



# FFL NEWSLETTER

FEDERAL FIREARMS LICENSEE INFORMATION SERVICE

June 2021

To keep Federal firearms licensees (FFLs) abreast of changing Federal firearms laws and regulations, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will provide annual FFL Newsletters. Previous editions of the FFL Newsletters are available on ATF's Web site (<https://www.atf.gov/resource-center/publications-library>).



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## What is a Straw Purchase?

In its 1992 FFL Newsletter, ATF explained that a straw purchase occurs when the actual buyer uses another person (“straw purchaser”) to execute the Form 4473 purporting to show that the straw purchaser is the actual purchaser of the firearm. In some instances, the actual purchaser is within one of the prohibited categories of persons who may not lawfully acquire firearms, such as a felon, or a resident of a State other than that in which the licensee’s business premises is located. In other instances, neither the straw purchaser nor the actual purchaser is prohibited from acquiring the firearm, but the actual purchaser wishes to conceal their identity.

The Gun Control Act of 1968 (GCA), codified at 18 U.S.C. 922(a)(6), makes it unlawful for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensee to knowingly make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition.

A straw purchase can occur through oral statements as well as written statements. Oral statements are those statements a “straw purchaser” makes verbally in regard to a firearm’s purchase. Written

statements are those made on documents such as the ATF Form 4473, whether in handwritten or electronic form. Generally, a Form 4473 is required to effect the transfer of a firearm from a licensee to an unlicensed transferee/buyer. The information and certification on the Form 4473 are designed so that the FFL may determine if they may lawfully sell or deliver a firearm to the person identified in Section B of the form, and to alert the transferee/buyer of certain restrictions on the receipt and possession of firearms. Form 4473, question 21.a., requires the transferee/buyer to certify – by answering “Yes” or “No” – whether they are the actual transferee/buyer of the firearm(s) listed on the form and any continuation sheet(s) (ATF Form 5300.9A), if applicable, and provides this warning: “Warning: You are not the actual transferee/buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual transferee/buyer, the licensee cannot transfer the firearm(s) to you. Exception: If you are only picking up a repaired firearm(s) for another person, you are not required to answer 21.a. and may proceed to question 21.b.” Form 4473 instructions further explain that a person is the actual transferee/buyer if he/she is: purchasing or acquiring the firearm for him/herself, such as: redeeming the firearm from pawn, retrieving it from consignment or firearm raffle winner or legitimately purchasing the firearm as a bona fide gift for a third party. A gift is not bona fide if another person offered or gave the person completing this form money, service(s), or item(s) of value to acquire the firearm for him/her, or if the other person is prohibited by law from receiving or possessing the firearm.

EXAMPLE: Mr. Smith asks Mr. Jones to purchase a firearm for Mr. Smith (who may not be prohibited). Mr. Smith gives Mr. Jones the money for the firearm. Mr. Jones is NOT THE ACTUAL TRANSFEREE/BUYER of the firearm and must answer “no” to question 21.a. The licensee may not transfer the firearm to Mr. Jones.

However, if Mr. Jones buys the firearm with his own money to give to Mr. Smith as a gift (with no service or tangible thing of value provided by Mr. Smith), Mr. Jones is the actual transferee/buyer of the firearm and should answer “yes” to question 21.a.

Whether the actual buyer is prohibited or not is irrelevant as explained in *Abramski v. United States*, 573 U.S. 169 (2014). Thinking he could acquire a firearm at a discount by showing his former police identification, Abramski offered to buy a Glock 19 handgun for his uncle—an offer his uncle accepted. Abramski received a check from his uncle for \$400 with “Glock 19 handgun” written on the memo line. Abramski purchased the firearm from an FFL two days later. The Supreme Court ruled that Abramski violated the GCA, section 922(a)(6), when he certified on Form 4473 that he was the “actual transferee/buyer” of the firearm listed on the form. At the time of the straw purchase, neither Abramski nor his uncle were prohibited from possessing firearms.

It is not feasible to lay out the universe of possible scenarios in which a straw purchase may take place. Each case depends upon its own facts, and the analysis may shift depending upon any number of circumstances present. Licensee’s must be diligent to ensure they do not transfer firearms to persons based on truthful responses provided on Form 4473 that prohibits the transfer of a firearm (e.g., customer answers “No” to question #21.a.) Regardless of a customer’s written responses, the licensees may not transfer a firearm to any person he/she knows or has reasonable cause to believe is prohibited under 18 U.S.C. 922 (g), (h), (n), or (x). See also 18 U.S.C. 922(d), (x).

