

## Bureau of Alcohol, Tobacco, Firearms, and Explosives

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Agency Information Collection Activities )  
Firearms Transaction Record (ATF Form )  
4473 (5300.9)) )  

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### **Firearms Industry Consulting Group's Comments as to ATF's Proposed Changes to the Firearms Transaction Record (ATF Form 4473 (5300.9))**

On April 7, 2016, the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF" or the "Agency") published a notice in the Federal Register requesting comments on proposed changes to the Firearms Transaction Record (ATF Form 4473 (5300.9)) ("4473"), pursuant to the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520.

The Firearms Industry Consulting Group ("FICG"), a division of Prince Law Offices, P.C., represents numerous individuals, gun clubs, and Federal Firearms Licensees ("FFLs") in Pennsylvania with regard to State law issues. Furthermore, in relation to federal issues, FICG represents numerous FFLs across the United States in all matters relating to firearms. FICG actively works to defend, preserve, and protect constitutional and statutory rights of firearms owners, including through Article I, Section 21 of the Pennsylvania Constitution and the Second Amendment to the United States Constitution. In this comment, FICG represents the interests of its respective clients.

FICG's purpose is:

To provide legal representation in the protection and defense of the Constitutions of Pennsylvania and the United States, especially with reference to the inalienable right of the individual citizen guaranteed by such Constitutions to acquire, possess, transport, carry, transfer ownership of, and enjoy the right to use arms, in order that the people may always be in a position to

exercise their legitimate individual rights of self-preservation and defense of family, person, and property, as well as to serve effectively in the appropriate militia for the common defense of the Republic and the individual liberty of its citizens.

FICG's interest in this matter stems from its representation of numerous Pennsylvania citizens and FFLs nationwide, who would be required to use the proposed form if ATF were to modify it as proposed. In response to the request for comment, FICG offers this public comment for consideration.

FICG opposes some of the proposed changes to the 4473 and offers some additional suggestions for consideration for the reasons set forth below.

I. **ATF Is Not the Appropriate Agency for Drafting, Modifying, or Amending the 4473 nor is it the Appropriate Agency for Defining or Clarifying What Constitutes an “Unlawful User of or Addicted to Any Controlled Substance” and “Fugitive from Justice”**

ATF is not the appropriate agency for drafting, modifying or amending the 4473 nor is it the appropriate agency for defining or clarifying what constitutes an “unlawful user of or addicted to any controlled substance” or “fugitive from justice”, because the Federal Bureau of Investigation (“FBI”) is empowered with the interpretation of 18 U.S.C. § 922(g), and as such ATF cannot proceed in this matter. *See, United States v. Mead Corp.*, 533 U.S. 218 (2001).

*a. FBI's Statutory and Regulatory Authority*

FBI initially derives its authority to investigate crimes under 28 U.S.C. § 533. The Brady Handgun Violence Prevention Act (Brady Act), Public Law 103-159, 107 Stat. 1536 (1993), required the implementation of the National Instant Check System (“NICS”), pursuant to 18

U.S.C. § 922(t).<sup>1</sup> The Attorney General delegated the implementation and control of the NICS system, including providing for an appeal process for erroneous denials, to the FBI. See, 28

C.F.R. §§ 25.1, 25.3.<sup>2</sup> Pursuant to 28 C.F.R. § 25.5,

(a) The FBI will be responsible for maintaining data integrity during all NICS operations that are managed and carried out by the FBI. This responsibility includes:

- (1) Ensuring the accurate adding, canceling, or modifying of NICS Index records supplied by Federal agencies;
- (2) Automatically rejecting any attempted entry of records into the NICS Index that contain detectable invalid data elements;
- (3) Automatic purging of records in the NICS Index after they are on file for a prescribed period of time; and
- (4) Quality control checks in the form of periodic internal audits by FBI personnel to verify that the information provided to the NICS Index remains valid and correct.

(b) Each data source will be responsible for ensuring the accuracy and validity of the data it provides to the NICS Index and will immediately correct any record determined to be invalid or incorrect.

