

DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
Supporting Statement

OMB # 1140-0020

Firearms Transaction Record/ Registro de Transacción de Armas de Fuego - ATF Form 4473 (5300.9) and Firearms Transaction Record Continuation Sheet/ Registro de Transacción de Armas de Fuego Hoja de Continuación- ATF Form 4473 (5300.9A)

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 B, and to alert the transferee/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 subject form is also made available in a Spanish-language version, i.e. Registro de Transacción de Armas de Fuego - ATF Form 4473 (5300.9). The Spanish-language version is made available due to concerns from law enforcement that ATF may lose a criminal case due to the lack of a Spanish-language version of the form, in areas with large numbers of Spanish-speaking residents. Transferee/buyers are not required to complete the Spanish-language version of the form. They may choose to complete the English-language version.

A continuation sheet, Firearms Transaction Record Continuation Sheet/ Registro de Transacción de Armas de Fuego Hoja de Continuación - ATF Form 4473 (5300.9A) has been developed for transactions which involve more than three firearms in a single transaction.

ATF also requests approval to make the following changes to ATF Form 4473 (5300.9):

- Added § to every U.S.C. reference.
- Page 1, top right: deleted “serial” from this box. It now reads: Transferor’s/Seller’s Transaction Number (if any)

Warning

- The warning at the top of page 1 has been changed to:

The information you provide will be used to determine whether you are prohibited by Federal or State law from receiving a firearm, or whether Federal or State law prohibits the sale or disposition of a firearm to you. Certain violations of the Gun Control Act, 18 U.S.C. 921 et. seq., are punishable by up to 15 years imprisonment and/or up to a \$250,000 fine. Any person who exports a firearm without a proper authorization from either the Department of Commerce or the Department of State, as applicable, is subject to a fine of not more than \$1,000,000 and up to 20 years imprisonment.

Section A.

- “Privately made firearm (PMF)” added to item 1, Section A. It now reads: Manufacturer and Importer, if any or privately made firearm (PMF) (If the manufacturer and importer are both different, include both.)
- Item 8 now reads: Check if any part of this transaction is to facilitate a private party transfer.

Section B.

- Question 10: Added “Reside in City Limits? YES NO UNKNOWN” to the “City” block.
- Question 21a. has been amended. The **bolded** portions are new: Are you the actual transferee/buyer of **all** the firearm(s) listed on this form and any continuation sheet(s) (ATF Form 5300.9A)? Warning: You are not the actual transferee/buyer if you are acquiring **any of** the firearm(s) on behalf of another person. If you are not the actual transferee/buyer, the licensee cannot transfer **any of** the firearm(s) to you. Exception: If you are only picking up a repaired firearm(s) for another person, you are not required to answer 21.a. and may proceed to question 21.b.
- New Question 21b. Do you intend to purchase or acquire any firearm listed on this form and any continuation sheet(s) or ammunition, for sale of other disposition to any person described in questions 21(c)-(m) or to a person described in question 21.n.1 who does not fall within a nonimmigrant exception?
- New question 21.c.: Do you intend to sell or otherwise dispose of any firearm listed on this form and any continuation sheet(s) or ammunition in furtherance of any felony or other offense punishable by imprisonment for a term of more than one year, a Federal crime of terrorism, or a drug trafficking offense?
- Due to the addition of the two new questions in Section B, the questions are now renumbered from 21.a. through 21.n.
- Questions 21.n.2 parenthesis at end of questions now reads: (U.S. citizens/nationals leave 21.n.1 and 21n.2. blank).

Certification

- The certification statement has been amended. The **bolded** portions are new: I certify that my answers in Section B are true, correct, and complete. I have read and understand the Notices, Instructions, and Definitions on ATF Form 4473. I understand that answering “yes” to question 21.a. if I am not the actual transferee/buyer is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I understand that a person who answers “yes” to any of the questions 21.d. through 21.m. is prohibited from receiving or possessing a firearm. I understand that a person who answers “yes” to question 21.n.1. is prohibited from receiving or possessing a firearm, unless the person answers “yes” to question 21.n.2. and provides the documentation required in 26.d. I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I further understand that the repetitive purchase of firearms for the purpose of resale **to predominantly earn a profit** without a Federal firearms license is a violation of Federal law.

Section C.

- Item 25 has been amended by adding the address, county and zip code where the gun show takes place.
- Removed “full” from full legal name on item 26.b.
- Item 26.c. PCS Base/City and State” to PCS Base, City and State
- Item 26.d. has been amended: This item now refers to item 21.n.2. NOT 21.l.2.
- Added a header before NICS questions begin: Notice: If transferee/buyer is under 21, a waiting period of up to 10 days may apply where notification from NICS is received within 3 business days to further investigate a possible disqualifying juvenile record. A NICS check is only valid for 30 calendar days from the date recorded in question 27a.
- Item 27.c. next to the delayed check box, the following has been added: The firearm(s) may be transferred on ____ if time period is not extended by NICS or the appropriate State agency, and State law allows (optional).
- Item 27.d. was amended adding the following statements with check boxes: Notice of additional delay of transferee under 21 years of age received on _____ (date), and may be transferred on _____ (date).
- No response was provided within 10 business days after initial delay for transferee/buyer under 21.
- Items 27.f. and 27.g. were removed.