### Scenarios (Straw Purchase? Yes or No)

- Buying a firearm on behalf of an individual (prohibited or not)? YES. The buyer must answer “No” to question 21.a.
- Buying a firearm on behalf of an individual to save them money (to get a discount)? YES. The buyer must answer “No” to question 21.a.
- Buying a firearm as a gift? NO. As long as the purchaser is the actual buyer, and the gift is bona fide.
- Using spouses’ credit card account to purchase a firearm? NO. As long as the purchaser is an authorized user on the credit card.

## Silencer Markings and Registration Requirements

Pursuant to [18 U.S.C. § 921\(a\)\(24\)](#), [27 § CFR 478.11](#), and [27 § CFR 479.11](#), the terms “firearms silencer” or “firearms muffler” mean “any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.” Such parts include, but are not limited to, these terms: outer tube, baffles, front end cap, and rear end cap. Therefore, a device, a combination of parts, and any part intended only for use in assembling a silencer are “firearm silencers” and each a “firearm” under both the Gun Control Act (GCA) and the National Firearms Act (NFA).

Pursuant to [18 U.S.C. § 923\(i\)](#), [26 U.S.C. § 5842\(a\)](#), [27 CFR § 478.92](#), and [27 CFR § 479.102](#), each licensed manufacturer is required to mark each firearm manufactured with a serial number, the name of the manufacturer, the city and State of manufacture, the model (if such designation has been made), and the caliber or gauge. Because each “part” is a “firearm,” these statutes require that each part or component of a silencer be marked with the required information. However, because of the difficulty, expense and limited public safety value associated with this, ATF has never required that *each* component of a silencer be marked when possessed during the production process by Federal firearms licensees paying special occupational tax (FFL/SOT). This enforcement policy extends to parts made by FFLs/SOTs for the sole purposes of repairing a registered silencer.

Accordingly, an FFL/SOT (Class 2 manufacturer of firearms) who manufactures a silencer part **for the sole purpose of repairing a registered silencer** 1) is not required to mark the part; 2) is not required to register the part on ATF Form 2; 3) is not required to submit and receive an approved ATF Form 3 to transfer the part to FFL/SOT; and 4) is not required to maintain records of manufacture or other acquisition and records of disposition (A&D) pursuant to [18 U.S.C. § 923\(g\)](#), [26 U.S.C. § 5843](#), [27 CFR § 478.123](#), and [27 CFR § 479.131](#),

provided the part is transferred to an FFL/SOT for the purpose of repairing a registered silencer.

If someone other than an FFL/SOT wants to acquire a silencer part, that part must be marked in accordance with regulations and registered by filing a Form 2. A Form 5 must be filed if the part is being acquired by a government entity. A Form 4 must be filed if the part is being acquired by an unlicensed person or FFL who is not qualified under the NFA.

## Changes to ATF Form 4473

In 2020, ATF revised the ATF Form 4473. The most significant change was the order in which information appeared on the Form. The firearm description is now Section A rather than being Section D as on the 2016 edition. This section was moved so the transferee/buyer’s certification would be applicable to the firearms documented. On the 2016 edition of the form, question 11.a. asked: “Are you the actual transferee/buyer of the firearm(s) listed on this form?” However, at this point on the form, the FFL had not been asked to document the firearms to be transferred. Changing the location of the firearm description fixes this.

### The form must be completed sequentially:

The headings and instructions on the Form 4473 require the manufacturer and importer (if any), the model, serial number, type and caliber or gauge of the firearm(s) to be transferred to be entered on the Form 4473, in Section A. Section A must be completed prior to the transferee/buyer completing Section B. Thus, a transferee/buyer may not complete Section B on the Form 4473 prior to the licensee identifying the firearm(s) to be transferred in Section A.

### Section A, item 6 (total number of firearms to be transferred):

Regardless of whether the buyer/transferee is denied by a background check, or does not take possession of the firearm(s) (for any reason), Item 6 should reflect the total number of firearms recorded in Items 1-5 and, as necessary, those indicated on Firearms Transaction Record Continuation Sheet, ATF Form 5300.9A.

## **Making corrections to the form:**

Errors on the ATF Form 4473 may be corrected prior to completion of the transaction by marking through the error (for example, by striking through the entry), entering the correct information, and initialing and dating each correction. Please note that Sections A, C and E may be corrected only by the licensee. The transferee/buyer may only make changes to Sections B and D.

The instructions on the [ATF Form 4473](#) state:

If the transferor/seller or the transferee/buyer discovers that an ATF Form 4473 is incomplete or improperly completed after the firearm has been transferred, and the transferor/seller or the transferee/buyer wishes to correct the omission(s) or error(s), photocopy the inaccurate form, and make any necessary additions or revisions to the photocopy. The transferor/seller should only make changes to Sections A, C, and E. The transferee/buyer should only make changes to Sections B and D. Whoever made the changes should initial and date the changes. The corrected photocopy should be attached to the original Form 4473 and retained as part of the transferor's/seller's permanent records.

