

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Attention: Chapter 2 Compliance Unit

Petition to the Office of Administrative Law

Re: Bureau of Firearms Non-Rosterable Frames Underground Regulation

From: Gene Hoffman, Jr., Chairman, The Calguns Foundation

Date: February 26, 2009

1. Identifying Information:

Gene Hoffman, Jr., Chairman
The Calguns Foundation
3200 Bridge Parkway Suite 202C
Redwood City, CA 94065
650-275-1015
hoffmang@calgunsfoundation.org

2. State agency or department being challenged:

California Department of Justice, Bureau of Firearms ("BoF")

3. Description of the Underground Regulation and the Department Action By Which it was Issued

BoF is promulgating an Underground Regulation by taking the official position that the bare "frame or receiver"¹ of a handgun is an "unsafe handgun." This is in clear contravention of the applicable statutes, as outlined below.

This official position is exemplified in a letter dated September 9, 2008 to Mr. Lawrence Gaglio of CCF RaceFrames, LLC of Richmond Virginia (Attachment A hereto, hereinafter, "Frames Letter"). That letter states, in pertinent part:

¹ For a visual representation of the difference between a bare "frame or receiver" of a handgun as compared to an actual handgun, please see the photographs in Attachment B hereto.

In the case of a metal replacement repair frame for a pistol, a dealer would be compelled to consider such a firearm to be a “handgun” because it is a “firearm” for purposes of Section 12071 that is also “capable of being concealed upon the person.” (§12001, subd. (a)(2).) **Such a metal replacement repair frame for a pistol would be considered an “unsafe handgun” because multiple criteria set forth in Section 12126, subdivision (b) would be present. Therefore, it would be unlawful to import into the state for sale, keep for sale, offer or expose for sale, give or lend such a metal replacement repair frame.** (§ 12125, subd. (a).)

Attachment A, para 6, [emphasis added]

4. The Legal basis for believing that the guideline, criterion, bulletin, provision in a manual, instruction, order, standard of general application, or other rule or procedure is a regulation as defined in Section 11342.600 of the Government Code and that no express statutory exemption to the requirements of the APA is applicable:

The California Administrative Procedures Act, California Government Code §11400 *et seq.*, defines “regulation” to mean “every rule, regulation, order, or standard of general application . . . adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it” (§11342.600).

Furthermore, “[a] regulation subject to the APA . . . has two principal identifying characteristics. . . . First, the agency must **intend its rule to apply generally**, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. . . . Second, the rule must ‘**implement, interpret, or make specific** the law enforced or administered by the agency, or govern the agency’s procedure.’ ” *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 571 (1996) (emphasis added, internal citations omitted).

A) The “Frames Letter” is a Regulation

The “Frames Letter” is a “regulation” within the meaning of §11342.600, as it attempts to interpret, and make specific the Penal Code §12125² and §12126³ by incorrectly interpreting the terms “handgun” and “unsafe handgun.”

² PC §12125 (a) “Commencing January 1, 2001, any person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year.”

³ PC §12126 “As used in this chapter, “unsafe handgun” means any pistol, revolver, or other firearm capable of being concealed upon the person, as defined in subdivision (a) of Section 12001, for which any of the following is true...”

B) The “Frames Letter” Applies Generally

This rule applies generally, as it applies to all manufacturers, buyers, and sellers of the frame or receiver of a handgun who import into or sell in the State, therefore satisfying the first element of *Tidewater*.⁴

C) The “Frames Letter” Purports to Implement, Interpret and Make Specific California Penal Code §12125 and §12126

The “Frames Letter” is an attempt to promulgate an interpretation of the term “handgun” and “unsafe handgun” in contradiction to the plain text of the Penal Code. This is an attempt to restrict the importation or sale of the frame or receiver of a handgun, which is beyond the regulatory scope of the Penal Code delegated to BoF under Penal Code §12125 and §12126.

The interpretation, as stated in the “Frames Letter”, thus attempts to interpret and make specific⁵ the definition of “unsafe handgun” whose import and sale is prohibited in the State by Penal Code §12125.

It does this by ignoring the specific exclusion of Penal Code §12125 from the list of Penal Code Sections in Penal Code §12001(c)⁶ for which the frame or receiver of a handgun shall be considered a firearm, therefore satisfying the second element of *Tidewater*.

No express APA exemption in Government Code §11340.9 applies to the “Frames Letter” and there are no express exemptions to the APA for the BoF in the relevant Penal Code sections.⁷

⁴ The “Frames Letter” applies to all BoF-regulated firearms manufacturers, sellers, and their buyers: “[t]his letter is in response to your letter to the Bureau of Firearms within the California Department of Justice (DOJ) dated June 19, 2008 in which you inquired about the importation to and sale in California of ‘metal replacement repair frame for the Glock pistols’ manufactured by CCF.” (*Attachment A*, para 1).

⁵ “Such a metal replacement repair frame for a pistol would be considered an ‘**unsafe handgun**’ ” (*Attachment A*, para 6, emphasis added)

⁶ As used in Sections 12021, 12021.1, 12070, 12071, 12072, 12073, 12078, 12101, and 12801 of this code, and Sections 8100, 8101, and 8103 of the Welfare and Institutions Code, the term “firearm” includes the frame or receiver of the weapon.

⁷ The Attorney General has certain delegated authority to adopt APA compliant regulations for Penal Code §12125 - §12133 but none provide an exemption for the underground regulation at issue.

5. Legal Basis for why the “Frames Letter” is an underground regulation

A) Background

“Unsafe handguns” generally cannot be sold in California (except in limited cases).

Penal Code §12125 through §12133 define certain handguns as “unsafe handguns.” Handguns that are defined as “unsafe handguns” cannot be imported or sold by licensed manufactures or licensed sellers (with certain limited exceptions). Due to these restrictions, the exact definition of “unsafe handgun” is of paramount importance, since a violation of §12125 *et seq.* carries a substantial criminal penalty.

B) The Penal Code Definition of “Unsafe Handgun” Does Not Include the Bare Frame or Receiver of the Weapon

i.) “Unsafe Handguns” Are Defined By Statute

To determine what an “unsafe handgun” actually is, one simply refers to Section 12126 of the California Dangerous Weapons Control Law. In that section, an “unsafe handgun” is defined as:

[A]ny pistol, revolver, or other firearm capable of being concealed upon the person, as defined in subdivision (a) of Section 12001, for which any of the following is true . . .

