



Federal Firearms Licensees
the Treasury, Bureau of Alco

1990 VOLUME 1



*Substance w/ Pistol
6/21/83*

pg 4

Washington, D. C.

**FACSIMILE TRANSMITTED COPIES
OF FORMS AND OTHER DOCUMENTS**

ATF has received numerous inquiries over the past several years regarding the use of facsimile transmitted copies of Federal firearms licenses, import applications, National Firearms Act (NFA) manufacture and transfer documents, etc.

Firearms licensees cannot make transfers to other firearms licensees unless they have a certified copy of the transferee's license containing an ORIGINAL signature. Therefore, facsimile transmitted copies of Federal firearms licenses cannot be used or accepted, because they would lack the presence of the original signature of the transferee.

However, the National Firearms Act Branch and the Firearms and Explosives Imports Branch have recently established procedures for the submission of ATF Forms 2, 3, 5, 6, 9 and International Import Certificates via facsimile machine (FACS). This procedure is available for use with ATF Forms 5, Application for Tax Exempt Transfer and Registration of a Firearm, only in situations where the application is not accompanied by fingerprint cards and photographs, such as for transfers to government agencies or for repair and return. —

The use of FACS is only available to Federally licensed importers and other Federal firearms licensees who have paid the special occupational tax to import, manufacture or deal in NFA firearms.

If you choose to utilize this procedure, the person who will file the forms must first submit to ATF an affidavit declaring, under penalties of perjury, that certain conditions will be met as outlined in the example of the affidavit which follows.

The affidavit must include your name, trade name (if any), street address, city, state, and zip code; your Federal firearms license number; employer identification number (EIN) and/or Arms Export Control Act (AECA) number (if applicable). It is required to be submitted only one time unless a different person will be signing or transmitting the forms. In that case a new affidavit must be made and submitted to ATF.

To illustrate what is necessary in the affidavit, an example is provided below. All the information must be included and it must be signed, in ink, by the person who will be submitting the forms.

AFFIDAVIT

I, John Doe, doing business as John's Guns, hereby state that:

- a. I will be filing ATF Form (specify form numbers) by facsimile machine.
- b. The signature appearing on the facsimile copies will be mine and is intended as the original signature.
- c. I will be submitting the facsimile copies as originals for purposes of approval under the provisions of Title 27, Code of Federal Regulations, Part 179/47 (whichever applies), and the facsimile copies are to be treated as originals.
- d. I will personally transmit the copies via facsimile machine (or a designated agent will do the transmittal, naming the agent).

I declare under penalty of perjury under the laws of the United States that the above information is true and correct.

(signature)

(date)

DBA John's Guns
150 Main Street
Washington, DC 20000
FFL# 1-23-345-01-1G-12345
EIN 01-2345678 /or
AECA# A-00-000-0000

If you have any questions, please contact the NFA Branch at (202) 789-3223 or the Firearms and Explosives Imports Branch at (202) 789-3113.

FFL TOLL-FREE INFORMATION

A toll free telephone number (1-800-366-5423) was recently established to enable licensees and applicants to contact ATF's National Firearms and Explosives Licensing Center in Atlanta, Georgia. Questions and concerns regarding application and license information should be made through this number, whereas questions of a technical nature concerning conducting business after receiving a license should be made through your local ATF (Compliance Operations) field office. A listing of ATF field offices appears later in this newsletter on page 6. We suggest you remove or copy this page and keep it for future reference.

SALES AGENTS

We have been asked about the use of a sales agent or representative by a Federal firearms licensee who has paid the special (occupational) tax to import, manufacture, or deal in National Firearms Act (NFA) firearms.

NFA firearms which are registered to an NFA importer, manufacturer, or dealer may be possessed by bona fide employees of the licensee for purposes of transacting the employer's business without a "transfer" of the firearm having occurred. In determining whether an employer/employee relationship exists, ATF considers whether the alleged employee is subject to the employer's control over the manner in which his work is performed. Also indicative of this

relationship is whether the individual is on the company payroll, whether taxes and Social Security are deducted from pay, whether the individual receives company paid benefits, and other indicia of the traditional employer/employee relationship.

If the person is not a bona fide employee, before the person could acquire an NFA firearm, an application to transfer the firearm must be submitted and approved before the change of possession occurs. Any change of possession without the approved application would be a violation of law.

