



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Office of the Director

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ATF PROCEDURE 2020-2

**Recordkeeping and Background Check Procedure for Facilitation of Private Party
Firearms Transfers**

18 U.S.C. 922(b):	UNLAWFUL ACTS
18 U.S.C. 922(t)(1):	NICS REQUIREMENTS AND EXCEPTIONS
18 U.S. C. 922(z):	SECURE GUN STORAGE OR SAFETY DEVICE
27 CFR 478.58:	STATE OR OTHER LAW
27 CFR 478.102:	SALES OR DELIVERIES OF FIREARMS ON AND AFTER NOVEMBER 30, 1998
27 CFR 478.122:	RECORDS MAINTAINED BY IMPORTERS
27 CFR 478.123:	RECORDS MAINTAINED BY MANUFACTURERS
27 CFR 478.124:	FIREARMS TRANSACTION RECORD
27 CFR 478.125:	RECORD OF RECEIPT AND DISPOSITION
27 CFR 478.126a:	REPORTING MULTIPLE SALES OR OTHER DISPOSITION OF PISTOLS AND REVOLVERS
27 CFR 478.129:	RECORD RETENTION

Purpose: The purpose of this Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) procedure is to set forth the recordkeeping and National Instant Criminal Background Check System (NICS) procedures for Federal firearms licensees (FFLs) who facilitate the transfer of firearms between private unlicensed individuals. This procedure does not apply to pawn transactions, consignment sales, or repairs.

Background: Title 18, United States Code (U.S.C.), section 922(t)(1)(A) requires FFLs to contact NICS before completion of the transfer of a firearm to an unlicensed person. Title 27, Code of Federal Regulations (CFR), sections 478.102, 478.122, 478.123, 478.124, and 478.125, set forth the recordkeeping and background check requirements for FFLs conducting firearms transactions. For an FFL to transfer a firearm in compliance with the recordkeeping and background check regulations, the FFL must take the firearm into inventory and record it as an acquisition in the FFL's acquisition and disposition (A&D) record.

Unlicensed persons do not have the ability to use NICS to conduct a background check on a prospective transferee/buyer and, consequently, have no comprehensive way to confirm whether the transferee/buyer is prohibited from receiving or possessing a firearm. In addition, several states have laws that prohibit the transfer of firearms between private individuals unless a NICS check is conducted on the transferee/buyer.

On March 15, 2013, ATF issued ATF Procedure 2013-1, providing guidance for FFLs who facilitate private party firearms transfers. In November of 2016, ATF issued *Facilitating Private Sales: A Federal Firearms Licensee Guide*, encouraging FFLs to facilitate the transfer of firearms between private individuals to enhance public safety and assist law enforcement. On July 28, 2017, ATF issued ATF Procedure 2017-1, superseding ATF Procedure 2013-1, to address revisions to the ATF Form 4473 (Form 4473), Firearms Transaction Record, that went into effect January 16, 2017. This new procedure addresses the updated Form 4473, effective May 2020, and supersedes ATF Procedure 2017-1.

Procedure: For an FFL to comply with the recordkeeping and background check requirements while facilitating firearm transfers between private parties, the procedures below must be followed when the private party transferor (seller) takes a firearm to an FFL with the prospective transferee/buyer to conduct a transaction. With respect to the completion of the ATF Form 4473, the FFL is considered the transferor/seller.

I. Procedure In All Cases

- A. The FFL must complete and execute Section A of the Form 4473, including checking the box in Item 8, before the transferee/buyer completes Section B;
- B. The prospective transferee/buyer must complete Section B of the Form 4473;
- C. If the FFL has no reasonable cause to believe the transferee/buyer is prohibited from receiving or possessing a firearm, the FFL must complete Section C of the Form 4473, conduct a NICS check on the prospective transferee/buyer, and record the response provided by NICS or the appropriate State agency;
- D. The FFL must complete Section E; and
- E. The FFL must retain the Form 4473 in accordance with 27 CFR 478.129(b).

II. Procedure in Specific Circumstances

A. Immediate “Proceed” Transactions:

If the FFL receives an immediate “proceed” response from NICS, the FFL transferring a firearm must:

1. Enter the firearm into the FFL's A&D record as an acquisition from the private party seller in accordance with 27 CFR 478.122, 478.123, and 478.125;
2. Complete Section E of the Form 4473, and transfer the firearm to the transferee/buyer. If the transfer of the firearm takes place on a different day from the date that the prospective transferee/buyer signed Section B, the FFL must again check the photo identification of the prospective transferee/buyer at the FFL's licensed business premises, and the prospective transferee/buyer must complete the recertification in Section D of the Form 4473 immediately prior to the transfer of the firearm; and
3. Record the disposition of the firearm in the FFL's A&D record not later than seven days following the transaction.

B. "Denied" or "Cancelled" Transactions

If the FFL receives a "denied" or "cancelled" response from NICS, the firearm cannot be transferred to the prospective transferee/buyer. If the private party seller has not relinquished possession to the FFL, the private party seller may leave the business premises with the firearm, and the FFL will not enter the firearm as an acquisition in the FFL's A&D record.

If, for whatever reason, the private party seller leaves the firearm in the exclusive possession of the FFL at the FFL's business premises, the FFL must:

1. Enter the firearm in the FFL's A&D record as an acquisition from the private party seller not later than the close of the next business day following the date the firearm is left with the FFL, in accordance with 27 CFR 478.122, 478.123, and 478.125;
2. Complete a Form 4473 to return the firearm to the private party seller;
3. Conduct a NICS background check on the private party seller, and receive either a "proceed" response, or no response after three business days (or appropriate State waiting period), prior to returning the firearm; and
4. Record the return as a disposition in the FFL's A&D record not later than seven days following the transaction.