Ibid.

ii.) Pistols, Revolvers, or other Firearms Capable of Being Concealed Upon the Person Are Defined by Statute

For guidance on the precise definition of “pistol, revolver, or other firearm capable of being concealed upon the person,” we refer to Section 12001 of the Penal Code.

First, we note that §12001(a)(1) defines a pistol, etc. as:

[A]ny device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, and that has a barrel less than 16 inches in length . . .

Ibid.

Furthermore, we note that Penal Code §12001(c) states:

As used in Sections 12021, 12021.1, 12070, 12071, 12072, 12073, 12078, 12101, and 12801 of this code, and Sections 8100, 8101, and 8103 of the Welfare and Institutions Code, the term “firearm” includes the frame or receiver of the weapon.

Ibid. at (c).

Please note that neither Penal Code §12125 or §12126 appear in the list of Sections for which “the term ‘firearm’ includes the frame or receiver of the weapon.”

Based on the statutory rule of interpretation *expressio unius est exclusio alterius* (“the expression of one thing is the exclusion of another”), the only legally tenable interpretation of the term “unsafe handgun” in PC §12125 – PC §12133 is that the frame or receiver of the weapon cannot be an “unsafe handgun.” This is because none of those sections are referenced in PC §12001(c).

To find that “the frame or receiver of the weapon” is a firearm for purposes of PC §12125 – PC §12133, a court (or BoF) would have to, at a minimum, add the number “12126” to the sections listed within §12001(c) of the Penal Code. Adding language into a statute “violate[s] the cardinal rule of statutory construction that courts must not add provisions to statutes.” (*Security Pacific National Bank v. Wozab* (1990) 51 Cal. 3d 991, 998.) “It is . . . against all settled rules of statutory construction that courts should write into a statute by implication express requirements which the Legislature itself has not seen fit to place in the statute.” (*In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.)⁸

Therefore **the frame or receiver of a handgun is not a firearm for PC §12126** where the term “unsafe handgun” is defined.

iii.) Logic Compels That A Frame or Receiver Can Not Be An “unsafe handgun”

Setting aside the clear statutory interpretation above, logic alone dictates that a bare “frame” can’t be a “handgun” or an “unsafe handgun” for purposes of §12126.

For a handgun to be certified as “not unsafe” it must pass certain specific tests which include a safety device that mandates certain qualities of the firing pin, passing the “firing requirement for handguns,” a chamber load indicator, or a magazine disconnect where appropriate. Bare frames or receivers do not have firing pins. Furthermore, bare frames cannot fire a round. A bare frame or receiver could likely pass the required drop test, but would ultimately fail due to lacking the ability to ever discharge a round. Finally, a frame or receiver generally does not contain a chamber, which is a necessary precondition to having a chamber load indicator, or the capability to retain a magazine, much less disconnect a nonexistent firing mechanism.⁹

⁸ See *In re Sabrina H.* (2007) , Cal. App. 4th

⁹ Again, see the visual depiction in Attachment B.

BoF's interpretation that the frame or receiver must be certified as "not unsafe" to be able to import, sell, give, or lend leads to other logical inconsistencies. If a frame or receiver must be separately certified as "not unsafe," then any Californian (whose otherwise certified "not unsafe" handgun suffers a defect or failure in the frame or receiver) would have no legal way to import a frame to repair the handgun.

The problem becomes significantly worse if, as often occurs, the handgun has been removed from the list of "not unsafe" handguns due to the manufacturer's failure to remit the annual fee to remain on the "not unsafe" list. In this situation, there is no way whatsoever to legally repair the formerly "not unsafe" handgun, since the replacement frame needed to make the repairs could not legally be acquired and brought into the state. Additionally, Federal law generally precludes a California resident from acquiring complete firearms or their frames or receivers outside of California without transferring them through a licensed California firearms dealer. Thus, a Californian would not even have the recourse of travelling outside of California to repair his handgun by acquiring a replacement frame.

iv.) The Analysis of Federal Law is Irrelevant, Incorrect, and Cuts the Other Way

From the Frames Letter:

A frame or receiver of a firearm is considered to be a "firearm" for purposes of the federal Gun Control Act. (18 U.S.C. § 921, subd. (a)(3).) As you point out in your letter, regulations of the federal Bureau of Alcohol, Tobacco, and Firearms clarify that any weapon or frame of a weapon which can readily be converted to expel a projectile by the actions of an explosive is a "firearm." (27 C.F.R. § 478.11.)

BoF makes a fundamental error when attempting to rely upon Federal Law to interpret California state law. If California law were silent on the definition of "handgun" or "unsafe handgun," then Federal law might have some bearing. However, as explained above, California law specifically outlines the sections for which the frame or receiver of the weapon shall be considered a firearm in the Penal Code - and therefore Federal law is not relevant to the definition of "unsafe handgun" under California law.

Further, Federal law actually does not consider the frame or receiver of the weapon to be a handgun. In August 2008, the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("BATFE") updated their Form 4473 (attached as Attachment C), which all gun sellers and buyers complete for every firearm transaction conducted through a Federal Firearms Licensee. One of the updates to Form 4473 was to clarify that the frame or receiver of a handgun or any other firearm should be marked as an "*Other Firearm (Frame, Receiver, etc. See Instructions for Question 18)*"¹⁰ - and not as a "*Handgun*" - in box 18 of the updated Form 4473. In the

¹⁰ "Question 18. Type of Firearm(s): Check all boxes that apply. "Other" refers to frames, receivers and other firearms that are not handguns or long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell, of National Firearms Act (NFA) firearms. [¶] If a frame or receiver can only be made into a long gun (*rifle or shotgun*), it is still a frame or receiver not a handgun or long gun. However, they are still 'firearms' by

“Instructions for Question 18”, BATFE reminds their licensees that the sale of multiple frames or receivers does not trigger the usual Federal requirement to report the sale of multiple pistols or revolvers to an unlicensed person,¹¹ as the frame or receiver is not considered a pistol or revolver and thus not a handgun under Federal law.

Therefore BoF is wrong as a matter of law that Federal law considers the frame or receiver of the weapon to be a handgun, when it in fact does not consider the frame or receiver to be a handgun, further undermining the BoF’s supposed legal basis for the underground regulation.

6. The petition raises an issue of considerable public importance requiring prompt resolution.

Manufacturers, buyers and sellers of the frames or receivers of handguns are being illegally restrained from buying, selling or acquiring parts that are not controlled by state law. Owners of handguns are suffering from a constructive taking in the case where the underground regulation prohibits them from repairing their legally owned property.

Further, the underground regulation is an illegal restraint of interstate commerce not actually approved by the legislature or delegated by the Federal Government.