If the person is a bona fide employee, we recommend that the licensee provide a letter to the employee, identifying him/her, the firearm involved, and the purpose for which the firearm is to be used. We also recommend that the employee be provided a copy of the licensee's Federal firearms license and of the registration of the firearm.

Please be aware that the mere issuance of a letter stating that a person is a sales representative or agent is not enough to establish the relationship. Also be aware that any use of the firearm by the employee other than for the employer's business would indicate that a transfer has taken place and that an application must have been approved. Possession of the firearm by the employee would then be in violation of law.

If you have any questions about the use of sales agents or representatives, please direct them to your local ATF office or to the NFA Branch in Washington, DC at (202) 789-3223.

FALSIFIED FEDERAL FIREARMS LICENSES

In recent months, ATF has seen a noticeable increase in complaints on the use of falsified (counterfeited) Federal firearms licenses (FFL's). Some of the most common areas on the FFL being altered or falsified are: the Federal firearms license-number, the expiration date, and address.

The Firearms and Explosives Operations Branch is taking steps to try and solve the problem. In the interim, we request that you be alert to this

problem. If a dealer suspects a Federal firearms license to be fraudulent, they should contact their local ATF office or the Firearms Licensing Center at 1-800-366-5423 to verify the authenticity of the license received. You will be advised of the validity of the license and, if the Federal firearms license is in fact falsified, ATF will take the appropriate action.

ATF is vigorously investigating and prosecuting cases of falsified FFL's and your cooperation is encouraged and appreciated.

OUT-OF-STATE FFL'S

Federal firearms licensees are well advised to determine the legality of shipments of firearms under the law of any State into which they cause firearms to be shipped, as well as under Federal law. Information concerning State laws can be obtained by referring to ATF Publication 5300.5, State Laws and Published Ordinances - Firearms. If you have need for further information or desire to check on recent changes in a State law or local ordinance, we suggest you contact the appropriate State Attorney General's office. A listing has been provided on pages ix and x of ATF Publication 5300.5 (19th Edition).

A recent arrest and felony conviction of a Federally licensed dealer for acquiring and selling firearms against State law has resulted in the indictment of three out of State FFL's who are alleged to have supplied firearms to the convicted dealer in violation of State law.

MANUFACTURER'S ANNUAL REPORT - FORM 4483-A

The deadline for filing (1989) Annual Firearms Manufacturing and Exportation Report, Form 4483-A, was February 15, 1990. This report is to be filed by all type 07 and 10 manufacturers. To date, there are still many licensed manufacturers who have not filed their 1989 report. Also, we are receiving numerous undeliverable pieces of correspondence from the Post Office because the address is incorrect; addressee has moved and left no forwarding address; and/or change of address has expired.

As a reminder, under 27 CFR 178.52, all Federal firearms licensees are required to notify the appropriate Regional Director(s) (Compliance), no less than 10 days prior to changing your business address.

We would like to clarify several recurring questions as to who must file Forms 4483-A and what should be reported.

(1) All type 07 and 10 licensees must file annually.

(2) Manufacturers who produce solely for the military must file showing 0 production and a notation indicating "manufacture solely for the military."

(3) Those licensees who manufacture frames and/or receivers which are then disposed of to another licensed firearms manufacturer for the purposes of final finishing and assembly should file showing 0 production with a notation stating "manufacturer of frames and/or receivers only."

(4) Manufacturers of destructive devices must file annual production reports, if production is solely for military a negative (0) report should be filed.

(5) Reporting requirements for exportation of firearms only apply to the actual manufacturer of the firearms. Firearms acquired from another manufacturer and exported, should not be reported as exported. Instead, a negative (0) report should be filed.

If you have any questions contact Specialist Linda Deel, Firearms and Explosives Operations Branch, at (202) 789-3030.

LETTERS TO THE EDITOR

The following questions were received in response to articles which appeared in the last FFL Newsletter:

Q. If shotgun-type firearms having barrels of 18 inches or more in length and overall length of 26 inches or more which come equipped with pistol grips in lieu of buttstocks are not shotguns under

the GCA, what do we enter on line 11 of the Form 4473 and how do we identify such firearms when logging them into our bound book records?

A. Firearms of this type which were originally manufactured with a pistol grip and no shoulder stock are not "shotguns" under the GCA, since they are not designed and intended to be fired from the shoulder. Such weapons are "firearms" and subject to all of the provisions of the GCA. However, you may still refer to this type of firearm as a shotgun in your bound book records and on Form 4473, Firearms Transaction Record.