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<sup>1</sup> Not all states are NICS states, such as Pennsylvania. In these non-NICS states, referred to as Point of Contact (POC) states, the state law enforcement agency tasked with performing background checks queries the NICS Index maintained by FBI. See, 28 C.F.R. § 25.2 defining POC as “a state or local law enforcement agency serving as an intermediary between an FFL and the federal databases checked by the NICS. A POC will receive NICS background check requests from FFLs, check state or local record systems, perform NICS inquiries, determine whether matching records provide information demonstrating that an individual is disqualified from possessing a firearm under Federal or state law, and respond to FFLs with the results of a NICS background check. A POC will be an agency with express or implied authority to perform POC duties pursuant to state statute, regulation, or executive order.”

<sup>2</sup> See, 28 C.F.R. § 25.3 holding:

(a) There is established at the FBI a National Instant Criminal Background Check System.

(b) The system will be based at the Federal Bureau of Investigation, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0147.

(c) The system manager and address are: Director, Federal Bureau of Investigation, J. Edgar Hoover F.B.I. Building, 935 Pennsylvania Avenue, NW, Washington, D.C. 20535.

See also, 28 C.F.R. § 25.2 defining *NICS Index* as “the database, to be managed by the FBI, containing information provided by Federal and state agencies about persons prohibited under Federal law from receiving or possessing a firearm. The NICS Index is separate and apart from the NCIC and the Interstate Identification Index (III).”

More importantly, pursuant to 28 C.F.R. § 25.6, it is the FBI that is to determine whether or not an individual is prohibited when a NICS check is performed.<sup>3</sup>

- (c)(1) The FBI NICS Operations Center, upon receiving an FFL telephone or electronic dial-up request for a background check, will:
- (i) Verify the FFL Number and code word;
  - (ii) Assign a NICS Transaction Number (NTN) to a valid inquiry and provide the NTN to the FFL;
  - (iii) Search the relevant databases (i.e., NICS Index, NCIC, III) for any matching records; and
  - (iv) Provide the following NICS responses based upon the consolidated NICS search results to the FFL that requested the background check:
    - (A) “Proceed” response, if no disqualifying information was found in the NICS Index, NCIC, or III.
    - (B) “Delayed” response, if the NICS search finds a record that requires more research to determine whether the prospective transferee is disqualified from possessing a firearm by Federal or state law. A “Delayed” response to the FFL indicates that the firearm transfer should not proceed pending receipt of a follow-up “Proceed” response from the NICS or the expiration of three business days (exclusive of the day on which the query is made), whichever occurs first. (Example: An FFL requests a NICS check on a prospective firearm transferee at 9:00 a.m. on Friday and shortly thereafter receives a “Delayed” response from the NICS. If state offices in the state in which the FFL is located are closed on Saturday and Sunday and open the following Monday, Tuesday, and Wednesday, and the NICS has not yet responded with a “Proceed” or “Denied” response, the FFL may transfer the firearm at 12:01 a.m. Thursday.)
    - (C) “Denied” response, when at least one matching record is found in either the NICS Index, NCIC, or III that provides information demonstrating that receipt of a firearm by the prospective transferee would violate 18 U.S.C. 922 or state law. The “Denied” response will be provided to the requesting FFL by the NICS Operations Center during its regular business hours.

Moreover, where an individual believes he or she was erroneously denied, the FBI, not the ATF, is tasked with the responsibility of processing the appeal. Pursuant to 28 C.F.R. § 25.10

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<sup>3</sup> See also, FBI’s Fact Sheet regarding NICS on its website declaring that it is the NICS operator that makes the decision as to whether provide a response of proceed, delayed, or denied, available at <http://www.fbi.gov/about-us/cjis/nics/general-information/fact-sheet>.

(c) If the individual wishes to challenge the accuracy of the record upon which the denial is based, or if the individual wishes to assert that his or her rights to possess a firearm have been restored, he or she may make application first to the denying agency, i.e., either the FBI or the POC.

