U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of the Assistant Director
Enforcement Programs and Services

Washington, DC 20226

www.atf.gov

OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES

Allowable Activities for Firearms Brought into Customs Bonded Warehouses and Foreign Trade Zones

The purpose of this open letter is to remind affected persons of the Gun Control Act (GCA), National Firearms Act (NFA), and Arms Export Control Act (AECA), and associated federal regulations as they apply to firearms brought into Customs Bonded Warehouses (CBWs) and Foreign Trade Zones (FTZs). This open letter also clarifies and outlines allowable activities involving firearms in these locations because in the past, certain activities occurring within CBWs and FTZs resulted in persons remanufacturing or manipulating firearms, firearm receivers, and barrels into sporting configurations that would otherwise be importable under the GCA and NFA.

Laws and regulations on importing firearms into the United States

The GCA, at Title 18, United States Code (U.S.C.), section 922(l), makes it unlawful for any person to knowingly import or bring into the United States any firearm except as permitted under § 925(d). Section 925(d) specifies the conditions under which the Attorney General will authorize importing firearms into the United States. One of these conditions, in § 925(d)(3), states that the Attorney General will authorize importing a firearm if it is "generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms" and is not a "firearm" as defined under the NFA in 26 U.S.C. § 5845(a).[1] In other words, it is generally unlawful under the GCA to import firearms that are not recognized as suitable for sporting purposes or that are "firearms" as defined under the NFA. The NFA, 26 U.S.C. § 5844, also restricts importing NFA firearms, with similar limited exceptions. *See also* 27 CFR 479.111.

[1] The other conditions (or exceptions) for which the Attorney General is to authorize importing firearms are: for scientific or research purposes; if the firearm is not a machine gun under the NFA and is unserviceable and imported as a curio or museum piece; if the firearm was previously taken out of the U.S. by the same person; and conditionally, for testing whether a firearm should be authorized for import. 18 U.S.C. § 925(d).

The AECA, 22 U.S.C. §§ 2751 *et seq*, designates items that are defense articles and services, and AECA regulations control their import by means of the United States Munitions Imports List (USMIL). The USMIL includes most firearms as defined under the GCA and NFA[2] as well as firearm parts. 22 U.S.C. § 2778(a)(1); *see also* 27 CFR 447.21–447.22.[3]

The definition of "importation" is found in the regulations that implement the GCA, NFA, and AECA. GCA regulations generally define "importation" as "[t]he bringing of a firearm or ammunition into the United States." 27 CFR 478.11. NFA regulations similarly define "importation" as "[t]he 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 intent to unlade." 27 CFR 479.11. Regulations that implement the AECA define "importation" as "bringing into the United States from a foreign country any of the articles on the [USMIL]," which list includes firearms regulated under the GCA and NFA, as well as firearm parts. 27 CFR 447.11.

The GCA also restricts what firearms may be assembled from parts that are imported into the United States. Specifically, the GCA at 18 U.S.C. § 922(r) makes it unlawful for any person to assemble any nonimportable firearm, *e.g.*, any semiautomatic rifle or shotgun that is prohibited from being imported under 18 U.S.C. § 925(d)(3), from certain imported firearm parts listed in 27 CFR 478.39.

Importing and activities allowed in CBWs

For several years, federal firearms licensees (FFLs) have imported firearms into CBWs, which are "buildings or parts of buildings and other enclosures . . . for the storage of imported merchandise entered for warehousing, or taken possession of by the appropriate customs officers, or under seizure, or for the manufacture of merchandise in bond, or for the repacking, sorting or cleaning of imported merchandise." 19 U.S.C. § 1555(a).

The provisions of the GCA, NFA, and AECA, and their associated regulations, apply in CBWs, as there are no federal laws or regulations that exempt or suspend the application of these specific statutes and regulations in CBWs. Therefore, ATF has authority to enforce these laws with respect to firearms imported into CBWs. *See* 28 CFR 0.130. If the CBW is the FFLs' business premises or storage location under the GCA regulations, then ATF has authority under 27 CFR 478.23 to examine records or conduct inspections.