7. Attachments

Attached, as Attachment A hereto, is a true and correct copy of the “Frames Letter.”
Attached, as Attachment B hereto, are photos of a bare frame or receiver and a handgun
Attached, as Exhibit C hereto, is a true and correct copy of Form 4473 adopted August 2008.

8. Certification

I certify that I have submitted a copy of this petition and all its attachments to:

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definition, and subject to the same GCA limitations as any other firearms. See Section 921(a)(3)(b). 18 U.S.C. Section 922(b)(1) makes it unlawful for a licensee to sell any firearm other than a shotgun or rifle to any person under the age of 21. Since a frame or receiver for a firearm, to include one that can only be made into a long gun, is a ‘firearm other than a shotgun or rifle,’ it cannot be transferred to anyone under the age of 21. Also note that multiple sales forms are not required for frames or receivers of any firearms, or pistol grip firearms, since they are not ‘pistols or revolvers’ under Section 923(g)(3)(a).”

¹¹ 18 U.S.C. 923(g)(3)(a): “Each licensee shall prepare a report of multiple sales or other dispositions whenever the licensee sells or otherwise disposes of, at one time or during any five consecutive business days, two or more pistols, or revolvers, or any combination of pistols and revolvers totalling two or more, to an unlicensed person. The report shall be prepared on a form specified by the Attorney General and forwarded to the office specified thereon and to the department of State police or State law enforcement agency of the State or local law enforcement agency of the local jurisdiction in which the sale or other disposition took place, not later than the close of business on the day that the multiple sale or other disposition occurs.”

Director
Bureau of Firearms
4949 Broadway
Sacramento, CA 95820
(916) 263-4887

I certify that all of the above information is true and correct to the best of my knowledge.

/s/

Gene Hoffman, Jr.
Chairman
The Calguns Foundation

February 26, 2009

Date

ATTACHMENT A



DIVISION OF LAW ENFORCEMENT
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
(916) 263-0699
Facsimile: (916) 263-0676

September 9, 2008

Mr. Lawrence R. Gaglio
CCF RaceFrames LLC
P.O. Box 29009
Richmond VA 23242

Re: Importation of Handgun Frames into the State of California

Dear Mr. Gaglio:

This letter is in response to your letter to the Bureau of Firearms within the California Department of Justice (DOJ) dated June 19, 2008 in which you inquired about the importation to and sale in California of "metal replacement repair frame for the Glock pistols" manufactured by CCF.

California law makes it a crime to import into the state for sale, keep for sale, offer or expose for sale, give or lend any "unsafe handgun." (California Penal Code¹, § 12125, subd. (a).) The definition of the phrase "unsafe handgun" varies, depending on whether the handgun is a revolver, or a pistol. (§ 12126, subds. (a), (b).) A pistol is defined as an "unsafe handgun" if any of the criteria set forth in Section 12126, subdivision (b) are present, including the following:

- (1) It does not have a positive manually operated safety device, as determined by standards relating to imported guns promulgated by the federal Bureau of Alcohol, Tobacco, and Firearms.
- (2) It does not meet the firing requirement for handguns pursuant to Section 12127.
- (3) It does not meet the drop safety requirement for handguns pursuant to Section 12128.
- ...
- (5) Commencing January 1, 2007, for all center fire semiautomatic pistols that are not already listed on the roster pursuant to Section 12131, it does not have both a chamber load indicator and if it has a detachable magazine, a magazine disconnect mechanism.
- (6) Commencing January 1, 2006, for all rimfire semiautomatic pistols that are not already listed on the roster pursuant to Section 12131, it does not have a magazine disconnect mechanism, if it has a detachable magazine.

¹ All statutory references are to the California Penal Code, unless otherwise indicated.

A pistol must be tested and approved by a DOJ-certified handgun testing laboratory before it can be approved for sale in California. (§ 12130.) A handgun that is tested and approved is eligible for listing on DOJ's roster of handguns that have been determined "not unsafe" and approved for sale to the public. (§ 12131(a).)

When a firearm is sold in California, the firearm dealer of the firearm must submit a Dealer's Record of Sale (DROS) containing information about the firearm and the prospective purchaser to DOJ. (§ 12076, subd. (a).) The dealer must determine whether the firearm is a handgun or a firearm *other than* a handgun at the time of submitting the DROS because the dealer's duties vary depending upon what type of firearm is sold. (See §§ 12071, 12072, 12077, 12078, 1280.)

A frame or receiver of a firearm is considered to be a "firearm" for purposes of the federal Gun Control Act. (18 U.S.C. § 921, subd. (a)(3).) As you point out in your letter, regulations of the federal Bureau of Alcohol, Tobacco and Firearms clarify that any weapon or frame of a weapon which can readily be converted to expel a projectile by the action of an explosive is a "firearm." (27 C.F.R. § 478.11.) Likewise, California law specifies that for purposes of the sections governing the sale of firearms by licensed firearm dealers, the frame or receiver is considered to be a "firearm." (§ 12001, subd. (c).)

In the case of a metal replacement repair frame for a pistol, a dealer would be compelled to consider such a firearm to be a "handgun" because it is a "firearm" for purposes of Section 12071 that is also "capable of being concealed upon the person." (§ 12001, subd. (a)(2).) Such a metal replacement repair frame for a pistol would be considered an "unsafe handgun" because multiple criteria set forth in Section 12126, subdivision (b) would be present. Therefore, it would be unlawful to import into the state for sale, keep for sale, offer or expose for sale, give or lend such a metal replacement repair frame. (§ 12125, subd. (a).)

In your letter, you requested "instruction on obtaining a variance as described above." While it is generally unlawful to import into the state or to sell a handgun in California unless the handgun is "not unsafe," there are several exceptions to the prohibition. (§§ 12125, subd. (a), 12132.) None of the exceptions appear to allow the sale to the public in California of a metal replacement repair frame of a handgun for purposes of repair of a different handgun. Furthermore, DOJ does not have the legal authority to grant a "variance" from the unsafe handgun requirements for a specific model of handgun.

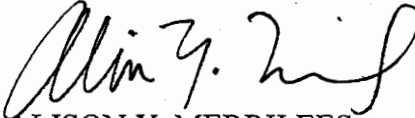
You also indicated that you would like to "submit [your] frames (completed with original Glock components) to one of the testing laboratories listed on California DOJ's website." DOJ regulations allow "only the manufacturer/importer of a handgun model" to submit a handgun for testing to a DOJ-certified testing laboratory. (Cal. Code Regs., tit. 11, § 4059, subd. (c).) In theory, you could manufacture a new model of pistol, using the frame that is manufactured by your company, and submit the model for testing to a

Mr. Gaglio
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DOJ-certified laboratory. In such a case, the pistol would have to comply with all of the requirements set forth in Section 12130.

