

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
Supporting Statement
Information Collection Request
OMB 1140-0020
ATF Form 4473 (5300.9) Part I, Firearms Transaction Record
Over-the-Counter

A. Justification

1. The subject form is required under the authority of 18 U.S.C. § 922 and 923 and 27 CFR 478.124. These sections of the Gun Control Act (GCA) prohibit certain persons from shipping, transporting, receiving or possessing firearms. All persons, including Federal firearms licensees (FFLs), are prohibited from transferring firearms to such persons. FFLs, as well as nonlicensed sellers, are also subject to other restrictions regarding the disposition of a firearm to an unlicensed person under the GCA. For example, age and state of residence also determine whether a person may lawfully receive a firearm. The information and certification on the Form 4473 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. The ATF Form 4473 should only be used for sales or transfers of firearms 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.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is amending the Form 4473 to be consistent with two conclusions recently reached by the Department of Justice about the proper scope of the GCA. First, based on an opinion of the Department's Office of Legal Counsel (OLC), dated October 28, 2011, the Department has concluded that the statutory prohibition in 18 U.S.C. 922(g)(5)(B) on the receipt and possession of firearms by nonimmigrant aliens applies only to nonimmigrant aliens admitted to the United States under a nonimmigrant visa, and does not apply to all nonimmigrant aliens, contrary to the position taken by ATF in a regulation promulgated in 2002. As a result, ATF Form 4473 is being revised to distinguish between nonimmigrant aliens lawfully present in the U.S. under a nonimmigrant visa and those lawfully present without a visa. Second, based upon an OLC opinion dated January 30, 2012, the Department has determined that, under the terms of the GCA, aliens lawfully present in the United States may not be subject to state residency requirements that are different from those that apply to U.S. citizens. Accordingly, ATF Form 4473 is also being revised to strike an instruction on the form requiring aliens to establish residency in a State continuously for a period of at least 90 days prior to obtaining a firearm from a Federal firearms licensee, a requirement that does pertain to U.S. citizen transferees.

ATF is also amending the Form 4473 to align with the Office of Management and Budget's (OMB) standard regarding collections of information about race and ethnicity. Additional miscellaneous conforming changes have been made to the form e.g., references to the Federal firearm laws and regulations, formatting, and the content of the instructions.

2. Needs and Uses

A person purchasing a firearm from a Federal firearms licensee must complete Section A of the Form 4473. The buyer's answers to the questions determine whether or not he or she is eligible to receive the firearm. If those answers indicate that the buyer is not prohibited from receiving a firearm, the licensee completes Section B of the Form 4473 and contacts the Federal Bureau of Investigation (FBI) National Instant Criminal Background Check System (NICS) or the State point of contact (POC) to determine if the firearm can be legally transferred to the purchaser. After the seller has completed the firearms transaction, he or she must retain the completed original Form 4473 (*which includes the Notices, General Instructions, and Definitions*) and any supporting documents, as part of his or her official records for twenty years, as required by 27 CFR 478.129 (b).

3. Use of Information Technology

The Form 4473 will be mailed to all licensees. In addition, the Form will be available electronically, via the ATF internet site to download and print. For those licensees not able to access the form electronically, additional forms will be made available at ATF's Distribution Center. The Distribution Center will continually stock the Form 4473 for distribution. Licensees who wish to utilize a commercial version of electronic 4473 software must do so in compliance with the variance provisions of 27 CFR 478.22(a) and ATF Ruling 2008-3.

4. Efforts to Identify Duplication

ATF uses a uniform subject classification system for its forms to identify duplication and to ensure that any similar information already available cannot be used or modified for use for the purpose of this information collection.

5. Minimizing Burden on Small Businesses

The revisions that are being made to the Form 4473 will not have a significant economic impact on small businesses. First, with respect to aliens lawfully admitted to the U.S. under a nonimmigrant visa who wish to purchase a firearm, most firearms dealers should not be significantly impacted by the changes to the form. The restrictions on the possession of firearms by aliens admitted under a nonimmigrant visa have not changed. Individuals traveling to the U.S. with a valid hunting license, or registrations or invitations to trade shows or competitive sporting events, are still able to purchase ammunition and accessories and rent firearms and they will continue to complete the Form 4473 as before. However, nonimmigrants admitted to the U.S. who did not require a visa are no longer considered to be prohibited, and accordingly they would not need to avail themselves of the exceptions under the law. This will reduce the burden on licensees because they will no longer be obligated to collect the documentation that is required for aliens admitted to the U.S. under a nonimmigrant visa. Second, with respect to residency requirements for aliens, revising the Form 4473 to comply with the Department's legal interpretation on

state of residence will reduce the burden on licensees selling firearms to aliens because the licensee won't need to collect or retain documentation such as leases or utility bills.

6. Consequences of Not Conducting or Less Frequent Collection

The consequences of not conducting this collection of information, or conducting it less frequently, are that the licensee might transfer a firearm to a person who is prohibited from possessing firearms under Federal law. The current revisions to the Form 4473 are necessary to be consistent with requirements of the law and will reduce the requirements placed on aliens purchasing firearms.

