



# FFL NEWSLETTER

## FEDERAL FIREARMS LICENSEE INFORMATION SERVICE

March 2013

Volume 2

In an effort to keep Federal firearms licensees (FFLs) abreast of changing Federal firearms laws and regulations, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will provide semiannual FFL Newsletters. Previous editions of the FFL Newsletters are available on ATF's Web site (<http://www.atf.gov/publications/newsletters/>).

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### Reminder: Keep Your Contact Information Up to Date

Federal firearms licensees (FFLs) who intend to relocate their business to a new location are required to submit ATF Form 5300.38 in duplicate, along with their original license, to the Federal Firearms Licensing Center (FFLC) at least 30-days prior to moving their business premises to the new location. Reference 27 CFR 478.52.

If you change your phone number, mailing address, or business hours, please notify the FFLC at [nlc@atf.gov](mailto:nlc@atf.gov) or 1-866-662-2750. ATF encourages you to provide to the FFLC a current email address.

### Reminder: eForm 6

On January 14, 2013, ATF launched the new eForms System. This system is an upgrade to ATF's eForms 6 online submission system, and allows Federal firearms licensees (FFLs) to electronically submit the ATF Form 6 Part I and the ATF Form 6A. Please visit <https://www.atfonline.gov/EForms/> to register on-line for the eForms system.

For more information, please visit <http://www.atf.gov/applications/eform/index.html>.

### Agency Information Collection Activities

If you visit the [Firearms Industry webpage](#), under Firearms Industry News, you will find links titled, "Agency Information Collection Activities: Proposed Collection; Comments Requested."

The agency information collection activities that appear on the ATF website are notices published in the Federal Register to obtain comments from the public and other affected agencies. Under the Paperwork Reduction Act of 1995, ATF is required to provide public notice when revising forms, sending out industry surveys, or requesting any information, even on a voluntary basis, from 10 or more persons. Often, the notices being published are for a renewal of an existing collection. For example, firearms recordkeeping forms are generally submitted for public comment every three years even when there are no planned changes to the information collection.

Public notices generally include:

1. a title for the collection of information;
2. a summary of the collection of information;
3. a brief description of the need for the information and the proposed use of the information;
4. a description of the likely respondents and proposed frequency of responses to the collection of information;
5. an estimate of the burden (in hours) that will result from the collection of information;
6. information on what points to address; and
7. where to send your comments.

Finally, the notices provide the date that comments are due and contact information if additional information is needed regarding the notice. Firearms industry members are encouraged to view and comment upon all information collection notices published in the Federal Register. ATF posts all such notices on our website at <http://www.atf.gov/press/industry/firearms/>.

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## Rental of Firearms On-Premises

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ATF has previously held that the rental of firearms for use on a Federal firearms licensee's (FFL's) business premises is not considered to be a sale, disposition, or delivery of the firearms. For this reason, an ATF Form 4473 is not required to be completed and no NICS background check is required. The FFL also does not need to log the firearm out of the acquisition and disposition (A&D) record. A licensee may rent a handgun to a person less than 21 years of age, or a long gun to a person less than 18 years of age for use at an on-premises shooting range. The on-premises rental of National Firearms Act (NFA) firearms is also permitted. However, licensees and

non-licensees are prohibited from renting or lending firearms or ammunition to a person knowing or having reasonable cause to believe the person is prohibited from receiving or possessing that firearm. Refer to 18 U.S.C. § 922(d) and 27 C.F.R. § 478.99(c).

An alien admitted to the U.S. under a nonimmigrant visa is prohibited from possessing firearms or ammunition unless he or she falls within one of the following exemptions:

1. is in possession of a hunting license or permit lawfully issued by the Federal Government, a State, or local government, or an Indian tribe federally recognized by the Bureau of Indian Affairs, which is valid and unexpired. The hunting license does not have to be from the State in which the business premises is located;
2. was admitted to the United States for lawful hunting or sporting purposes;
3. is an official representative of a foreign government who is accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States;
4. is an official representative of a foreign government who is en route to or from another country to which that alien is accredited;
5. is an official of a foreign government, or a distinguished foreign visitor who has been so designated by the Department of State;
6. is a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business; or
7. has received a waiver from the Attorney General of the United States.

