

requirements. Section 478.125 provides the detailed recordkeeping requirements for licensed dealers. The last sentence of that section states, “Each . . . licensed manufacturer selling or otherwise disposing of firearms or armor piercing ammunition to nonlicensees shall maintain such records of such transactions as are required of licensed dealers by this section.”⁶¹ These recordkeeping requirements are explained under the recordkeeping requirements for licensed dealers in Chapter 11.

Consolidation of Records of Manufacture and Records of Disposition

As detailed above, manufacturers are required to maintain three sets of records. First, they are required to maintain records for each complete firearm manufactured or otherwise acquired, which requires them “to record the type, model, caliber or gauge, and serial number” of the firearm “and the date such manufacture or other acquisition was made.”⁶² Second, they are required “to record the disposition of firearms to other licensees showing the quantity, type, model, manufacturer, caliber, size or gauge, serial number of the firearms transferred, the name and license number of the licensee to whom the firearms were transferred, and the date of the transaction.”⁶³ Third, they are required to “maintain separate records of the sales or other dispositions of firearms made to nonlicensees.”⁶⁴

“Licensed manufacturers may seek approval from the ATF to use an alternate method or procedure to record the acquisition and disposition of firearms” if certain conditions are met.⁶⁵ Rather than require licensees to request these variances, the

ATF recognizes that, provided certain conditions are met, the consolidation of records of manufacture or other acquisition of firearms by a licensed manufacturer with corresponding firearms disposition records will accurately and readily disclose the information required to be maintained. It will also make it easier for manufacturers and ATF to account for and trace a manufacturer’s firearms inventory. ATF therefore finds that there is good cause to authorize a variance to the separate A&D record requirements of the Federal firearms regulations. Further, this alternate method is not contrary to any

⁶¹ 27 C.F.R. § 478.125(i).

⁶² ATF Ruling 2016-3 (citing 27 C.F.R. § 478.123(a)). ATF Ruling 2016-6 replaces ATF Ruling 2010-8.

⁶³ ATF Ruling 2016-3 (citing 27 C.F.R. § 478.123(b)).

⁶⁴ ATF Ruling 2016-3 (citing 27 C.F.R. § 478.123(d)).

⁶⁵ ATF Ruling 2016-3 (citing 27 C.F.R. §§ 478.123(c), 478.22).

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provision of law, will not increase costs to ATF, and will not hinder the effective administration of the Federal regulations.⁶⁶

Accordingly, the “ATF authorizes licensed manufacturers to consolidate their records of manufacture or other acquisition of firearms and their separate firearms disposition records” provided the following conditions are met:

1. Within seven days of the date of manufacture or other acquisition, the licensed manufacturer records the following information for each firearm:
 - a. Date of manufacture or other acquisition;
 - b. Name of the person from whom the firearm was acquired;
 - c. Address of the person from whom the firearm was acquired if the transferor is a nonlicensee, or the complete 15-digit license number of the licensed manufacturer or other licensee from whom the firearm was acquired;
 - d. Name of the manufacturer (to include the licensed firearms manufacturer) and licensed importer (if applicable);
 - e. Model;
 - f. Serial number;
 - g. Type; and
 - h. Caliber, size, or gauge.

2. Within seven days of the date of sale or other disposition, beside the corresponding line item record of manufacture or other acquisition, the licensed manufacturer records the following information for each firearm:
 - a. Date of sale or other disposition;
 - b. Name of the person to whom the firearm was transferred (to include the licensed manufacturer); and
 - c. Address of the person to whom the firearm was transferred if the transferee is a nonlicensee, or the ATF Form 4473 serial number if the Forms 4473 are filed numerically, or if transferred to a licensee, the transferee’s complete 15-digit license number.

3. When a licensed manufacturer makes changes to the model, type, caliber, size, and/or gauge of a frame, receiver, or assembly of a firearm, the firearm should remain logged into the A&D record until the changes and/or conversions are complete. Once the change and/or conversion is complete, the licensed manufacturer should then log the firearm out of the A&D record as a disposition to itself using the licensed name and

⁶⁶ ATF Ruling 2016-3.

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license number. The date of the disposition would be the change and/or conversion date. Concurrently, the licensed manufacturer would record the new firearm information on a separate line of the A&D record as an acquisition from itself on the same date as the date of the change and/or conversion.

