

18 U.S.C. 922(a)(2): INTERSTATE CONTROLS

18 U.S.C. 922(b)(3): INTERSTATE CONTROLS

18 U.S.C. 922(t): TRANSFER TO UNLICENSED PERSONS

18 U.S.C. 923(g)(1)(A): REQUIRED RECORDS

27 CFR 478.124: FIREARMS TRANSACTION RECORD

27 CFR 478.125: FIREARMS RECEIPT AND DISPOSITION RECORD

The temporary assignment of a firearm by an FFL to its unlicensed employees for bona fide business purposes, where the actual custody of the firearm is transferred for a limited period of time, and where title and control of the firearm remain with the FFL, is not a transfer for purposes of the Gun Control Act, and, accordingly, the FFL need not contact NICS for a background check, record a bound book disposition entry, nor complete an ATF Form 4473. The temporary assignment of a firearm by an FFL to its unlicensed agents, contractors, volunteers, or any other person who is not an employee of the FFL, even for bona fide business purposes, is a transfer or disposition for purposes of the Gun Control Act, and, accordingly, the FFL must contact NICS for a background check, record a disposition entry, and complete an ATF Form 4473. Revenue Ruling 69-248 is superseded and ATF Ruling 73-19 is modified. Industry Circular 72-23 is no longer in effect.

ATF Rul. 2010-1

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received inquiries from firearms industry members asking whether the temporary assignment of a firearm by a Federal firearms licensee (FFL) to certain unlicensed persons constitutes a “transfer” under Federal law, thus requiring the FFL to contact the National Instant Criminal Background Check System (NICS) prior to assigning firearms to such persons.

FFLs use employees and sometimes the services of certain unlicensed persons, such as writers, evaluators, consultants, attorneys, engineers, and sales representatives, to carry out their business operations. In the course of their employment or contracted services, such persons may, for example, research, examine, photograph, and evaluate firearms on behalf of FFLs.

The Gun Control Act of 1968 (GCA), Title 18, United States Code (U.S.C.), Chapter 44, imposes Federal controls on FFLs who transfer firearms in interstate commerce. Section 922(a)(2) makes it unlawful for an FFL to ship or transport in interstate or foreign commerce any firearm to a person other than an FFL. Section 922(b)(3) makes it unlawful for an FFL to sell or deliver a firearm to a person he or she knows does not reside in the State in which the FFL’s place of business is located. Additionally, under 18 U.S.C. 923(g)(1)(A), each FFL must maintain records of importation, production, shipment, receipt, sale, or other disposition of firearms at its place of business as prescribed by regulation. Federal regulations at Title 27, Code of Federal Regulations (CFR), sections 478.124 and 478.125, require licensed importers, manufacturers, and dealers to record each firearm sale or disposition and complete a Firearms Transaction Record, ATF Form 4473.

Revenue Ruling 69-248, 1969-1 C.B. 360, addresses temporary assignments of firearms to FFL employees, agents, and representatives. That ruling states that a licensee may lawfully ship or transport a firearm to its unlicensed employees, agents, or representatives without violating section 922(a)(2), provided (1) the employee, agent, or representative is not prohibited under section 922(g) from possessing a firearm; and (2) the shipment is for a bona fide business purpose, except to sell or dispose of the firearm. Upon completion of the business purpose, the employee, agent, or representative must return the firearm to the licensee. Rev. Rul. 69-248 is limited to situations in which “the actual custody of the firearms . . . is transferred for a limited period of time and where title and ultimate control of the firearms . . . remain in such licensee.”

ATF issued Industry Circular 72-23 (dated August 23, 1972) to clarify Rev. Rul. 69-248. Industry Circular 72-23 explained that professional writers, consultants and evaluators were included within the category of agents and representatives discussed in Rev. Rul. 69-248. The industry circular noted that Rev. Rul. 69-248 is explicitly limited to “firearms . . . acquired from a licensee for limited lengths of time and where the title to and ultimate control of the firearm remains in the licensee.”

In 1993, over 20 years after issuance of the ruling and circular, Congress enacted the Brady Handgun Violence Prevention Act (the Brady Law), Title 18, U.S.C., section 922(t). The Brady Law amended the GCA, in part, by providing that an FFL may not transfer a firearm to any unlicensed person unless the FFL contacts and successfully completes a background check through NICS, and the FFL has verified the identity of the transferee by examining a valid identification document containing a photograph of the transferee. In enacting the Brady Law, Congress intended to create a system to help ensure that FFLs did not allow prohibited persons to come into possession of firearms.