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[2] The USMIL does not include sporting shotguns, shotgun shells, or shotgun parts. *See* 27 CFR 447.21 and Instruction 2 on the "Application and Permit for Importation of Firearms, Ammunition, and Defense Articles, ATF Form 6.

[3] In pertinent part, the AECA requires that any person importing (or brokering activities for importing) any item on the USMIL must have a license to do so, and must register the item with the appropriate agency and pay a registration fee, the details of which process are in the AECA's implementing regulations. As with the GCA and NFA, there are certain exceptions to this requirement, such as for any U.S. government officer or employee acting in an official capacity who imports such items. *See* 22 U.S.C. § 2778(b)(1), (2).

To lawfully bring firearms into a CBW, the items must be importable under the GCA and NFA by meeting an exception under the GCA, 18 U.S.C. § 925(d), and/or the NFA, 26 U.S.C. § 5844. Because GCA and NFA firearms, and firearm parts, are on the USMIL, FFLs must also comply with AECA requirements when importing firearms into a CBW. *See* 27 CFR 447.41. The definitions of "importation" in federal regulations, described above, contain no exceptions for firearms brought into a CBW. Therefore, to comply with all of these laws, an FFL must submit an "Application and Permit for Importation of Firearms, Ammunition, and Defense Articles," ATF Form 6, to ATF and receive ATF approval prior to bringing any firearms into CBWs. *See* 27 CFR 447.42; 27 CFR 478.112; 27 CFR 479.111.

Additionally, manufacturing is restricted by Customs Border Protection (CBP) within CBWs. Under the regulations applicable to CBWs, manufacturing may only occur in a CBW if the item to be manufactured is to be exported. *See* 19 CFR 19.1(a)(6).

Importing and activities allowed in FTZs

For numerous years FFLs have also imported firearms into FTZs, which are secure areas located in or near CBP ports of entry and established by the Foreign Trade Zone Board under the Foreign Trade Zone Act of 1934 (FTZ Act), as amended. 19 U.S.C. §§ 81a–81u. Although FTZs are legally considered to be outside of customs territory for purposes of tariff laws and CBP entry procedures (*see* 19 U.S.C. 81c(a)), the FTZ Act does not provide any additional exemptions within FTZs from other federal, state, or local laws or regulations.[4] Therefore, all laws and regulations relevant to the place in which the FTZ is located apply. Thus, ATF has authority to enforce the GCA, NFA, and AECA in FTZs. *See* 28 CFR 0.130. Such authorities in 27 CFR 478.23 include inspecting or examining the records, documents, and firearms at an FFL's business premises and all places of storage, to include items located in FTZs.

With respect to FTZs, the implementing regulations of the GCA define "importation" at 27 CFR 478.11 to include a limited exception which provides that bringing a firearm "from outside the United States *into a foreign-trade zone for storage* pending shipment to a foreign country or subsequent importation into this country, pursuant to this part, *shall not be deemed importation.*" (Emphasis added). The implementing regulations of the NFA define "importation" to also include a similarly worded exception providing that storage of NFA firearms pending shipment to a foreign country or subsequent importation into this country under Title 26 of the United

[4] Indeed, the relevant regulations provide that persons that operate in a zone are to comply with federal, state, and local laws. Specifically, 15 CFR 400.13(a)(1) states that "[p]rior to activation of a zone, the zone grantee or operator shall obtain all necessary permits from federal, state and local authorities and . . . shall comply with the requirements of those authorities." Additionally, § 400.13(a)(5) provides that "[Z]one grantees, operators, and users (and persons undertaking zone-related functions on behalf of grantees, where applicable) shall permit federal government officials acting in an official capacity to have access to the zone and records during normal business hours and under other reasonable circumstances."

States Code are not deemed to be imported.[5] Thus, unlike in CBWs, firearms, including machine guns or other non-sporting firearms, which are not typically authorized for import into the United States, may, under the GCA and NFA, lawfully be brought into an FTZ for storage pending shipment to a foreign country or subsequent importation into the country (as permitted by federal law and regulations).