If the buyer/transferee has left the business premises with the firearm, the transaction has been completed, and any corrections or changes will need to be made on a photocopy of the Form 4473. You must then initial and date the changes and attach the copy to the original form.

## **Transfers of firearms to service members:**

If a member of the United States Armed Forces on **active duty** wishes to acquire a firearm by claiming residency in the State of his/her permanent duty station, the service member must be able to prove residency and military status. Military identification and official orders showing the service member's permanent duty station within the State where the FFL is located will satisfy the residency and identification document requirements. Only the active-duty service member may establish residency in this manner, not family members. If the military member resides in a State other than where his/her permanent duty station is located, and wishes to purchase a firearm in that State, he/she must comply

with the residency and identification document requirements in the same way as any other resident of that State.

## **Here are several scenarios involving active duty military members and what is required:**

1. Permanent Change of Station (PCS) Stationed to State A. Lives on base in State A.

If the transferee is a member of the Armed Forces on active duty, is acquiring a firearm in the same State as his/her permanent duty station, and resides on base, the transferee must present to a licensee his/her military identification and orders, and record his/her permanent duty station as his/her residence address in item 10 of the Form.

2. PCS Stationed to State A. Lives off base in State A.

If the transferee is a member of the Armed Forces on active duty, and is acquiring a firearm in the same State as his/her permanent duty station, the military member may produce his or her military identification and orders reflecting his/her permanent duty station in that State, but must record his/her off-base residence address in item 10, even if claiming residency based on his/her permanent duty station. The service member may also claim residency by the maintaining of a home in the State in which he/she is stationed, recording in item 10 his/her off base residence, and producing government issued identification containing the service member's name, off base residence address, date of birth, and photograph. Service members may use a combination of documents to satisfy the requirements of an identification document, such as a military identification with the member's name, date of birth, and photograph, combined with other government identification containing the off-base residence address, such as a vehicle registration.

3. PCS Stationed to State A. Lives off base in State B.

If the service member is acquiring a firearm in a State where his/her permanent duty station is located, but maintains a residence in a different State, the transferee must establish residency by producing his/her military identification and orders, and must list both his/her permanent duty station address and residence address on the Form 4473.

The service member may also acquire firearms from a licensee in the State in which he/she maintains a residence, by listing his/her off base residence address in item 10, and producing government issued identification, or a combination of government issued identification, containing the service member's name, off base residence address, date of birth, and photograph.

### **Misdemeanor Crimes of Domestic Violence:**

The Form 4473 now includes a note that a current or former member of the military who has been convicted of a violation of the Uniform Code of Military Justice that included, as an element, the use of force against a person as identified on ATF Form 4473 in the instruction under question 21.i must answer "yes" to question 21.i on the ATF Form 4473.

## **State of Residence and Identification**

Among other statutory and regulatory requirements, licensees must verify the identity of the transferee/buyer by examining a valid identification document prior to transfer of a firearm to: ensure the individual completing the [ATF Form 4473](#) is the transferee/buyer; to verify the transferee's/buyer's State of residence; as well as prevent the sale of firearms to underage individuals. As part of the transferee/buyer's certification statement on the ATF Form 4473, the transferee/buyer must certify that the name, residence address, and date of birth provided on the form is true, correct, and complete. The certification is made with the written understanding that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to the transaction, is a crime punishable as a felony under Federal law, and may also violate State and/or local law.

Pursuant to the GCA, codified at [18 U.S.C. 922\(b\)\(3\)](#), except for the conditions pertaining to the sale or delivery of a rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located, Federal firearms licensees are prohibited from selling or delivering a firearm to any person who the licensee knows or has reasonable cause to believe does not reside in the State in which the licensee's place of business is

located. 18 U.S.C. 922(a)(5) similarly prohibits unlicensed persons, with some limited exceptions, from transferring a firearm to any unlicensed person who the transferor knows or has reasonable cause to believe does not reside in the transferor's State of residence.

A person's "State of residence" is defined by regulation, [Title 27, Code of Federal Regulations \(CFR\), 478.11](#) as the State in which an individual resides. An individual resides in a State if he or she is present in a State with the intention of making a home in that State. Additionally, if an individual is on active duty as a member of the Armed Forces, the individual's State of residence is the State in which his or her permanent duty station is located, as stated in 18 U.S.C. 921(b).

Based on the regulatory definition of "State of residence," ownership of a home or land within a given State is not sufficient, by itself, to establish State of residence for GCA purposes. Alternatively, ownership of a home or land within a particular State is not required to establish GCA residency where a person is present in a State with the intent to make a home in that State. Furthermore, temporary travel, such as short-term stays, vacations, or other transient acts in a State are not sufficient to establish State of residence, because the individual demonstrates no intention of making a home in that State.