If you would prefer to differentiate firearms of this type and combo kits for same from traditional shotguns, we would suggest you enter them in your records and on Form 4473 as "pistol grip shotgun" or "combo kit shotgun."

Q. Did the article addressing "Straw Purchases" apply to individuals who are purchasing firearms as gifts and would this also prevent someone from buying a gift certificate which would later be redeemed for the purchase of a firearm?

A. To answer your questions, let us first define "Straw Purchases" in the context of the article in the FFL Newsletter. In laymen's terms, a straw purchase occurs when an individual, who is in fact the actual purchaser, uses another person to acquire a firearm and to conceal or misrepresent the identity of the actual purchaser of the firearm. This occurs when a straw purchaser acquires a firearm at the behest of the individual who is actually making the purchase. This results in the firearms dealer's records improperly reflecting the straw purchaser as the firearm's actual purchaser.

The article did not purport to cover sales to persons who purchase firearms with the intent of making gifts of such firearms to other persons. In instances such as this, the person making the purchase is indeed the true purchaser. There is no "straw purchaser."

chaser" in these instances. The use of gift certificates would also not fall within the category of "straw purchases." The person redeeming the gift certificate would be the actual purchaser of the firearm and would be properly reflected as such in the dealer's records.

Questions and/or areas of concern which you would like to see addressed in the FFL Newsletter should be submitted to the following address:

ATF FFL Newsletter
Letters to the Editor
P.O. Box 189
Washington, DC 20044

EXCISE TAX

Effective January 1, 1991, ATF will be assuming the collection function for Federal excise taxes on firearms and ammunition.

A Federal excise tax is imposed by 26 U.S.C. 4181 on the sale of pistols and revolvers, other firearms, shells and cartridges sold by firearms manufacturers, producers, and importers.

The tax rate is 10% of the sale price for pistols and revolvers, 11% for firearms other than pistols and revolvers, and 11% for shells and cartridges.

This tax is currently being collected by IRS and will remain their responsibility until January 1, 1991. Therefore, if you have any questions concerning this tax and your potential liability, you should refer the questions to your IRS District Office, Excise Tax Specialist.

Additional information concerning tax computation, filing and deposit requirements is available in ATF Publication 5300.4, (Your Guide to) Federal Firearms Regulation, page 99.

More detailed information concerning ATF's assumption of this collection function will be provided in the next edition of the FFL Newsletter in addition to an Industry Circular which will be distributed to licensed dealers, manufacturers and importers.

THEFTS OF DEALER'S RECORDS

There have been several instances recently of FFL's reporting the theft of their acquisition and disposition records. Licensees are required by law and regulation to maintain certain records for specific periods of time. Loss of these records through lax security or carelessness could result in revocation of your FFL.

ATF CONTACT POINT

As many of you may already be aware, the position of Firearms and Explosives Coordinator in our regional offices has been eliminated. In the past this has been your primary contact point for technical assistance regarding firearms and explosives matters. If you have any questions concerning technical issues regarding conducting business as an FFL you should now contact your local ATF (Compliance Operations) field office for assistance. A complete listing of Compliance Operations area offices appears on the next page. We suggest you remove or copy this listing for future reference. Reminder - All questions concerning application and license information should be made through the ATF National Firearms and Explosives Licensing Center's toll-free number (1-800-366-5423).

DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

SAVE THIS SHEET FOR FUTURE REFERENCE

IF YOU HAVE ANY QUESTIONS ON LAW, REGULATIONS, PROCEDURES OR POLICIES
PLEASE CONTACT THE ATF AREA SUPERVISOR NEAREST YOU

IN ORDER TO SAVE SPACE, WE HAVE ELIMINATED THE TITLE "AREA SUPERVISOR" AND
THE NAME OF THE AGENCY, "THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS".

Please direct correspondence to the Area Supervisor, Bureau of Alcohol, Tobacco and Firearms at the address below.