However, the AECA does not similarly except from "importation" firearms that are admitted into FTZs for storage pending shipment to a foreign country or subsequent importation. *See* 27 CFR 447.11. Rather, under the AECA definition of "importation," firearms and firearm parts listed as defense articles on the USMIL *are* considered imported under the AECA unless they are transactions subject to Department of State controls.[6] Therefore, to comply with the AECA, the FFL must complete an "Application and Permit for Importation of Firearms, Ammunition, and Defense Articles," ATF Form 6, and obtain approval from ATF prior to bringing any firearms into FTZs. *See* 27 CFR 447.41. To subsequently withdraw firearms from an FTZ that can be permanently imported into the United States per the law and regulations, FFLs must complete another ATF Form 6 and receive approval from ATF. *See* 27 CFR 478.113.

While neither the law nor implementing regulations define the term "storage," ATF has provided private letters in response to individual requests,[7] that have authorized limited activities incidental to the primary purpose of storage to be conducted with respect to firearms located in FTZs (*e.g.*, repacking or sorting). ATF has also permitted FFLs to destroy firearms in FTZs in certain circumstances; for example, ATF has permitted FFLs to destroy firearms in lieu of abandoning them to the U.S. Government under 27 CFR 478.111(b)(2).[8]

ATF has received inquiries on whether bringing NFA and GCA firearms into FTZs for destruction is permissible. ATF has determined that its regulations, which are silent on destruction, do not prevent the destruction of firearms within an FTZ; further, the destruction of firearms has been permitted in FTZs by the FTZ Board in consultation with ATF.[9] Thus, when

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[5] Specifically, the definition of "importation" in 27 CFR 479.11 states: "Except that, bringing a firearm from a foreign country or a territory subject to the jurisdiction of the United States into a foreign trade zone for storage pending shipment to a foreign country or subsequent importation into this country, under Title 26 of the United States Code, and this part, shall not be deemed importation."

[6] Under AECA regulations, articles that are "subject to the Intransit or Temporary Export License procedures of the Department of State" under 22 CFR part 123 are not considered imported or exported under the AECA. *See* 27 CFR 447.46.

[7] These letters have been specific to the inquiries of private individuals and limited in scope, on a case-by-case basis, given the specific factual circumstances of each request.

[8] 27 CFR 478.111(b) provides that where a firearm is imported without the authorization required, then the person shall "(1) Store, at the person's expense, such firearm, firearm barrel, or ammunition at a facility designated by U.S Customs or the Director of Industry Operations to await the issuance of the required authorization or other disposition; or (2) Abandon such firearm, firearm barrel, or ammunition to the U.S. Government; or (3) Export such firearm, firearm barrel, or ammunition."

[9] Private companies or individuals have requested authorization for certain activities from ATF and the FTZ Board in the past. ATF has authorized activities beyond storage in such cases, based on the facts of each case as presented by private companies. If authorized, these persons then submit a proposal to the FTZ Board for approval. *See e.g.*, 87 FR 8562–8563 (Feb. 15, 2022); 85 FR 33622 (Jun. 2, 2020); 78 FR 50375–50376 (Aug. 19, 2013).

bringing firearms into an FTZ for the purpose of destruction, FFLs should indicate in item #10 on ATF Form 6 that the purpose for importing them is "destruction." At a minimum, destroying a firearm consists of permanently altering the frame or receiver or barrel such that it may not be readily completed, assembled, restored, or otherwise converted to be operable.[10]

The FTZ Act at 19 U.S.C. § 81c(a) prohibits manufacturing firearms in an FTZ, because the manufacturer, producer, or importer is subject to excise taxes under the Internal Revenue Code at 26 U.S.C. § 4181. Accordingly, FFLs cannot manufacture firearms or engage in other activities beyond the scope of storing or destroying them in FTZs.[11] For instance, reconfiguring non-sporting firearms into a sporting configuration to render the firearms suitable for use and subsequent import into the U.S. is not permitted in an FTZ. This also means that non-importable firearms, and receivers or barrels of non-importable firearms, cannot be brought into FTZs for purposes of manipulation into a configuration (*e.g.*, sporting) that would otherwise be importable under the GCA or NFA. Conversely, destroying firearms as described above does not render the firearms "suitable for use," and therefore does not constitute manufacturing.