As stated in 27 CFR 478.11 "State of residence" provides several examples. One such example is as follows: A maintains a home in State X and a home in State Y. A resides in State X except for weekends or the summer months of the year and in State Y for the weekends or the summer months of the year. During the time that A actually resides in State X, A is a resident of State X, and during the time that A actually resides in State Y, A is a resident of State Y.

The GCA, [18 U.S.C. 922\(t\)](#), requires the transferor of a firearm to verify the identity of the transferee by examining a valid identification document of the transferee containing a photograph of the transferee. Section 922 incorporates the definition of an "identification document" as defined by [18 U.S.C. 1028\(d\)](#).

## NICS Alternative Permits and Age Restrictions

Federal regulations, [27 CFR §§ 478.102\(a\)\(3\)](#) and [124\(c\)\(3\)\(i\)](#), require licensees verify the identity of the transferee by examining an “identification document,” defined in [27 CFR § 478.11](#) as “[a] document containing the name, residence address, date of birth, and photograph of the holder and which was made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi- governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.”

The most commonly used identification document that meets this requirement is a *valid* State-issued driver’s license, as it is a document that typically contains the name, residence address, date of birth, and photograph of the holder made or issued under the authority of a State.

Each transferee/buyer must record his/her current residence address on the ATF Form 4473. A rural route may be accepted, provided the transferee/buyer lives in a State or locality where it is considered a legal residence address. However, the address cannot be a post office box or a private business address used solely as mail delivery address. Pursuant to [ATF Ruling 2001-5](#), licensees may accept a combination of valid government-issued documents to satisfy these identification document requirements. A valid government-issued photo identification document bearing the name, photograph, and date of birth of the transferee may be supplemented by another valid, government-issued document showing the transferee’s residence address. As an example, a transferee’s valid identification document endorsed with a P.O. Box cannot be used by a licensee to verify the transferee’s/buyer’s current residence address. However, the transferee/buyer may supplement such valid identification document with other valid government-issued documentation (*e.g.*, vehicle registration) endorsed with the transferee’s/buyer’s current residence address which, in combination, meet the “identification document” requirement.

Please see [ATF Ruling 2010-6](#) for further information.

A State-issued NICS alternative permit does not authorize a Federal firearms licensee (FFL) to sell or deliver a firearm, other than a shotgun or rifle, to a person the licensee knows or has reasonable cause to believe is under 21 years of age. [18 U.S.C. 922\(b\)\(1\)](#).

The Brady law generally requires FFLs to initiate a NICS check before transferring a firearm to an unlicensed person. Nonetheless, pursuant to [18 U.S.C. § 922\(t\)\(3\)](#), the Brady law contains exceptions to [National Instant Criminal Background Check System](#) (NICS) check, including an exception for holders of certain State permits to possess, carry, or acquire firearms. See also [27 CFR 478.102](#).

States may issue such permits to individuals at least 18 years of age to satisfy State law pertaining to the possession, carrying, or acquisition of firearms. Under Federal law, an individual at least 18 years of age may acquire a handgun from an unlicensed individual who resides in the same State, provided the person acquiring the handgun is not otherwise prohibited from receiving or possessing firearms under Federal law and the transfer complies with State law. However, pursuant to [18 U.S.C. § 922\(b\)\(1\)](#), it is unlawful for any FFL to sell or deliver any firearm to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm is other than a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age.

Please refer to the [Permanent Brady Permit Chart](#) for a listing of permits that qualify as an alternative to the background check requirements of the Brady law. A qualifying permit is valid for no more than five years from the date of issuance, must be valid under State law in order to qualify as a Brady alternative, and is a valid Brady alternative only in the State of issuance.

## Medical Marijuana and CBD Products

It is unlawful for any person “who is an unlawful user of or addicted to any controlled substance...to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.” 18 U.S.C. § 922(g)(3).

Marijuana is listed in the Controlled Substances Act (CSA) as a Schedule I controlled substance. *See* [21 U.S.C. § 812](#). Possession of marijuana, including medical marijuana, is a violation of Federal law, regardless of State law/patient cardholder status. *See* 21 U.S.C. § 844.

ATF’s September 21, 2011, [Open Letter](#) to all FFLs states in part:

“[A]ny person who uses or is addicted to marijuana, regardless of whether his or her State has passed legislation authorizing marijuana use for medicinal purposes, is an unlawful user of or addicted to a controlled substance, and is prohibited by Federal law from possessing firearms or ammunition. Such persons should answer “yes” to question 11.e. on ATF Form 4473 (August 2008), Firearms Transaction Record, and you may not transfer firearms or ammunition to them. Further, if you are aware that the potential transferee is in possession of a card authorizing the possession and use of marijuana under State law, then you have “reasonable cause to believe” that the person is an unlawful user of a controlled substance. As such, you may not transfer firearms or ammunition to the person, even if the person answered “no” to question 11.e. on ATF Form 4473.”<sup>1</sup>