And

(d) ... The FBI will consider the information it receives from the individual and the response it receives from the POC or the data source. If the record is corrected as a result of the challenge, the FBI shall so notify the individual, correct the erroneous information in the NICS, and give notice of the error to any Federal department or agency or any state that was the source of such erroneous records.

Maybe even more enlightening is Section 25.6(j)(2) that goes on to declare that FBI is to respond to an inquiry from ATF in relation to a civil or criminal enforcement matter relating to the Gun Control Act or National Firearms Act, because it is FBI, not ATF, that not only controls the database but also determines the prohibited status of an individual.

*b. ATF's Statutory Authority*

ATF's statutory authority is derived from 28 U.S.C. § 599A. In particular, the statute specifies that ATF is responsible for investigating:

- (1)** criminal and regulatory violations of the Federal firearms, explosives, arson, alcohol, and tobacco smuggling laws;
- (2)** the functions transferred by subsection (c) of section 1111 of the Homeland Security Act of 2002 (as enacted on the date of the enactment of such Act [enacted Nov. 25, 2002]); and
- (3)** any other function related to the investigation of violent crime or domestic terrorism that is delegated to the Bureau by the Attorney General.

28 U.S.C. § 599A(b).

ATF is granted limited powers, which include being able to investigate criminal and regulatory violations of Federal firearms, explosives, arson, alcohol and tobacco smuggling laws,

as well as investigating violent crime or domestic terrorism that is delegated to the Bureau by the Attorney General.

None of the enumerated powers granted to ATF provide it the authority or ability to draft, modify or amend the 4473 nor the power to define an “unlawful user of or addicted to any controlled substance” or “fugitive from justice”.

Further, even the Gun Control Act of 1968 (“GCA”) does not give ATF the regulatory authority to draft, modify or amend the 4473 or promulgate a regulation relating to a “fugitive from justice”. 18 U.S.C. § 926(a) provides:

The Attorney General may prescribe only such rules and regulations as are necessary to carry out the provisions of this chapter [18 USCS §§ 921 et seq.], including—

- (1) regulations providing that a person licensed under this chapter [18 USCS §§ 921 et seq.], when dealing with another person so licensed, shall provide such other licensed person a certified copy of this license;
- (2) regulations providing for the issuance, at a reasonable cost, to a person licensed under this chapter [18 USCS §§ 921 et seq.], of certified copies of his license for use as provided under regulations issued under paragraph (1) of this subsection; and
- (3) regulations providing for effective receipt and secure storage of firearms relinquished by or seized from persons described in subsection (d)(8) or (g)(8) of section 922 [18 USCS § 922].

Nowhere in the proscribing statute is there language that ATF has any such authority. Even if Section 926(a) were read to convey such power to regulate, that authority would rest with the FBI, not with ATF.

More importantly, ATF has already acknowledged in 27 C.F.R. § 478.11 that state-licensed physician prescribed marijuana for medicinal purposes is lawful and the Congress has already defined “fugitive from justice” in 18 U.S.C. § 921 as “...any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal

proceeding.” Therefore, both ATF and FBI lack the power to regulate contrary to the clear language enacted by the Congress.

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Accordingly, pursuant to 28 C.F.R. §§ 25.6, 25.10, and 25.6, it is the FBI, not ATF, that is to determine whether an individual is prohibited under 18 U.S.C. § 922(g) and the Congress has already clearly defined a “fugitive from justice.” Therefore, ATF is an inappropriate agency to regulate what constitutes a “fugitive from justice”, because FBI has been empowered with the interpretation of 18 U.S.C. § 922(g), and FBI cannot proceed with defining a “fugitive from justice” because the Congress has already clearly defined it.<sup>4</sup>

## **II. Proposed Revision to Instructions for Question 11.d**

ATF proposes to add the following language for instructions with regards to Question 11.d. Question 11.d reads “Are you a fugitive from justice?” The current version of the 4473 contains no instructions for this question. The proposed instructions read:

Question 11.d. Fugitive from Justice: Any person who has fled from any State to avoid prosecution for a felony or a misdemeanor; or any person who leaves the State to avoid giving testimony in any criminal proceeding. The term also includes any person who knows that misdemeanor or felony charges are pending against such person and who leaves the State of prosecution.<sup>5</sup>

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<sup>4</sup> As it is assumed that ATF will ignore this clear restriction on its power instead of requesting FBI to enter into rulemaking, the remaining issues are raised in the alternative, presupposing that ATF will find that it has authority to draft, modify or amend the 4473 and define or clarify “fugitive from justice.”

