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Christopher A. Conte

February 16, 2006

Mr. David W. Kuhn
City Solicitor
728 Second Street
Portsmouth, Ohio 45662

Dear Mr. Kuhn,

My response to various statements in support of 705.30 was delayed as I wanted to first contact Chief Horner to verify whether his statement in the paper was accurate. I am glad I called him to discuss the matter.

Chief Horner was courteous, but very hesitant to talk with me so our conversation was very limited. It was quickly apparent that there are not just differences on public policy at play, but personality differences greatly affecting this discussion as well. This is not helpful to having a rational, fact-based and open-minded discussion on the merits, or lack thereof, involving ordinance 705.30. I wish to keep our discussion focused on the facts at hand, which are statements and hypotheticals in support of 705.30 and my personal responses to them.

1. "Say for example, a convicted felon purchases a firearm. Obviously, no one would catch it. As we receive the cards, we can look at them and see that this person is a convicted felon." Chief Horner as quoted in the 1/14/06 article by Jeff Barron.

In my brief conversation with Chief Horner after the publication of the article, Chief Horner stated that he was aware that there is a federal system in place which requires a criminal history background check for all retail and pawn shop firearms transaction under 18 U.S.C. 922(t). This fact was also previously mentioned in my letter sent prior to that meeting.

Chief Horner stated that he was only speaking about a possible case of a felon with some kind of phony identification that would not show a criminal record. Unfortunately, this was not the impression left with many people in the room, including the reporter Jeff Barron, and such statements must be clarified in any future discussions to avoid another false impression. I trust Chief Horner will speak more clearly in future discussions.

Chief Horner neither provided a single real-world example of such an incident occurring in Portsmouth, nor explained what his agency does currently that would somehow detect such an event should one ever occur. Such a hypothetical, phony identification would not show a criminal record on the state level background check either that he would conduct, and as seen below, a state check is already part of the federal NICS background check.

The Department of Justice has a publication available online which explains how the National Instant Criminal Background Check system works to avoid future confusion on what is and is not conducted.

The government webpage is:

<http://www.ojp.usdoj.gov/bjs/pub/pdf/ssprfsm04.pdf>

Page 19 of this document explains in the “Federal Data” paragraph that one of the three major databases used in the federal NICS check is the Interstate Identification Index (III), used for state criminal histories, again making the need for the 705.30 duplicative and unnecessary.

Another question I have is why a potential criminal smart enough to have great phony identification would not just purchase a gun on the street from another criminal or burglarize a few homes to avoid all of the federal and local paperwork?

2. “As we do not get copies of any records checks conducted under the National Instant Criminal Background Check System (NICS), it is of no benefit to local law enforcement.” 1/09/06 letter from Chief Horner.

As stated in my previous letter, ordinance 705.30 is duplicative in that all licensed gun stores and pawn shops are required to keep a copy of the form 4473 for 20 years. They are also required to provide access to the BATFE to those records, and would allow viewing in a bona fide criminal investigation by local law enforcement as well, such as in the case of a gun theft. The availability of local data eliminates the benefit of having the records on-site as the police should be immediately visiting local gun/pawn shops to see if anyone attempted to sell the stolen guns matching a particular description (Glock 9mm, for example). J.J.R. Gun shop, the one from the first example used by Chief Horner, would have far fewer records to look through and that could also save some time. A copy of the form 4473 is enclosed in order to show the level of detail in comparison to the local 705.30 form.

3. “Prior to and since the expiration of the Brady Bill, the gun registration cards are the most accurate means we have of tracking stolen firearms and when persons who are prohibited by law from owning or possessing firearm(s) purchase a gun.” 1/09/06 letter from Chief Horner.

I asked Chief Horner what he meant by the phrase “expiration of the Brady Bill.” He claimed that it was the “registration” portion of the Brady Bill. As noted in other responses both above and below, federal law generally prohibits gun, gun owner, and/or gun transaction registrations. Under 18 U.S.C. 922(s), the interim requirements of the Brady Law that have expired, Chief Horner would have been provided with information on the individual attempting to purchase the handgun, but not information on the handgun itself such as a serial number. Furthermore, Chief Horner was required to destroy those records within 20 days unless the purchase would have violated either federal or state law under 18 U.S.C. 922(s)(6)(B). There was never any Brady Law registration as the data has never included the serial number of the firearm, nor have the records ever been kept permanently at any levels of government.

