

Emergency Request for Approval of Collection of Information

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) forwards this request for emergency approval of the collection of information associated with the ATF Form 4473 (5300.9). This emergency review has been requested in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 3507(j)), because public harm is reasonably likely to result if normal clearance procedures are followed. ATF is making conforming changes to ATF Form 4473 in order for it to be consistent with the Department's recent legal conclusions concerning the proper scope of prohibitions and requirements in the Gun Control Act.

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 prohibitions in 18 U.S.C. 922(g)(5)(B) on transfer and possession of firearms apply only to nonimmigrant aliens admitted to the United States under a nonimmigrant visa, and do not apply to nonimmigrant aliens whose lawful presence in the United States did not require a visa. Appropriate changes have been made to Form 4473 to conform to OLC's opinion.

Second, the Department has also concluded that, under the language of the Gun Control Act, 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 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 acquiring a firearm from a Federal firearms licensee, a requirement that does not apply to U.S. citizens.

Immediate revisions to Form 4473 are necessary to conform with the law. If normal clearance procedures are followed, the Department believes there will be widespread

confusion among Federal firearms licensees, as well as among aliens lawfully present in the United States who wish to purchase a firearm, about a process that if not performed correctly can result in the imposition of civil or criminal sanctions . Publication of the Federal Register notice advising the public of the emergency request will acquaint licensees and aliens with the Department's legal positions. Delaying implementation of the new interpretation during a three to six month notice and comment period will generate many questions about which position licensees should follow. Immediate implementation is therefore required.