



FFL NEWSLETTER



AUGUST 1998

VOLUME 1

**FEDERAL FIREARMS LICENSEE INFORMATION SERVICE
PROVIDED BY THE U.S. DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, DC**

NATIONAL INSTANT CRIMINAL BACKGROUND SYSTEM (NICS)

The permanent provisions of the Brady law provide for the establishment by the Federal Bureau of Investigation (FBI) of a national instant criminal background check system ("NICS") that a firearms licensee must contact before transferring any firearm to unlicensed individuals. The law requires that the permanent system be established not later than November 30, 1998. While the interim provisions apply only to handguns, the permanent provisions of the Brady law will apply to all firearms. Furthermore, while there is no five-day waiting period under the permanent provisions, the system may take up to three business days to notify the licensee whether receipt of a firearm by the prospective purchaser would be in violation. Some FFLs will contact the NICS through a State point of contact to initiate background checks on prospective purchasers of firearms, while others will be instructed to contact the FBI. ATF will notify each FFL by letter of whom to contact to perform NICS background checks prior to the date that NICS is operational.

FFLs will be required to enroll with the FBI to be able to initiate NICS background checks. The FBI will mail an enrollment package containing a NICS brochure, survey, and User Agreement to FFLs in states to be serviced by the FBI beginning in June 1998. If you have not received a packet or have not been informed as to whom your State contact is, please contact ATF or the FBI for further information.

Further information concerning NICS can be obtained by calling (304) 625-2750 or by visiting

the Internet Web sites at <http://www.fbi.gov/programs/nics/index.htm> or <http://atf.treas.gov/core/firearms/information/brady/q&anics.htm>.

As always, questions that may be answered by ATF should be addressed to your nearest ATF office listed in the federal government pages of your phone book or access ATF's Homepage at <http://www.treas.atf.gov>.

NEW FIREARMS TRANSACTION RECORD

With the establishment of the permanent provisions of Brady beginning November 30, 1998, a new ATF F 4473 (5300.9), Firearms Transaction Record will be in effect. All previous editions must be destroyed. Each dealer should receive a number of these new forms; however, if it is necessary to acquire additional forms they should contact the ATF Distribution Center at 703-455-7801.

REPORTING MULTIPLE SALES OR OTHER DISPOSITIONS OF PISTOLS AND REVOLVERS

A new edition of the ATF F 3310.4 Multiple Sale or other Disposition of Pistols and Revolvers will soon be made available. This form supercedes all other editions, and must be used by FFLs. A supply of these will be sent to each FFL and additional forms may be obtained from the ATF Distribution Center at phone number 703-455-7801. Dealers who continue to use old editions of the form may be cited for violating 27 CFR 178.126a, and continual, willful violations may lead to administrative action against your license.

Please dispose of all out of date forms immediately and begin using the current form.

This new edition will instruct the licensee to mail the ATF copy of the form to:

ATF National Tracing Center
Spring Mills Office Park
2029 Stonewall Jackson Drive
Falling Waters, West Virginia 25419

In addition, there will be made available an 800 fax number for licensees to fax the copy to ATF. By statute a copy must also be sent to the Chief Law Enforcement Officer where the sale or other disposition took place. The licensee shall retain the third copy.

AGE RESTRICTION REMINDER

Licensees are reminded that certain commercially produced "shotguns" do not fall within the definition of 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. Therefore, they cannot be sold or delivered by a licensee to any person less than 21 years of age.

RESOLUTION OF MODERN MUZZLE LOADING COURT CASE

ATF has received a favorable decision in the case *Modern Muzzleloading, Inc. v. Magaw*, No. 97-2956 (TAF) (D.D.C. Aug. 8, 1988).

This case involved a challenge to ATF's classification of plaintiff's Knight Disc Rifle as a "firearm" for purposes of the Gun Control Act. The Knight Disc Rifle is an in-line modern muzzle loading rifle, which interchangeably uses either a percussion cap or a shotgun primer as an ignition system. Plaintiff claims the Knight Disc Rifle should be classified as an "antique firearm" and not regulated as a "firearm" under the Gun Control Act.