As for the prohibited person portion of the statement, my responses in other sections provide the details showing the 705.30 registration is not necessary.

4. “The majority of firearms purchased by residents of the City of Portsmouth are purchased locally and the purchaser is required to register the firearm. The registration card is then forwarded to our agency and the Federal Bureau of Alcohol, Tobacco and Firearms.” 1/09/06 letter from Chief Horner.

Ordinance 705.30 does not provide for the forwarding of either the registration card, nor of its data, to other agencies or individuals. In addition, federal law generally prohibits the registration of firearms, firearms owners and/or firearms transfers not only under 18 U.S.C. 922 but also under 18 U.S.C. 926. For this reason, I am uncertain as to why BATFE would be provided such registration data, nor why they would accept such data, considering these prohibitions. I called Lt. Lynn Brewer, who was mentioned in Chief Horner's letter, and he stated that such distributions of the registration forms and/or their data is not taking place. But since registration abuses have occurred in other jurisdictions, it would be prudent to have Chief Horner clarify this statement for the record.

5. "Should it become necessary for us to obtain this information from A.T.F. on each and every occasion that we need it, would cause unnecessary delay in entering stolen firearms as stolen and add unnecessary delay to investigations involving firearms offenses." 1/09/06 letter from Chief Horner.

While this was answered in 2. above, it is important to note that the theft of a firearm is a serious matter that should involve all levels of law enforcement as many criminals may try to dispose of the stolen property outside the jurisdiction of theft. Such records are also available locally without 705.30, but not at BATFE.

6. "We all know that most Drug Dealers and those that engage in crime on a daily basis are not above using stolen fire arms, but our city policemen deal not only with the criminal element but also domestics, enraged outburst by common every day people, young men and women just entering into drug dealing, upset employees Etc." 1/22/06 letter from Councilman Timothy Loper.

This is an excellent point on the stolen firearms, and one I made as well. As for the average citizen portion of the statement, and including his first example of where he feels 705.30 might be of use, my response is that police are trained to assume that every person they come in contact with—whether a routine traffic stop or felony bust—could possess a weapon and may become a threat. Ask Chief Horner if his officers are trained for the sudden appearance of a weapon. I know they are in other police departments. In fact, relying on a limited local registration may create a false sense of security and a lack of preparedness for officers when a criminal with an unregistered firearm (or knife) is confronted. In a narrow situation where someone is under police "surveillance" as alleged in the hypothetical example 1, obviously the police would actually observe firsthand the suspect entering the gun store.

7. I do not understand why anyone that has the intention of obeying federal, state, and local gun laws would find this Ordinance offensive or in violation of their rights...." 1/22/06 letter from Councilman Timothy Loper.

In general, I believe that the focus of this discussion should remain on the facts of the ordinance at hand and not be expanded into a discussion of registration in general or what may, might, could, should or shouldn't happen in some hypothetical world. However, in answer to this specific question, gun registration has been used in recent years in parts of this country as a way to facilitate either gun freezes (handguns in Chicago and Washington, DC [no additional registrations allowed]) and even gun bans (handguns in San Francisco and some long guns in New York City [previously legally registered guns made illegal contraband]). That is one of the reasons why some residents, such as Mr. Pack, have purchased firearms outside the Portsmouth City Limits. This denies revenue from sales to both local businesses and the city.

8. “What I do find offensive is anyone that would take it upon them self to try to repeal an ordinance that may have the potential of saving and preserving life, even if it is just one life per year.” 1/22/06 letter from Councilman Timothy Loper.

The reality is that ordinance 705.30 has been in effect for over 20 years and to date supporters of the ordinance have failed to list a single, actual crime (that I have seen) that could have been solved only by using the registration cards (as opposed to the locally held form 4473 or other methods), nor prove how it would be faster with the cards. Certainly, nobody has alleged that the ordinance has saved a single life in all those years. Even Chief Horner at the top of page 2 of his letter admitted that, “The ordinance may not stop crimes, but does assist law enforcement in investigating crimes after-the-fact....” And as seen in my other responses, even the investigative portion can be accomplished without 705.30.