I hope this information is helpful. Please feel free to contact me if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Y. Merrilees", written in a cursive style.

ALISON Y. MERRILEES
Deputy Attorney General
Bureau of Firearms

For EDMUND G. BROWN JR.
Attorney General



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Richmond, VA 23242 USA



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larry@ccfraceframes.com
www.ccfraceframes.com

Chief Wilfredo Cid
Bureau of Firearms
4949 Broadway
Sacramento, CA 95820

June 19, 2008

Re: CCF RaceFrames LLC alloy repair / replacement
frames for Glock pistols

Chief Cid,

CCF RaceFrames LLC manufactures a metal replacement repair frame for the Glock pistols. These frames are considered, by BATF regulations, the firearm "in and of themselves" and are accordingly serialized.

As I interpret the California Dept of Justice regulations, our frames, as firearms per se, are not eligible for sale in California unless submitted for evaluation and approval. As we do not manufacture a complete functioning pistol (nor will we), it is physically impossible to satisfy the new criteria, ie "loaded chamber indicator" and the "empty magwell de-activation mechanism".

As our frames are intended **solely for use as "repair / replacement" frames** for the Glock series pistols, is there an allowance for our frames to be tested & evaluated to the same design criteria the Glock pistols were originally tested & approved under?

If so, I would appreciate instruction on obtaining a variance as described above, so we can submit our frames (completed with original Glock components) to one of the testing laboratories listed on California DoJ's website.

Should you wish to view our product's details, I have enclosed one of information flyers and further details are available at our website: www.ccfraceframes.com.

I do appreciate your assistance and time in this matter.

Sincerely,

Lawrence R. Gaglio
CCF RaceFrames LLC.

TAKING PERFECTION TO THE NEXT LEVEL



ALLOY FRAMES FOR GLOCKS®



CCF RACEFRAMES, LLC RICHMOND, VA (804) 622-4277 WWW.CCFRACEFRAMES.COM

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Attachment B

M1911A1 FRAME



M1911 COMPLETE HANDGUN



ATTACHMENT C

Firearms Transaction Record Part I - Over-the-Counter

WARNING: You may not receive a firearm if prohibited by Federal or State law. The information you provide will be used to determine whether you are prohibited under law from receiving a firearm. Certain violations of the Gun Control Act, 18 U.S.C. §§ 921 *et. seq.*, are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine.

Transferor's Transaction
Serial Number (If any)

Prepare in original only. All entries must be handwritten in ink. Read the Notices, Instructions, and Definitions on this form. "PLEASE PRINT."

Section A - Must Be Completed Personally By Transferee (Buyer)

1. Transferee's Full Name Last Name		First Name		Middle Name (If no middle name, state "NMN")			
2. Current Residence Address (U.S. Postal abbreviations are acceptable. Cannot be a post office box.) Number and Street Address		City		County		State	ZIP Code
3. Place of Birth U.S. City and State		-OR- Foreign Country		4. Height Ft. _____ In. _____	5. Weight (Lbs.)	6. Gender Male <input type="checkbox"/> Female <input type="checkbox"/>	7. Birth Date Month _____ Day _____ Year _____
8. Social Security Number (Optional, but will help prevent misidentification)				9. Unique Personal Identification Number (UPIN) if applicable (See Instructions for Question 9.)			
10. Race (Ethnicity) (Check one or more boxes. See Instructions for Question 10.) <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Asian <input type="checkbox"/> White							
11. Answer questions 11.a. (see exceptions) through 11.i. and 12 (if applicable) by checking or marking "yes" or "no" in the boxes to the right of the questions.							
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Instructions for Question 11.a.) Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.						Yes <input type="checkbox"/>	No <input type="checkbox"/>
b. Are you under indictment or information in any court for a felony , or any other crime, for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)						Yes <input type="checkbox"/>	No <input type="checkbox"/>
c. Have you ever been convicted in any court of a felony , or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)						Yes <input type="checkbox"/>	No <input type="checkbox"/>
d. Are you a fugitive from justice?						Yes <input type="checkbox"/>	No <input type="checkbox"/>
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?						Yes <input type="checkbox"/>	No <input type="checkbox"/>
f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)						Yes <input type="checkbox"/>	No <input type="checkbox"/>
g. Have you been discharged from the Armed Forces under dishonorable conditions?						Yes <input type="checkbox"/>	No <input type="checkbox"/>
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)						Yes <input type="checkbox"/>	No <input type="checkbox"/>
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)						Yes <input type="checkbox"/>	No <input type="checkbox"/>
j. Have you ever renounced your United States citizenship?						Yes <input type="checkbox"/>	No <input type="checkbox"/>
k. Are you an alien illegally in the United States?						Yes <input type="checkbox"/>	No <input type="checkbox"/>
l. Are you a nonimmigrant alien? (See Instructions for Question 11.l.) If you answered "no" to this question, do NOT respond to question 12 and proceed to question 13.						Yes <input type="checkbox"/>	No <input type="checkbox"/>
12. If you are a nonimmigrant alien, do you fall within any of the exceptions set forth in the instructions? (If "yes," the licensee must complete question 20d.) (See Instructions for Question 12.) If question 11.l. is answered with a "no" response, then do NOT respond to question 12 and proceed to question 13.						Yes <input type="checkbox"/>	No <input type="checkbox"/>
13. What is your State of residence (if any)? (See Instructions for Question 13.)		14. What is your country of citizenship? (List/check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.) <input type="checkbox"/> United States of America <input type="checkbox"/> Other (Specify) _____		15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?			

