PART 478: COMMERCE IN FIREARMS
(18 U.S.C. 922(t), 922(b)(2), 922(z); 27 CFR 478.58, 478.102, 478.122, 478.123, 478.124, 478.125, 478.126a, 478.129)

Recordkeeping and background check procedures for facilitation of private party firearms transfers.

ATF Proc. 2013-1

Purpose: The purpose of this ATF procedure is to set forth the recordkeeping and National Instant Criminal Background Check System (NICS) procedures for Federal firearms licensees (FFLs) who facilitate the transfer of firearms between private unlicensed individuals. This procedure does not apply to pawn transactions, consignment sales, or repairs.

Background: On January 16, 2013, ATF issued an Open Letter to all FFLs encouraging them to facilitate the transfer of firearms between private individuals to enhance public safety and assist law enforcement. This procedure expands and modifies the guidance provided in that letter with respect to private firearms transfers facilitated by FFLs. As explained in the letter, unlicensed persons do not have the ability to use NICS to conduct background checks on prospective transferees (buyers) and, consequently, have no comprehensive way to confirm whether or not the transferee (buyer) is prohibited from receiving or possessing a firearm. In addition, several states have laws which prohibit the transfer of firearms between private individuals unless a NICS check is conducted on the transferee (buyer).

Title 18, United States Code (U.S.C.), section 922(t)(1)(A) requires FFLs to contact NICS before completing the transfer of a firearm to an unlicensed person. Title 27, Code of Federal Regulations (CFR), sections 478.102, 478.122, 478.123, 478.124, and 478.125 set forth the recordkeeping and background check requirements with which FFLs must comply to conduct firearms transactions. As provided by 18 U.S.C. 922(t)(1), an FFL may only conduct a NICS check in connection with a proposed firearm transfer by the FFL. For an FFL to lawfully complete the transfer of a firearm, the FFL must first take the firearm into inventory, and record it as an acquisition in the acquisition and disposition (A&D) record.

The procedures below must be followed when the private party (seller) takes a firearm to an FFL with the prospective transferee (buyer) to conduct a transaction. In all cases—
(1) the prospective transferee (buyer) must complete Section A of a Firearms Transaction Record, ATF Form 4473;
(2) the FFL must complete Section B of the Form 4473, conduct a NICS check on the prospective transferee (buyer), and record the response;
(3) the FFL <u>must</u> record the words "Private Party Transfer" on the ATF Form 4473, Item 30c; and
(4) the FFL must maintain the Form 4473 in accordance with 27 CFR 478.129(b).

The FFL must record "Private Party Transfer" on the form to ensure it can be determined which transaction records correspond with private party transfers in the FFL's A&D record. If "Private Party Transfer" is not noted on the form, and there is no corresponding entry in the A&D record, ATF may conclude that the FFL has transferred a firearm without making appropriate entries in the A&D record.

Procedure – Immediate "Proceed" Transactions:

- If the FFL receives an immediate "proceed" response from NICS, the FFL enters the firearm into the A&D record as an acquisition from the private party (seller) in accordance with 27 CFR 478.122, 478.123, and 478.125.
- The FFL completes Section D of the Form 4473 and transfers the firearm to the transferee (buyer).
- The FFL records the disposition of the firearm out of the A&D record to the transferee (buyer) no later than seven days following the transaction.

Procedure - "Denied" or "Cancelled" Transactions:

- If the FFL receives a "denied" or "cancelled" response from NICS, the firearm cannot be transferred to the prospective transferee (buyer). If the private party (seller) has not relinquished possession, he or she may leave the business premises with the firearm. The FFL would not enter the firearm as an acquisition into the A&D record.
- If, for whatever reason, the private party (seller) leaves the firearm in the exclusive possession of the FFL at the FFL's business premises, the FFL must:
  (1) record the firearm as an acquisition in the A&D record from the private party (seller), in accordance with 27 CFR 478.122, 478.123, and 478.125;
  (2) complete a Form 4473 to return the firearm to the private party (seller);
  (3) conduct a NICS background check on the private party (seller), and receive either a "proceed" response or no response after three business days (or appropriate State waiting period), prior to returning the firearm; and
  (4) record the return as a disposition in the A&D record no later than seven days following the transaction.