9. “A felon from out of state moves into the Portsmouth area, unknown by anyone...tries to purchase a fire arm. First they must fill out the registration form giving date of birth... Even though the purchase may be denied the police department is still in receipt of all necessary information to conduct a full investigation and hopefully make an arrest before anyone is shot, robbed or found dead.” 1/22/06 letter from Councilman Timothy Loper.

This goes back to the inaccurate impression Chief Horner left with many at the council meeting and discussed in 1. of this letter. The fact is that a review of Ohio’s criminal history records would not show that individual’s criminal history. Fortunately, as shown repeatedly above in my responses, federal law and the federal NICS check should both deny this hypothetical purchase and allow for the prosecution of the individual for a federal felony for lying on the form 4473.

This ends my responses to others’ statements.

While this discussion has been interesting and hopefully educational, I must end by remarking one point. Ordinance 705.30 has been on the books for over 20 years and therefore has a proven history to review and study on what the ordinance has actually done and how it compares with other laws. Our discussion should therefore focus on its track record and its necessity in the real world knowing that there are federal laws currently in place doing the job 705.30 was once envisioned as providing.

Furthermore, if defenders of 705.30 can only continue to put forth examples that have nothing to do with the necessity of 705.30, or use abstract hypotheticals or emotional arguments as justification for the ordinance—then the decision should be clear—705.30 should be repealed for failing to contribute in any way to the safety and well-being of the residents of Portsmouth.

I hope this answers all of the questions about the necessity of 705.30. As before, I am available to discuss 705.30 in more detail. **My direct office line and address are listed below if there are any questions.**

Sincerely,



Dave LaCourse
Executive Field Officer
P.O. Box 123
Canajoharie, NY 13317
Direct Line (518) 673-3747

CC: Portsmouth City Councilmen, Portsmouth Mayor, Chief Horner and Mr. Pack

Firearms Transaction Record Part I - Over-the-Counter

WARNING: You may not receive a firearm if prohibited by Federal or State Law. The information you provide will be used to determine whether you are prohibited under law from receiving a firearm. Certain violations of the Gun Control Act are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine.

Transferor's Transaction Serial Number

Prepare in original only. All entries must be in ink. Read the Important Notices, Instructions and Definitions on this form. "Please Print."

Section A - Must Be Completed Personally By Transferee (Buyer)

1. Transferee's Full Name

Last Name	First Name	Middle Name (If no middle name state "NMN")
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2. Current Residence Address (Cannot be a post office box.)

Number and Street Address	City	County	State	Zip Code
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3. Place of Birth

U.S. City/State	Foreign Country
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4. Height

Ft. _____	In. _____
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5. Weight

6. Gender

Male <input type="checkbox"/>	Female <input type="checkbox"/>
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7. Birth Date

Month	Day	Year
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8. Social Security Number (Optional, but will help prevent misidentification.)

9. Unique Personal Identification Number (UPIN) if applicable (See Instruction to Transferor 6.)

10. Race (Ethnicity) (Check one or more boxes.)

<input type="checkbox"/> American Indian or Alaska Native	<input type="checkbox"/> Black or African American	<input type="checkbox"/> Native Hawaiian or Other Pacific Islander
<input type="checkbox"/> Hispanic or Latino	<input type="checkbox"/> Asian	<input type="checkbox"/> White

11. Answer questions 11.a. through 12 by writing "yes" or "no" in the boxes to the right of the questions.

a. Are you the actual buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Important Notice 1 for actual buyer definition and examples.)	
b. Are you under indictment or information in any court for a felony , or any other crime, for which the judge could imprison you for more than one year? (An information is a formal accusation of a crime by a prosecutor. See Definition 3.)	
c. Have you ever been convicted in any court of a felony , or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Important Notice 4, Exception 1.)	
d. Are you a fugitive from justice?	
e. Are you an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?	
f. Have you ever been adjudicated mentally defective (which includes having been adjudicated incompetent to manage your own affairs) or have you ever been committed to a mental institution?	
g. Have you been discharged from the Armed Forces under dishonorable conditions?	
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Important Notice 5.)	
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Important Notice 4, Exception 1 and Definition 4.)	
j. Have you ever renounced your United States citizenship?	
k. Are you an alien illegally in the United States?	
l. Are you a nonimmigrant alien? (See Definition 6.) If you answered "no" to this question, you are not required to respond to question 12.	
12. If you answered "yes" to question 11.l., do you fall within any of the exceptions set forth in Important Notice 4, Exception 2? (e.g., valid State hunting license.) (If "yes," the licensee must complete question 20c.)	

