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June 12, 2017

BY ELECTRONIC DELIVERY

Andrew Graham
Deputy Assistant Director of Industry Operations
Bureau of Alcohol, Tobacco, Firearms & Explosives
United States Department of Justice
99 New York Avenue, NE
Washington, DC 20226

**Re: Guidance and Policy Regarding the Sale of Firearms at Trade Shows
by Out-of-State FFLs**

Dear Mr. Graham:

On behalf of my client, the National Association of Arms Shows (“NAAS”), I am writing this letter to address a policy matter regarding transfers of firearms between an out-of-state federal firearms licensee (“FFL”) and an in-state FFL dealer at a gun show. We are concerned by inconsistent and impractical guidance received from various Field Divisions on how such a transfer would operate. As a result, we wish to provide our understanding of the Bureau of Alcohol, Tobacco, Firearms and Explosives’ (“ATF”) historical guidance and the governing regulations on dealer-to-dealer transfers for gun shows. We respectfully request the Bureau to confirm as soon as possible that this understanding is the guiding policy for transfers of firearms between an out-of-state FFL and an in-state FFL at trade shows.

I. Legal and Policy Background

Generally, it is unlawful for a licensee to sell or deliver a firearm to a person who does not reside in the same state of the licensee’s place of business¹ and any firearms business must take place at the licensed premises.² Both the U.S. Code and ATF regulations state that a licensee may conduct business at a gun show if the gun show is taking place in the same state as the dealer’s licensed premises.³ Licensees conducting business at a gun show must maintain firearms records for any transaction completed at

¹ 18 U.S.C. § 922(b)(3).

² 27 C.F.R. § 478.50.

³ 18 U.S.C. § 923(j); 27 C.F.R. § 478.100(a).

the show, as licensees are required to enter these transactions into the permanent records of the licensee and retain them at the licensed premises.⁴

In addition to the above, the ATF website provides the following guidance for what a licensee may do at an out-of-state gun show:

A licensee may only display and take orders for firearms at an out-of-State gun show. In filling any orders for firearms, the licensee must return the firearms to his or her licensed premises and deliver them from that location. Any firearm ordered by a nonlicensee must be delivered or shipped from the licensee's premises to a licensee in the purchaser's State of residence, and the purchaser must obtain the firearm from the licensee located in the purchaser's State. A licensee is prohibited from transferring firearms to another licensee at an out-of-State gun show, except where the firearm being transferred is a curio or relic.⁵

Furthermore, ATF issued a June 2010 FFL Newsletter describing how an out-of-state FFL can consign firearms to an in-state FFL which enables the in-state FFL to sell the firearms on the out-of-state FFL's behalf.⁶ Both FFLs must enter into a consignment agreement, and the out-of-state FFL must make arrangements to transfer the firearms to the licensed premises of the in-state FFL. The two FFLs must record the transfer in their respective A&D books: the in-state FFL must record the acquisition of the consigned firearms by the close of the next business day following the date of acquisition. Once the firearms are sold at the gun show, the in-state FFL must record the transaction in its A&D book within 7 days of the date of disposition. Following the gun show, any unsold firearms may be transferred back to the out-of-state FFL. Both FFLs must record the return of the firearms in their respective A&D books.

II. Field Division Guidance on Dealer-to-Dealer Transfers at Gun Shows

At a recent meeting between ATF Field Division personnel and licensed dealers, ATF outlined how an out-of-state dealer and in-state dealer must collaborate in order for the out-of-state dealer to participate in a gun show. However, as NAAS understood this guidance, it appeared to be inconsistent with previous ATF guidance such as that outlined in the aforementioned FFL Newsletter. The correct procedures for out-of-state dealer transactions, as explained in the meeting, are as follows.

1. Firearms must be logged out from the out-of-state dealer's bound book prior to the show and must be logged in to the in-state (transfer) dealer's bound book in advance of the show.

⁴ 18 U.S.C. § 923(j).

⁵ *What May a Licensee Do at an Out-of-State Gun Show?*, ATF.GOV (Sept. 23, 2016), <https://www.atf.gov/firearms/qa/what-may-licensee-do-out-state-gun-show>.

⁶ BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, FFL NEWSLETTER, JUNE 2010 5-6 <https://www.atf.gov/firearms/docs/newsletter/federal-firearms-licensees-newsletter-june-2010/download> (*hereafter* JUNE 2010 NEWSLETTER).