600 Beacon Ridge Parkway West
Suite 730
Birmingham, AL 35209
205-731-0040

700 W. Capitol, Rm. 3414
Little Rock, AR 72201
501-378-6457

Federal Bldg. Rm. 4217
1130 O Street
Fresno, CA 93721
209-487-5093

Main Post Office, POB 1991
Los Angeles, CA 90053
213-894-4817

801 I St., Rm. 143
Sacramento, CA 95814
916-551-1323

651 Brannan St., Room 213
San Francisco, CA 94107
415-974-7778

280 S. First St., Room 2180
San Jose, CA 95113
408-291-7464

PO Box 12250
Santa Ana, CA 92712
714-836-2946

777 Sonoma Ave., Room 214
Santa Rosa, CA 95404
707-576-0184

POB 3523, Federal Office Bldg.
Denver, CO 80294
303-844-5027

A.A. Ribicoff Federal Bldg.
450 Main St., Rm. 401
Hartford, CT 06103
203-722-2037

5205 Northwest 84th Ave.
Suite 104
Miami, FL 33166
305-592-9967

500 Zack St., Rm. 215
Tampa, FL 33602
813-228-2346

3835 Presidential Parkway
Atlanta, GA 30340
404-986-6075

230 S. Dearborn St.
15th Floor
Chicago, IL 60604
312-353-3797

330 West Broadway, Room 124
Frankfort, KY 40601
502-223-3350

510 W. Broadway, Ste. 808-A
Louisville, KY 40202
502-582-5217

31 Hopkins Plz., Rm. 938
Baltimore, MD 21201
301-962-3200

Boston Federal Office Bldg.
10 Causeway St., Rm. 795
Boston, MA 02222-1079
617-565-7073

Arboretum Bldg. Suite 195
34505 West Twelve Mile Rd.
Farmington Hills, MI 48331
313-226-4735

Federal Bldg. & U.S. Courthouse
316 N. Robert St., Rm. 650
St. Paul, MN 55101
612-290-3496

911 Walnut St., Rm. 1407
Kansas City, MO 64106
816-426-2464

815 Olive St., Room 310
St. Louis, MO 63101
314-539-2251

120 Littleton Rd., Rm. 305
Parsippany, NJ 07054
201-334-7058

Federal Bldg., Room 219
111 West Huron St.
Buffalo, NY 14202
716-846-4048

POB 3539, Church St. Station
New York, NY 10008
212-264-4650

4530 Park Road, Suite 441
Charlotte, NC 28209
704-371-6127

Holiday Office Park
St. Paul Bldg. Suite 301
801 B. West 8th St.
Cincinnati, OH 45203
513-684-3351

Plaza South 1, Room 300
7251 Engle Road
Middleburg Heights, OH 44130
216-522-3374

7820 N.E. Holman Suite B-3
Portland, OR 97218
503-231-2331

Century Plz., 100 W. Main St.
Suite 300-B
Lansdale, PA 19446
215-248-5252

Federal Bldg., 1000 Liberty Ave.
Rm. 2126
Pittsburgh, PA 15222
412-644-2919

Federico Degetau Fed. Bldg.
Room 659
Avenida Carlos Chardon
Hato Rey, PR 00918
809-753-4082

1100 Commerce St., Rm. 13C22
Dallas, TX 75242
214-767-9461

333 West Loop North, Suite 111
Houston, TX 77024
713-220-2157

727 East Durango, Room A-427
San Antonio, TX 78206
512-229-6168

POB 10185
Richmond, VA 23240
804-771-2877

Federal Bldg. Room 842
915 2nd Ave.
Seattle, WA 98174
206-442-5900

Federal Bldg. & US Courthouse
Room 636
517 East Wisconsin Ave.
Milwaukee, WI 53202
414-291-3991

AUCTIONING FIREARMS

Under the Gun Control Act of 1968, as amended, any person engaged in the business of importing, manufacturing or dealing in firearms is required to have a Federal firearms license. "Engaged in the business" is defined for a dealer in firearms other than a gunsmith or a pawnbroker as:

A person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such a term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.

Accordingly, whether an auctioneer is a person who should be licensed depends upon whether he is engaged in a firearms business. Occasionally, an auctioneer is merely acting as an agent for the actual owner of the property by finding a purchaser and arriving at a price. The owner consummates the sale and the auctioneer receives a commission for his services. If the property included firearms, this transaction would normally be treated as a sale between private individuals (the actual owner and the purchaser) and the auctioneer would not require a Federal firearms license.