Note: Previous Editions Are Obsolete

**Transferee (Buyer) Continue to Next Page
STAPLE IF PAGES BECOME SEPARATED**

ATF Form 4473 (5300.9) Part I
Revised August 2008

16. Transferee's/Buyer's Signature	17. Certification Date
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18. Type of firearm(s) to be transferred (<i>check or mark all that apply</i>): <input type="checkbox"/> Handgun <input type="checkbox"/> Long Gun <input type="checkbox"/> Other Firearm (<i>Frame, Receiver, etc.</i> (<i>rifles or shotguns</i>) See Instructions for Question 18.)	19. If sale at a gun show or other qualifying event. Name of Event _____ City, State _____
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20a. Identification (e.g., Virginia Driver's license (VA DL) or other valid government-issued photo identification.) (See Instructions for Question 20.a.)				
Issuing Authority and Type of Identification	Number on Identification	Expiration Date of Identification (if any)		
		Month	Day	Year

20c. All Aliens: Type and dates of documents that establish 90-day residency (*e.g., utility bills or lease agreements*). (*See Instructions for Question 20.c.*)

Type(s) of Document	Date(s) of residence indicated on documents

Questions 21, 22, or 23 Must Be Completed Prior To The Transfer Of The Firearm(s) (See Instructions for Questions 21, 22 and 23.)			
21a. Date the transferee's identifying information in Section A was transmitted to NICS or the appropriate State agency: (Month/Day/Year)			21b. The NICS or State transaction number (if provided) was:
Month	Day	Year	

<p>21c. The response initially provided by NICS or the appropriate State agency was:</p> <p><input type="checkbox"/> Proceed <input type="checkbox"/> Delayed <input type="checkbox"/> Denied <i>[The firearm(s) may be transferred on _____ (MDI date provided by NICS) if State law permits (optional)]</i> <input type="checkbox"/> Cancelled</p>	<p>21d. If initial NICS or State response was "Delayed," the following response was received from NICS or the appropriate State agency:</p> <p><input type="checkbox"/> Proceed _____ (date) <input type="checkbox"/> Denied _____ (date) <input type="checkbox"/> Cancelled _____ (date) <input type="checkbox"/> No resolution was provided within 3 business days.</p>
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21e. (Complete if applicable.) After the firearm was transferred, the following response was received from NICS or the appropriate State agency on: _____
(date). ☐ Proceed ☐ Denied ☐ Cancelled

(name)
(number)

23. ☐ No NICS check was required because the buyer has a valid permit from the State where the transfer is to take place, which qualifies as an exemption to NICS *(See Instructions for Question 23.)*

If the transfer of the firearm(s) takes place on a different day from the date that the transferee (*buyer*) signed Section A, the transferee must complete Section C immediately prior to the transfer of the firearm(s). (See *Instructions for Question 24 and 25.*)

24. Transferee's/Buyer's Signature	25. Recertification Date
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Section D - Must Be Completed By Transferor (Seller)

26. Manufacturer and/or Importer <i>(If the manufacturer and importer are different, the FFL should include both.)</i>	27. Model	28. Serial Number	29. Type <i>(pistol, revolver, rifle, shotgun, receiver, frame, etc.) (See instructions for question 29)</i>	30. Caliber or Gauge

30a. Total Number of Firearms <i>(Please handwritten by printing e.g., one, two, three, etc. Do not use numerals.)</i>	30b. Is any part of this transaction a Pawn Redemption? <input type="checkbox"/> Yes <input type="checkbox"/> No
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30c. For Use by FFL *(See Instructions for Question 30c.)*

Complete ATF Form 3310.4 For Multiple Purchases of Handguns Within 5 Consecutive Business Days

31. Trade/corporate name and address of transferor <i>(seller) (Hand stamp may be used.)</i>	32. Federal Firearms License Number <i>(Must contain at least first three and last five digits of FFL Number X-XX-XXXXX.) (Hand stamp may be used.)</i>

The Person Transferring The Firearm(s) Must Complete Questions 33-36. For Denied/Cancelled Transactions, The Person Who Completed Section B Must Complete Questions 33-35.

I certify that my answers in Sections B and D are true, correct, and complete. I have read and understand the Notices, Instructions, and Definitions on ATF Form 4473. On the basis of: (1) the statements in Section A (and Section C if the transfer does not occur on the day Section A was completed); (2) my verification of the identification noted in question 20a (and my reverification at the time of transfer if the transfer does not occur on the day Section A was completed); and (3) the information in the current State Laws and Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form to the person identified in Section A.

33. Transferor's/Seller's Name <i>(Please print)</i>	34. Transferor's/Seller's Signature	35. Transferor's/Seller's Title	36. Date Transferred

NOTICES, INSTRUCTIONS AND DEFINITIONS

Purpose of the Form: The information and certification on this form are designed so that a person licensed under 18 U.S.C. § 923 may determine if he or she may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the buyer of certain restrictions on the receipt and possession of firearms. This form should only be used for sales or transfers where the seller is licensed under 18 U.S.C. § 923. The seller of a firearm must determine the lawfulness of the transaction and maintain proper records of the transaction. Consequently, the seller must be familiar with the provisions of 18 U.S.C. §§ 921-931 and the regulations in 27 CFR Part 478. In determining the lawfulness of the sale or delivery of a long gun *(rifle or shotgun)* to a resident of another State, the seller is presumed to know the applicable State laws and published ordinances in both the seller's State and the buyer's State.

After the seller has completed the firearms transaction, he or she must make the completed, original ATF Form 4473 *(which includes the Notices, General Instructions, and Definitions)*, and any supporting documents, part of his or her permanent records. Such Forms 4473 must be retained for at least 20 years. Filing may be chronological *(by date)*, alphabetical *(by name)*, or numerical *(by transaction serial number)*, as long as all of the seller's completed Forms 4473 are filed in the same manner. **FORMS 4473 FOR DENIED/CANCELLED TRANSFERS MUST BE RETAINED:** If the transfer of a firearm is denied/cancelled by NICS, or if for any other reason the transfer is not complete after a NICS check is initiated, the licensee must retain the ATF Form 4473 in his or her records for at least 5 years. Forms 4473 with respect to which a sale, delivery, or transfer did not take place shall be separately retained in alphabetical *(by name)* or chronological *(by date of transferee's certification)* order.

If you or the buyer discover that an ATF Form 4473 is incomplete or improperly completed after the firearm has been transferred, and you or the

buyer wish to make a record of your discovery, then photocopy the inaccurate form and make any necessary additions or revisions to the photocopy. You only should make changes to Sections B and D. The buyer should only make changes to Sections A and C. Whoever made the changes should initial and date the changes. The corrected photocopy should be attached to the original Form 4473 and retained as part of your permanent records.

Over-the-Counter Transaction: The sale or other disposition of a firearm by a seller to a buyer, at the seller's licensed premises. This includes the sale or other disposition of a rifle or shotgun to a nonresident buyer on such premises.

State Laws and Published Ordinances: The publication (ATF P 5300.5) of State firearms laws and local ordinances ATF distributes to licensees.

Exportation of Firearms: The State or Commerce Departments may require you to obtain a license prior to export.

Section A

Question 1. Transferee's Full Name: The buyer must personally complete Section A of this form and certify *(sign)* that the answers are true, correct, and complete. However, if the buyer is unable to read and/or write, the answers *(other than the signature)* may be completed by another person, excluding the seller. Two persons *(other than the seller)* must then sign as witnesses to the buyer's answers and signature.