<sup>5</sup> <https://www.atf.gov/resource-center/docs/form-example-firearms-transaction-record/download> at 4.

a. Fugitive from Justice as Defined by 18 U.S.C. § 921(a)(15)

Congress defined the term “fugitive from justice” when it passed the Gun Control Act of 1968 (“GCA”). The term “fugitive from justice” originally read “The term ‘fugitive from justice’ means any person who has fled from any State or possession to avoid prosecution for a crime punishable by imprisonment for a term exceeding one year or to avoid giving testimony in any criminal proceeding.”<sup>6</sup> Congress modified the definition in October of 1968 to read, as it still does, “The term ‘fugitive from justice’ means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.”<sup>7</sup>

b. Fugitive from Justice as Defined by 27 C.F.R. § 478.11

ATF defined the term “fugitive from justice” when it modified the federal regulations in 1997. It defined the term “fugitive from justice” as

Any person who has fled from any State to avoid prosecution for a felony or a misdemeanor; or any person who leaves the State to avoid giving testimony in any criminal proceeding. The term also includes any person who knows that misdemeanor or felony charges are pending against such person and who leaves the State of prosecution.<sup>8</sup>

ATF’s definition mirrors that of the GCA with the addition of the last sentence adding a new class of individual to the term “fugitive from justice”.

i. *Comments ATF Received when Implementing its Regulatory Definition*

ATF began to solicit comments with regard to proposed changes to its federal regulations on September 6, 1996 for a period of one (1) year. After the comment period closed, it received a

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<sup>6</sup> Added June 19, 1968, P.L. 90-351, Title IV, § 902, 82 Stat. 226

<sup>7</sup> Added Oct. 22, 1968, P.L. 90-618, Title I, § 102, 82 Stat. 1214

<sup>8</sup> 27 C.F.R. § 478.11



total of eleven (11) comments, five (5) of which were relevant to the definition of “fugitive from justice”.

In its response to the comment submitted by a federal agency, which stated the term was already defined in the GCA and as such any expansion would require an act of Congress, ATF responded that it was not seeking to expand the definition but rather clarify it.<sup>9</sup> ATF went on to state that

...the statute does not spell out that to be a fugitive from justice it is not necessary that the person left a State with the intent of fleeing the charges. Rather, a person is a fugitive from justice if the individual, knowing that charges are pending, purposefully leaves the State of prosecution and does not appear before the prosecuting tribunal. Accordingly, ATF’s proposed regulatory definition merely clarifies the statutory definition by covering these points.<sup>10</sup>

Yet, nowhere in the final definition of “fugitive from justice” does ATF include language that in order to be a fugitive from justice a person must purposefully leave the State of prosecution and fail to appear before the prosecuting tribunal. In fact, the person must only be aware of the pending charges and leave the State.

- c. ATF Cannot Regulate the Definition of a “Fugitive from Justice” in these proceedings, as It Failed to Notify the Public of any such Intent and It Failed to Comply with 18 U.S.C. § 926(b)

As declared in *Connecticut Light & Power Co. v. NRC*, 673 F.2d 525, 528 (D.C. Cir. 1982), “[i]f the [NPR] fails to provide an accurate picture of the reasoning that has led the agency to the proposed rule, interested parties will not be able to comment meaningfully upon the agency's proposals.” The court went on to find that an agency commits serious procedural

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<sup>9</sup> 62 FR 34634 at 34636

<sup>10</sup> *Id.*

error when it fails to reveal the basis for a proposed rule in time to allow for meaningful commentary.