The collection of this information is necessary to comply with the statutory requirements to verify the eligibility of an individual receiving or possessing firearms under the Gun Control Act. There is no discretionary authority on the part of ATF to waive these requirements. Respondents are required to supply this information as often as necessary to comply with statutory provisions. The form is critical with regard to the prevention of criminal diversion of firearms and enhances law enforcement's ability to trace firearms that are recovered in crimes.

7. Special Circumstances

There are no special circumstances that would cause or allow the information collection to be conducted in any other manner than is currently proposed.

8. Public Comments and Consultations

This Emergency Request for Approval of Collection of Information does not seek comments from the public concerning the proposed information collection because the changes described above are necessary to ensure that the information collected on Form 4473 does not exceed the lawful requirements of the GCA. As explained in Item No. 1 of the Justification, the Department is merely making conforming changes to the information collection instrument to be consistent with the law. The remaining changes to the form are of a technical nature.

9. Provision of Payments or Gifts to Respondents

No payment or gift is offered to the respondent.

10. Assurance of Confidentiality

All records regarding this collection are kept on the licensee's premises in a secured location. Confidentiality is not assured.

11. Justification for Sensitive Questions

Questions of a sensitive nature are asked to ensure that firearms are not sold to or received by persons who are prohibited by law from receiving and possessing firearms. The

information and certification on the form are designed and intended to assist a person licensed under 18 U.S.C. § 923 in determining at the point of sale whether he or she may lawfully sell or deliver a firearm to the transferee.

12. Estimate of Respondent's Burden

The number of respondents associated with this information collection is 14,409,616 per year. Previous estimates of the number of respondents (112,073) have been inaccurate because they inadvertently focused on the number of licensees, not the number of transactions that licensees, as a group, typically facilitate each year. Each respondent completes the form prior to acquiring a firearm. It is estimated that it takes 30 minutes to complete the form. The total annual burden hours associated with this information collection therefore is 7,204,808. Previous estimates of annual burden hours (56,037) are inaccurate because they wrongly assumed each licensee would facilitate completion of only one form per year, rather than on the total number of transactions that occur each year. There is no change in the estimated time it will take to complete the form (30 minutes) because of the changes being made to the form. As a result, the actual burden remains the same; the change in total number of burden hours results solely from a correction of a prior miscalculation.

13. Estimate of Cost Burden

There is no cost to respondents due to the fact that the purchaser completes the form on the premises in front of the licensee. For Federal firearms licensees, the costs associated with the changes made to the Form 4473 are negligible. As indicated, licensees will no longer have to collect information from all aliens lawfully present in the U.S. who wish to purchase firearms. In addition, by eliminating the 90-day residency requirement for aliens licensees will no longer be obligated to collect documentation supporting residency, such as lease agreements or utility bills. Licensees can obtain a supply of revised Form 4473 at no charge from the ATF Distribution Center. In addition, the revised form will be available electronically, via the ATF Web site to download and print.

14. Cost to Federal Government

Cost of printing, distributing, and mailing the form is estimated at \$1,500,000. The cost estimate includes printing an estimated 6,000,000 forms, shrink-wrapping the forms, inserting them in envelopes, and mailing the packages to all Federal firearms licensees, as well as delivering a bulk supply of forms to the ATF Distribution Center for stock.

15. Reason for Change in Burden

As is noted above, the estimated number of respondents (112,073) and corresponding annual burden hours (56,037) approved under this control number in 2008 were significantly inaccurate due to an underestimation of the number of respondents; the burden estimate per respondent was accurate and is not being changed but the number of respondents is being changed. The inaccurate 2008 numbers are reflected in OMB's current inventory. Based upon recent statistics concerning firearms transactions involving

a federal background check, ATF now estimates that there are 14,409,616 likely respondents each year, and that the total amount of time needed to read the instructions and complete each form continues to be 30 minutes. There is no change in ATF's estimate of the amount of time needed to read the instructions and complete the form. Accordingly, ATF estimates 7,204,808 total annual burden hours associated with the information collection. ATF does not estimate that the actual total burden on respondents will increase as a result of these changes; the burden estimate is increasing based solely on a correction of an earlier miscalculation regarding the number of respondents.

16. Anticipated Publication Plan and Schedule

The information collection will not be published. ATF is requesting an emergency approval to conform changes to the information collection instrument to the law.

17. Display of Expiration Date

The Form 4473, if granted the emergency approval, is only valid for 180 days. A new collection of information notice will be published 90 days after an OMB control number is assigned. ATF anticipates making additional changes to the form upon expiration, which changes do not warrant emergency treatment. Because ATF does not typically provide the expiration date on its forms, ATF is requesting that the expiration date not be posted on the ATF Form 4473. ATF also believes that because the expiration date is not absolute and could be extended by OMB at ATF's request, it may cause confusion among the industry members and applicants if it is provided on the form and later extended. Additionally, because ATF mails the forms to respondents, displaying the expiration date would also require subsequent printing and mailing costs should the expiration date be extended.

B. Statistical Methods:

This collection of information employs no statistical methods.