In 2018, Congress passed the Agriculture Improvement Act, Pub. L. 115-334, 132 Stat. 4490. The Act amended the term “Marihuana” under the CSA to exclude “hemp.” 21 U.S.C. § 802(16)(A). The term “hemp” is defined as “the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts,

cannabinoids, isomers, acids, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.” 7 U.S.C. § 1639o(1). The Act also amended Schedule I(c)(17) of the CSA to exclude from the definition of “Tetrahydrocannabinols” (THC) the “tetrahydrocannabinols in hemp (as defined under section 1639o of Title 7).” *See* 21 U.S.C. § 812(c), Schedule I(c)(17). Thus, *Cannabis sativa L.* and products derived from *Cannabis sativa L.*, which have a THC concentration of 0.3 percent or less on a dry weight basis, are no longer considered a controlled substance under the CSA.

Products purporting to contain a THC concentration less than the prohibited amount are often marketed as “CBD” products, such as CBD oils, edibles, and capsules. Because of the 2018 amendments to the CSA, users of products that have a THC concentration “not more than 0.3 percent on a dry weight basis” are not prohibited from purchasing firearms or ammunition under 18 U.S.C. § 922(g)(3).

It is unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that such person is an unlawful user of or addicted to any controlled substance as defined in the Controlled Substances Act. *See* 18 U.S.C. § 922(d)(3). The fact a person legally uses a product with a THC concentration less than the prohibited amount does not *alone* establish a reasonable cause to believe the person is an unlawful user of or addicted to any controlled substance.

However, marijuana, as that term is defined by the CSA, remains a controlled substance and a licensee who knows or has reasonable cause to believe a person is an unlawful user of or addicted to marijuana is prohibited from selling or otherwise disposing a firearm or ammunition to that person.

Please [contact](#) the United States Drug Enforcement Administration (DEA) if you have further questions whether any drug or substance (*e.g.*, hemp derivative) is a “controlled substance” under 21 U.S.C. 802(6).

<sup>1</sup> The ATF Form 4473 has been revised since the 2011 open letter; the unlawful user question is now under 21.e. of ATF Form 4473 (May 2020).

## Private Party Sales

Federal law allows unlicensed individuals to transfer a firearm to an unlicensed resident of their State, provided the transferor does not know or have reason to believe the transferee is prohibited from receiving or possessing firearms under Federal law and the transfer complies with State laws.

Unlicensed individuals are not authorized to utilize the National Instant Criminal Background Check System (NICS) to conduct background checks on prospective buyers. In light of this prohibition, unlicensed individuals have no comprehensive way to confirm whether the buyer is prohibited from possessing firearms. Accordingly, ATF encourages Federal firearms licensees to assist with private party sales.

[ATF Procedure 2020-2](#) sets forth the recordkeeping and NICS procedures for a licensee to facilitate the transfer of firearms between unlicensed individuals. It should be noted that Procedure 2020-2 does not apply to pawn transactions, consignment sales, or repairs and that there may be State laws that regulate intrastate private party firearm transactions.

## Internet Sales

ATF is often asked by the general public, “Is there an *internet loophole* for the sale of firearms?” Online websites that sell or advertise firearms are convenient platforms for licensed and unlicensed individuals to promote firearm sales. Although an FFL’s website enables customers to browse the FFL’s inventory, Federal law requires an ATF Form 4473 to be completed at the licensed business premises when a firearm is transferred over-the-counter to a nonlicensee. Additionally, online auctions and classified advertisements are utilized by unlicensed individuals to promote firearms sales between unlicensed persons. Federal law prohibits an unlicensed seller from transferring a firearm directly to an unlicensed purchaser who does not reside in the seller’s State. Therefore, interstate firearms sales between two unlicensed individuals are unlawful unless an FFL facilitates the firearm transaction. There is no *internet loophole*, as Federal law applies equally to all firearms

transactions, whether initiated in person, or through an Internet source.

## Firearm Raffles

ATF frequently receives inquiries regarding the legality of raffles involving firearms and the role of a Federal firearms licensee (FFL) in such activity. Organizations conducting raffles may transfer firearms to a raffle winner in one of the following manners:

- 1). An FFL, or an employee of the licensee, may bring the firearm to the raffle so that the firearm can be displayed. After the raffle, the firearm is returned to the FFL’s licensed premises and the raffle winner appears at the FFL’s premises, completes an ATF Form 4473, and undergoes a background check, or presents a qualifying permit in lieu of a NICS background check prior to receiving the firearm.
- 2). The FFL transfers the firearm to a representative acting on behalf of the organization. The representative authorized to act on behalf of the organization must complete Section B of ATF Form 4473 with his/her personal information, sign Section B, and attach a written statement, executed under penalties of perjury, stating: (A) the firearm is being acquired for the use of and will be the property of that organization; and (B) the name and address of that organization. As with any other transfer, the FFL must conduct a background check or the transferee must present a qualifying permit in lieu of a NICS background check prior to transferring the firearm. Once the firearm has been transferred to the organization, the organization can subsequently transfer the firearm to the raffle winner as a private party transfer. Such transfer would be lawful if the raffle winner resides in the State in which the organization is located, the raffle winner is not prohibited from receiving or possessing firearms under Federal law and the transfer complies with applicable Federal, State, and local laws. Because the organization is not a licensee, a background check is not conducted. Note, if the organization’s practice of raffling firearms rises to the level of being engaged in the business of dealing in firearms, the organization must obtain a Federal firearms license.