Permanent resident aliens, and aliens lawfully admitted to the U.S. without a visa (e.g. Visa Waiver Program) do not fall within the prohibition, and therefore do not need to meet one of the above exemptions to rent a firearm.

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## Rental of Firearms Off-Premises

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A licensee may rent a firearm to any person for temporary use off the premises of the licensee for lawful sporting purposes. This transaction is considered a "transfer" and must meet the following conditions:

1. The individual renting the firearm must meet the age requirement of 21 to rent a handgun, and 18 to rent a long gun;
2. The individual renting the firearm has a valid identification document;
3. An ATF Form 4473 must be completed, and a NICS check must be conducted; and
4. The FFL must log the firearm out of the A&D record as a disposition to the transferee.

An alien admitted to the U.S. under a nonimmigrant visa may rent a firearm for use away from the premises provided the above conditions are met, and the alien falls within one of the above listed exemptions, and has a valid identification document. However, under Federal law, a person may not transfer a firearm to an alien in possession of a waiver issued under the provisions of 18 U.S.C. 922(y)(3), unless the alien meets one of the exceptions found in 18 U.S.C. 922(y)(2). Permanent resident aliens and aliens lawfully admitted to the U.S. without a visa (*e.g.* Visa Waiver Program) do not need to fall within one of the above exemptions to rent a firearm off-premises. However, the alien must have a valid identification document.

The off-premises rental of an NFA firearm is allowed under certain additional conditions. These transactions are considered a transfer and are subject to the transfer provisions of the National Firearms Act, as well as the Gun Control Act. This includes a strict prohibition on the transfer of machineguns imported or manufactured on or after May 19, 1986, to non-government persons.

To lawfully rent an NFA firearm away from the business premises:

1. The appropriate transfer form must be filed with ATF;
2. Any applicable transfer tax must be paid;
3. The NFA transfer form must be approved by ATF; and
4. The firearm must be registered to the transferee.

Before the rented NFA firearm is returned to the FFL from whom it was rented:

1. The appropriate NFA transfer form must be filed with ATF;
2. Any applicable transfer tax must be paid;
3. The NFA transfer form must be approved by ATF; and

4. The firearm must be registered to the transferee.

For additional information concerning the rental of NFA firearms, please contact the NFA Branch at (304) 616-4500.

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### **Clarification to ATF Ruling 2008-3: Making Corrections to the Electronic Version of the ATF Form 4473 (e-Form 4473)**

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ATF has received inquiries from Federal firearms licensees (FFLs) regarding making corrections to the electronic version of the ATF Form 4473, known as the ATF e-Form 4473. FFLs requested clarification of ATF Ruling 2008-3, which includes conditions that neither the transferee nor transferor can make revisions to his/her answers after a statement has been selected or mouse-clicked. Reference requirements #4 and #6 of ATF Ruling 2008-3.

The conditions of ATF Ruling 2008-3 do not preclude the making of corrections after the form has been completed and printed. The laws, regulations, policies, and procedures applicable to the handwritten version of ATF Form 4473 also apply to electronic versions of the ATF Form 4473. Errors on printed forms may be corrected prior to completion of the transaction by marking through the error (for example, by striking through the entry), entering the correct information, and initialing and dating each correction. In addition, if the FFL or the buyer discover that an ATF Form 4473 (or e-Form 4473) is incomplete or improperly completed after the firearm has been transferred, and the FFL or the buyer wish to make a record of the discovery, then the FFL should photocopy the inaccurate form (or e-Form 4473) and make the necessary additions or revisions to the photocopy. The FFL should only make changes to Sections B and D. The buyer should only make changes to Sections A and C. The person who made the changes should initial and date the changes. The corrected photocopy should be attached to the original Form 4473 (or e-Form 4473) and retained as part of the FFLs required records.

