

ATF FFL NEWSLETTER

Federal Firearms Licensees Information Service provided by the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms Washington, D.C.

OUT-OF-STATE AND MAIL ORDER SALES

The recent enactment of State and local statutes restricting or prohibiting the sale of certain handguns, rifles and shotguns makes it imperative that licensees verify compliance with the legal conditions of sale on all out-of-State and mail-order sales, prior to consummating such sales. Section 178.96 of Title 27 CFR, Out-of-State and mail order sales, requires licensees to verify that interstate sales fully comply with the legal conditions of sale in both such States.

For mail-order sales within their own State they must provide notification, by registered or certified mail, to the chief law enforcement officer identified on the Firearms Transaction Record, Form 4473 Part II. Shipment or delivery of the firearm must be delayed for at least 7 days following receipt by the licensee of the return receipt evidencing delivery or refusal of the copy of the Form 4473 by such chief law enforcement officer.

FIREARMS TRANSACTION RECORDS ON TITLE II TRANSFERS

There is apparently some confusion among Class 3 dealers as to whether a Firearms Transaction Record, ATF Form 4473, is required on Title II (NFA) firearms. A Firearms Transaction Record is required for every sale or disposition to a nonlicensee of a weapon that falls within the definition of a firearm under Title I of the Gun Control Act. This definition covers all Title II (NFA) weapons except machinegun conversion kits. The Firearms Transaction Record must be completed, signed, and retained in the manner prescribed by 27 CFR 178.124(b). Licensed gunsmiths who return a firearm to the person from whom they received it and licensed collectors need not execute a Firearms Transaction Record, ATF Form 4473.

"STRAW PURCHASES" OF FIREARMS

Questions have arisen concerning the lawfulness of firearms purchases from licensees by persons who use "straw purchasers" (another person) to acquire the firearms. Specifically, the actual buyer uses the straw purchaser to execute the Form 4473 purporting to show that the straw purchaser is the actual purchaser of the firearm. In some instances, a straw purchaser is used because the actual purchaser is prohibited from acquiring the firearm. That is to say, the actual purchaser is a felon or is within one of the other prohibited categories of persons who may not lawfully acquire firearms or is a resident of a State other than that in which the licensee's business premises is located. Because of his or her disability, the person uses a straw purchaser, who is not prohibited from purchasing a firearm from the licensee. In other instances, neither the straw purchaser nor the actual purchaser is prohibited from acquiring the firearm.

In both instances the straw purchaser violates Federal law by making false statements on Form 4473 to the licensee with respect to the identity of the actual purchaser of the firearm, as well as the actual purchaser's residence address and date of birth. The actual purchaser who utilized the straw purchaser to acquire a firearm has unlawfully aided and abetted or caused the making of the false statements. The licensee selling the firearm under these circumstances also violates Federal law if the licensee is aware of the false statements on the form. It is immaterial that the actual purchaser and the straw purchaser are residents of the State in which the licensee's business premises is located, are not prohibited from receiving or possessing firearms, and could have lawfully purchased firearms from the licensee.

ATF DISTRIBUTION CENTER

Federal firearms licensees wishing to order forms from the ATF Distribution Center should place such orders on the 11-86 or 12-88 revisions of ATF Form 1600.8, Requisition For Firearms/Explosives Forms, to avoid loss or delay of their orders. Older editions have the previous (now incorrect) address and result in orders being lost or delayed in forwarding. The current address of the Distribution Center is:

Bureau of Alcohol, Tobacco & Firearms
Distribution Center
7943 Angus Court
Springfield, VA. 22153

ARMOR PIERCING AMMUNITION - UPDATE

The currently available .38 Special caliber PMC Ultra Mag ammunition is not armor piercing. The ammunition contains a copper bullet. The stock number for the Ultra Mag ammunition which is not armor piercing is:

38J SPL+P 66 THP (Ultramag)

CHANGE OF CONTROL

In the case of a corporation or association holding a Federal firearms license, if actual or legal control of the corporation or association changes, directly or indirectly, whether by reason of a change in stock ownership or control (in the licensed corporation or in any other corporation), by operations of law, or in any other manner, the licensee shall, within 30 days of such change, give written notification of the change, executed under the penalties of perjury, to the regional director (compliance). Upon expiration of the license, the corporation or association must file a Form 7, Application For License.