3). If the raffle occurs at a gun show or event sponsored by any national, State, or local organization, or any affiliate of any such organization devoted to the collection, competitive use, or other sporting use of firearms, a licensee may transfer firearms at that event provided it is licensed in the State in which the event takes place. The FFL must obtain a completed ATF Form 4473 and conduct a background check prior to transferring the firearm to the raffle winner.

Social media gun raffles are gaining popularity on the internet. In most instances, the sponsor of the event is not a Federal firearms licensee, but will enlist the aid of a licensee to facilitate the transfer of the firearm to the raffle winner. Often, the sponsoring organization arranges to have the firearm shipped from a distributor to a licensed third party and never takes physical possession of the firearm. If the organization's practice of raffling firearms rises to the level of being engaged in the business of dealing in firearms, the organization must obtain a Federal firearms license.

Please reference ATF's website for additional information on [firearms raffles](#).

## Firearm Registry

ATF has received requests from Federal firearms licensees (FFLs) to "consult our firearms registry" in order to provide the ownership history of a particular firearm or to provide a complete list of firearms owned by a specific individual. With the exception of the National Firearms Registration and Transfer Record (NFRTR) established under the National Firearms Act (NFA), ATF does not maintain a National firearms registry and cannot answer such inquiries. See 18 U.S.C. § 926.

Under the GCA, FFLs themselves are required to maintain certain records pertaining to the acquisition and disposition of firearms. 18 U.S.C. § 923(g); 27 C.F.R. Subpart H. When an FFL discontinues business, the FFL must deliver these records to ATF within 30 days after the business is discontinued. 18 U.S.C. 923(g)(4). The National Tracing Center (NTC) maintains these records only for use in firearms tracing and to provide records to Federal, State, local, tribal, or foreign law

enforcement agencies in connection with a bona-fide criminal investigation.

## Variance Requests and the Approval Process

Do you know what considerations are made in the approval process of a variance request? ATF regulation 27 CFR 478.22 allows for an alternate method or procedure to be utilized in lieu of a method or procedure specifically prescribed, if approved by the Director. Approval is contingent upon certain conditions, including (1) good cause, (2) consistent with the intended effect and is substantially equivalent to that specifically prescribed method or procedure; and (3) will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of this part. Variance requests are not granted for any reason an FFL desires and cannot be obtained simply to circumvent regulatory requirements. Indeed, it is necessary that the result of the proposed variance be largely equivalent to the codified regulatory requirement.

The two most common variance requests are firearm marking requests and digital storage of ATF Forms 4473. In fact, these requests are so common that ATF has created special forms or guidance to make the process more efficient. The implementing regulation that sets out marking Gun Control Act requirements, 27 CFR 478.92, includes "alternate means of identification" upon receipt of an application from the FFL showing that such other identification is reasonable and will not hinder the effective administration of this part. The easiest way to request such a marking variance is to fill out [ATF Form 3311.4 – Application for Alternate Means of Identification of Firearm\(s\) \(Marking Variance\)](#). This form outlines all the required information for a successful marking variance application. The Firearms Technology Industry Services Branch processes firearm marking variances.

Digital storage systems for Forms 4473 must meet certain minimum requirements to ensure that they comply with all ATF rules and regulations and won't interfere with compliance inspections.

Additional information including system requirements can be found [here](#).

The Firearms Industry Programs Branch (FIPB) is responsible for analyzing and responding to all firearms variances, except for firearm marking variances as detailed above. When preparing your variance request to FIPB, please provide your name, your company name (if any), your full 15-digit federal firearm licensee (FFL) number, which regulation(s) you want to deviate from, your proposed alternate method or procedure, and why you wish to deviate from the regulation(s). Please make sure your request is signed and dated by a responsible person listed on the license. You may submit your request as a signed PDF attachment to FIPB by email at [FIPB@atf.gov](mailto:FIPB@atf.gov).

Processing times can vary widely depending on the complexity of the request. You can email or call FIPB at (202) 648-7190 to check on the status of your request. All variance request approvals are conditional and may be withdrawn at any time should a statutory change occur, administrative difficulties arise, or you fail to include all required information in the alternate method or procedure.

