



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of the Director

Washington, DC 20226

18 U.S.C. 922(c): NON-OVER-THE-COUNTER SALES OF FIREARMS
18 U.S.C. 922(t): NICS REQUIREMENTS AND EXCEPTIONS
27 CFR 478.96: MAIL ORDER SALES OF FIREARMS (IN-STATE, NICS EXEMPT)
27 CFR 478.102: NICS REQUIREMENTS AND EXCEPTIONS

Recordkeeping procedure for non-over-the-counter firearm sales by licensees to unlicensed in-state residents that are NICS exempt.

ATF Proc. 2013-2

Purpose: This ATF procedure gives guidance to licensed importers, manufacturers, and dealers (licensees) on how to record the sale of a firearm to an unlicensed person who:

- a) Has a valid alternate permit or otherwise is exempt from National Instant Criminal Background Check System (NICS) requirements;
- b) Resides in the same State as the licensee; and
- c) Does not appear in person at the licensee's business premises.

Background: Title 18, United States Code (U.S.C.), section 922(c)(1), states that, in any case not otherwise prohibited by 18 U.S.C. chapter 44, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person (other than another licensed importer, manufacturer, or dealer) who does not appear in person at the licensee's business premises only if the transferee submits to the transferor a sworn statement in the following form:

Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are _____.

Signature _____

Date _____

The statement must contain blank spaces to attach a true copy of any permit or other information required pursuant to such State statute or published ordinance.

The corresponding regulation at 27 CFR 478.96(b) states, in relevant part, that a licensee may sell a firearm that is not subject to the provisions of 478.102(a) to a nonlicensee who does not appear in person at the licensee's business premises if the nonlicensee is a resident of the same State in which the licensee's business premises are located, and the nonlicensee furnishes to the licensee the firearms transaction record, Form 4473 as required by 478.124. The regulation further requires the nonlicensee to attach to the Form 4473 a true copy of any permit or other information required pursuant to any statute of the State and published ordinance applicable to the locality in which he/she resides.

Furthermore, 18 U.S.C. 922(t)(1) and its implementing regulations at 27 CFR 478.102(a) require a licensee to contact NICS for a background check prior to completion of a firearm transfer to an unlicensed person, and verify the identity of that person by examining a valid identification document. The statute at subsection 922(t)(3) and implementing regulation at subsection 478.102(d) provide exceptions to these requirements: (1) if the transferee has presented a permit or license ("alternate permit") that: (i) allows the transferee to possess, acquire, or carry a firearm; (ii) was issued not more than 5 years earlier by the State in which the transfer is to take place; and (iii) the law of the State provides that such a permit or license is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by the transferee would be in violation of Federal, State, or local law, and includes completion of a NICS background check; (2) the firearm is subject to the provisions of the National Firearms Act and has been approved for transfer under 27 CFR Part 479; or (3) on application of the licensee, in accordance with 27 CFR 478.150, the ATF Director has certified that running a NICS background check is impracticable due to the geographical location of the licensee.

ATF recognizes that Form 4473, Part I – Over-the-Counter, does not include the sworn statement required by 18 U.S.C. 922(c)(1), and that licensees who sell firearms subject to section 478.96(b) requirements without that statement would not be in compliance with Federal law. For this reason, ATF authorizes this procedure to use Form 4473, Part I, for non-over-the-counter firearm sales by licensees to unlicensed in-state residents that are NICS exempt.

Procedure: A licensed importer, manufacturer, or dealer may record and conduct the sale of a firearm to a resident of the same state who does not appear in person at the licensed business premises using ATF Form 4473, Part I, *provided* the transfer is exempt from the NICS requirements, pursuant to 18 U.S.C. 922(t)(3) and 27 CFR 478.102(d), and the procedures below are followed:

1. The buyer must properly complete and execute Section A of ATF Form 4473, Part I, as if the firearm was being transferred over-the-counter;
2. Pursuant to 18 U.S.C. 922(c)(1) and 27 CFR 478.96(b), the buyer must execute and attach to the Form 4473 a sworn statement in the format prescribed by 18 U.S.C. 922(c)(1) (set forth above), and, as applicable, a true copy signed and dated by the buyer

of the valid alternate permit that qualifies as a NICS exception, and any other documentation required pursuant to State statute or published ordinance;

3. The buyer must send the original ATF Form 4473 and attachment(s) to the licensee. The licensee must then complete the remaining portions of the form as if the firearm was being transferred over-the-counter;
4. The licensee must document the applicable NICS exception in Section B of the ATF Form 4473;
5. The licensee is permitted to omit recording identifying information (type of identification, number on identification, expiration date of identification) in Section B. However, if the buyer is a nonimmigrant alien, the licensee must record the type of documentation showing an exception to the nonimmigrant alien prohibition. This supporting documentation must be attached to the ATF Form 4473;
6. Neither the licensee nor the purchaser should complete Section C of the ATF Form 4473;
7. The licensee must complete Section D. In addition, the licensee must record the words "Non over the counter transaction" at the top of the first page of the ATF Form 4473;
8. Pursuant to 18 U.S.C. 922(c)(2) and 27 CFR 478.96(b), the licensee must, prior to shipment or delivery of the firearm, forward by registered or certified mail (return receipt requested) a copy of the Form 4473, sworn statement, and valid alternate permit or other required information to the chief law enforcement officer (CLEO) named on such statement;
9. Pursuant to 18 U.S.C. 922(c)(3) and 27 CFR 478.96(b), the licensee must delay shipment or delivery of the firearm for at least seven days following receipt by the licensee of either the return receipt evidencing delivery of the copy of the Form 4473, to the CLEO, or the return of the copy of the Form 4473 to the licensee due to refusal of the CLEO to accept the same in accordance with U.S. Postal Service regulations;
10. The licensee must retain the original Form 4473, Part I, sworn statement, NICS exemption documentation, and evidence of receipt or rejection of delivery of the information sent to the CLEO as a part of the records required to be kept by the licensee under the provisions of 27 CFR Subpart H, including 478.129 and 478.131;
11. The licensee must record the firearms disposition in the licensee's acquisition and disposition record in accordance with 27 CFR 478.122, 478.123, or 478.125 (as applicable); and
12. The licensee must report any multiple sales or other disposition of pistols or revolvers on ATF Form 3310.4 in accordance with 27 CFR 478.126a. In addition, the licensee must report any multiple sales or other disposition of certain rifles on ATF Form 3310.12 in accordance with 18 U.S.C. 923(g)(5)(A), as applicable.

Licensees are reminded of their responsibility to ensure the accuracy and completeness of all required records, and to maintain such records on their licensed premises available for inspection. Failure to abide by any of these procedures may result in a violation of 18 U.S.C. 922(b)(5), 922(c), 922(m), 923(g), and/or 924(a)(3)(B), and corresponding regulations.

Inquiries: Inquiries concerning this procedure should refer to its number and be addressed to the Firearms Industry Programs Branch at (202) 648-7190 or fipb@atf.gov.

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B. Todd Jones
Director