

Chapter 8
Transfer Process and Background Checks

“An individual signing on behalf of the person in authority is acceptable, provided there is a proper delegation of authority.”²²

While licensees “are not required to prepare a Form 4473 . . . covering sales of firearm made in accordance with [the above requirements] to law enforcement officers for official use,” the “disposition to the officer must be entered into the licensee’s permanent records, and the certification letter must be retained in the licensee’s files.”²³

Electronic Version of ATF Form 4473 Approved

Requirements. The ATF approved the use of an electronic version of Form 4473 under ATF Ruling 2008-3. That ruling, with its eleven prerequisites, has now been superseded with ATF Ruling 2016-2 and includes 22 prerequisites, with subparts.²⁴ Ruling 2016-2 explains that, under the regulations, “The answers on Form 4473 must be handwritten, and contain the information specified by Title 27, Code of Federal Regulations (CFR), section 478.124.” Ruling 2016-2 recognizes that a licensee may “seek ATF approval to use an alternate electronic system of recordkeeping” and that the ATF Director “may approve of an alternate method or procedure” if certain conditions are met.²⁵ The ATF has determined that the use of computers to complete the ATF Form 4473 meets these conditions and, therefore “authorizes licensees to use an electronic ATF Form 4473 (5300.9) provided all of the [twenty-one] requirements are met.”²⁶ These requirements are as follows:

1. *Use Proper Form and Follow Instructions.* The licensee must follow the 3 ½ pages of “Notices, Instructions, and Definitions” provided for the ATF Form 4473, which is referred to as “the OMB-approved version of the ATF Form 4473.”²⁷ In addition, licensees must either: (a) obtain and uses their own electronic Form 4473 software, or (b) download the ATF’s most current electronic version of Form 4473, referred to as “ATF e-Form 4473,” and save it to their own computer.²⁸

²² 27 C.F.R. § 478.124(b)(2).

²³ 27 C.F.R. § 478.124(c).

²⁴ ATF Ruling 2016-2.

²⁵ ATF Ruling 2016-2 (citing to 27 C.F.R. §§ 478.22, 479.26).

²⁶ ATF Ruling 2016-2.

²⁷ ATF Ruling 2016-2..

²⁸ ATF Ruling 2016-2.

Chapter 8

Transfer Process and Background Checks

2. *Provide ATF Completion Instructions.* The “Notices, Instructions, and Definitions” provided with the paper ATF Form 4473, must be clearly displayed on the e-Form 4473, either “on the same screen, or upon mouse-clicking a conspicuously displayed screen item.”²⁹
3. *New Blank Form for Each Transaction.* “The computer software must allow for a new e-Form 4473 to be created and completed upon each transaction. The system cannot populate Section A from previous transfers from the same transferee (buyer).”³⁰
4. *Buyer Physically Present; Questions Match Official Form.* The buyer of the firearm “must answer the questions for Section A of e-Form 4473 while physically present at the seller’s premises,” which include “a qualifying gun show or event.”³¹ Also, the questions on the computer screen must be legible and contain the same wording as the most recent “OMB-approved version of ATF Form 4473 (5300.9).”³² Where Form 4473 requires “checking” or “marking,” the buyer may mouse-click in an appropriate box to answer the question on the e-Form 4473. Where Form 4473 requires “printing” or “handwriting” the buyer may enter the information on the e-Form 4473.³³
5. *Buyer Corrections.* The e-Form 4473 must allow buyers to review and amend their answers until they select or mouse-click a statement on the screen that they agree with and certify the buyer certification statement provided in the most recent “OMB-approved ATF Form 4473 (5300.9).” Once the certification statement “has been selected or mouse-clicked,” buyers must not be able to make revisions to their answers.³⁴
6. *Buyer Certification.* Buyers must confirm their answers with their signature and date on the form, certifying that their answers are true, correct, and complete, and that they

²⁹ ATF Ruling 2016-2.

³⁰ ATF Ruling 2016-2. For the remaining restrictions, the use of “buyer” is used rather than “transferor” or “transferor (buyer).”

³¹ ATF Ruling 2016-2.

³² ATF Ruling 2016-2.

³³ ATF Ruling 2016-2.

³⁴ ATF Ruling 2016-2.