## Special Occupational Tax Requirements Business Locations

### § 479.39 Engaging in More Than One Business at the Same Location.

A Federal firearms licensee (FFL) that chooses to maintain a Type 01 dealer's license in addition to a Type 10 manufacturer's license or Type 11 importer's license at the same qualified premises, paying the special occupational tax (SOT) only on the manufacturer or importer license, may not deal in National Firearms Act (NFA) firearms using the Type 01 license without first having paid the SOT on the Type 01 license.

The NFA requires that "every importer, manufacturer and dealer in firearms shall pay a special (occupational) tax for each place of business...." 26 U.S.C. § 5801(a). The implementing regulations further explain:

"If more than one business taxable under 26 U.S.C. 5801, is carried on at the same location

during a taxable year, the special (occupational) tax imposed on each such business must be paid. This section does not require a qualified manufacturer or importer to qualify as a dealer if such manufacturer or importer also engages in business on his qualified premises as a dealer. However, a qualified manufacturer who engages in business as an importer must also qualify as an importer. Further, a qualified dealer is not entitled to engage in business as a manufacturer or importer." 27 CFR 479.39.

Accordingly, the NFA requires payment of the SOT for every taxable business activity that is carried on at the same location during a taxable year. The only exception to paying SOT for every business activity carried on at the same location is when a manufacturer or importer also engages in business as a dealer on the qualified premises. For example, a Type 07 or Type 11 licensee that pays SOT is not required to pay a second SOT to engage in business as a dealer at the qualified premises. The regulation specifically lists this one scenario in which an FFL/SOT is not required to pay a second SOT.

There is no exception for a manufacturer or importer holding a *separate* license to operate as a dealer from payment of SOT as a dealer. A manufacturer or importer that also chooses to hold a separate Type 01 license as a dealer to conduct NFA transfers would need to be qualified as a Class-3 SOT for the Type 01 license.

A manufacturer or importer is not required to obtain a Type 01 license to deal from the qualified premises in the same type of firearms authorized by the license, but a licensed manufacturer or importer who also obtains a Type 01 license, and deals in NFA firearms using the Type 01 license, requires payment of tax as both a manufacturer or importer, and as a dealer.

In order to simplify the payment process, the NFA Division has been working with Pay.gov to host ATF Form 5630.7, Special Tax Registration and Return (SOT). The hosting of the SOT form on Pay.gov will allow for the electronic submission and payment of both renewals and new tax payers. Payment options will include Bank Account (ACH), Debit or Credit Card, Amazon Pay, and PayPal. The go live date is currently set for April 19, 2021.

As a reminder, all NFA and SOT taxes are deposited into the General Fund of the Treasury. ATF does not retain the collected taxes.

## Reminders Renewals / RPs/ FFLC Address / AFMER

### FFL Renewals (Timely Renewal and Common Mistakes):

Federal Firearms License (FFL) Renewal Applications are sent to the mailing address on file 90 days prior to expiration. Renewals must be submitted on or before the date of expiration to be considered timely. Failing to submit a timely renewal form will result in the discontinuance of the operations authorized by your current license and it will be placed “out of business.” A new Federal Firearms License Application will need to be submitted and approved to continue business. We recommend you complete the renewal immediately upon receipt to avoid disruption in operations. If your application has been received timely by FFLC, you may continue operations as usual while your application is being processed.

If you do not receive your renewal application, you should contact the Federal Firearms Licensing Center for a duplicate renewal. (**Note:** duplicate renewals are NOT available via the internet; downloaded forms found on the web are not approved forms and will not be accepted). Also, remember to notify the licensing center if you have a change in mailing address to ensure you receive your mail.

When renewing, be sure to submit responses to 7A and 7B, even for C&R licensees and remember to sign and date the bottom of the reverse-side of the renewal application. Failing to do so will delay processing.

### Applying for a New FFL or Adding Responsible Persons (RPs):

The Form 7 (Application for Federal Firearms License 5310.12) and Form 7CR (Application for Federal Firearms License – Collector of Curios and Relics 5310.16) have been revised. The two forms have been combined into one form, the ATF Form 7/7CR (5310.12/5310.16), which is divided into two

parts. Part B is a Responsible Persons Questionnaire. If/When applying for a new FFL, make sure you complete and submit Part B for each responsible person (RP) including yourself. The full application and the Responsible Persons Questionnaire are both available at [www.atf.gov](http://www.atf.gov) or the distribution center. Please use the Supplement Part B as a means of adding RP(s) to an existing license. When submitting this form to add RP(s), please remember to accompany this document with a photo, fingerprint card (FD-258), and a written request from a current RP on the license.