FORM 4473 OMISSIONS AND DISCREPANCIES

Compliance inspections conducted by ATF on firearms licensees' records have disclosed that the following types of omissions and discrepancies on Forms 4473 occur repeatedly.

1. Complete address of purchaser not shown.
2. Date of birth of purchaser omitted or shown as the date of the transaction rather than the date of birth.
3. Incomplete information entered for the place of birth of the purchaser (for example, city but not State or State but not city).

4. Answers to questions 8a through 8h omitted. A "yes" answer to any of these questions indicates the purchaser is prohibited from purchasing and/ or possessing a firearm under Federal law and the sale should not be made. However, if a purchaser who answers "yes" has been granted relief by ATF from the disability to which the answer refers, the sale may be made. The seller should obtain and keep a copy of the grant of relief in the case of such sales. If the purchaser refuses to answer any of the questions 8a through 8h, the sale should not be made.

Licensees are reminded that it is their responsibility to ensure that Section A of the Form 4473 is properly completed and signed by the transferee (purchaser) in all instances.

HOUSTON DISTRICT OFFICE - ADDRESS CORRECTION

ATF Publication 5300.15(1/89), Federal Firearms Licensee Information, listed an incorrect address and telephone number for the ATF Law Enforcement District Office in Houston, Texas. The correct information is as follows:

16630 Imperial Valley Drive
Suite 263
Houston, Texas 77060
(713) 445-2291

SALES TO UNDERAGED PERSONS

There are several States which permit the purchase of a handgun by persons less than 21 years of age. This is contrary to the requirements for sales by licensees under the Gun Control Act of 1968 (GCA), and licensees should be aware that the age restrictions in the GCA on firearms purchasers take precedence over these State laws. Where a difference in State or local laws and Federal law exists, the more stringent law is to be observed.

The GCA prohibits licensed importers, manufacturers, dealers or collectors from selling or delivering any firearm or ammunition to any person less than 18 years of age and if the firearm or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any person less than 21 years of age.

Licensees should be aware that certain commercially produced "shotguns" do not fall within the definition of a shotgun under the GCA. Firearms such as the Mossberg Model 500 Camper, Persuader 500 and all other makes and models which come equipped with a pistol grip in place of the butt stock are not shotguns under the GCA and, therefore, cannot be sold or delivered by a licensee to any person less than 21 years of age.

SPECIAL OCCUPATIONAL TAX

Federal firearms licensees who deal in conventional type sporting firearms, such as pistols, revolvers, rifles and shotguns, do not incur any special occupational tax (SOT) liability. Section 5801 of Title 26, U.S.C. provides that on first engaging in business, and thereafter on or before the first day of July of each year, every importer, manufacturer, and dealer in National Firearms Act (NFA) firearms shall pay the appropriate SOT. This section of the law refers only to those persons engaging in a firearms business with respect to those firearms defined in Section 5845, which includes short-barreled rifles and shotguns, machineguns, silencers, destructive devices and firearms classified as "any other weapons."

If a person or company is licensed under Title I of the Gun Control Act of 1968 and wishes to become licensed to deal in NFA firearms, the person or company must pay the appropriate SOT and register with ATF by filing a Special Tax Registration and Return, ATF Form 5630.5. We hope that the following will assist you in paying the appropriate SOT.

A person who is licensed as an importer of firearms, holds a current FFL as a Type 08, and wishes to start importing any NFA firearms other than a destructive device, can apply as a Class 1 importer and pay the appropriate rate of SOT.