13. What is your State of residence (if any)? _____ (See Definition 5. If you are not a citizen of the United States, you only have a State of residence if you have resided in a State for at least 90 continuous days immediately prior to the date of this sale.)

14. What is your country of citizenship? (List/check more than one, if applicable.)

<input type="checkbox"/> United States of America	<input type="checkbox"/> Other (Specify) _____
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15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?

I certify that the answers to Section A are true and correct. I am aware that ATF Form 4473 contains Important Notices, Instructions, and Definitions. I understand that answering "yes" to question 11.a. if I am not the actual buyer of the firearm is a crime punishable as a felony. I understand that a person who answers "yes" to any of the questions 11.b. through 11.k. is prohibited from purchasing or receiving a firearm. I understand that a person who answers "yes" to question 11.l. is prohibited from purchasing or receiving a firearm, unless the person also answers "yes" to question 12. I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony. I further understand that the repetitive purchase of firearms for the purpose of resale for livelihood and profit without a Federal firearms license is a violation of law. (See Important Notice 6.)

16. Transferee's/Buyer's Signature	17. Certification Date
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Section B - Must Be Completed By Transferor (Seller)

18. Type of firearm(s) to be transferred: <input type="checkbox"/> Handgun <input type="checkbox"/> Long Gun <input type="checkbox"/> Both	19. Location of sale if at a gun show or other qualifying event. (See Instruction to Transferor 15.) _____ (City, State)
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20a. Identification (e.g., driver's license or other valid government-issued photo identification.) (See Instruction to Transferor 1.)			
Type of Identification	Number on Identification	Expiration Date of Identification (if any)	
		Month	Day
		Year	

20b. Aliens only: Type and dates of additional required identification (e.g., utility bills or lease agreements.) (See Instruction to Transferor 2.)	
Type of Identification	Date(s)

20c. **Nonimmigrant aliens only:** Type of documentation showing an exception to the nonimmigrant alien prohibition (e.g., hunting license/permit; waiver.) (See Instruction to Transferor 3.)

Question 21, 22, or 23 Must Be Completed Prior To The Transfer Of The Firearm(s) (See Instructions to Transferor 5-8.)

21a. The transferee's identifying information in Section A was transmitted to NICS or the appropriate State agency on: _____ (Date)	21b. The NICS or State transaction number (if provided) was:
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21c. The response initially provided by NICS or the appropriate State agency was: <input type="checkbox"/> Proceed <input type="checkbox"/> Delayed <input type="checkbox"/> Denied [The firearm(s) may be transferred on _____ (MDI date provided by NICS) if State law permits (optional)] <input type="checkbox"/> Cancelled	21d. If initial NICS or State response was "Delayed," the following response was received from NICS or the appropriate State agency: <input type="checkbox"/> Proceed _____ (date) <input type="checkbox"/> Denied _____ (date) <input type="checkbox"/> Cancelled _____ (date) <input type="checkbox"/> No resolution was provided within 3 business days.
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21e. (Complete if applicable.) After the firearm was transferred, the following response was received from NICS or the appropriate State agency on: _____ (date). Proceed Denied Cancelled

21f. The name and Brady identification number of the NICS examiner (optional) _____ / _____ (name) (number)	22. <input type="checkbox"/> No NICS check was required because the transfer involved only NFA firearm(s). (See Instruction to Transferor 8.)
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23. <input type="checkbox"/> No NICS check was required because the buyer has a valid permit from the State where the transfer is to take place which qualifies as an exemption to NICS (See Instruction to Transferor 8.)			
State Permit Type	Date of Issuance (if any)	Expiration Date (if any)	Permit Number (if any)

Section C

If the transfer of the firearm(s) takes place on a different day from the date that the transferee (buyer) signed Section A, the transferee must complete Section C immediately prior to the transfer of the firearm(s). (See Instruction to Transferee 3 & Instruction to Transferor 9.)

I certify that the answers I provided to the questions in Section A of this form are still true and correct.

24. Transferee's/Buyer's Signature	25. Recertification Date
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Section D (See Instructions to Transferor 10-11.)