4. For firearms dispositions to a licensee, the commercial record of the transaction shall be retained separately from other commercial documents maintained by the licensed manufacturer, and shall be readily available for inspection on the licensed premise, until the transaction is recorded in the A&D.
5. For firearms dispositions to a nonlicensee, the Firearms Transaction Record, ATF Form 4473, shall be retained separately from the licensee's Form 4473 file, and be readily available for inspection on the licensed premises until the transaction is recorded. After that time, the Form 4473 shall be retained alphabetically (by name of purchaser), chronologically (by date of sale or other disposition), or numerically (by transaction serial number) as part of the licensed manufacturer's required records.
6. By using this variance, a line item will be recorded for each firearm manufactured or otherwise acquired and sold or otherwise disposed of by a licensed manufacturer. The quantity of firearms manufactured or otherwise acquired of the same type, model, and caliber or gauge must be able to be readily determined by adding all associated line items.
7. All consolidated firearms acquisition and disposition records must be maintained permanently by the licensed manufacturer. Additionally, as provided by 27 CFR 478.127, upon discontinuance of business all required records must be forwarded to the ATF Out-of-Business Records Center.⁶⁷

The ATF adds that “this approval does not relieve licensed manufacturers of any requirements of State, local, or other Federal government agencies. If acquisition and disposition records are maintained in electronic form, licensed manufacturers must comply with ATF Ruling 2016-1.”⁶⁸ Also, Ruling 2016-3 does not alter “the parameters and protocols of licensed manufacturer participation in ATF's electronic

⁶⁷ ATF Ruling 2016-3. One of the trade-offs with this variance is the licensee must maintain all of these records permanently. Without taking advantage of this variance, while records of manufacture or acquisition must be maintained permanently (27 C.F.R. §§ 478.121(a), 478.129d)), records of disposition need be retained for only 20 years. (27 C.F.R. 478.129(d).)

⁶⁸ ATF Ruling 2016-3. (Note: These requirements were also required under ATF Ruling 2010-8 pursuant to ATF Ruling 2008-2, which was replaced with ATF Ruling 2013-5, which has been replaced by ATF Rulings 2016-1 (see page 184) and 2016-3.)

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access portal, wherein they will continue to maintain separate records for dispositions made to unlicensed purchasers when those records are otherwise contained in these electronic access portals.”⁶⁹

The ATF warns that if it “finds that a licensed manufacturer has failed to abide by the conditions of this ruling or 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 consolidated firearms manufacturer records, the licensed manufacturer is no longer authorized to consolidate his or her A&D records under this ruling.”⁷⁰

Federal Excise or Sales Tax on Sales or Use of Firearms and Ammunition

The Internal Revenue Code imposes an excise tax on the sale of firearms “by the manufacturer, producer, or importer.”⁷¹ For the excise tax, firearms are defined as “[a]ny portable weapons, such as rifles, carbines, machine guns, shotguns, or fowling pieces, from which a shot, bullet, or other projectile may be discharged by an explosive.”⁷² The tax is “payable by the manufacturer, producer, or importer making the sale.”⁷³

Amount of Tax

The amount of this tax is “equivalent to the specified percent of the price for which” the firearm is sold, which is ten percent for pistols and revolvers and eleven percent for firearms (other than pistols and revolvers and “shells and cartridges,” (i.e., ammunition)).⁷⁴

⁶⁹ ATF Ruling 2016-3.

⁷⁰ ATF Ruling 2016-3.

⁷¹ 26 U.S.C. § 4181, 27 C.F.R. § 53.61(a).

⁷² 27 C.F.R. § 53.11. The ATF generally interprets the term “portable” to “mean that the firearm is capable of being carried by a person.” This includes, for example, two models of semiautomatic firearms: the 1919 A-4 (no buttstock, designed to be used with a tripod, and weighing approximately 31 pounds) and the 1919 A-6 (includes a buttstock, weighing approximately 30 pounds unloaded, and having an overall length of 53 inches). The critical features in one ruling were that the firearms could “be transported by a single soldier” and could be fired “in an ‘assault’ or standing position,” even if this was not recommended. (ATF Ruling 97-2.)

⁷³ 27 C.F.R. § 53.61(e).

⁷⁴ 26 U.S.C. § 4181, 27 C.F.R. § 53.61(c).