The District Court held that ATF properly classified the Knight Disc Rifle as firearms since it utilizes a modern centerfire shotgun primer, not an antique ignition system. The Court rejected plaintiff's argument that because the Gun Control

Act is a criminal statute; the rule of lenity must apply. Rather, the court held that ATF's classification decision is entitled to deference and is neither arbitrary nor capricious.

FIREARMS SALES TO FOREIGN NATIONALS

Recent changes to the regulations in 27 CFR Part 178 imposed more stringent requirements on licensee sales of firearms to foreign nationals. T.D. ATF-389, published in the Federal Register on April 21, 1997, amended the definition of "State of residence" to eliminate the language allowing aliens to establish residency in a State by obtaining a letter from their embassy or consulate. The definition was also revised to provide that an alien legally in the United States is a "resident" of a State only if the alien is residing in a State and has resided in a State for at least 90 days prior to the sale or delivery of a firearm. The amended regulations further require that licensees identify the alien purchaser and obtain proof of residence by examining (1) a government-issued photo identification document, such as a driver's license; and (2) documentation, such as utility bills or a lease agreement, showing that the purchaser has resided in the State for at least 90 days.

In addition, when a licensee knows or believes that a foreign customer intends to take a rifle or handgun out of the U.S., the dealer is legally obligated to notify the State Department, Office of Foreign Trade Control (ODTC) and/or ATF that the firearm was sold for the purpose of exportation. (See later article in this issue for address and phone number for ODTC.) Removal of a firearm from the U.S. by an alien is exportation. With few exceptions, the firearms licensee must obtain an export license (Form DSP-5) from ODTC prior to exportation. Also, a licensee may export a firearm to an alien if an export license is obtained from ODTC.

Where the licensee exports the firearm(s) to the alien, the licensee need only record the name and address of the foreign customer in the bound record book. Also, maintain a copy of the completed DSP Form 5 documenting the exportation. The ATF Form 4473 need not be completed in such instances.

NATIONAL FIREARMS ACT (NFA) INFORMATION

Some confusion has resulted from the article regarding the retention of machineguns in the August 1997 FFL Newsletter and we wish to clarify the issues raised.

“Pre-1986” machineguns (those lawfully possessed prior to May 19, 1986) and all other National Firearms Act (NFA) firearms in inventory may be retained by a Federal firearms licensee who has paid the special (occupational) tax to import, manufacture, or deal in NFA firearms and who wishes to (1) cease business involving NFA firearms by no longer paying the special tax or (2) cease business entirely by also terminating the Federal firearms licensee. As noted below, there are restrictions on the subsequent transfer of imported NFA firearms.

A sole proprietor may continue to retain and possess the NFA firearms indefinitely. However, licensees who are corporations or partnerships may retain the NFA firearms until the corporation or partnership dissolves. The NFA firearms must be transferred prior to the dissolution of the corporation or partnership. In many cases, the dissolution takes place at the same time as the ceasing of the firearms business, so the dispositions are made at that time.

The licensee, before the expiration of the licensee’s special tax status (27 CFR § 179.105(f)), must dispose of “Post-1986” machineguns (those machineguns manufactured or imported on or after May 19, 1986). These machineguns may be transferred to a government agency, to a qualified licensee who can document governmental interest (“law enforcement letter”) in the particular model of machinegun, or exported. A licensee can identify these machineguns from the restriction stamped in the approval block of the registration form. The restriction reads:

**RESTRICTED REGISTRATION –
Possession limited to continued
compliance with provisions of Public
Law 99-308.**

If the licensee is unable to transfer or export these machineguns, the machineguns must be abandoned to ATF. As noted above, machineguns imported prior to May 19, 1986 and

other imported NFA firearms, may be retained by a licensee terminating business. These imported NFA firearms can be identified from the restriction stamped in the approval block of the registration form, which reads:

LIMITED TO USE AS SALES SAMPLE

These NFA firearms were imported under the provisions of 26 U.S.C. § 5844 and are subject to the restrictions therein. Thus, these “sales sample” NFA firearms may only be transferred to a qualified licensee or a government agency.

Machineguns possessed lawfully prior to May 19, 1986, and other NFA firearms, which have no restrictions on their possession, may be transferred to individuals, licensees, or government agencies in accordance with the Gun Control Act.