However, if an auctioneer purchases firearms for resale or takes firearms on consignment for sale in his auction business, he may need a firearms license to be in compliance with the GCA. The necessity for a license is determined on a case-by-case basis, taking into account all pertinent facts. For example, if an auctioneer infrequently auctions off a firearm which was part of the property of an estate that contained a variety of personal property, he would not be considered to be engaging in the business of dealing in firearms. On the other hand, if an auctioneer held a

weekly or monthly auction of such property, his conduct would probably constitute engaging in the business and he would require a Federal firearms license. It should be noted that a Federal firearms dealer's license is issued for particular premises, and all sales concerning that license must be transacted at that location. However, the licensee may solicit purchases for the firearms (by auction or otherwise) at a location other than the licensed premises so long as the sale is consummated and the property is delivered to the purchaser at the licensed premises. Also, the records of the licensed dealer must be kept at the licensed premises.

BLACK POWDER DEALERS' RECORDS

ATF Industry Circular 82-8 (July 13, 1982) announced the change in recordkeeping requirements under 18 U.S.C. Chapter 40, and 27 C.F.R. Part 55, as they pertain to the sale of black powder.

Prior to this change, all federally licensed dealers of black powder were required to maintain: physical inventories and records of all receipts and dispositions (27 C.F.R. 55.121-125), daily magazine summaries (27 C.F.R. 55.127), and a file of all ATF Forms 5400.3, Transaction Record for Black Powder to be used in Antique Weapons.

As a result of the change, the preparation of ATF Form 5400.3 was no longer required for black powder sales not exceeding 50 pounds for sporting and recreational uses.

We have since found that some black powder licensees have erroneously ceased maintaining all of the above-mentioned records. Each licensee must still maintain records of receipt of black powder, a daily magazine summary (for each storage box) which lists only the total number of pounds or units sold on a particular day, and a copy of the physical inventory that is required to be taken on an annual basis.

Taking into consideration the size of the average black powder dealer's operations, we are offering a suggested records format below. This is only one option licensees can utilize which will satisfy all of the recordkeeping requirements mentioned by combining them on a single record. We feel that the suggested format will help licensees save time in maintaining the appropriate records.

NOTE: Any single sale of black powder exceeding 50 pounds to nonlicensees/nonpermittees for sporting or recreational use (or in any quantity when not intended for use as exempted in the law) requires the preparation of ATF Form 5400.4, Explosives Transaction Form.

RECORD OF ACQUISITION, DAILY MAGAZINE TRANSACTIONS
AND INVENTORY FOR BLACK POWDER SOLD FOR
SPORTING OR RECREATIONAL USE ONLY IN
QUANTITIES NOT EXCEEDING 50 POUNDS

DATE	SUPPLIER NAME, ADDRESS & LIC. NUMBER	MANUFACTURER	IDENTIFICATION MARKS	QUANTITY REC'D	QUANTITY SOLD	QUANTITY ON HAND			
						FG	2FG	3FG	4FG

SIGNIFICANT COURT CASES

THOMPSON CENTER PISTOL WITH THOMPSON CENTER CARBINE KIT IS A SHORT BARRELED RIFLE UNDER NFA.

In Thompson Center Arms Co. v. United States, No. 652-88T (Ct. Cl. March 23, 1990), the Court of Claims held that the Thompson Center Contender pistol possessed in conjunction with a Contender carbine kit, which includes a rifle stock and rifle barrel, is a short barreled rifle as defined under the National Firearms Act (NFA) (26 U.S.C. § 5845(a)(3)). The court further held that the \$200 tax imposed upon the "making" of the short barreled rifle was properly assessed and that Thompson Center Arms Co. was not entitled to a refund. The court followed the decision in United States v. Drasen, 845 F 2d 731 (7th Cir. 1988), in holding that the parts may meet the definition of a short barreled rifle even if they had never been previously assembled.

RESTORATION OF CIVIL RIGHTS DID NOT REMOVE FELON'S FIREARMS DISABILITIES.

As amended in 1986, a conviction for purposes of the Gun Control Act (GCA) is determined by reference to State law. The amendment provides that any conviction which has been expunged, set aside, or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of the GCA unless such pardon, expungement, or restoration expressly provides that the person may not ship, transport, possess, or receive firearms.

In United States v. Cassidy, No. 89-3372 (6th Cir. March 30, 1990), the defendant, after being paroled, received a certificate stating that the civil rights forfeited by his conviction had been restored. The certificate was silent on the subject of firearms. The court held that since the defendant remained under State firearms disabilities, the certificate did not relieve his Federal firearms disabilities. This decision is consistent with ATF's regulation at 27 CFR 178.11, which interprets the definition of "conviction" to include the convictions of persons who, despite having received a State pardon, expunction, or restoration of rights, still have State firearms disabilities.