



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington DC 20226

May 16, 2013

www.atf.gov

OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES

In 2012, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) became aware that some Federal firearms licensees (FFL) are arranging for the exportation of firearms and ammunition through an in-person disposition to foreign purchasers at the airline ticket counter of local international airports. Industry members are advised that this manner of disposing of firearms and ammunition violates the Gun Control Act of 1968 ("GCA"), as amended, 18 U.S.C. §§ 921 *et. seq.*, and its implementing regulations.

The typical scenario involves an FFL bringing a firearm to the airport ticket counter where the foreign purchaser is waiting to check in baggage for an out-bound flight. Next, the firearm is either checked in its own shipping case or inserted by the FFL or an airline employee into the foreign purchaser's baggage. The FFL has usually obtained the required export licenses and approvals from the United States Department of State. Neither a Firearms Transaction Record, ATF Form 4473, nor a National Instant Criminal Background Check System (NICS) check is completed by the FFL in connection with the firearms transaction.

Delivering and disposing of a firearm to a foreign purchaser at the airport without completing an ATF Form 4473 or conducting a NICS check would violate 18 U.S.C. § 922(b)(3), (b)(5), (m), and (t), and 27 CFR. §§ 478.102, .121(c), and .124(a). Because the purchaser has lawful authority and control over his/her baggage, it makes no difference whether the FFL enlists the aid of an airline employee to act as an intermediary in taking the firearm from the FFL without the foreign purchaser ever actually handling the firearm. Even after check-in, the foreign traveler may request and retrieve his or her baggage containing the firearm prior to a flight. Circumstances may also arise preventing the purchaser from travelling, and the baggage holding the firearm would be returned to the foreign visitor. Likewise, it makes no difference whether the firearm is inserted into the purchaser's baggage or kept in a separate container, because both would constitute baggage of the foreign purchaser.

Further, if the foreign purchaser is legally present in the United States on a tourist or other non-immigrant visa, the sale or disposition of the firearm and/or ammunition would be unlawful under 18 U.S.C. § 922(d)(5)(B), unless the person falls within one of the exceptions listed in 18 U.S.C. § 922(y)(2). Additionally, it is unlawful under 18 U.S.C. § 922(a)(9) for a non-licensee who does not reside in the United States to receive any firearms unless such receipt is for lawful sporting purposes. ATF is also concerned that FFLs engaged in this practice have not properly identified the individual at the airport who purports to be the foreign purchaser.

Nonetheless, an FFL acting as an exporter may lawfully complete an export transaction at the airport consistent with the requirements of the GCA. The proper procedure would be for the FFL, consistent with the airline's freight policy, to deliver the firearm and/or ammunition directly to the airline as freight to be sent by the FFL to the foreign purchaser. The airline would then ship or transport (*i.e.*, export) the firearm on behalf of the FFL to the purchaser outside the United States. Because the firearm and/or ammunition being sent would be under the exclusive direction and control of the FFL exporter, this procedure would not result in an unlawful disposition of a firearm and/or ammunition at the airport.

ATF is committed to assisting you in complying with Federal firearms laws. If you have questions, please contact ATF's Firearms Industry Programs Branch at (202) 648-7190.



Debra S. Satkowiak

Chief, Firearms and Explosives Industry Division