### Clarification on Federal Firearms Licensing Center (FFLC) Addresses:

Currently, new and renewal applications for a Federal Firearms License (FFL), which require a fee and include payment, first go to our bank (lockbox) for processing at the address listed on the application in Portland, OR. Please ensure proper payment is included with your new and renewal applications and promptly send to ATF, P.O. Box 6200-20, Portland, OR 97228-6200.

Documents not requiring any type of payment can be sent directly to ATF-FFLC, 244 Needy Road, Martinsburg, WV 25405.

### AFMER Reporting Requirements: ALL Type 07 and Type 10 Manufactures ONLY

For Type 07 and Type 10 Manufactures ONLY, you MUST file an Annual Firearms Manufacturing and Exportation Report (**AFMER**), **Form 5300.11**, by **April 1<sup>st</sup>** of each year. The furnishing of this form is mandatory pursuant to 18 U.S.C. 923(g)(5)(A). The AFMER requires all licensed manufacturers to report all firearms manufactured and distributed into commerce between January 1<sup>st</sup> and December 31<sup>st</sup> of the previous calendar year. The AFMER must be completed and submitted even if you did not manufacturer and distribute any firearms into commerce in the previous calendar year. The forms will be mailed to you in February. If for any reason you don't receive the form you may submit electronically by completing your AFMER 5300.11 via eForms:

<https://www.atf.gov/firearms/applications-eforms> or obtain a form at <https://www.atf.gov/resource-center/forms-library>.

We strongly recommend you utilize eForms to submit your AFMER. eForms is fully electronic and will only allow you to submit the form after all required information is complete. This ensures your form will be accepted and filed, and not returned to you for completion. This is the fastest method and provides proof of submission, and it's free - no access fees or postage required!

The only other method in which to submit your form, is to mail it to ATF-FFLC, AFMER program, 244 Needy Road, Martinsburg, WV 25405. Please note that if you mail in your form you will not receive any notification that it was received. Be sure to complete all of the blocks on the AFMER form so it can be accepted; otherwise, the form will be returned to you for completion. **For all categories where you did not manufacture and distribute specific types of firearms into commerce, or export them, enter a zero (0). Even if no firearms were manufactured and distributed or manufactured and exported, a form must still be submitted** - simply place a zero (0) in all of the blanks.

**\*\*\* Faxed and emailed forms will no longer be accepted \*\*\***

Have you discontinued your Type 07 or Type 10 FFL, or do you intend to this year?

When a manufacturing license is discontinued, you must submit an AFMER form no later than 30 days following the date of discontinuance of your business. Discontinuance is the **ONLY** reason to submit current year statistics. If for any reason you did not complete an AFMER form within the 30 days as required, please complete one and submit as soon as possible.

If you discontinued business in the reporting calendar year (which is the previous calendar year), you are still required to submit an AFMER form and report on your data for the portion of the calendar year in which you were in business, even if you were only in business for one day of that year. Be sure to put the date of business discontinuance in item #7 on the form.

An extensive list of Frequently Asked Questions, to include technical questions with examples, can be found at <https://www.atf.gov/qa-category/afmer-atf->

[form-530011](#). If you have further questions after reading the instruction sheet (front & back) provided with the form, and the information provided on our website, call the Federal Firearms Licensing Center Customer Service at 1-866-662-2750.

Again, **ONLY** Type 07 & Type 10s (no other license types) are required to report, as this is a manufacturing form.

## NFA Forms Processing Times

### Processing Times QTR 2 FY 21

	Paper	eForm
Form 1	3 months	60 days
Form 2	1 month	10 days
Form 3	1 month	10 days
Form 4	7 months	n/a
Form 5	1 month	10 days
Form 9	1 month	10 days

### Are your ATF eForms 2 getting routed to "Pending Research"?

A simple email identifying those new firearms models (not previously submitted) can help SOT Manufacturers avoid delays in noticing newly produced firearms. Prior to manufacturing new models, submit an email to [NFAFax@atf.gov](mailto:NFAFax@atf.gov) with Subject: "MFG F2 Add Model" and in the email body include: the new model name(s), caliber, and firearm type. These firearms will be added to eForms ahead of your submission so that your ATF eForms 2 will be routed around Pending Research.

## Contact ATF

The ATF website includes information and updates for the FFL industry at [www.atf.gov](http://www.atf.gov).

If you have questions relating to Federal firearms laws or regulations, please contact:

**Bureau of ATF  
Firearms Industry Programs Branch**

**99 New York Avenue, NE  
Washington, DC 20226  
Telephone: 202-648-7190  
Fax: 202-648-9601**

**Email: [fipb@atf.gov](mailto:fipb@atf.gov)**

To contact your local ATF office, go to:  
<https://www.atf.gov/contact/atf-field-divisions>.

To report suspected illegal firearms activities,  
please call **1-800-ATF-GUNS (1-800-283-4867)**.

**NOTICE:** The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law, regulations, or Department policies.