If any additional information is required, please contact the National Firearms Act Branch at (202) 927-8330.

IMPORTING INFORMATION

Applications to Import Sales Samples of Certain Title I Firearms

The Firearms and Explosives Imports Branch cannot approve applications to import semiautomatic assault weapons as defined in 18 U.S.C. § 921(a)(30), or firearms determined not to be suitable for or readily adaptable to sporting purposes under 18 U.S.C. § 925(d)(3) for use as sales samples. ATF Ruling 80-8 holds that such firearms may only be imported for sale or delivery to a Federal, State or local law enforcement or government agency when the permit application is supported by a purchase order from the intended recipient.

In lieu of an import permit from ATF, we suggest importers desiring to import such firearms as sales samples do so pursuant to a temporary import license issued by the Department of State, Office of Defense Trade Control. Their address and telephone number is:

Office of Defense Trade Controls
PM/DTC, SA-6, Room 228
Department of State
Washington, DC 20522-0602
Telephone (703) 875-6644

Applications to Import Sales samples of Machineguns

Applications to import machineguns as sales samples for the internal use of the importer or for demonstration models by dealers will be processed under the provisions of 27 CFR 179.105. Such applications will be approved if they are supported by documentation: (1) that establishes by specific information the expected governmental customers who would require a demonstration of the weapon; (2) that confirms the availability of the machinegun to fill subsequent orders; and (3) letters from the governmental entities expressing a need for a particular model or interest in seeing a demonstration of a particular weapon. Additionally, importers who submit applications to import more than one machinegun of a particular model must also establish a need for the quantity of sales samples sought.

Applications to import U.S.-origin Significant Military Equipment.

The Department of State is responsible for ensuring that the foreign transfer and subsequent importation into the United States of U.S.-origin Significant Military Equipment (SME) is in compliance with the Foreign Assistance Act of 1938. The term SME includes firearms, ammunition, and certain other defense articles as identified by the Department of State in the U.S. Munitions List (22 CFR Part 121). The Department of State, Bureau of Political Military Affairs, in furtherance of their responsibility, has requested that ATF forward all applications to import U.S.-origin SME to their office for review and recommendation. In compliance with their request, all such applications received by the Firearms and Explosives Imports Branch will be forwarded to the Department of State before final action is taken on the applications.

Surplus military curio or relic firearms

An application to import surplus military firearms which have been classified as curios or relics will only be approved when submitted by a Federally licensed importer, provided it is supported by the required certifications and documentary evidence

as outlined in 18 U.S.C. § 925(e). The documentation from the foreign source of the firearms must: (1) identify the place(s) of storage of the firearms for the 5-year period immediately preceding importation; (2) be currently dated (dated within 6-months of the date of application); and (3) be signed by an authorized representative of the foreign source.

In addition, to qualify for importation into the United States, surplus military curio or relic firearms must be in their original military configuration. All surplus military curio or firearms that have been modified from their original military configuration lose their curio or relic classification and, thus, their eligibility for importation.

Semiautomatic Assault Weapons imported temporarily for repair.

ATF has held that no import permit is required for firearms being sent directly to a Federal Firearms Licensee for repair or replacement and subsequent exportation. However, because the Gun Control Act of 1968 prohibits the manufacture, transfer and possession of semiautomatic assault weapons, this exception to the permit requirement does not extend to semiautomatic assault weapons imported temporarily for repair or replacement and return. Before receiving in foreign commerce a semiautomatic assault weapon for repair or replacement and subsequent return, a Federal Firearms Licensee must secure a temporary import license, DSP-61, from the Department of State, Office of Defense Trade Control. (See previous article in this issue for address and telephone number.)

Importation of Firearms for Display at Industry Trade Shows

ATF has received a number of inquiries concerning the procedures importers should follow in importing firearms for display at industry trade shows.

If the firearms are generally recognized as particularly suitable for sporting purposes, they may be imported by obtaining an approved ATF Form 6, Application and Permit to Import Fire-

arms, Ammunition, and Implements of War. If an importer wishes to export the firearms at the conclusion of the trade show, an export license, DSP-5, must be obtained from the Department of State, Office of Defense Trade Controls.