Moreover, 18 U.S.C. § 926(b) provides that ATF “shall give not less than ninety days public notice, and shall afford interested parties opportunity for hearing, before prescribing such rules and regulations.”

As these proceedings failed to provide proper public notice and only afforded sixty days for comments, ATF lacks the authority to promulgate any definition in these proceedings.

d. In the Alternative, an Entirely New Class of Prohibited Persons Emerges Under ATF’s Proposed Definition

Due to ATF’s prior failure to clarify the definition of a “fugitive from justice” when it entered into rulemaking to promulgate the definition, it now seeks to create an entirely new class of prohibited persons.

ATF’s proposed definition does not reflect the understanding that an individual is *required* to know that felony or *misdemeanor* charges are pending, leaves the state purposefully and does not appear before the prosecuting tribunal. In fact, ATF’s proposed definition of “fugitive from justice” seemingly takes individuals who would not otherwise be prohibited and turns them into a “fugitive from justice”.

In point of fact, if an individual resides in Pennsylvania, who knows he/she is charged with a Misdemeanor of the second degree<sup>11</sup> or a Misdemeanor of the third degree<sup>12</sup> (neither of which are federally prohibiting offenses, as they are not punishable by more than two years of

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<sup>11</sup> See 18 Pa.C.S. § 106(b)(7) (“...if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is not more than two years.”)

<sup>12</sup> See 18 Pa.C.S. § 106(b)(8) (“...if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is not more than one year.”)

imprisonment), travels to a surrounding state on a vacation, shopping trip, etc., and attempts to purchase a gun, he/she would be unable to answer question 11d by checking “no” truthfully, even though the Congress never sought to prohibit an individual during charging, where even if convicted of the offenses, the individual would not be prohibited. The Congress only sought to prohibit an individual under charging from purchasing new firearms, where the individual would be prohibited if convicted of the charges, since one is presumed innocent until proven guilty.

*Coffin v. United States*, 156 U.S. 432, 453 (1895)

With the proposed definition of “fugitive from justice,” individuals who are not under charging for an offense that would result in a prohibition and regardless of their intent to return to the state to answer for the charges, would be proscribed from completing the 4473.

### **III. Proposed Revision to Question 11.e**

For brevity, FICG joins in and supports all of Cannabis Industry Law Group’s (“CILG”) Comment, which, *inter alia*, proposes that ATF specifically find that users of state-licensed physician prescribed marijuana for medicinal purposes are not “unlawful user of or addicted to any controlled substance”, pursuant to 18 U.S.C. § 922(g)(3) and 27 C.F.R. § 478.11, or, in the alternative, that ATF stay these proceedings pending the outcome of the Drug Enforcement Administration’s review and consideration of the removal or re-scheduling of marijuana.

#### IV. Proposed Revision to the Instructions for Box 20

Box 20 on the proposed 4473 reads “No NICS check was required because a background check was completed during the NFA approval process on the individual who will receive the NFA firearm(s), as reflected on the approved NFA application.”<sup>13</sup>

The proposed instructions read:

**Questions 20 and 21. NICS EXCEPTIONS:** 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 of National Firearms Act firearms to an individual who has undergone a background check during the NFA approval process; (b) transfers where the transferee/buyer has presented the licensee with a permit or license that allows the transferee/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; or (c) transfers certified by ATF as exempt because compliance with the NICS check requirements is impracticable. 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 transferee/buyer who fails to provide such documentation.

*A NICS check must be conducted if an NFA firearm has been approved for transfer to a trust, or to a legal entity such as a corporation, and no background check was conducted as part of the NFA approval process on the individual who will receive the firearm. Individuals who have undergone a background check during the NFA application process are listed on the approved NFA transfer form.*<sup>14</sup>

(Emphasis added).