26. Manufacturer and/or Importer	27. Model	28. Serial Number	29. Type (pistol, revolver, rifle, shotgun, etc.)	30. Caliber or Gauge

Complete ATF Form 3310.4 For Multiple Purchases Of Handguns (See Instruction to Transferor 13.)

31. Trade/corporate name and address of transferor (<i>seller</i>) (<i>Hand stamp may be used.</i>)	32. Federal Firearms License Number (<i>Complete 15 digit FFL Number.</i>) (<i>Hand stamp may be used.</i>)
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On the basis of (1) the statements in Section A (and Section C if the transfer does not occur on the day Section A was completed); (2) my verification of the identification noted in question 20a (and my reverification at the time of transfer if the transfer does not occur on the day Section A was completed); and (3) the information in the current State Laws and Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form to the person identified in Section A.

The Person Transferring The Firearm(s) Must Complete Questions 33-36. For Denied/Cancelled Transactions, The Person Who Completed Section B Must Complete Questions 33-35.

33. Transferor's/Seller's Name (<i>Please print.</i>)	34. Transferor's/Seller's Signature	35. Transferor's/Seller's Title	36. Date Transfer is Completed
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Important Notices

- 1. Actual Buyer:** For purposes of this form, you are the actual buyer if you are purchasing the firearm for yourself or otherwise acquiring the firearm for yourself (*for example, redeeming the firearm from pawn/retrieving it from consignment, firearm raffle winner*). You are also the actual buyer if you are legitimately acquiring the firearm as a gift for a third party. **ACTUAL BUYER EXAMPLES:** Mr. Smith asks Mr. Jones to purchase a firearm for Mr. Smith. Mr. Smith gives Mr. Jones the money for the firearm. Mr. Jones is NOT the actual buyer of the firearm and must answer "no" to question 11.a. The licensee may not transfer the firearm to Mr. Jones. However, if Mr. Brown goes to buy a firearm with his own money to give to Mr. Black as a present, Mr. Brown is the actual buyer of the firearm and should answer "yes" to question 11.a. Please note, if you are picking up a repaired firearm for another person, you should answer "n/a" to question 11.a.

- 2. Purpose of the Form:** The information and certification on this form are designed so that a person licensed under 18 U.S.C. § 923 may determine if he or she lawfully may sell or deliver a firearm to the person identified in Section A, and to alert the buyer of certain restrictions on the receipt and possession of firearms. This form only should be used for sales or transfers where the seller is licensed under 18 U.S.C. § 923. The seller of a firearm must determine the lawfulness of the transaction and keep proper records of the transaction. Consequently, the seller must be familiar with the provisions of 18 U.S.C. §§ 921-931 and the regulations in 27 CFR Part 478. In determining the lawfulness of the sale or delivery of a long gun to a resident of another State, the seller is presumed to know applicable State laws and published ordinances in both the seller's State and the buyer's State.

- 3. Background Checks:** The Brady law, 18 U.S.C. § 922(t), requires that prior to transferring any firearm to an unlicensed person, a licensed importer, manufacturer or dealer must first contact the National Instant Criminal Background Check System (NICS). NICS will advise the licensee whether the system finds any information that the purchaser is prohibited by law from possessing or receiving a firearm. For purposes of this form, contacts to NICS include contacts to State agencies designated to conduct NICS checks for the Federal Government. **WARNING:** Any seller who transfers a firearm to any person they know or have reasonable cause to believe is prohibited from receiving or possessing a firearm violates the law even if the seller has complied with the background check requirements of the Brady law.

- 4. Prohibited Persons:** Generally, 18 U.S.C. § 922 prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who: has been convicted of a misdemeanor crime of domestic violence; has been convicted of a felony, or any other crime, punishable by imprisonment for a term exceeding one year (*this does not include State misdemeanors punishable by imprisonment of two years or less*); is a fugitive from justice; is an unlawful user of, or addicted to, marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance; has been adjudicated mentally defective or has been committed to a mental institution; has been discharged from the Armed Forces under dishonorable conditions; has renounced his or her U.S. citizenship; is an alien illegally in the United States or a nonimmigrant alien; or is subject to certain restraining orders. Furthermore, section 922 prohibits the shipment, transportation, or receipt in or affecting interstate commerce of a firearm by one who is under indictment or information for a felony, or any other crime, punishable by imprisonment for a term exceeding one year.