Please remember that when the purchaser signs and dates the ATF Form 4473, he or she is certifying that all answers on the form are true, correct, and complete.

When the FFL signs and dates the form, he or she is certifying that he or she has no reason to believe the transfer is unlawful. Making any false statement when completing the form is a crime punishable as a felony under Federal law, and may also violate State or local law.

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## Recording Identification Documents on the ATF Form 4473—Military Identification and PCS Orders

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Questions have arisen concerning where to record certain identification information on the ATF Form 4473 when the purchaser is an active duty military member.

As a reminder, pursuant to the instructions on the ATF Form 4473, Federal firearms licensees (FFLs) should record the purchaser's military identification card and official orders showing where his or her permanent duty station is located in Block 20a. of the ATF Form 4473.

However, FFLs may not be able to fit all of the information into Block 20a. FFLs are permitted to record the military identification information in Block 20a., and record the information derived from official orders in Block 20b. of the ATF Form 4473.

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## Purchase of Firearms by Current or Former Law Enforcement Officers

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Federal firearms laws contain provisions for the carrying of concealed firearms by qualified active duty and separated law enforcement officers. These provisions of the Act do not affect the requirements applicable to the sale of firearms to current or former law enforcement officers.

For the purposes of purchasing a firearm for personal use, the same requirements apply to current and former law enforcement officers and to other individuals purchasing a firearm. This includes compliance with the requirements of 27 CFR 478.124, which include completion of an ATF Form 4473, 27 CFR 478.102, which generally requires a background check, and meeting residency requirements.

Law enforcement officers may purchase a firearm for official use by providing the licensee a certification on agency letterhead. The letterhead must be signed by a person in authority within the agency (other than the officer purchasing the firearm), state that the officer will use the firearm in official duties, and that a records check

reveals that the purchasing officer has no convictions for misdemeanor crimes of domestic violence. If these conditions are met, the purchasing officer is not required to complete an ATF Form 4473, or undergo a NICS background check. However, the licensee must record the transaction in his or her required records and retain a copy of the certification letter. A law enforcement officer purchasing a firearm on agency letterhead may purchase a firearm in another State regardless of where the officer resides or the agency is located. Reference 27 CFR 478.134.

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## Recording Pistol Grip Firearms in the Acquisition and Disposition Record

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Recently, questions have been raised regarding the definition of firearms with pistol grips that utilize a shotgun shell for ammunition and how they should be entered in the acquisition and disposition (A&D) record under the heading "Type."

In the November 2009 FFL Newsletter, ATF advised that a firearm with a pistol grip in lieu of the shoulder stock is not designed to be fired from the shoulder and, therefore, is not a shotgun. Since it is a firearm "other than a rifle or shotgun," the purchaser must be 21 years of age or older. Additionally, interstate controls apply—the licensee and transferee must be residents of the same State.

ATF further recommended that the licensee record the firearm type as "pistol grip firearm" in the A&D records.

Licensees have subsequently raised questions pertaining to entries made in the licensee's required records with respect to firearm "Type." Specifically, some licensees have computerized A&D programs that prevent the recording of "pistol grip firearm" due to the number of characters required.

To accurately identify these firearms, entries regarding the "Type" of firearm may be recorded as "Pistol Grip Firearm," "PGF," or "PG." In addition, this firearm type may be recorded as "Other."

If an abbreviation is used, then the licensee should archive the information in his or her internal operating procedures, or via a separate key or legend documenting such use. Furthermore, the licensee must consistently use this abbreviation throughout the A&D record when recording these types of firearms.