If the importer is not sure whether the firearms to be displayed at the trade show are sporting firearms that qualify for importation, the firearms should be conditionally imported for purposes of testing and evaluation. The importer should submit an ATF Form 6 and state in item 9, "Specific Purpose of Importation," that the firearms are being imported for purposes of testing and evaluation by ATF. Upon arrival in the United States, the firearms are to be delivered directly to ATF. The importer will be notified in writing of the import classification of the firearms.

The entire process from submission of a conditional import application to return of the firearm after classification takes at least 8 weeks. Importers who need to have firearms evaluated prior to an industry trade show should allow sufficient time for the evaluation of a sample firearm and processing of an application for importation of additional quantities of the firearms. For example, importers desiring to display firearms at the SHOT Show in late January should submit applications for conditional importation no later than mid November. Applications submitted after this date may not be processed in time for the firearms to be imported and displayed at the show. In addition, importers should remember to allow adequate time for incidental matters such as, shipping, Custom's clearance, etc.

If the firearms have been classified as nonsporting or are National Firearms Act weapons, the only vehicle for importing the firearms is to obtain a temporary import license, DSP-61, from the Department of State, Office of Defense Trade Controls. The State Department will only issue such licenses to residents of the United States. The Office of Defense Trade Controls may be contacted by calling (703) 875-6644. Nonresidents of the United States may apply for a temporary import license from the Department of State through their embassy located in the United States.

Questions concerning these procedures should be directed to the Firearms and Explosives Imports Branch at (202) 927-8320.

FFL OR INTERSTATE THEFT PROCEDURES AND INFORMATION

FFL Thefts:

Recently the ATF Stolen Firearms operations moved from ATF Headquarters to the ATF National Tracing Center (NTC) in Falling Waters, West Virginia. Licensees reporting a theft or loss may still contact ATF after normal business hours at 1-800-800-3855. However during normal business hours (8:00 AM – 4:00 PM) you should call the NTC directly at 1-800-788-7133, extension 773. In addition, the ATF F 3310.11, Federal Firearms Licensee Theft/Loss Report should be mailed to: ATF Stolen Firearms Program, P.O. Box 759, Falling Waters, WV 25419 or faxed to 304-274-1320.

Interstate Thefts:

It is not required under the Gun Control Act for interstate thefts to be reported to ATF, since such thefts are from a common carrier and not the FFL. However, most of the common carriers voluntarily report these thefts to ATF, and they are subsequently entered in the National Crime Information Center system (NCIC). If such a theft should occur, we request you ask the carrier to report the theft to ATF. However, any or all of the three parties involved, shipper, consignee, or consignor, may report these firearms to ATF as stolen. If a licensee wishes to report these firearms as well they need to be reported on an ATF F 3310.6, Interstate Theft Form.

These theft report forms may be obtained by calling the ATF Distribution Center at 703-455-7801. Licensees are encouraged to have some of these forms on hand at all times.

Additionally, if a licensee receives a firearm back from a police department after it has been recovered; the licensee needs to verify ATF has been notified of this recovery. As was previously stated, these firearms are entered in NCIC. If ATF does not get notified of the recovery, the guns remain in NCIC as stolen and your customer may

be wrongly accused of possessing a stolen firearm at a later date.

New ATF Publication 3317.2 (3/98): Safety and Security Information for Federal Firearms Licensees.

ATF is the law enforcement agency tasked with enforcing the Federal firearms laws. In fulfilling these responsibilities, ATF is prepared to work in collaboration with the firearms industry to prevent and investigate thefts of firearms, particularly from licensed dealers.

Each year ATF receives numerous reports of thefts from licensed dealers involving thousands of stolen firearms. Violent criminals, juveniles, and gang offenders often target licensed dealers for theft, and stolen firearms, by their very nature, are destined to become crime guns. While an impenetrable and perfect security system does not exist, there are many steps that licensed dealers can take to significantly improve their chances of preventing firearms thefts, losses, and personal injury. To help make the firearms industry aware of these steps, ATF developed Publication 3317.2 (3/98). This publication suggests measures and provides information intended to prevent licensed dealers from becoming the victim of a crime as well as preventing violent criminals, juveniles, and gang offenders from unlawfully obtaining firearms they may use to victimize others.