EXCEPTION 1: A person who has been convicted of a felony, or any other crime, for which the judge could have imprisoned the person for more than one year, or who has been convicted of a misdemeanor crime of domestic violence, is not prohibited from purchasing, receiving, or possessing a firearm if: (1) under the law of the jurisdiction where the conviction occurred, the person has been pardoned, the conviction has been expunged or set aside, or the person has had civil rights (*the right to vote, sit on a jury, and hold public office*) restored AND (2) the person is not prohibited by the law of the jurisdiction where the conviction occurred from receiving or possessing firearms. Persons subject to this exception should answer "no" to 11.c. or 11.i., as applicable. A person who has been convicted of a misdemeanor crime of domestic violence also is not prohibited unless: (1) the person was represented by a lawyer or gave up the right to a lawyer; and (2) if the person was entitled to a jury, was tried by a jury or gave up the right to a jury trial. Persons subject to this exception should answer "no" to 11.i.

EXCEPTION 2: A nonimmigrant alien is not prohibited from purchasing, receiving, or possessing a firearm if the alien: (1) is in possession of a hunting license or permit lawfully issued in the United States; or (2) has received a waiver from the prohibition from the Attorney General of the United States. (*See 18 U.S.C. § 922(y)(2) for additional exceptions.*) Persons subject to one of these exceptions should answer "yes" to questions 11.i. and 12 and provide the documentation requested by question 20c.

5. **Restraining Orders:** Under 18 U.S.C. § 922, firearms may not be sold to or received by persons subject to a court order that: (A) was issued after a hearing which the person received actual notice of and had an opportunity to participate in; (B) restrains such person from harassing, stalking or threatening an intimate partner or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. An "intimate partner" of a person is: the spouse or former spouse of the person, the parent of a child of the person, or an individual who cohabitates or has cohabited with the person.
6. **Engaged in the Business:** Under 18 U.S.C. §§ 922 and 923, it is unlawful for a person to engage in the business of dealing in firearms without a license. A person is engaged in the business of dealing in firearms if he or she devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. A license is not required of a person who only makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his or her personal collection of firearms.
7. **Exportation of Firearms:** The State or Commerce Departments may require you to obtain a license prior to export.

Instructions To Transferee/Buyer

1. The buyer must personally complete Section A of this form and certify (*sign*) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers (*other than the signature*) may be written by another person, excluding the seller. Two persons (*other than the seller*) must then sign as witnesses to the buyer's answers and signature.
2. When the buyer of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business must complete Section A of the form with his or her personal information, sign Section A, and attach a written statement, executed under penalties of perjury, stating: (A) the firearm is being acquired for the use of and will be the property of that business entity, and (B) the name and address of that business entity.
3. If the transfer of the firearm takes place on a different day from the date that the buyer signed Section A, the seller must again check the photo identification of the buyer at the time of the transfer, and the buyer must complete the recertification in Section C at the time of transfer.

4. If the buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his or her permanent duty station is located, but does not reside at his or her permanent duty station, the buyer must list both his or her permanent duty station address and his or her residence address in response to question 2.
5. If you are a U.S. citizen with two states of residence, you should list your current residence address in response to question 2 (*e.g., if you are buying a firearm while staying at your weekend home in State X, you should list your address in State X in response to question 2*).