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## Manufacturing NFA Firearms for the United States Government

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Pursuant to 26 U.S.C. 5851, and 27 CFR 479.33, any person engaged in the business of manufacturing NFA firearms *exclusively* for the United States, or any agency of the U.S., may be relieved from the requirement to pay Special Occupational Tax (SOT) as required by 27 CFR 479.31. This exemption is obtained by filing a letter application with ATF's NFA Branch setting out the manner in which the applicant conducts business, the type of firearm(s) to be manufactured, and satisfactory proof of the existence of the manufacturer's Government contract under which the applicant intends to operate. Approval of the application entitles the applicant to the exemption. If a manufacturer's business activity includes sales of NFA firearms to non-U.S. Government customers (for example, manufacture for exportation to overseas customers), that manufacturer would not qualify for the exemption. The exemption must be renewed with a new approved letter application on or before the beginning of the SOT tax year (July 1st).

Additionally, pursuant to 18 U.S.C. § 5851, and 27 CFR 479.33, any person engaged in the business of manufacturing NFA firearms for the United States, or any agency of the U.S., may be relieved from the requirement to file an ATF Form 2 (Notice of Firearms Manufactured or Imported) and ATF Form 5 (Application for Tax Exempt Transfer and Registration of a Firearm) with respect to such firearms. Typically, both of these exemptions are requested in the same written application, but if done separately, this exemption may be obtained by filing a letter application containing the same information set forth above with the NFA Branch. Approval of the application entitles the applicant to the exemption. The exemption must be renewed with a new approved letter application on or before the beginning of the SOT tax year (July 1st).

The exemption from filing the Form 2 and Form 5 is only for transactions between the manufacturer (as named in the United States Government contract), and the United States Government. If a sub-contractor is involved in the process, then the required registration and transfer forms must be filed and approved. Please note that neither of the above exemptions applies to NFA importers or imported NFA firearms—only to manufacturers. Importers importing NFA firearms must file all of the required registration and transfer forms with the NFA Branch.

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## When Permission is Required to Move NFA Firearms

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ATF has received inquiries as to when permission is required to move National Firearms Act (NFA) firearms. Authorization to transport certain NFA firearms in interstate or foreign commerce is required except where the transportation is by:

1. A Federally licensed importer, manufacturer, or dealer who has paid special occupational tax for the current year, provided that the licensee is qualified to engage in business with respect to the device or weapon to be transported. This means that if a destructive device is to be transported, the licensee must be either an importer of, a manufacturer of, or a dealer in destructive devices.
2. A Federally licensed collector if the device or weapon to be transported is a curio or relic.

If the transportation is in foreign commerce, the Department of State requirements apply. The Directorate of Defense Trade Controls (DDTC) should be contacted for further information about these requirements. A permanent exportation of an NFA firearm can only be made subsequent to an approved ATF Form 9 and State Department license. The exportation under a temporary export license from the DDTC does not require ATF permission if you are a qualified Federal firearms licensee as described above.

The requirement for authorization to transport certain NFA firearms in interstate or foreign commerce is found in the Gun Control Act (Title 18, U.S.C. 922(a)(4)). The statutory requirement is implemented by 27 CFR 478.28, which prescribes the information required to be provided in the written request for authorization. Please note that authorization to transport NFA firearms in interstate or foreign commerce is not required for all types of NFA firearms. Authorization is required for the transportation of a destructive device, machinegun, short barreled rifle, or short barreled shotgun. Authorization is not required for the transportation of a silencer or firearm classified as an 'any other weapon.'

Please use ATF Form 5320.20, Application to Transport Interstate or to Temporarily Export Certain National Firearms Act (NFA) Firearms, to request authorization. This form captures the information necessary to submit the request. This form is available in a fillable format on the ATF website ([www.atf.gov/forms/firearms](http://www.atf.gov/forms/firearms)).

ATF Form 5320.20 may also be used to report a change of address, either intrastate or interstate, as the information provided on the form is sufficient for ATF to update the National Firearms Registration and Transfer Record.