C. "Delayed" Transactions Without a Subsequent Denial

If the FFL receives a "delayed" response from NICS, the private party seller has the option to:

1. Leave the FFL's business premises with the firearm; or

2. Allow the FFL to retain the firearm at the business premises (with the FFL's consent) pending a response from NICS, or until the passage of three business days or applicable State waiting period.

If the private party seller chooses to leave the FFL's premises with the firearm, the FFL does not need to record the firearm as an acquisition in the FFL's A&D record. However, the private party seller must return the firearm to the FFL's business premises prior to transfer of the firearm to the prospective transferee/buyer.

If the private party seller chooses to allow the FFL to retain the firearm at the FFL's business premises, the FFL is required to take the firearm into inventory and record the firearm as an acquisition in the FFL's A&D record not later than the close of the next business day following the date the firearm is left with the FFL in accordance with 27 CFR 478.122, 478.123, and 478.125. If NICS later issues a "proceed," or no response is received after three business days (or appropriate State waiting period), and the FFL chooses to proceed with the transfer, the private party seller need not return to the FFL's business premises for transfer of the firearm to the transferee/buyer.

If the transfer of the firearm takes place on a different day from the date that the prospective transferee/buyer signed Section B, the FFL must again check the photo identification of the prospective transferee/buyer at the FFL's licensed business premises, and the prospective transferee/buyer must complete the recertification in Section D of the Form 4473. The FFL must complete Section E of the Form 4473 prior to transferring the firearm to the prospective transferee/buyer. The FFL must file the form as prescribed by 27 CFR 478.124(b). In addition, the FFL must record in the FFL's A&D record the disposition of the firearm to the transferee/buyer not later than seven days following the transaction.

If, for whatever reason, the transfer is not completed, the FFL must retain the Form 4473 in accordance with section 478.129(b).

If the firearm(s), having been left with the FFL, are returned to the original owner because the FFL or original owner decides not to transfer the firearm, adhere to the steps outlined in Section B, items 1-4.

D. Delayed Transactions With a Subsequent Denial

If the FFL receives a "denied" response from NICS prior to transfer of the firearm, the firearm cannot be transferred to the prospective transferee/buyer.

If the private party seller has chosen to allow the FFL to retain the firearm pending NICS approval, the FFL and the private party seller must complete a Form 4473 prior to returning the firearm to the private party seller.

The FFL must also conduct a NICS background check on the private party seller and receive a “proceed” response, or no response after three business days (or appropriate State waiting period), prior to returning the firearm. The FFL must also record the return as a disposition in the FFL’s A&D record not later than seven days following the transaction.

III. Additional Requirements

A. Secure Handgun Storage or Safety Devices

The FFL must provide a secure gun storage or safety device for each handgun the FFL transfers pursuant to 18 U.S.C. 922(z). The FFL is, therefore, generally required to provide a secure gun storage or safety device upon the transfer of a handgun to a private party transferee/buyer, or upon return of a handgun to a private party seller. The FFL is not required to provide the private party seller with a secure gun storage or safety device if the private party seller does not relinquish exclusive dominion or control of the firearm to the FFL.

B. Reports of Multiple Sale or Other Disposition of Pistols and Revolvers

As provided by 27 CFR 478.126a, the FFL must complete an ATF Form 3310.4 and report all transactions in which an unlicensed person acquires, at one time or during five consecutive business days, two or more pistols or revolvers. The form is not required when the pistols or revolvers are returned to the same person from whom they were received.

C. Reports of Multiple Sale or Other Disposition of Certain Rifles

All applicable FFLs and pawnbrokers located in Arizona, California, New Mexico, and Texas must complete an ATF Form 3310.12 and report all transactions in which an unlicensed person acquires, at one time or during five consecutive business days, two or more semi-automatic rifles larger than .22 caliber (including .223/5.56 caliber) with the ability to accept a detachable magazine. The form is not required when the rifles are returned to the same person from whom they were received.

D. NFA Firearms

Transfers of National Firearms Act firearms may be accomplished only pursuant to the manner outlined in Subpart F, Part 479, Title 27, Code of Federal Regulations.

E. State and Local Law

An FFL facilitating private party firearms transfers must comply with all applicable State laws and local ordinances. As provided by 27 CFR 478.58, a Federal firearms license confers no right or privilege to conduct business or activity contrary to State or other law. It is unlawful for an FFL to sell or deliver

any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or published ordinance applicable at the place of sale, delivery, or other disposition. See 18 U.S.C. 922(b)(2). Compliance with the provisions of any State or other law affords no immunity under Federal law or regulations.

F. Out-of-State Residency and Underage Transactions

Private party firearm transfers involving a transferee/buyer the FFL knows or has reasonable cause to believe does not reside in the FFL's State, or underage persons (*i.e.*, under 18 for all firearms, or 21 for firearms other than a shotgun or rifle), must comply with all interstate controls and age requirements under the Gun Control Act, 18 U.S.C. 921 *et. seq.* Except in limited circumstances, FFLs cannot transfer firearms under these circumstances. See 18 U.S.C. 922(b)(1), (3).

This procedure supersedes ATF Procedure 2017-1.

Date approved: September 2, 2020

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Acting Director

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