Chapter 8

Transfer Process and Background Checks

have read, understood, and complied with the conditions, notices, definitions, and instructions for the form.³⁵

7. *Questions for Seller.* The seller of the firearm must enter the information for Sections B and D of the e-Form 4473 into the licensee's computer. The questions viewed on the screen for these sections "must be legible, and contain the same wording as the current OMB-approved version of ATF Form 4473."³⁶
8. *Signatures.* The buyer and seller signatures on the e-Form 4473 "may be electronic signatures captured via an electronic signature pad prior to printing or may be handwritten (ink) signatures on the printed copy of the e-Form 4473."³⁷
9. *Signature Equipment Failure.* "If the electronic signature pad breaks or fails to operate properly, the licensee must discontinue use of electronic signatures and obtain handwritten (ink) signatures on the OMB-approved ATF Form 4473 or the printed copy of the eForm 4473."³⁸
10. *Buyer Unable to Read or Write.* If the buyer cannot read and/or write, "another person, excluding the licensee or any employee of the licensee, may complete the answers. Two persons, other than the licensee or any employee of the licensee, must then sign as witnesses to the buyer's answers and signature. The person who cannot read and/or write may electronically sign or mark the e-Form 4473. The two additional persons' signatures must be handwritten in ink on the printed e-Form 4473."³⁹
11. *NICS/POS Information Entry Methods.* All NICS (National Instant Criminal Background Check System) or State POC (Point of Contact) related information must be entered accurately on the eForm 4473 in the applicable fields. These entries can be made by either a) electronic population (auto-population of the fields), b) manual

³⁵ ATF Ruling 2016-2.

³⁶ ATF Ruling 2016-2.

³⁷ ATF Ruling 2016-2.

³⁸ ATF Ruling 2016-2.

³⁹ ATF Ruling 2016-2.

Chapter 8

Transfer Process and Background Checks

electronic entry (typing the information into the fields), or c) handwritten entry onto the printed form.⁴⁰

12. *Electronic NICS/POC Entries.* To electronically populate NICS/POC information, the licensee “must contact the FBI NICS or appropriate State agency to request authorization to transfer specific NICS data from e-Check into the computerized system.”⁴¹
13. *Background Check Exceptions.* If an exception to the NICS/POC check exists, “the licensee must record such information on the ATF Form 4473 (i.e., if a buyer possesses a NICS or State POC exempt permit) in the applicable fields.”⁴²
14. *Download Pending Transactions.* If the licensee maintains e-Forms 4473 for pending transactions, “the forms must be downloaded from the system to a physical storage device (e.g., hard drive, Digital Versatile Disc (DVD), server) at the licensee’s business premises, or printed and maintained at the licensee’s business premises:
 - a. At least daily, in a format that is unencrypted with the required information readily apparent;
 - b. Upon request of an ATF officer (must be provided within 24 hours);
 - c. Prior to discontinuance or change of: the software (program); the database system, whether or not maintained by a host facility (e.g., remote server or cloud storage provider; and/or the host facility (if applicable); and
 - d. Prior to discontinuance of the licensee’s firearms business.⁴³
15. *Host Computer Facilities.* If the licensee wishes to maintain e-Form 4473 for pending transactions, the forms may be stored on a computer server or device owned and operated by the licensee, or contracted/leased by the licensee through a host facility (e.g., remote server or cloud storage provider), provided that:

⁴⁰ ATF Ruling 2016-2.

⁴¹ ATF Ruling 2016-2.

⁴² ATF Ruling 2016-2 (citing 27 CFR §§ 478.102(d), 478.131(a)(2)).

⁴³ ATF Ruling 2016-2. See section regarding electronic acquisition and disposition records under ATF Ruling 2016-1 at page 186.

Chapter 8

Transfer Process and Background Checks

- a. The e-Forms 4473 are readily accessible through a computer server or device located at the licensed premises during regular business hours.
 - b. The e-Forms 4473 documenting a pending transaction must be printed out upon request by any ATF officer.
 - c. The e-Forms 4473 documenting a pending transaction must be searchable by the transferee's (buyer's) last name, address, and by firearms information, such as by serial number, manufacturer, and importer (if applicable).
 - d. The licensee's server is located within the United States or its territories, or if a host facility is used, that facility must have a business premises within the United States or its territories, and must be subject to U.S. legal process.
 - e. Each licensee must maintain its stored e-Form 4473 on a separate/partitioned database that cannot be intermingled with another licensee's records.
 - f. The storage system must back-up the stored e-Form 4473 on at least a daily basis to protect the data from accidental deletion or system failure.
 - g. Licensees are strongly encouraged to ensure that there are proper and robust security protection measures in place (e.g., encryption) to ensure all data is protected.⁴⁴
16. *Changes in Host Facility.* "If the licensee contracts with, leases from, or changes a host facility (e.g., remote server or cloud storage provider), the licensee must, within 30 days, notify his/her respective ATF Area Office of the name and address of the host facility."⁴⁵
17. If the transfer of the firearm takes place on a different day than the date that the buyer signed Section A, the buyer must complete Section C immediately prior to the transfer of the firearm. The computer software must not allow the electronic signature to be

⁴⁴ ATF Ruling 2016-2. See section regarding electronic acquisition and disposition records under ATF Ruling 2016-1 at page 186.