A person who is licensed as an importer of destructive devices, holds a current FFL as a Type 11, and wishes to start importing all NFA firearms, including destructive devices, can apply as a Class 1 importer and pay the appropriate rate of SOT.

A person who is licensed as a manufacturer of firearms and holds a current FFL as a Type 07 can pay the SOT as a Class 2 manufacturer and make NFA firearms, except those classified as destructive devices.

A person who is licensed as a manufacturer of destructive devices and who holds a current FFL as a Type 10 can pay the SOT as a Class 2 manufacturer and make all NFA firearms.

If a person wants to deal in NFA firearms and holds a current Type 01, 02, 07, 08, 09, 10 or 11 FFL, the person can pay the SOT of \$500 and become a Class 3 dealer.

A person who has qualified as either a Class 1 importer or Class 2 manufacturer does not have to qualify as a Class 3 dealer in order to deal in firearms manufactured by other licensees.

ATF IDENTIFICATION NUMBERS

In 1980, because of delays in the issuance of special tax stamps by the Internal Revenue Service (IRS), which resulted in the inability of special taxpayers to conduct business operations, ATF Procedure 80-6 was implemented to inform special taxpayers of the availability of an ATF Identification Number which was to be used in place of the special tax stamp identification on all forms involving NFA firearms.

Since that time, ATF has taken over the collection of special tax from the IRS and we now issue the special tax stamps. The number used to identify the special tax stamp is the employer identification number (EIN).

Effective July 1, 1989, the National Firearms Act Branch discontinued the use and assignment of the ATF Identification Numbers to persons manufacturing, importing, or dealing in NFA firearms. The EIN will replace the ATF identification number on all transaction forms involving NFA firearms.

The NFA Branch sent a notice dated April 4, 1989, to all FFLs who were qualified to deal in NFA firearms advising them of this new procedure. In addition to this notice, the NFA Branch mailed an IRS Form SS-4 to those taxpayers whom we identified as not having been assigned an EIN number by the IRS.

Persons who wish to engage in the business of dealing in NFA firearms should first contact their local IRS office and apply for an EIN. Upon receipt of their EIN number, they can complete ATF Form 5630.5, Special Tax Registration and Return, and mail the completed form to the following address:

Bureau of ATF
P.O. Box 371962
Pittsburgh, PA 15250-7962

If you have any questions concerning these matters, contact the NFA Branch at (202) 789-3223 (Note new phone number).

PERMIT TO CARRY CONCEALED WEAPONS

The Gun Control Act of 1968 contains no provision for the issuance of a Federal permit to carry a concealed weapon. The jurisdiction to issue permits to carry a concealed weapon is that of State and/or local authorities. Having a Federal firearms license does not entitle the licensee to carry a concealed weapon. Customers should be advised to contact their State Attorney General's office or local law enforcement officials concerning restrictions on the carrying of firearms and their desire to obtain a permit to carry a concealed weapon.

ASSAULT RIFLES

On July 7, 1989, the Director of ATF announced the proposal to prohibit the importation of semiautomatic assault-type rifles.

This action was based upon a comprehensive 3-month study and analysis of these weapons. Affected importers are being given an opportunity to respond before a final decision is made.

A list of the affected foreign-made firearms is as follows:

Barred From Importation

AK47 type	SKS type with detachable magazine
AK47s type	86S type
AK 74 type	86S7type
AKS type	87S type
AKM type	Galil type
AKMS type	Type 56type
84S type	Type 56S type
ARM type	Valmet M76 type
84S1 type	Valmet M78 type
84S3 type	M76 counter sniper typ
HK91 type	FAL type
HK93 type	L1A1A type
HK94 type	SAR 48 type
G3SA type	AUG type FNC type
K1 type	Uzi carbine
K2 type	Algimec AGMI type
M14S type	AR180 type
MAS 223 type	Australian Automatic Arms (SAR type)
AR100 type	Beretta AR70 type
SIG 550SP type	Beretta BM59 type
SIG 551SP type	CIS SR88 type