Instructions To Transferor/Seller

1. **Know Your Customer:** Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. The buyer **must** provide a valid government-issued photo identification to the seller that contains the buyer's name, residence address, and date of birth. The licensee must record the type, identification number, and expiration date (*if any*) of the identification in question 20a. A driver's license or an identification card issued by a State in place of a license is acceptable. Social security cards are not acceptable because no address, date of birth, or photograph is shown on the cards. A combination of government-issued documents may be provided. For example, if a U.S. citizen has two states of residence and is trying to buy a handgun in State X, he may provide a driver's license (*showing his name, date of birth, and photograph*) issued by State Y and another government-issued document (*such as a tax document*) from State X showing his residence address. If the buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his or her permanent duty station is located, but he or she has a driver's license from another State, you should list the buyer's military identification card and official orders showing where his or her permanent duty station is located in response to question 20a.
2. **Sale of Firearms to Legal Aliens (Part 1):** A buyer who is not a citizen of the United States must provide additional documentation (*beyond a valid government-issued photo identification that contains the buyer's name, residence address, and date of birth*) to establish that he or she has resided in a State continuously for at least 90 days immediately prior to the date of the sale. *See Definition 5.* Examples of appropriate documents to establish State residency are utility bills from each of the last 3 months immediately prior to the sale or a lease agreement which demonstrates 90 days of residency immediately prior to the sale. A licensee may attach a copy of the documentation to ATF Form 4473, rather than record the type of documentation in question 20b.
3. **Sale of Firearms to Legal Aliens (Part 2):** Even if a nonimmigrant alien can establish that he or she has a U.S.-issued alien number or admission number and has resided in a State for at least 90 continuous days immediately prior to the date of sale, he or she is prohibited from receiving a firearm unless he or she falls within an exception to the nonimmigrant alien prohibition. (*See Important Notice 4, Exception 2.*) If a nonimmigrant alien claims to fall within one of these exceptions by answering "yes" to question 12, he or she must provide the licensee with documentation of the exception (*e.g., hunting license/permit; waiver*). If the documentation is a hunting license/permit, the licensee must make sure it has not expired. An expired hunting license/permit does not qualify for the exception. A licensee may attach a copy of the documentation to ATF Form 4473, rather than record the type of documentation in question 20c.
4. If the buyer's name in question 1 is illegible, the seller must print the buyer's name above the name written by the buyer.
5. **NICS Check:** After the buyer has completed Section A of the form and the licensee has completed questions 18-20, and before transferring the firearm, the licensee must contact NICS (*see Instruction 8 below for NICS check exceptions*.) However, the licensee should NOT contact NICS and should stop the transaction if: the buyer answers "no" to question 11.a.; the buyer answers "yes" to any question in 11.b.-11.l., unless the buyer only has answered "yes" to question 11.l. and also answers "yes" to question 12; or the buyer is unable to provide the documentation required by question 20a, b, or c.