⁴⁵ ATF Ruling 2016-2. See section regarding electronic acquisition and disposition records under ATF Ruling 2016-1 at page 186.

Chapter 8

Transfer Process and Background Checks

automatically populated in the form from a previously captured signature or information in the software.⁴⁶

18. *Printing & Signature Verification.* The e-Form 4473 must be printed, including instructions, at the time the transfer of the firearm is complete and prior to the buyer departing the business premises. The seller must verify that the signature and date are present and in the appropriate fields on the printed ATF Form 4473.
19. *Transactions Denied or Cancelled.* In the case of denied, no sale, or cancelled transactions, “the ATF Form 4473, including instructions, must be printed and the printout retained pursuant to 27 CFR 478.129(b).”⁴⁷
20. *Transactions Not Completed in 30 Days.* If the transaction is not completed within thirty days after initially contacting NICS, “the ATF Form 4473, including instructions, must be printed and the printout retained pursuant to 27 CFR 478.129(b).”⁴⁸
21. *Printing Form 4473.* “The licensee must print all ATF Forms 4473, including the Notices, Instructions and Definitions, on 8 1/2" x 11" white paper. The pages must be stapled together. The entire printed ATF Form 4473 must be a verbatim/exact image of the current OMB-approved ATF Form 4473 (5300.9). Each response to a question must be legibly printed and aligned in the particular space or box allotted for that question on ATF Form 4473. If the licensee is unable to print the ATF Form 4473, he/she must use the current hardcopy of the OMB-approved version of the form. The pages may be printed either single-sided or double-sided.”⁴⁹
22. *Records Retention.* “The licensee must retain the printed ATF Forms 4473 at the licensed premises in accordance with 27 CFR 478.124(b) and 129.”⁵⁰

⁴⁶ ATF Ruling 2016-2.

⁴⁷ ATF Ruling 2016-2. See section regarding retention of firearm records at page 211.

⁴⁸ ATF Ruling 2016-2. See section regarding retention of firearm records at page 211.

⁴⁹ ATF Ruling 2016-2

⁵⁰ ATF Ruling 2016-2. See section regarding retention of firearm records at page 211.

Chapter 8
Transfer Process and Background Checks

Exception. ATF Ruling 2016-2 regarding using e-4473 “does not apply to a licensee who uses computer software that gathers additional information other than that set forth on the current OMB-approved ATF Form 4473 (5300.9).”⁵¹

Collecting Additional Information. “Licensees who wish to collect additional information must clearly distinguish information requested by the licensee from information required by law and ATF. In no case shall any licensee who uses software to collect additional data make any representation contrary to law or regulation, or any representation that ATF has required a collection of any additional information.”⁵²

Loss of Right to Use e-4473. If a licensee “fails to abide by the conditions of [Ruling 2016-2], uses any procedure that hinders the effective administration of the Federal firearms laws or regulations, or any legal or administrative difficulties arise due to the use of an e-Form 4473, the licensee is no longer authorized to maintain an ATF e-Form 4473 under this ruling and must revert back to using the OMB-approved ATF Form 4473 (5300.9) . . . paper document until all conditions of this ruling are met.”⁵³

Previous Variances. ATF Ruling 2016-2 “supersedes all previously approved variances covering the use of electronic ATF Form 4473.”⁵⁴

Firearms Transfer Process

Required Information for Form 4473

“Prior to making an over-the-counter transfer of a firearm to a nonlicensee who is a resident of the State in which the licensee’s business premises is located, the [licensee] transferring the firearm shall obtain a Form 4473 from the transferee” showing the transferee’s

1. Name
2. Sex
3. Residence address (including county or similar political subdivision)
4. Date and place of birth
5. Height, weight and race
6. Country of citizenship
7. INS-issued alien number or admission number

⁵¹ ATF Ruling 2016-2.

⁵² ATF Ruling 2016-2.

⁵³ ATF Ruling 2016-2.

⁵⁴ ATF Ruling 2016-2.