This open letter generally serves to remind FFLs that:[12]

- The Gun Control Act (GCA) and National Firearms Act (NFA) generally prohibit importing firearms. 18 U.S.C. § 922(l); 26 U.S.C. § 5844. Both statutes, however, contain exceptions for limited types of imports. *See e.g.*, 18 U.S.C. § 925(d); 26 U.S.C. § 5844. One such exception under the GCA at 18 U.S.C. § 925(d)(3) allows FFLs to

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[10] *See*, *e.g.*, 27 CFR 478.12(e). *See also* ATF.gov, "How to properly destroy firearms," https://www.atf.gov/firearms/how-properly-destroy-firearms.

[11] *Samsung Electronics Co., Ltd. v. Apple Inc.*, 137 S. Ct. 429, 435 (2016) ("'manufacture' means 'the conversion of raw materials by the hand, or by machinery, into articles suitable for the use of man' and 'the articles so made.'" (*citing* J. Stormonth, A Dictionary of the English Language at 589 (1885))); *FastShip, LLC v. United States*, 892 F.3d 1298, 1303 n.7 (Fed. Cir. 2018) (same); *Cyrix Corp. v. Intel Corp.*, 803 F. Supp. 1200, 1206 (E.D. Tex. 1992) (referring to the manufacturing process of converting raw materials into computer coprocessors); *Swiss Manufacturers Ass'n, Inc. v. United States*, 39 Cust. Ct. 227, 233 (1957) ("What must be kept in mind is the distinction between manufacturing operations which advance the materials as materials and manufacturing operations which convert the materials into the complete articles."); *Dean & Sherk Co., Inc. v. United States*, 28 Cust. Ct. 186, 189 (1952) ("It may require more than one manufacturing process to convert a textile material into a new textile material having a new name, character, or use."); *United States v. J.A. Schneider & Co.*, 21 C.C.P.A. 352, 357 (Cust. & Pat. App. 1934) (referring to the process of taking finished products of certain processes of manufacture as "material for subsequent manufacturing processes necessary to convert them into parts for furniture"); *Bedford Mills v. United States*, 75 Ct. Cl. 412, 423 (1932) (referring to a "manufacturer" as "one who converts raw materials into a finished product"); *Stoneco, Inc. v. Limbach*, 53 Ohio St. 3d 170, 173, 560 N.E. 2d 578, 580 (Ohio. 1990) ("manufacturing is the commercial use of engines, machinery, tools, and implements to convert material into a new form, quality, property, or combination and into a more valuable commodity for sale"); *State v. American Sugar Refining Co.*, 108 La. 603, 627, 32 So. 965, 974 (La. 1902) ("The process of manufacture converts the raw material . . . into the manufactured articles"); see also Prod. Liab.: Design and Mfg. Defects § 14:7 (2d ed.) ("The basic function of the manufacturing organization is to convert raw materials into finished products."); *cf. Broughman v. Carver*, 624 F.3d 670, 675 (4th Cir. 2010) (to "manufacture" a firearm means "to render the firearm 'suitable for use'").

[12] *See* discussions and footnotes, *supra*, for statutory and regulatory citations regarding the topics summarized in these bullet points on firearms, CBWs, and FTZs.

import a firearm if it is generally recognized as particularly suitable for or readily adaptable to sporting purposes (excluding military surplus firearms) and is not a firearm as defined under the NFA. But, § 925(d)(3) also limits what can be imported by prohibiting a person from importing the frame, receiver, or barrel of a firearm if, when those parts are used in assembling a firearm, result in a firearm that would be prohibited from import.

- The Arms Export Control Act (AECA) and its regulations apply to permanent import of items on the United States Munitions Imports List (USMIL) into the United States. The USMIL includes most firearms regulated under the GCA and NFA, as well as firearm parts. *See* 22 U.S.C. § 2778; 27 CFR 447.21–447.22.

- The terms "import" or "importation" are defined in regulations that implement the GCA, NFA, and AECA. GCA regulations generally define "importation" as "[t]he bringing of a firearm … into the United States." 27 CFR 478.11. The NFA and AECA contain similarly worded definitions. *See* 27 CFR 479.11 and 27 CFR 447.11.