While ATF 41F was designed to purportedly solve the issue of individuals using legal entities to acquire NFA firearms without a background check, ATF instructs licensees to conduct background checks on the individual receiving the firearm if they were not listed on the NFA application.<sup>15</sup>

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<sup>13</sup> <https://www.atf.gov/resource-center/docs/form-example-firearms-transaction-record/download>

<sup>14</sup> *Id.*

<sup>15</sup> ATF violated numerous administrative law requirements during the rulemaking process of ATF 41P/F, failed to account for a single instance where prohibited persons utilized a legal entity to acquire an NFA firearm to avoid a background check (purportedly the entire premise of the rulemaking process) and seemingly colluded with the National Firearms Act Trade and

a. Pennsylvania's Instant Check System and the Inability to Utilize it to Perform Background Checks on Individuals Receiving Certain NFA Firearms

Pennsylvania law defines the term “firearm” as

Any pistol or revolver with a barrel length less than 15 inches, any shotgun with a barrel length less than 18 inches or any rifle with a barrel length less than 16 inches, or any pistol, revolver, rifle or shotgun with an overall length of less than 26 inches. The barrel length of a firearm shall be determined by measuring from the muzzle of the barrel to the face of the closed action, bolt or cylinder, whichever is applicable.

18 Pa.C.S. § 6102.

While Pennsylvania's definition of a firearm would include that of a short barrel rifle and short barrel shotgun, the term is noticeably devoid of any reference to a silencer or firearm muffler.

As Pennsylvania is a “point of contact state” for utilizing the National Instant Check System, all background checks must go through the Pennsylvania State Police. The uses for the Pennsylvania Instant Check System (PICS) are defined in 18 Pa.C.S. § 6111(b). The statute, in the pertinent part, reads:

No ... licensed dealer shall sell or deliver any **firearm** to another person ... until the conditions of subsection (a) have been satisfied and until he has:

- (1) For purposes of a firearm as defined in section 6102 (relating to definitions), obtained a completed application/record of sale from the potential buyer or transferee...
- (2) Inspected photo identification of the potential purchaser or transferee...
- (3) Requested by means of a telephone call that the Pennsylvania State Police conduct a criminal history, juvenile delinquency history and a mental health record check.
- (4) Received a unique approval number for that inquiry from the Pennsylvania State Police and recorded the date and the number on the application/record of sale form.
- (5) Issued a receipt containing the information from paragraph (4), including the unique approval number of the purchaser....

18 Pa.C.S. § 6111(b). (Emphasis added).

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Collectors Association (NFATCA) in order to institute a cumbersome, unneeded and questionable regulatory scheme with regard to legal entities and NFA firearms.

Pennsylvania law even expands the definition of firearm, solely for the purpose of this section to read "... 'firearm' shall mean any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon." 18 Pa.C.S. § 6111(f). Yet, even with the expanded definition, there is nothing that would include a silencer in the term firearm.

To make matters worse, ATF would now be instructing dealers to violate state law and commit a *felony* of the third degree. 18 Pa.C.S. § 6111(g)(3) is instructive, stating

Any ... licensed dealer ... who knowingly and intentionally requests a criminal history, juvenile delinquency or mental health record check or other confidential information from the Pennsylvania State Police under this chapter for **any purpose other than compliance with this chapter ... commits a felony of the third degree.**

(Emphasis added). Regardless of ATF's instructions, a Pennsylvania dealer *cannot* utilize PICS to run a background check on an individual who is picking up a silencer from a licensee. Surely there are other point of contact states which present the same or similar problem.

#### **V. The Proposed 4473 Fails to Include a Field for Firearms Being Received on Behalf of a Legal Entity**

One of the issues that licensees face when disposing of a firearm to an individual on behalf of a legal entity is that ATF offers no sample forms, wording, etc., beyond the instructions for Section A. This has not been changed in the current proposed iteration of the 4473.

FICG urges ATF to promulgate a field that would allow a licensee to mark that the firearm is being disposed of to a legal entity and include an area for the licensee or transferee/buyer to list the name and address of the legal entity, as is provided for on the ATF Form 1 and Form 4 forms.

This would eliminate the need of licensees to have to promulgate their own form, store them with the corresponding 4473, and have any violations levied against them for not having the statement with all the required information or in the format preferred by the Industry Operations Inspector.