When the buyer of a firearm is a corporation, company, association, partnership, or other such business entity, an officer authorized to act on behalf of the business must complete Section A of the form with his or her personal information, sign Section A, and attach a written statement, executed under penalties of perjury, stating: (A) the firearm is being acquired for the use of and will be the property of that business entity and (B) the name and address of that business entity.

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If the buyer's name in question 1. is illegible, the seller must print the buyer's name above the name written by the buyer.

Question 2. Current Residence Address: U.S. Postal abbreviations are acceptable. (e.g., St., Rd., Dr., PA, NC, etc.). Address cannot be a post office box. County and Parish are one and the same.

If the buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his or her permanent duty station is located, but does not reside at his or her permanent duty station, the buyer must list both his or her permanent duty station address and his or her residence address in response to question 2. If you are a U.S. citizen with two States of residence, you should list your current residence address in response to question 2 (e.g., *if you are buying a firearm while staying at your weekend home in State X, you should list your address in State X in response to question 2*).

Question 9. Unique Personal Identification Number (UPIN): For purchasers approved to have information maintained about them in the FBI NICS Voluntary Appeal File, NICS will provide them with a Unique Personal Identification Number, which the buyer should record in question 9. The licensee may be asked to provide the UPIN to NICS or the State.

Question 10. Race (Ethnicity): Any other race or ethnicity that does not fall within those indicated, please select the closest representation.

Question 11.a. Actual Transferee/Buyer: For purposes of this form, you are the actual transferee/buyer if you are purchasing the firearm for yourself or otherwise acquiring the firearm for yourself (e.g., *redeeming the firearm from pawn/retrieving it from consignment, firearm raffle winner*). You are also the actual transferee/buyer if you are legitimately purchasing the firearm as a gift for a third party. **ACTUAL TRANSFEREE/BUYER EXAMPLES:** Mr. Smith asks Mr. Jones to purchase a firearm for Mr. Smith. Mr. Smith gives Mr. Jones the money for the firearm. Mr. Jones is **NOT THE ACTUAL TRANSFEREE/BUYER** of the firearm and must answer "NO" to question 11.a. The licensee may not transfer the firearm to Mr. Jones. However, if Mr. Brown goes to buy a firearm with his own money to give to Mr. Black as a present, Mr. Brown is the actual transferee/buyer of the firearm and should answer "YES" to question 11.a. However, you may not transfer a firearm to any person you know or have reasonable cause to believe is prohibited under 18 U.S.C. § 922(g), (n), or (x). **Please note: EXCEPTION:** If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.

Question 11.b. - 11.i. Definition of Prohibited Person: Generally, 18 U.S.C. § 922 prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who: has been convicted of a misdemeanor crime of domestic violence; has been convicted of a felony, or any other crime, punishable by imprisonment for a term exceeding one year (*this does not include State misdemeanors punishable by imprisonment of two years or less*); is a fugitive from justice; is an unlawful user of, or addicted to, marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance; has been adjudicated mentally defective or has been committed to a mental institution; has been discharged from the Armed Forces under dishonorable conditions; has renounced his or her U.S. citizenship; is an alien illegally in the United States or a nonimmigrant alien; or is subject to certain restraining orders. Furthermore, section 922 prohibits the shipment, transportation, or receipt in or affecting interstate commerce of a firearm by one who is under indictment or information for a felony, or any other crime, punishable by imprisonment for a term exceeding one year.

Question 11.b. Under Indictment or Information or Convicted in any Court: An indictment, information, or conviction in any Federal, State, or local court. An information is a formal accusation of a crime verified by a prosecutor.

EXCEPTION to 11.c. and 11.i.: A person who has been convicted of a felony, or any other crime, for which the judge could have imprisoned the person for more than one year, or who has been convicted of a misdemeanor crime of domestic violence, is not prohibited from purchasing, receiving, or possessing a firearm if: (1) under the law of the jurisdiction where the conviction occurred, the person has been pardoned, the conviction has been expunged or set aside, or the person has had their civil rights (*the right to vote, sit on a jury, and hold public office*) taken away and later restored AND (2) the person is not prohibited by the law of the jurisdiction where the conviction occurred from receiving or possessing firearms. Persons subject to this exception should answer "no" to 11.c. or 11.i., as applicable.

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Question 11.f. Adjudicated Mentally Defective: A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) is a danger to himself or to others; or (2) lacks the mental capacity to contract or manage his own affairs. This term shall include: (1) a finding of insanity by a court in a criminal case; and (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility.

Committed to a Mental Institution: A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution. Please also refer to Question 11.c. for the definition of a prohibited person.

EXCEPTION to 11. f. NICS Improvement Amendments Act of 2007: A person who has been adjudicated as a mental defective or committed to a mental institution is not prohibited if: (1) the person was adjudicated or committed by a **department or agency of the Federal Government**, such as the United States Department of Veteran's Affairs ("VA") (as opposed to a State court, State board, or other lawful State authority); and (2) either: (a) the person's adjudication or commitment for mental incompetency was set-aside or expunged by the adjudicating/committing agency; (b) the person has been fully released or discharged from all mandatory treatment, supervision, or monitoring by the agency; or (c) the person was found by the agency to no longer suffer from the mental health condition that served as the basis of the initial adjudication.

Persons who fit this exception should answer "no" to Item 11.f. This exception does not apply to any person who was adjudicated to be not guilty by reason of insanity, or based on lack of mental responsibility, or found incompetent to stand trial, in any criminal case or under the Uniform Code of Military Justice.

Question 11.h. Definition of Restraining Order: Under 18 U.S.C. § 922, firearms may not be sold to or received by persons subject to a court order that: (A) was issued after a hearing which the person received actual notice of and had an opportunity to participate in; (B) restrains such person from harassing, stalking, or threatening an intimate partner or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. An "intimate partner" of a person is: the spouse or former spouse of the person, the parent of a child of the person, or an individual who cohabitates or cohabitating with the person.

Question 11.i. Definition of Misdemeanor Crime of Domestic Violence: A Federal, State, local, or tribal offense that is a misdemeanor under Federal, State, or tribal law and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with, or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. The term includes all misdemeanors that have as an element the use or attempted use of physical force or the threatened use of a deadly weapon (e.g., *assault and battery*), if the offense is committed by one of the defined parties. (*See Exception to 11.c. and 11.i.*) A person who has been convicted of a misdemeanor crime of domestic violence also is not prohibited unless: (1) the person was represented by a lawyer or gave up the right to a lawyer; or (2) if the person was entitled to a jury, was tried by a jury, or gave up the right to a jury trial. Persons subject to this exception should answer "no" to 11.i.

