

18 U.S.C. 922(t)(1)(C): IDENTIFICATION OF TRANSFEREE

27 CFR 178.124: FIREARMS TRANSACTION RECORD

Licensees may accept a combination of valid government-issued documents to satisfy the identification document requirements of the Brady Act. The required 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. A member of the Armed Forces on active duty is a resident of the State in which his or her permanent duty station is located, and may satisfy the identification document requirement by presenting his or her military identification card along with official orders showing that his or her permanent duty station is within the State where the licensed premises are located.

ATF Ruling 79-7 is superseded.

ATF Rul. 2001-5

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received numerous inquiries from Federal firearms licensees (FFLs) regarding the acceptance of identification documents that do not show the purchaser's current residence address. FFLs have asked whether they may accept other documents, such as tax bills or vehicle registration documents, to establish the current residence address of the purchaser.

It has been ATF's longstanding position that licensees may accept a combination of documents to establish the identity of a firearm purchaser. ATF Rul. 79-7, ATFQB 79-1, 26, interpreted a licensee's obligation to obtain satisfactory identification from a purchaser in the manner customarily used in commercial transactions, pursuant to the existing regulations under the Gun Control Act of 1968 (GCA). The ruling held that satisfactory identification of a firearms purchaser must include the purchaser's name, age or date of birth, place of residence, and signature. The ruling also held that while a particular document may not be sufficient to meet the statutory requirement for identifying the purchaser, any combination of documents that together disclosed the required information would be acceptable.

ATF Rul. 79-7 has been superseded by an amendment to the GCA. The Brady Handgun Violence Prevention Act (Brady Act), which took effect in 1994, mandated the use of photo identification documents for transfers subject to the Act. Under the permanent provisions of the Brady Act, which went into effect on November 30, 1998, a licensed importer, manufacturer, or dealer is generally required to initiate a background check through the National Instant Criminal Background Check System (NICS) prior to transferring a firearm to an unlicensed individual.

The Brady Act requires a licensee to identify the nonlicensed transferee by examining a valid government-issued identification document that contains the photograph of the holder. See 18 U.S.C. 922(t)(1)(C). This requirement applies to all over-the-counter transfers, even where the transferee holds a permit that qualifies as an exception to the requirement for a NICS check at the time of transfer. 27 CFR 178.124(c)(3)(i).

The Brady Act incorporates the definition of an "identification document" provided by 18 U.S.C. 1028(d)(2), which is set forth in relevant part as follows:

[A] document 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.

ATF regulations further require that the identification document must contain the name, residence address, date of birth, and photograph of the holder. 27 CFR 178.11.

ATF has received questions from licensees regarding purchasers who present a State-issued driver's license or other identification document that shows either an out-of-date residence address or a mailing address (such as a post office box) in lieu of a residence address. ATF has advised that these identification documents, standing alone, would not satisfy the requirements of the regulations implementing the Brady Act.

It is ATF's position that a combination of documents may be used to satisfy the Brady Act's requirement for an identification document. The prospective transferee must present at least one valid document that meets the statutory definition of an identification document; i.e., it must bear the transferee's name and photograph, it must have been issued by a governmental entity, and it must be of a type intended or commonly accepted for identification purposes. ATF recognizes, however, that some valid government-issued identification documents do not include the bearer's current residence address. Such an identification document may be supplemented with another valid government-issued document that contains the necessary information.

Thus, for example, a licensee may accept a valid driver's license that accurately reflects the purchaser's name, date of birth, and photograph, along with a vehicle registration issued by the State indicating the transferee's current address. Licensees should note that if the law of the State that issued the driver's license provides that the driver's license is invalid due to any reason (i.e., the license is expired or is no longer valid due to an unreported change of address), then the driver's license may not be used for identification purposes under the Brady Act. If a licensee has reasonable cause to question the validity of an identification document, he or she should not proceed with the transfer until those questions can be resolved.

The licensee must record on the Form 4473 the type of identification document(s) presented by the transferee, including any document number. Examples of documents that may be accepted to supplement information on a driver's license or other identification document include a vehicle registration, a recreation identification card, a fishing or hunting license, a voter identification card, or a tax bill. However, the document in question must be valid and must have been issued by a government agency.

ATF has also received questions from licensees as to how to comply with the identification document requirement in the case of purchasers who are in the military. Some active duty military personnel may not have driver's licenses from the State in which they are stationed. The only identification document carried by some active duty military personnel is a military identification card that bears the holder's name, date of birth, and photograph, but does not reflect the holder's residence address.

Section 921(b) of the GCA provides that a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located. The purchaser's official orders showing that his or her permanent duty station is within the State where the licensed premises are located suffice to establish the purchaser's residence for GCA purposes. In combination with a military identification card, such orders will satisfy the Brady Act's requirement for an identification document, even though the purchaser may actually reside in a home that is not located on the military base.

Licensees should note that for purposes of the GCA, military personnel may in some cases have two States of residence. For example, a member of the Armed Forces whose permanent duty station is Fort Benning, Georgia, may actually reside in a home in Alabama. For GCA purposes, that individual is a resident of Georgia when he or she is in Georgia and a resident of Alabama when he or she is in Alabama. If such an individual wishes to purchase a firearm in Alabama, he or she must of course comply with the identification document requirement in the same way as any other Alabama resident.

Held,

the Brady Act and the implementing ATF regulations require licensed importers, manufacturers, and dealers to examine a valid government-issued identification document that bears the name, residence address, date of birth, and photograph of the holder prior to making an over-the-counter transfer to any unlicensed transferee. Licensees may accept a combination of valid, government-issued documents to satisfy the identification document requirements of the Brady Act. A 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 current residence address.

Held further,

a purchaser who is a member of the Armed Forces on active duty is a resident of the State in which his or her permanent duty station is located, and may satisfy the identification document requirement by presenting his or her military identification card along with official orders showing that his or her permanent duty station is located within the State where the licensed premises are located.

ATF Ruling 79-7, ATFQB 79-1, 26, is hereby superseded.

Date signed: December 31, 2001