2. There must be a letter of agreement, or consignment agreement, between the dealers, defining the relationship between them regarding the transfer of firearms for the gun show.
3. The out-of-state dealer must physically take the firearms to the licensed premises of the in-state dealer. At the in-state dealer's premises, the two parties must unpack them, jointly verify serial numbers, then re-pack them. The in-state dealer can then bring the firearms to the show location.
4. At the gun show, the out-of-state dealer must set up at the same tables as the in-state dealer and may act as his agent. Since the out-of-state dealer has "consigned" his firearms to the in-state dealer, he cannot be actively engaged in selling them.
5. The firearms may not be delivered to a purchasing customer at the show; rather they must be taken to the in-state dealer's licensed premises and must be delivered after the show concludes, such as during the following week.
6. Any unsold firearms may not be returned to the out-of-state dealer at the show. Rather, they must be taken back to the in-state dealer's licensed premises and logged out of his books before the out-of-state dealer can take possession of them again.
7. Dealer-to-dealer transfers at a gun show are not allowed (except for curio and relic firearms).

III. Inconsistencies between Recent Guidance and Historical Policy

While we do not disagree with all of the points noted above, several of them concern us as being inconsistent with current regulations or attempting to turn best practices into enforceable violations. The primary disagreements concern the type of agreement required between the dealers, the physical location of each dealer and each firearm at the moment of transfer, and the physical location of the customer at the moment of retransfer.

For instance, the Field Division seems to be stating that any agreements between dealers for a gun show transaction must be reduced to writing. While this point was noted in the 2010 guidance⁷ and we concur that this is generally a good idea, nothing in the regulations requires a written agreement between the dealers. From an enforcement standpoint, all that the regulations require is that the dealers reflect the dispositions and acquisitions appropriately in their bound books and provide certified copies of their FFLs to each other.⁸ There are no provisions requiring that the transaction be structured as a consignment sale, or that it be specific to a certain gun show.

⁷ JUNE 2010 NEWSLETTER, at 7.

⁸ 27 C.F.R. § 478.94; 27 C.F.R. § 478.125(e).

Further, to our knowledge, the regulations do not require that physical delivery of firearms from one dealer to another, or from the dealer to the customer, must take place at the receiving dealer's physical location as shown on the license. As you know, a licensee can receive items to locations not shown on the FFL, such as to a warehouse location.⁹ In addition, 18 U.S.C. 923(j) provides that a licensee can conduct business temporarily at a location other than the location shown on the license for events such as gun shows. The law provides that in such situations, "[r]ecords of receipt and disposition of firearms transactions conducted at such temporary location shall include the location of the sale or other disposition and shall be entered in the permanent records of the licensee and retained on the location specified on the license."¹⁰ Nothing in this provision indicates that ATF can require the temporary business to be consummated at the licensed location, or prohibit the business from being finalized at the temporary location.

ATF's regulations issued pursuant to this off-site business provision specifically state that "[t]he premises of the gun show or event at which the licensee conducts business shall be considered part of the licensed premises."¹¹ The regulations further provide that "records of firearms transactions conducted at such locations shall include the location of the sale or other disposition, be entered in the acquisition and disposition records of the licensee, and retained on the premises specified on the license."¹² Both of these provisions acknowledge that firearms transfers can be completed at a location other than the licensee's regular business premises. Further, they do not restrict off-premises transactions to transfers between FFLs and private parties or require that the physical exchange of the firearm be completed at the location shown at the license. The only restrictions are a prohibition on conducting business out of vehicles and requiring that the dealer post a copy of his license at the temporary location.¹³

Under these provisions of the U.S. Code and ATF's regulations, it is thus permissible for a dealer to receive a delivery of a firearm from another licensee when at a physical location not shown on the recipient's license. In addition, the in-state dealer can dispose of a firearm to a customer at a temporary location not shown on the license. Further, if the temporary location is thus considered an extension of the in-state licensed premises, the in-state dealer can transfer firearms back to the originating licensee while still at the gun show location. In these situations, the only additional requirement is that the dealer's records reflect that the transfer took place at the different address.¹⁴

ATF's historical guidance has been generally consistent with this understanding of the regulations. For instance, the June 2010 Newsletter provides that an in-state dealer "[m]ay dispose of firearms to any FFL" while at a gun show and an out-of-state dealer "[m]ay acquire firearms from any FFL licensed in the state and from any non-licensed individual."¹⁵ These same points were consistently echoed in ATF's October 2016 Gun Show pamphlet and are not inconsistent with the website explanation included above.