Neither the GCA nor its implementing regulations define the term “transfer.” The common legal definition of “transfer” broadly encompasses any method of disposing of an asset. A “transfer” includes any change in dominion or control of a firearm, whether temporary or permanent, commercial or noncommercial. A change in dominion or control may occur even when such change does not convey title to the firearm.

Businesses carry out operations through their employees. When an FFL temporarily assigns a firearm to an employee for bona fide business purposes, title and control of the firearm remain with the licensee. For this reason, no transfer or disposition occurs for purposes of the GCA. Accordingly, no NICS check, disposition record entry, or ATF Form 4473 is required for the temporary assignment of a firearm by an FFL to its employee. Bona fide business purposes, in this context, are purposes integral to the FFL’s business operations, and do not include permanently assigning a firearm to a specific employee, or loaning or renting a firearm to an employee for personal use. Those are considered transfers or other dispositions that would trigger recordkeeping and NICS requirements. Because FFLs are accountable for their firearms inventories, ATF strongly recommends that FFLs ensure accountability for firearms temporarily assigned to employees. In addition, ATF reminds FFLs that they may not knowingly make available

or assign a firearm to any person whose receipt or possession of firearms is prohibited under the GCA.

Businesses may also support their operations through contractors or volunteers. When an FFL temporarily assigns a firearm to a non-employee, even for bona fide business purposes, a transfer occurs for purposes of the GCA. Temporary firearms assignments to employees are different from temporary firearms assignments to non-employee contractors, agents, and representatives because the FFL exerts a higher level of control over its employees than its contractors or agents. Unlike contractors and agents, employees work for wages or salaries under direct supervision. In an employer-employee relationship, the employer controls not only the result of the employee's work, but also the manner, training, and hours in which the work will be carried out. In independent contractor or non-employee agency relationships, the independent contractor or non-employee agent has control of the manner, training, and hours of performing the work, and is only responsible for the result. Because an FFL relinquishes control over a firearm by temporarily assigning it to a non-employee, the GCA requirements apply.

If the FFL and the unlicensed person do not wish to enter into an employer-employee relationship, certain unlicensed persons may obtain a Federal firearms license from ATF. As discussed above, the Brady Law does not apply to transfers between FFLs; therefore, no NICS check would be required to transfer a firearm from one FFL to another. In ATF Ruling 73-19, for example, ATF determined that firearms consultants and experts may be licensed as dealers to receive firearms from unlicensed persons for testing and evaluation. ATF Rul. 73-19, 1973-ATF C.B. 93. Licensed dealers who engage solely in firearms consulting or expert services for firearms testing or evaluation need not maintain regular business hours or open their business premises to the general public, although they must comply with all other applicable GCA requirements.

Held, the temporary assignment of a firearm by an FFL to its unlicensed employees for bona fide business purposes, where the actual custody of the firearm is transferred for a limited period of time, and where title and control of the firearm remain with the FFL, is not a transfer or disposition for purposes of the Gun Control Act, as amended, and, accordingly, the FFL need not contact NICS for a background check, record a disposition entry, nor complete an ATF Form 4473.

Held further, the temporary assignment of a firearm by an FFL to its unlicensed agents, contractors, volunteers, or any other person who is not an employee of the FFL, even for bona fide business purposes, is a transfer or disposition for purposes of the Gun Control Act, as amended, and, accordingly, the FFL must contact NICS for a background check, record a disposition entry, and complete an ATF Form 4473. As a reminder, an FFL may not transfer a firearm other than a rifle or shotgun to an unlicensed person who does not reside in the FFL's State. An FFL may transfer a firearm to another FFL in the unlicensed person's State of residence, and that FFL may subsequently transfer the firearm to the unlicensed person, after contacting NICS for a background check, recording a disposition entry, and completing an ATF Form 4473.

Rev. Rul. 69-248, 1969-1 C.B. 360, is hereby superseded and ATF Rul. 73-19, 1973-ATF C.B. 93, is modified. In addition, Industry Circular 72-23, dated August 23, 1972, is no longer in effect.

Date approved: May 20, 2010

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