Allowed for Importation

AK22 type
AP74 type
Galil/22 type
M16/22 type
Unique F11 type
Erma EM1 .22 type
Valmet Hunter

Regulations Implementing 1986 Amendments to the Gun Control Act Upheld by U.S. District Court

On August 15, 1989, The U.S. District Court for the District of South Carolina upheld ATF's regulations implementing the 1986 amendments to the Gun Control Act, with one exception. The law suit, which was filed by the National Rifle Association and eight other plaintiffs in September 1988, sought an injunction against enforcement of the regulations and a declaratory judgment that the regulations were invalid.

The primary thrust of the suit was that the regulations were contrary to statute or were not "necessary" as required by law. The plaintiffs also alleged certain procedural defects in the rulemaking process, including the failure to hold a public hearing and the issuance of temporary regulations prior to inviting and receiving public comment.

Specific regulations challenged were:

1. Definition of "business premises" for licensing purposes. The plaintiffs contended that the definition unlawfully requires that private residences be open to the general public. The Government argued that the regulation, which had existed since 1969, only required that such residences be open to that segment of the public served by the business.
2. Recordkeeping requirements for licensed collectors. The plaintiffs maintained that the regulation unlawfully requires licensed collectors to record curio or relic firearms on hand at the time of licensing. The Government argued that the regulation, which had existed since 1969, was necessary to determine the accuracy of collectors' record of the acquisition and disposition of curios or relics.
3. Recordkeeping requirements for licensees' acquisition and disposition of "personal" firearms. The plaintiffs contended that "personal" firearms, whether acquired before or after licensing, are not subject to any recordkeeping requirements under the law. The Government argued that these requirements were necessary to effectively administer the 1986 amendment requiring that licensees' disposition of a personal firearm be recorded if not held as a personal firearm for at least one year.

4. Definition of "gun show." The plaintiffs alleged that the regulation allowing a licensed dealer to conduct business at gun shows within the State in which the licensed premises is located is unduly restrictive because it precludes commercially sponsored shows. The Government contended that the regulation recognizes both gun shows sponsored by nonprofit groups and commercially sponsored shows.
5. Definition of "manufacture." The plaintiffs contended that the definition unlawfully altered the licensing scheme of the Gun Control Act by requiring gunsmiths to obtain manufacturers' licenses. The Government argued that the regulation had no such effect and that the statutory definitions of "dealer" (including gunsmiths) and "manufacturer" make it clear that gunsmiths need only be licensed as dealers.

In its August 15th order, the district court rendered summary judgment in favor of the Government on all the issues, except that relating to the definition of "manufacture." While the court agreed with the Government's argument, the court set aside the section of regulations containing that definition as "arbitrary and capricious" because the court believed that the regulation as written could be confusing to gunsmiths.

Unless the court's order is appealed, ATF will have to issue a new regulation either removing the definition of "manufacture" from the regulations or amending its language to remove any ambiguity.

GUN SHOW GUIDELINES

There continues to be complaints by licensees of improper sales being made by out-of-State dealers at gun shows, in violation of the Gun Control Act. ATF has developed a poster which advises dealers of the "cans and cannots" at gun shows. A reduced size version of the poster appears on the next page. The posters are available through ATF Bureau Headquarters to sponsors or promoters of gun shows. Sponsors or promoters interested in obtaining a full size copy of the poster (22"X30") should contact the Firearms and Explosives Operations Branch at (202) 789-3026 at least eight to ten weeks prior to their show.

IMPORTANT SALES NOTICE TO DEALERS AT THIS GUN SHOW

- **DEALERS LICENSED IN THIS STATE**

You can sell here as you sell at your licensed premises
You cannot sell for an out-of-State FFL

- **DEALERS FROM OUT OF STATE**

You can display and take orders only
You cannot transfer firearms at this show



Department of Treasury
Bureau of Alcohol, Tobacco and Firearms