- Importers must be careful not to knowingly assist persons in assembling non-importable (*i.e.*, non-sporting) rifles or shotguns from certain imported firearm parts. *See* 18 U.S.C. § 922(r); 27 CR 478.39.

With respect to Customs Bonded Warehouses (CBWs), this open letter clarifies that:

- There are no federal laws or regulations that exempt or suspend application of the GCA, NFA, or AECA in CBWs. Therefore, ATF has authority to enforce these laws with respect to firearms imported into CBWs. If the CBW is the FFLs' business premises or storage location under the GCA regulations, then ATF has authority under 27 CFR 478.23 to examine records or conduct inspections.

- To lawfully bring firearms into a CBW, the items must be importable under the GCA and NFA by meeting an exception under 18 U.S.C. § 925(d) and/or 26 U.S.C. § 5844. Because the AECA controls importing defense articles and services, which include GCA and NFA firearms, and firearm parts, FFLs must also comply with the AECA.

- To comply with the GCA, NFA, and AECA, the FFL must submit an "Application and Permit for Importation of Firearms, Ammunition, and Defense Articles," ATF Form 6, to ATF, and receive ATF approval, prior to bringing firearms into CBWs.

- Manufacturing in CBWs is only permitted in specified warehouses solely for purposes of exportation from the United States. *See* 19 CFR 19.1(a)(6).

With respect to Foreign Trade Zones (FTZs), this open letter clarifies that:

- The FTZ Act, 19 U.S.C. §§ 81a–81u, provides no additional exemptions from federal, state, or local law or regulation for any entity utilizing an FTZ. *See also* 15 CFR 400.13(a), 400.13(a)(5). As a result, the GCA and the NFA are generally applicable and enforceable in FTZs, and ATF maintains regulatory authority over FFLs and their activities in FTZs. Such authorities in 27 CFR 478.23 include inspecting or examining the records, documents, and firearms at the business premises and all places of storage, to include items located in an FTZ.

- The definitions of "importation" in 27 CFR 478.11 and 479.11 provide that firearms brought into an FTZ for storage pending shipment to a foreign country or subsequent importation into the United States are not considered imported. Due to these regulatory exceptions from the definition of "importation," firearms, including machine guns or other non-sporting firearms, which are not typically authorized for import into the United States, firearms may lawfully be brought into FTZs for storage pending shipment to a foreign country or subsequent importation into the United States (as permitted by federal law and regulations).

- Based on the definition of "importation" under the AECA regulations, firearms and firearm parts listed as defense articles on the USMIL *are* considered imported under the AECA unless they are transactions subject to Department of State controls. *See* 27 CFR 447.11, 447.46. Therefore, to comply with the AECA, an FFL must complete an "Application and Permit for Importation of Firearms, Ammunition, and Defense Articles," ATF Form 6, and receive approval from ATF prior to bringing any firearms in FTZs. *See* 27 CFR 447.41. To subsequently withdraw firearms from an FTZ that can be permanently imported into the United States per the law and regulations, FFLs must complete another ATF Form 6 and receive approval from ATF. *See* 27 CFR 478.113.

- "Storage" is not defined in the law or applicable regulations, but ATF has permitted limited activities like repacking or sorting firearms to be conducted in an FTZ because such activities are incidental to the primary purpose of storage.

- ATF has also determined that its regulations, which are silent on destruction, do not prevent firearms from being brought into FTZs for purposes of destruction. FFLs should indicate, on item #10 of ATF Form 6, that the purpose for importing them is "destruction" when seeking approval from ATF.

- The FTZ Act at 19 U.S.C. § 81c(a) prohibits manufacturing firearms in an FTZ because the manufacturer, producer, or importer is subject to excise taxes under the Internal Revenue Code at 26 U.S.C. § 4181. Accordingly, manufacturing and other firearm activities beyond the scope of storage or destruction, cannot be conducted in FTZs. This also means that non-importable firearms, and receivers or barrels of non-importable

firearms, cannot be brought into FTZs for purposes of manipulation into a configuration (*e.g.*, sporting) that would otherwise be importable under the GCA or NFA.

Should you have any questions regarding this open letter, please contact the ATF Imports Branch at 304-616-4550 or imports@atf.gov.

Sincerely,

Megan A. Bennett, Assistant Director
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