Question 11.l. "Nonimmigrant Alien": An alien in the United States in a nonimmigrant classification. The definition includes, among others, persons traveling temporarily in the United States for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain foreign workers. The definition does **NOT** include permanent resident aliens.

Sale of Firearms to Legal Aliens: Even if a nonimmigrant alien can establish that he or she has a U.S.-issued alien number or admission number and has resided in a State for at least 90 continuous days immediately prior to the date of

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sale, he or she is prohibited from receiving a firearm unless he or she falls within an exception to the nonimmigrant alien prohibition. (*See Question 11.c. and Exception to 11.l.*) If a nonimmigrant alien claims to fall within one of these exceptions by answering “yes” to question 12, he or she must provide the licensee with documentation of the exception (*e.g., hunting license/permit; waiver*). If the documentation is a hunting license/permit, the licensee must make sure it has not expired. An expired hunting license/permit does not qualify for the exception. A licensee **MUST** complete and may attach a copy of the documentation to ATF Form 4473.

EXCEPTION to 11.l. A nonimmigrant alien is not prohibited from purchasing, receiving, or possessing a firearm if the alien: (1) is in possession of a hunting license or permit lawfully issued in the United States; or (2) has received a waiver from the prohibition from the Attorney General of the United States. (*See 18 U.S.C. § 922(y)(2) for additional exceptions.*) Persons subject to one of these exceptions should answer “yes” to questions 11.l. and 12 and provide a copy of the hunting license or letter granting the waiver, which must be recorded in 20.d. If the Transferee (Buyer) answered “yes” to this question, the licensee **MUST** complete 20.d.

Question 12. Exceptions to Nonimmigrant Alien Response: If question 11.l. is answered with a “no” response, then do **NOT** respond to question 12 and proceed to question 13. If response is “yes,” then licensee must complete question 20.d., and may attach a copy.

Question 13. State of Residence: The State in which an individual resides. An individual resides in a State if he or she is present in a State with the intention of making a home in that State. If an individual is a member of the Armed Forces on active duty, his or her State of residence also is the State in which his or her permanent duty station is located. An alien who is legally in the United States is a resident of a State only if the alien is residing in the State and has resided in the State continuously for at least 90 days immediately prior to the date of sale or delivery of a firearm.

If you are a U.S. citizen with two States of residence, you should list your current residence address in response to question 2 (*e.g., if you are buying a firearm while staying at your weekend home in State X, you should list your address in State X in response to question 2.*) If you are not a citizen of the United States, you only have a State of residence if you have resided in a State for at least 90 continuous days **immediately** prior to the date of this sale.

Question 16. Certification Definition of Engaged in the Business: Under 18 U.S.C. § 922 (a)(1), it is unlawful for a person to engage in the business of dealing in firearms without a license. A person is engaged in the business of dealing in firearms if he or she 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. A license is not required of a person who only 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 or her personal collection of firearms.

Section B

Question 18. Type of Firearm(s): Check all boxes that apply. “Other” refers to frames, receivers and other firearms that are not either handguns or long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell, or National Firearms Act (NFA) firearms.

If a frame or receiver can only be made into a long gun (*rifle or shotgun*), it is still a frame or receiver not a handgun or long gun. However, they still are “firearms” by definition, and subject to the same GCA limitations as any other firearms. See Section 921(a)(3)(b). 18 U.S.C. Section 922(b)(1) makes it unlawful for a licensee to sell any firearm other than a shotgun or rifle to any person under the age of 21. Since a frame or receiver for a firearm, to include one that can only be made into a long gun, is a “firearm other than a shotgun or rifle,” it cannot be transferred to anyone under the age of 21. Also, note that multiple sales forms are not required for frames or receivers of any firearms, or pistol grip firearms, since they are not “pistols or revolvers” under Section 923(g)(3)(a).

Question 19. Gun Shows: If sale at gun show or other qualifying event sponsored by any national, State, or local organization, as authorized by

27 CFR § 478.100, the seller must record the name of event and the location (*city and State*) of the sale in question 19.

Question 20a. Identification: List issuing authority (*e.g., State, County or Municipality*) and type of identification presented (*e.g., Virginia driver’s license (VA DL), or other valid government-issued identification*).

Know Your Customer: Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. The buyer **must** provide a valid government-issued photo identification to the seller that contains the buyer’s name, residence address, and date of birth. The licensee must record the type, identification number, and expiration date (*if any*) of the identification in question 20.a. A driver’s license or an identification card issued by a State in place of a license is acceptable. Social Security cards are not acceptable because no address, date of birth, or photograph is shown on the cards. A combination of government-issued documents may be provided. For example, if a U.S. citizen has two States of residence and is trying to buy a handgun in State X, he may provide a driver’s license (*showing his name, date of birth, and photograph*) issued by State Y and another government-issued document (*such as a tax document*) from State X showing his residence address. If the buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his or her permanent duty station is located, but he or she has a driver’s license from another State, you should list the buyer’s military identification card and official orders showing where his or her permanent duty station is located in response to question 20.a.

Question 20.b. Alternate Documentation: Licensees may accept a combination of valid government-issued documents to satisfy the identification document requirements of the law. The required valid government-issued photo identification document bearing the name, photograph, and date of birth of transferee may be supplemented by another valid, government-issued document showing the transferee’s residence address. This alternate documentation should be recorded in question 20.b., with issuing authority and type of identification presented. A combination of government-issued documents may be provided. For example, if a U.S. citizen has two States of residence and is trying to buy a handgun in State X, he may provide a driver’s license (*showing his name, date of birth, and photograph*) issued by State Y and another government-issued document (*such as a tax document*) from State X showing his residence address.

Question 20.c. Documentation for All Aliens:

Sale of Firearms to Legal Aliens: A buyer who is not a citizen of the United States must provide additional documentation (*beyond a valid government-issued photo identification that contains the buyer’s name, residence address, and date of birth*) to establish that he or she has resided in a State continuously for at least 90 days immediately prior to the date of the sale. (*See Question 13.*) Examples of appropriate documents to establish State residency are utility bills from each of the last 3 months immediately prior to the sale or a lease agreement that demonstrates 90 days of residency immediately prior to the sale. A licensee may attach a copy of the documentation to ATF Form 4473, rather than record the type of documentation in question 20.c. Acceptable documentation to prove 90-day continuous residency must be original documentation (*e.g., utility bills, current bank statements, rent receipts, mortgage payments, lease agreements, personal property tax bills, documents issued by Federal, State, or local government agencies, first-class mail issued by government agency, insurance policies, or bill with current address or major credit card bill*).