In addition to safety and security tips, the publication contains specific information regarding the requirement that licensed dealers report all firearms thefts, provides copies of the appropriate ATF forms to report such thefts, and gives important customer safety tips and advisories. The publication also contains a warning poster for would-be robbers that ATF aggressively investigates thefts of firearms from licensed dealers, and that penalties are severe.

Copies of the publication are currently being distributed and it will also be posted on our web site (www.atf.treas.gov). You may also contact your local ATF office to obtain a copy. We hope this information and the publication are of use to you, and we look forward to working with you on this important issue.

FFL CONCERNS AND ALERTS

Licensee Fraud

Complaints are increasing from licensees about being defrauded by other business contacts. With the increasing use of the internet as a marketing technique and the reported economic strain on the firearms industry, licensees are encouraged to use good, sound business judgments. As in any business arena, the firearms industry will have those who prey on others. Licensees are reminded of these simple rules.

- 1) If you don't know the person you are doing business with, ask for references or talk to others who have conducted business with this person.
- 2) Be cautious about providing large sums of money "up front" for products or services.
- 3) Deal with persons who are clearly complying with all laws. If the person is willing to cheat on taxes, not have a required license, or not comply with recordkeeping practices, that person will be more likely to cheat you as well.
- 4) If it seems too good to be true, it probably is.

Unlicensed Dealing and Gunshow Activities:

ATF does not regulate gunshows. We do, however, regulate the conduct of FFLs at gunshows. Reports of unlicensed dealers at gunshows continues to generate the greatest numbers of complaints to ATF by Federal firearms licensees. ATF does investigate these reports. However, as you well know, each weekend there are hundreds of gunshows throughout the country. Only with help from industry members can we make an impact on this problem. Here are a few examples of recent actions taken. All of the investigations discussed below resulted in Federal indictments of the individuals involved who either plead guilty, were convicted of violations of Federal firearms laws, or are awaiting trial.

Investigation Number 1:

Three individuals were identified as operating at a gunshow every weekend. They would buy and sell firearms for a profit, never using these

firearms nor maintaining them in a personal collection. One of these individuals had recently discontinued business as a Federal firearms dealer. He had reported to ATF all his firearms records had been stolen. During the execution of search warrants 26 handguns and 14 longguns, approximately \$4000 in U.S. currency and miscellaneous records pertaining to buying and selling firearms was seized.

Investigation number 2:

An individual, who had previously been informed by ATF that he needed a license, continued to buy and sell firearms at area gunshows. Prominently displayed on his tables at the gunshows were signs indicating no waiting period, no sales taxes, and/or no cost for Brady checks here. After completion of the investigation, search warrants resulted in the seizure of 45 handguns, 26 shotguns, 6 rifles, \$15,795 in cash, and numerous documents relating to firearms purchases and sales. This individual admitted he had made between \$40,000 to \$50,000 profits from his firearm sales the last two years.

Investigation number 3:

As the result of a lengthy ATF investigation of unlawful activities at Florida gunshows, the U.S. Attorney for the Southern District of Florida made a press release. This release described the execution of ten Federal search warrants resulting in the seizure of 441 firearms, including four

machineguns. This investigation involved four defendants at the time. However, additional arrests were expected.

Investigation number 4:

An individual whose license was revoked for willful violations of the GCA continued dealing in firearms at gunshows. A criminal investigation was completed with the execution of Federal search warrants. A total of 92 firearms and records pertaining to firearm acquisitions and sales were seized. This individual admitted to making profits of over \$20,000 a year from the illegal firearm sales.

We can not emphasize enough how much we need the help of the industry to ensure firearms sold at gunshows are in accordance with applicable laws. Please contact your local ATF office with specific information about these activities or call the ATF Hotline at 1-800-ATF-GUNS (1-800-283-4867).

In addition, ATF is happy to staff information booths at gunshows when requested by the promoter and as workload levels permit. This provides an opportunity to answer questions asked by the general public as well as licensees. Promoters who have requested ATF information booths have indicated this reduces the level of unlawful activities at their shows. Promoters may contact their local ATF offices for further information.