulations requiring a certificate of landing or statement of the foreign consignee are duplicative and unnecessary.

We are enclosing our proposed regulatory changes with this letter. We believe the changes would result in a streamlined export system that will reduce costs for industry members and the processing burden for ATF. We also believe our proposal will provide ATF with all the information it requires for administering the NFA.

If you have any questions about our proposal, do not hesitate to contact me.

Sincerely,

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Johanna Reeves
Executive Director

Enclosure

cc: Andrew Lange
Chief, Office of Regulatory Affairs

⁹ See also 22 C.F.R. §§ 120.19 (definition of reexport or retransfer) and 123.9 (country of ultimate destination and approval of reexports or retransfers).

¹⁰ See 22 C.F.R. §§ 127.1 (violations); 127.2 (misrepresentations and omission of facts); and 127.3 (penalties for violations).

**F.A.I.R. Petition for Rulemaking
Amendment of Regulations in 27 C.F.R. Part 479
Relating to ATF Form 9**

Sections 479.114-479.122, Title 27, C.F.R. are revised to read as follows:

§ 479.114 Notice of firearms exported

Any person desiring to export a firearm must prepare ATF Form 9 (Firearms), Notice of Exportation of Firearms, in accordance with the instructions on the form. The Form 9 shall show the name and address of the foreign consignee, number of firearms covered by the application, the port of exportation, a complete description of each firearm to be exported, the name and address of the special (occupational) tax payer, and State Department export license number (or reference to an applicable license exemption in the regulations in 22 C.F.R. Parts 120-131). Part I of the Form 9 must be executed under penalties of perjury by the exporter.

§ 479.115 Procedure by exporter

(a) *Export by means other than parcel post.* If exportation is to be made by means other than by parcel post, the exporter shall present to the District Director of Customs and Border Protection at the port of exportation a copy of the State Department export license (or evidence that the firearm may be exported pursuant to a license exemption in the regulations in 22 C.F.R. Parts 120-131) and two copies of a completed Form 9.

(b) *Export by parcel post.* If export is to be made by parcel post, one copy of a completed Form 9 must be presented to the Postmaster at the office receiving the parcel containing the firearm.

§ 479.116 Action by Customs and Border Protection or U.S. Postmaster

(a) Upon receipt of a Form 9, in duplicate, the District Director, Customs and Border Protection, may order such inspection as deemed necessary prior to lading of the merchandise. If satisfied that the shipment is proper and the information contained on the Form 9 is in agreement with information on the shipper's export declaration and the Department of State export license, the District Director, Customs and Border Protection, will, after the merchandise has been duly exported, execute the certificate of exportation (Part 2 of the Form 9). One copy of the form will be retained with the shipper's export declaration and the remaining copy will be returned to the Director.

(b) Upon receipt of a Form 9, the Postmaster will execute Part 3 of the Form 9 and return it to the exporter for transmittal to the Director.

§ 479.117 Submission of Form 9 to the Director

No later than 6 months following the export of a firearm, the exporter shall file with the Director a notice on Form 9. The notice shall include all the information specified in § 479.114 and include a certificate of exportation executed by Customs and Border Protection (Part 2 of Form 9) or a certification of mailing by parcel post/exportation executed by a U.S. Postmaster (Part 3 of Form 9). Furnishing of the Form 9 to the Director with a certificate of exportation will relieve the actual exporter and the person selling to the exporter for exportation from transfer tax liability. Where satisfactory evidence of exportation of a firearm is not furnished within the stated period, the transfer tax will be assessed.

§ 479.118 Action by Director

Upon receipt of a Form 9 from an exporter, the Director will complete Part 4 of the Form 9 and return it to the registrant as proof that the Form 9 has been received. The Director will make appropriate entry in the National Firearms Registration and Transfer Record to indicate the firearm has been exported.

§ 479.119 Transfer to Exporter

In instances where the registrant desires to make a transfer free of tax to another person who in turn will export the firearm, the transferor shall prepare and submit a Form 9 in accordance with the regulations in this Subpart. Where the transferor and exporter are both registered special (occupational) taxpayers, the exporter will not be required to prepare and submit a separate Form 9 for the firearm to be exported.

§ 479.120 Transportation of firearms to effect exportation

Notwithstanding any provision of § 478.28 of this chapter, it shall not be required that authorization be obtained from the Director for the transportation in interstate or foreign commerce of a firearm in order to effect the exportation of a firearm authorized under the provisions of this subpart.

§ 479.121 Refunds

Where, after payment of tax by the manufacturer, a firearm is exported, and satisfactory proof of exportation (see § 479.117) is furnished, a claim for refund may be submitted on Form 843 (see § 479.172). If the manufacturer waives all claim for the amount to be refunded, the refund shall be made to the exporter. A claim for refund by an exporter of tax paid by a manufacturer should be accompanied by waiver of the manufacturer and proof of tax payment by the latter.

§ 479.122 Insular possessions

Transfers of firearms to persons in the insular possessions of the United States are exempt from transfer tax, provided title in cases involving change of title (and custody or control, in cases not involving change of title), does not pass to the transferee or his agent in the United States. However, such exempt transactions must be covered by notices and supporting documents corresponding to those required in the case of firearms exported to foreign countries (see §§ 479.114-479.119), except that the Director may vary the requirements herein set forth in accordance with the requirements of the governing authority of the insular possession. Shipments to the insular possessions will not be authorized without compliance with the requirements of the governing authorities thereof. In the case of a nontaxable transfer to a person in such insular possession, the exemption extends only to such transfer and not to prior transfers.