⁹ See 27 C.F.R. § 479.50(a).

¹⁰ 18 U.S.C. § 923(j).

¹¹ 27 C.F.R. § 478.100(a).

¹² 27 C.F.R. § 478.100(c).

¹³ 27 C.F.R. § 478.100(a).

¹⁴ 27 C.F.R. § 478.100(c).

¹⁵ JUNE 2010 NEWSLETTER, at 6.

However, the recent Field Division guidance regarding returns of consigned firearms (point 6, above) is clearly inconsistent with the printed ATF guidance, as it claims the out-of-state FFL cannot receive incoming FFL transfers.

Further, we believe that where an out-of-state dealer has a prior agreement with an in-state dealer to sell firearms on its behalf at a gun show, the out-of-state dealer may deliver the firearms to the in-state dealer at the gun show premises. This scenario is no different from a dealer or manufacturer physically delivering firearms to a licensee's regular business premises or warehouse location, or causing a shipping service to affect the same type of delivery. The transfer in both situations commenced when the dealer dispositioned the firearms out of its own bound book and initiated the shipping action. The recipient licensee must enter all of the firearms into the bound books associated with its licensed address regardless of the fact that the firearms might be stored off site or were delivered in person rather than by a shipping service.

Because 27 C.F.R. § 478.100(a) provides that the temporary gun show location is considered an extension of the licensed premises, it should not be illegal for an in-state dealer to receive the physical delivery of consigned firearms at that temporarily-licensed gun show location. We agree that if there were no pre-show arrangement between the out-of-state licensee and the in-state licensee, the two parties could not enter an agreement at the show and complete a transfer to the in-state licensee in person during the gun show. However, where the parties have already entered an agreement prior to the show and the out-of-state dealer completed its disposition from its licensed premises, there is no prohibition on mere delivery to the in-state dealer at a location covered, even if only temporarily, by the in-state dealer's current license.

Finally, we agree with the Field Division that in-state dealer must maintain dominion and control over any firearms consigned by an out-of-state dealer for the duration of the show. However, we believe that where the premises do not permit the two licensees to have adjacent tables, it is possible for the out-of-state dealer to exhibit the consigned firearms at tables not adjacent to the in-state dealer's tables. If this scenario occurs, an employee of the in-state dealer must be present at all times at the out-of-state dealer's table to maintain dominion and control. Further, if a customer wished to purchase the firearm, an employee of the in-state dealer would need to walk the firearm and customer over to the in-state dealer's table in order to complete the disposition and record it properly in its bound books.

In either tabling situation, the in-state dealer may dispose of consigned firearms to residents of the state where the gun show is located, provided that all background check and recordkeeping requirements are met. After the show, unsold firearms may be returned to the out-of-state FFL, and both FFLs will document the return of the unsold consigned firearms in their respective records. The return of the firearms is permitted to take place at the location of the gun show, consistent with ATF's written guidance, as the gun show is an extension of the licensed premises of the in-state dealer.

IV. Conclusion

In light of the aforementioned analysis and conclusions, we respectfully request ATF to provide clarification on the legal requirements for out-of-state FFLs to transfer firearms to a licensed in-state dealer at a trade show located in the same state of the transferee FFL. As our client members continue to hold firearms shows regularly throughout the country, and as they have experienced exhibitor withdrawals due to concern over how inconsistent policies might be applied, we would greatly appreciate receiving confirmation of ATF's current policies in this regard as soon as possible. We hope that this letter is sufficient to provide enough information for the Bureau to answer our request. If you have any questions regarding the matter, please do not hesitate to contact me at (202) 626-0070 or mark.barnes@mbassociateslaw.com.

Sincerely,

A handwritten signature in black ink that reads "Mark Barnes". The signature is written in a cursive style with a large, prominent "B". There is a small "mb" monogram at the end of the signature.

Mark Barnes
Outside Counsel to
National Association of Arms Shows

CC: Krissy Carlson, Division Chief, Firearms and Explosives Industry Division

MB:mab:pm