Transferor Certification

- In the transferor certification, added: If this transaction required a NICS check, I further certify that this firearm(s) transfer is within 30 days from the date of the initial contact with NICS.

Changes to the Instructions:

- In the instructions, changed every law reference from section to 18 U.S.C. §
- Page 3, 2nd column (**added bolded portion**): After the transferor/seller has completed the firearms transaction, he/she must make the completed, original ATF Form 4473 (which includes the Notices, General Instructions, and Definitions), and any supporting documents, part of his/her permanent records. Such Forms 4473 must be retained **until discontinuance of business or licensed activity. Paper forms over 20 years of age may be stored at a separate warehouse, which is considered part of the business premises subject to inspection.** Filing may be chronological (by date of disposition), alphabetical (by name of purchaser), or numerical (by transaction number), as long as all of the transferor's/seller's completed Forms 4473 are filed in the same manner.
- Page 3, 2nd column (**removed bolded portion**): 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 completed **after a NICS check is initiated**, the licensee must retain the ATF Form 4473 in his/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 of transferee) or chronological (by date of transferee's certification) order.
- Page 4, 1st column: Questions 1-6. Firearm(s) Description (**added bolded parts**): These blocks must be completed with the firearm(s) information. All firearms manufactured or made after 1968 should be marked with a **licensee's** serial number. Should you acquire a firearm that is legally not marked with a serial number (i.e., **certain pre-1968 firearms**); you may answer question 3 with "NSN" (No Serial Number), "N/A" or "None." **Unless already properly marked by another licensee, licensees who take a privately made firearm (PMF) into inventory are required to mark the PMF with an individual serial number that begins with the FFL's abbreviated license number, which is the first three and last five digits, as a prefix to a unique identification number, followed by a hyphen, e.g., "12345678-unique identification number.**
- Question 8. Private Party Transfer (**added bolded part, italicized portion means sentence modified from 2020 edition**): Check this box if the licensee is facilitating the sale or transfer of a firearm between private unlicensed individuals in accordance with ATF Procedure 2017-1. This will assist the licensee by documenting which transaction records correspond with private party transfers, and why there may be no corresponding A&D entries when the transfer did not proceed because it was denied, delayed, or cancelled. **If the proposed transfer involves a PMF, the PMF must first be taken into inventory and properly marked with a licensee's serial number.**

- Questions 21.b. - 21.l. Prohibited Persons changed to Questions 21.d. – 21.n. Prohibited Persons. Instructions numbering for questions under item 21 have been redone due to the addition of two new questions (21.b. and 21.c.).
- Page 5: Question 21.k. Misdemeanor Crime of Domestic Violence (**added bolded parts, italicized portion means sentence modified from 2020 edition**): A Federal, including a general court-martial, 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, **or by a person who has a current or recent former dating relationship with the victim (as defined in 18 U.S.C. 921(a)(37))**. 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 21.d. - 21.m.) 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 21.k.

A current or former member of the military who has been convicted of a violation of the Uniform Code of Military Justice that included, as an element, the use of force against a person as identified in the instructions under question 21.k. must answer “yes” to this question. This may include a qualifying offense that was referred to a special or general court-martial.

EXCEPTION: A person is not prohibited from receiving or possessing a firearm if that person: (1) has been convicted of any Federal or State offense pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices; (2) has been convicted of a State misdemeanor punishable by imprisonment of two years or less; or (3) following conviction of a felony or other crime for which the judge could have imprisoned the person for more than one year, or a misdemeanor crime of domestic violence, has received a pardon, an expungement or set aside of the conviction, or has lost and regained civil rights (the right to vote, sit on a jury, and hold public office) in the jurisdiction in which the conviction occurred, AND the law of the convicting jurisdiction does not prohibit the person from receiving or possessing firearms. *Also, a person who has no more than one conviction of a misdemeanor crime of domestic violence against an individual in a dating relationship, and is not otherwise prohibited under this chapter, is not prohibited if 5 years have elapsed from conviction or completion of the person's custodial or supervisory sentence, whichever occurs later, and the person has not subsequently been convicted of any other misdemeanor crime of violence, or any other offense that would disqualify the person under 18 U.S.C. 922(g).* A person subject to any of these exceptions, or who received

relief from disabilities under section 925(c), should answer “no” to the applicable question.

- Question 22. Transferee/Buyer Certification (**added bolded part**): 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/she devotes time, attention, and labor to dealing in firearms as a regular course of trade or business **to predominately earn a 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/her personal collection of firearms.