ATF could revise the language in the certification statement to include language to the effect that if the firearm being transferred is done to an officer authorized to act on behalf of the entity, the firearm is being acquired for the use and will be the property of the entity.

This simple solution would reduce the paperwork burden on licensees and allow ATF to collect all of the required information on one form, as is done with the ATF Form 1 and Form 4.

## **VI. The Certification Statement for Transferors**

While ATF revised the certification statement for Transferors to reflect that “[u]nless this transaction has been denied or cancelled, I further certify on the basis of..” to properly allow an individual to complete boxes 34-36, the statement still presents issues.

Specifically, the individual is certifying that based on the “information in the current ATF Publication ‘*State Laws and Published Ordinances*’ – it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise disposes of the firearm(s) listed on this form to the person identified in Section A.” The current publication of ATF’s *State Laws and Published Ordinances*, as of the writing of this comment, is the 31<sup>st</sup> Edition, which was published in 2011 and contains laws and ordinances effective through January 2011. This results in *at least* a 5-year lapse of current information.

While not all inclusive, since January of 2011, New York implemented its blatantly unconstitutional Secure Ammunition and Firearms Enforcement (SAFE) Act <sup>16</sup>, Washington began universal background checks on all firearms transfers <sup>17</sup>, Colorado banned the manufacture or ability to purchase “high capacity” (read “standard capacity”) magazines <sup>18</sup>, Connecticut deprived its citizens of the ability to transfer and/or possess “assault weapons” (read “America’s Rifle, Modern Sporting Rifles and Arms”) <sup>19</sup>, Maryland criminalized the ability for an individual to manufacture, sell, offer for sale, purchase, receive, or transfer a detachable magazine that has a capacity of more than 10 rounds of ammunition for a firearm <sup>20</sup>, California is in the process of passing even more laws to criminalize a fundamental constitutional right <sup>21</sup> and three (3) states have legalized silencer ownership <sup>22</sup>.

Thus a licensee/employee is left to guess whether they transferred the firearm in accordance with the actual state law or ordinance (if the transferee/buyer is a non resident purchasing a long gun). This puts licensees in a precarious position as many states have recently changed their laws, including the ban on modern sporting rifles such as the AR-15 or “America’s Rifle”.

Further, ATF’s *own regulations* require that “[t]he Director *shall* annually revise and furnish Federal firearms licensees with a compilation of State laws and published ordinances which are relevant to the enforcement of this part.” <sup>23</sup> In an interesting twist of fate, the ATF has *failed to comply with its own regulations* that it promulgated in 1988 and amended in 2004,

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<sup>16</sup> See <http://legislation.nysenate.gov/pdf/bills/2013/S2230>

<sup>17</sup> See Rev. Code Wash. (ARCW) § 9.41.113

<sup>18</sup> See Colo. Rev. Stat. §§ 18-12-301 through 18-12-303

<sup>19</sup> See Conn. Gen. Stat. § 53-202b - § 53-202o

<sup>20</sup> See Md. Criminal Law Code Ann. § 4-305

<sup>21</sup> See <http://www.reuters.com/article/us-california-politics-guncontrol-idUSKCN0YO05Y>

<sup>22</sup> See <http://americansuppressorassociation.com/education/>

<sup>23</sup> See 27 C.F.R. § 478.24



which will come with no repercussions, yet if a licensee were to fail compliance with the regulations, ATF would likely take the position the licensee “willfully violated the Gun Control Act and its regulations”.

### CONCLUSION

For the reasons set-forth above, ATF lacks the authority to define or clarify what constitutes an “unlawful user of or addicted to any controlled substance” or “fugitive from justice”.

ATF should thoroughly consider the suggestions and comments in opposition to proposed changes contained in this comment as well as the implications of the proposed changes. Additionally, as the statutory and regulatory requirements of licensees to correctly complete and retain the 4473 are quite arduous, ATF must promulgate a form that is easy for licensees to complete.

Respectfully submitted,



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