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## Recordkeeping Requirements and Retention Requirements for Licensed Manufacturers

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Pursuant to 27 CFR 478.123(a), each licensed manufacturer is required to record the type, model, caliber or gauge, and serial number of each completed firearm manufactured or otherwise acquired, and the date such manufacture or other acquisition was made. This information is required to be recorded not later than the seventh day following the date of manufacture or other acquisition. Records of manufacture or other acquisition of firearms must be maintained *permanently*. Reference 27 CFR 478.129(d).

In addition, a record of firearms disposed of by a manufacturer to another FFL is required to be maintained. This record includes the quantity, type, model, manufacturer, caliber, size or gauge, the serial number of the firearm, the name and license number to whom the firearm was transferred, and the date the firearm was transferred. Reference 27 CFR 478.123(b).

Each licensed manufacturer is required to maintain separate records of the sales or other dispositions of firearms to nonlicensees in a format prescribed by 27 CFR 478.125(e). Reference 27 CFR 478.123(d).

Records of sales or other dispositions must be maintained for a minimum of 20 years after the sale or disposition occurs. Reference 27 CFR 478.129(d).

However, in ATF Ruling 2010–8, ATF held that, if certain conditions were met, the consolidation of records of manufacture or other acquisition of firearms by a licensed manufacturer with corresponding firearms disposition records was permissible. All firearms acquisition and disposition records maintained pursuant to ATF Ruling 2010–8 must be maintained permanently by the licensed manufacturer.

If licensed manufacturers want to maintain records differently than the requirements of 27 CFR 478.123 or pursuant to ATF Ruling 2010–8, they must obtain a recordkeeping variance from ATF prior to doing so. All approved variances must be maintained permanently until the manufacturer is out of business.

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## Clarification: Firearms Shipments via Common or Contract Carrier

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ATF has received questions pertaining to a previous newsletter article. In the November 2012 ATF FFL Newsletter, there is an article titled “*Firearms Shipments via Common or Contract Carrier*.” This article includes the statement that under Federal law, any person intending to ship a firearm or ammunition via contract or common carrier must provide written notice to the carrier that a firearm or ammunition is being shipped.

ATF intended the article to pertain to the shipment of firearms to unlicensed individuals. Pursuant to 27 CFR 478.31, written notification is required only if it is being shipped to any person other than a licensee.

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## Brokering of Firearms/Drop Shipments

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Individuals who engage in the business of brokering firearms by buying firearms from a manufacturer, selling those firearms to a licensed third person, and then arranging with the manufacturer to have the firearms dropped shipped to the purchaser, are required to obtain a Federal firearms license.

ATF has experienced difficulty in tracing firearms in instances where drop shipments have been made to third parties, and where the recordkeeping procedures employed by the three licensed parties do not lend themselves to easy and fast tracing of firearms. ATF is providing recordkeeping procedures for “drop shipments” as set forth below:

- Licensee “A” orders firearms from licensee “B.”
- Licensee “B” transmits the order to licensee “C” for direct shipment (drop shipment) to licensee “A.”
- Licensee “A” must provide licensee “C” a certified copy of its Federal firearms license prior to the shipment of the order.
- Licensee “C” shall enter the disposition of the firearms into his or her acquisition and disposition (A&D) record to licensee “A.”
- Licensee “A” shall enter the acquisition of the firearms into his or her A&D record from licensee “C.”
- Licensee “B” makes **NO** entries into his or her A&D record because he or she does not take physical possession of the firearms.

See ATF Procedure 75–3 for further information on the drop shipment of firearms.

If you would like a determination whether your business activity may require a Federal firearms license, you may contact your local ATF office ([www.atf.gov/field](http://www.atf.gov/field)) or the Firearms Industry Programs Branch at [fipb@atf.gov](mailto:fipb@atf.gov).