Question 20.d. Documentation for Nonimmigrant Aliens: See instructions for Question 11.l. Types of acceptable documents would include a valid State-issued hunting license or a letter from the U.S. Attorney General granting a waiver.

Question(s) 21, 22, 23, NICS BACKGROUND CHECKS: 18 U.S.C. § 922(t) requires that prior to transferring any firearm to an unlicensed person, a licensed importer, manufacturer, or dealer must first contact the National Instant Criminal Background Check System (NICS). NICS will advise the licensee whether the system finds any information that the purchaser is prohibited by law from possessing or receiving a firearm. For purposes of this form, contacts to NICS include contacts to State agencies designated to conduct NICS checks for the Federal Government. **WARNING:** Any seller who transfers a firearm to any person they know or have reasonable cause to believe is prohibited from receiving or possessing a firearm violates the law, even if the seller has complied with the background check requirements of the Brady law.

After the buyer has completed Section A of the form and the licensee has completed questions 18-20, and before transferring the firearm, the licensee must contact NICS (*read below for NICS check exceptions.*) However, the licensee should NOT contact NICS and should stop the transaction if: the buyer answers "no" to question 11.a.; the buyer answers "yes" to any question in 11.b.-11.l., unless the buyer only has answered "yes" to question 11.l. and also answers "yes" to question 12; or the buyer is unable to provide the documentation required by question 20.a, b, c, or d.

At the time that NICS is contacted, the licensee must record in question 21.a-c: the date of contact, the NICS (*or State*) transaction number, and the initial response provided by NICS or the State. The licensee may record the Missing Disposition Information (MDI) date in 21.c. that NICS provides for delayed transactions (*States do not provide this number*). If the licensee receives a "delayed" response, before transferring the firearm, the licensee must record in question 21.d. any response later provided by NICS or the State or that no resolution was provided within 3 business days. If the licensee receives a response from NICS or the State after the firearm has been transferred, he or she must record this information in question 21.e. **Note:** States acting as points of contact for NICS checks may use terms other than "proceed," "delayed," "cancelled," or "denied." In such cases, the licensee should check the box that corresponds to the State's response. Some States may not provide a transaction number for denials. However, if a firearm is transferred within the three business day period, a transaction number is required.

NICS Responses: If NICS provides a "proceed" response, the transaction may proceed. If NICS provides a "cancelled" response, the seller is prohibited from transferring the firearm to the buyer. If NICS provides a "denied" response, the seller is prohibited from transferring the firearm to the buyer. If NICS provides a "delayed" response, the seller is prohibited from transferring the firearm unless 3 business days have elapsed and, before the transfer, NICS or the State has not advised the seller that the buyer's receipt or possession of the firearm would be in violation of law. (See 27 CFR § 478.102(a) for an example of how to calculate 3 business days.) If NICS provides a "delayed" response, NICS also will provide a Missing Disposition Information (MDI) date that calculates the 3 business days and reflects when the firearm(s) can be transferred under Federal law. States may not provide an MDI date. *Please note State law may impose a waiting period on transferring firearms.*

EXCEPTIONS TO NICS CHECK: A NICS check is not required if the transfer qualifies for any of the exceptions in 27 CFR § 478.102(d). Generally these include: (a) transfers where the buyer has presented the licensee with a permit or license that allows the buyer to possess, acquire, or carry a firearm, and the permit has been recognized by ATF as a valid alternative to the NICS check requirement; (b) transfers of National Firearms Act weapons approved by ATF; or (c) transfers certified by ATF as exempt because compliance with the NICS check requirements is impracticable. See 27 CFR § 478.102(d) for a detailed explanation. If the transfer qualifies for one of these exceptions, the licensee must obtain the documentation required by 27 CFR § 478.131. A firearm must **not** be transferred to any buyer who fails to provide such documentation.

Section C

Question 24 and 25. Transfer on a Different Day and Recertification: If the transfer takes place on a different day from the date that the buyer signed Section A, the licensee must again check the photo identification of the buyer at the time of transfer, and the buyer must complete the recertification in Section C at the time of transfer.

Section D

Immediately prior to transferring the firearm, the seller must complete all of the questions in Section D. In addition to completing this form, the seller must report any multiple sale or other disposition of pistols or revolver on ATF Form 3310.4 (see 27 CFR § 478.126a).

Question(s) 26, 27, 28, 29 and 30, Firearm(s) Description: These blocks should be completed with the firearm(s) information. Firearms manufactured after 1968 should all be marked with a serial number. Should you acquire a firearm that is not marked with a serial number; you may answer question 28 with "NSN" (No Serial Number), "N/A" or "None."

If more than five firearms are involved in a transaction, the information required by Section D, questions 26-30, must be provided for the additional firearms on a separate sheet of paper, which must be attached to the ATF Form 4473 covering the transaction.

Types of firearms include: pistol, revolver, rifle, shotgun, receiver, frame and other firearms that are not either handguns or long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell or National Firearms Act (NFA) firearms.

Additional firearms purchases by the same buyer may not be added to the form after the seller has signed and dated it. A buyer who wishes to purchase additional firearms after the seller has signed and dated the form must complete a new ATF Form 4473. The seller must conduct a new NICS check.

Question 30c. This box is for the FFL's use in recording any information he or she finds necessary to conduct business.

Question 32 Federal Firearms License Number: Must contain at least the first three and last five digits of the FFL number, for instance X-XX-XXXXX.

Question 33-35 Transferor/Sellers Information: For "denied" and "cancelled" NICS transactions, the person who completed Section B must complete Section D, questions 33-35.

Privacy Act Information

Solicitation of this information is authorized under 18 U.S.C. § 923(g). Disclosure of the individual's Social Security number is voluntary. The number may be used to verify the buyer's identity.

Paperwork Reduction Act Notice

The information required on this form is in accordance with the Paperwork Reduction Act of 1995. The purpose of the information is to determine the eligibility of the transferee to receive firearms under Federal law. The information is subject to inspection by ATF officers and is required by 18 U.S.C. §§ 922 and 923.

The estimated average burden associated with this collection is 30 minutes per respondent or recordkeeper, depending on individual circumstances. Comments about the accuracy of this burden estimate and suggestions for reducing it should be directed to Reports Management Officer, Document Services Section, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Confidentiality is not assured.