Procedure – "Delayed" Transactions Without a Subsequent Denial:

- If the FFL receives a "delayed" response from NICS, the private party (seller) has the option to:
  (1) leave the FFL's business premises with the firearm; or
  (2) allow the FFL to retain the firearm at the business premises (with the FFL's consent) pending a response from NICS, or until the passage of three business days or applicable State waiting period.
- If the private party (seller) chooses to leave the FFL's premises with the firearm, the FFL does not need to record the acquisition into the A&D record. However, the private party (seller) must return the firearm to the FFL's business premises prior to transfer of the firearm to the prospective transferee (buyer).
- If the private party (seller) chooses to allow the FFL to retain the firearm at the FFL's business premises, the FFL is required to take the firearm into inventory, and record the firearm as an acquisition in the A&D record in accordance with 27 CFR 478.122, 478.123, and 478.125. If NICS later issues a "proceed," or no response after three business days (or appropriate State waiting period), and the FFL chooses to proceed with the transfer, the private party (seller) need not return to the FFL's business premises for transfer of the firearm to the transferee (buyer).
- If the FFL does not receive a response after three business days (or appropriate State waiting period) and NICS (or State point-of-contact) has not advised the FFL that the prospective transferee's (buyer's) receipt or possession of the firearm would be in violation of law, the

FFL may, but is not required to, transfer the firearm to the prospective transferee (buyer).

- A transfer to a prospective transferee (buyer) must be completed within 30 calendar days from the date NICS was initially contacted. If the prospective transferee (buyer) does not return during this period, the FFL must conduct a new NICS check prior to the transfer.
- If the transfer of the firearm takes place on a different day from the date that the prospective transferee (buyer) signed Section A, the FFL must again check the photo identification of the prospective transferee (buyer) at the FFL's licensed business premises, and the prospective transferee (buyer) must complete the recertification in Section C of the Form 4473 immediately prior to the transfer of the firearm.
- The FFL must complete Section D of the Form 4473 prior to transferring the firearm to the prospective transferee. The FFL must record the words "Private Party Transfer" on the Form 4473, Item 30c and file the form as prescribed by 27 CFR 478.124(b). In addition, the FFL must record in the A&D record the disposition of the firearm to the transferee (buyer) no later than seven days following the transaction.
- If the private parties do not return to complete the transfer, the FFL must retain the Form 4473 in accordance with section 478.129(b).

Procedure – Delayed Transactions With a Subsequent Denial: If the FFL receives a "denied" response from NICS prior to transfer of the firearm, it cannot be transferred to the prospective transferee (buyer). If the private party (seller) has chosen to allow the FFL to retain the firearm pending NICS approval, the FFL and the private party (seller) must complete a Form 4473 prior to returning the firearm to the private party (seller). The FFL must also conduct a NICS background check on the private party (seller) and receive a "proceed" response, or no response after three business days (or appropriate State waiting period), prior to returning the firearm. The FFL must also record the return as a disposition in the A&D record no later than seven days following the transaction.

Procedure – Secure Handgun Storage or Safety Devices: The FFL must provide the transferee (buyer) or private party (seller) with a secure gun storage or safety device for each handgun he or she transfers, pursuant to 18 U.S.C. 922(z). The FFL is not required to provide the private party (seller) with a secure gun storage or safety device if the private party (seller) does not relinquish exclusive dominion or control of the firearm.

Procedure – Reports of Multiple Sale or Other Disposition of Pistols and Revolvers: As provided by 27 CFR 478.126a, the FFL must complete an ATF Form 3310.4 and report all transactions in which an unlicensed person acquires, at one time or during five consecutive business days, two or more pistols or revolvers. The form is not required when the pistols or revolvers are returned to the same person from whom they were received.

Procedure – Reports of Multiple Sale or Other Disposition of Certain Rifles: All applicable FFLs and pawnbrokers located in Arizona, California, New Mexico, and Texas must complete an ATF Form 3310.12 and report all transactions in which an unlicensed person acquires, at one time or during five consecutive business days, two or more semi-automatic rifles larger than .22 caliber *(including .223/5.56 caliber)* with the ability to accept a detachable magazine.

The form is not required when the rifles are returned to the same person from whom they were received.

NFA Firearms: Transfers of National Firearms Act firearms may be accomplished only pursuant to the manner outlined in Subpart F, Part 479, Title 27, Code of Federal Regulations.

State and Local Law: An FFL facilitating private party firearms transfers must comply with all State laws and local ordinances. As provided by 27 CFR 478.58, a Federal Firearms License confers no right or privilege to conduct business or activity contrary to State or other law. It is unlawful for an FFL to sell or deliver any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or published ordinance applicable at the place of sale, delivery, or other disposition. *See* 18 U.S.C. 922(b)(2). Compliance with the provisions of any State or other law affords no immunity under Federal law or regulations.

Procedure – Out-of-State Transactions: Private party firearm transfers conducted with out-of-State FFLs must comply with all interstate controls and requirements under the Gun Control Act, 18 U.S.C. 921 *et. seq.* Except in limited circumstances, FFLs cannot transfer firearms to out-of-State residents. *See, e.g.,*18 U.S.C. 922(b)(3).

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Acting Director