Question 27. NICS Background Checks: In the first paragraph, replaced, NICS will advise the licensee whether the system finds any information that the purchaser is prohibited by law from possessing or receiving a firearm with: *NICS will advise the licensee whether the system finds any information that the transfer to, or receipt by, the transferee is prohibited by law.*

Replaced the first sentence of the second paragraph with: *The licensee should NOT contact NICS and must stop the transaction if there is reasonable cause to believe that the sale or disposition of a firearm to the transferee/buyer is prohibited or the transferee/buyer is prohibited from receiving or possessing a firearm, including if: the transferee/buyer answered “no” to questions 21.a; the transferee/buyer answered “yes” to questions 21.b. – 21.m; the transferee/buyer answered “yes” to question 21.m.1., and answered “no” to question 21.m.2.*

Changed the **Warning** in the second paragraph to: *Any person who transfers a firearm to any person knowing or having reasonable cause to believe the sale or disposition to such person is prohibited violates the law, 18 U.S.C. 922(d), even if the transferor/seller has complied with the Federal background check requirements.*

NICS Responses (**added bolded parts**): If NICS provides a “proceed” response, the transaction may proceed. If NICS provides a “denied” or “cancelled” (and does not immediately provide a new transaction number) response, the transferor/seller is prohibited from transferring the firearm to the transferee/buyer. **If NICS provides a “delayed” response, the transferor/seller is prohibited from transferring firearms to the transferee/buyer unless 3 business days have elapsed , and, before the transfer, NICS or the State has not advised the transferor that the transfer to, or receipt or possession by, the transferee/buyer would be in violation of law (See 27 CFR 478.102(a) for an example of how to calculate 3 business days.) If within 3 business days NICS or the State notifies the transferor/seller that it has cause to further investigate a possibly disqualifying juvenile record of a transferee/buyer under 21 years of age, the transfer may occur only after 10 business days since the licensee**

initially contacted NICS, and NICS has not notified the licensee that the transfer is prohibited.

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. 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. State law may impose a waiting period or other requirements on transferring firearms.

At the time that NICS is contacted, the licensee must record in question 27.a. - 27.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 date the firearms may be transferred to the transferee/buyer (also known as the Missing Disposition Information (MDI) date) in 27.c. that NICS provides for delayed transactions (States may not provide this date). If the licensee receives any subsequent response(s) before transferring the firearm, the licensee must record in question 27.d. any response later provided by NICS or the State, or that no response was provided within 3 business days. **If, within 3 business days, the licensee receives notice of additional delay (only if transferee/buyer under the age of 21), the licensee must indicate this response in item 27.d. If no response is received after 10 days, the licensee may transfer the firearm assuming State law allows.**

If the licensee receives a response from NICS or the State after the firearm has been transferred, he/she must record this information in question 27.f. If the transaction was denied and later overturned, in addition to checking the “Proceed” in 27.d. and entering the date, the licensee must also check “Overturned” and, if provided, attach the overturn certificate issued by NICS or the State POC to this ATF Form 4473. If more than 30 days have elapsed and a new NICS check is required, record the new transaction number, date of contact and the response provided by NICS or the State on this Form 4473 in questions 27.a.-27.c. 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.

- In the privacy act information, changed 68 FR 163558, January 24, 2003 to 82 FR 44659, September 25, 2017
- 2. A person purchasing a firearm from a Federal firearms licensee must complete Section B of the Form 4473. The buyer’s answers to the questions determine if 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 C 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. 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 licensees unable 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 2016-2.
4. 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. The Form 4473 will not have a significant economic impact on small businesses.
6. 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 collection of this information is necessary for compliance 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 -to the prevention of criminal diversion of firearms and enhances law enforcement's ability to trace firearms that are recovered in crimes.
7. 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. ATF responded to all substantive comments received during both the 60-day and 30-day Federal Register notice periods.
9. No payment or gift is offered to the respondent.
10. All records regarding this collection are kept on the licensee's premises in a secured location. Confidentiality is not assured.
11. 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, to determine at the point of sale, whether he or she may lawfully sell or deliver a firearm to the transferee.
12. The number of respondents associated with this information collection is 17,189,101 per 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 is 8,594,551.

13. There is no cost to respondents because the purchaser completes the form on the premises in front of the licensee. Licensees may receive the Form 4473 at no charge from the ATF Distribution Center. In addition, the form will be available electronically, via the ATF Web site to download and print.
14. 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. There are no adjustments associated with this information collection.
16. The results of this information collection will not be published.
17. ATF is requesting that the expiration date not be posted on the ATF Form 4473, to prevent confusion among industry members and applicants, if a date provided on the form is later extended. Additionally, because ATF mails the forms to respondents, displaying the expiration date will incur additional re-printing and mailing costs should the expiration date be extended.
18. There are no exceptions to the certification statement.