- At the time that NICS is contacted, the licensee must record in question 21a-c: the date of contact, the NICS (*or State*) transaction number, and the initial response provided by NICS or the State. The licensee may record the Missing Disposition Information (MDI) date in 21c which NICS provides for delayed transactions (*States do not provide this number*). If the licensee receives a "delayed" response, before transferring the firearm, the licensee must record in question 21d any response later provided by NICS or the State or that no resolution was provided within 3 business days. If the licensee receives a response from NICS or the State after the firearm has been transferred, he or she must record this information in question 21e. **Note:** States acting as points of contact for NICS checks may use terms other than "proceed," "delayed," "cancelled," or "denied." In such cases, the licensee should check the box that corresponds to the State's response. Some States may not provide a transaction number for denials. However, if a firearm is transferred within the three business day period, a transaction number is required.
6. **Unique Personal Identification Number (UPIN):** For purchasers approved to have information maintained about them in the FBI NICS Voluntary Appeal File (VAF), NICS will provide them with a Unique Personal Identification Number (UPIN), which the buyer should record in question 9. The licensee may be asked to provide the UPIN to NICS or the State.
 7. **NICS Responses:** If NICS provides a "proceed" response, the transaction may proceed. If NICS provides a "cancelled" response, the seller is prohibited from transferring the firearm to the buyer. If NICS provides a "denied" response, the seller is prohibited from transferring the firearm to the buyer. If NICS provides a "delayed" response, the seller is prohibited from transferring the firearm unless 3 business days have elapsed and, before the transfer, NICS or the State has not advised the seller that the buyer's receipt or possession of the firearm would be in violation of law. See 27 CFR § 478.102(a) for an example of how to calculate 3 business days. If NICS provides a "delayed" response, NICS also will provide a Missing Disposition Information (MDI) date which calculates the 3 business days and reflects when the firearm(s) can be transferred under Federal law. States may not provide an MDI date. *Please note State law may impose a waiting period on transferring firearms.*
 8. **EXCEPTIONS TO NICS CHECK:** 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 where the buyer has presented the licensee with a permit or license that allows the 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; (b) transfers of National Firearms Act weapons approved by ATF; or (c) transfers certified by ATF as exempt because compliance with the NICS check requirements is impracticable. See 27 CFR § 478.102(d) for a detailed explanation. 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 buyer who fails to provide such documentation.
 9. If the transfer takes place on a different day from the date that the buyer signed Section A, the licensee must again check the photo identification of the buyer at the time of transfer, and the buyer must complete the recertification in Section C at the time of transfer.
 10. For "denied" and "cancelled" NICS transactions, the person who completed Section B must complete Section D, questions 33-35.
 11. Immediately prior to transferring the firearm, the seller must complete all of the questions in Section D.
 12. Additional firearms purchases by the same buyer may not be added to the form after the seller has signed and dated it. A buyer who wishes to purchase additional firearms after the seller has signed and dated the form must complete a new ATF Form 4473. The seller must conduct a new NICS check.
 13. In addition to completing this form, the seller must report any multiple sale or other disposition of pistols or revolvers on ATF Form 3310.4. (See 27 CFR § 478.126(a)).
 14. If more than three firearms are involved in a transaction, the information required by Section D, questions 26-30, must be provided for the additional firearms on a separate sheet of paper, which must be attached to the ATF Form 4473 covering the transaction.
 15. If the transfer occurs at a gun show or other qualifying event sponsored by any national, State, or local organization as authorized by 27 CFR § 478.100, the seller must record the location of the sale in question 19.
 16. After the seller has completed the firearms transaction, he or she must make the completed, original ATF Form 4473 (*which includes the Important Notices, Instructions, and Definitions*), and any supporting documents, part of his or her permanent records. Such Forms 4473 must be retained for at least 20 years. Filing may be chronological (*by date*), alphabetical (*by name*), or numerical (*by transaction serial number*), as long as all of the seller's completed Forms 4473 are filed in the same manner. **FORMS 4473 FOR DENIED/CANCELLED TRANSFERS MUST BE RETAINED:** If the transfer of a firearm is denied/cancelled by NICS, or if for any other reason the transfer does not go through after a NICS check is initiated, the licensee must retain the ATF Form 4473 in his or her records for at least 5 years. Forms 4473 with respect to which a sale, delivery or transfer did not take place shall be separately retained in alphabetical (*by name*) or chronological (*by date of transferee's certification*) order.
 17. You may include any other information on this form that is relevant to the transaction.
 18. If you or the buyer discover an ATF Form 4473 is incomplete or improperly completed after the firearm has been transferred, and you or the buyer wish to make a record of your discovery, photocopy the inaccurate form. Make any necessary additions or revisions to the photocopy. You only should make changes to Sections B and D. The buyer only should make changes to Sections A and C. Whoever made the changes should initial and date the changes. The corrected photocopy should be attached to the original Form 4473 and retained as part of your permanent records.
- #### Definitions
1. **Over-the-counter Transaction:** The sale or other disposition of a firearm by a seller to a buyer, at the seller's licensed premises. This includes the sale or other disposition of a rifle or shotgun to a nonresident buyer on such premises.
 2. **State Laws and Published Ordinances:** The publication (ATF P 5300.5) of State firearms laws and local ordinances ATF distributes to licensees.
 3. **Under indictment or information or convicted in any court:** An indictment, information, or conviction in any Federal, State, or local court.
 4. **Misdemeanor Crime of Domestic Violence:** A Federal, State, or local offense that is a misdemeanor under Federal or State law and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with, or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. The term includes all misdemeanors that have as an element the use or attempted use of physical force or the threatened use of a deadly weapon (*e.g., assault and battery*), if the offense is committed by one of the defined parties.
 5. **State of Residence:** The State in which an individual resides. An individual resides in a State if he or she is present in a State with the intention of making a home in that State. If an individual is a member of the Armed Forces on active duty, his or her State of residence also is the State in which his or her permanent duty station is located. An alien who is legally in the United States is a resident of a State only if the alien is residing in the State and has resided in the State continuously for at least 90 days immediately prior to the date of sale or delivery of a firearm.
 6. **Nonimmigrant Alien:** An alien in the United States in a nonimmigrant classification. The definition includes, in large part, persons traveling temporarily in the United States for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain foreign workers. The definition does NOT include permanent resident aliens.
- #### Privacy Act Information
- Solicitation of this information is authorized under 18 U.S.C. § 923(g). Disclosure of the individual's social security number is voluntary. The number may be used to verify the individual's identity.

Paperwork Reduction Act Notice

The information required on this form is in accordance with the Paperwork Reduction Act of 1995. The purpose of the information is to determine the eligibility of the transferee to receive firearms under Federal law. The information is subject to inspection by ATF officers and is required by 18 U.S.C. §§ 922 and 923.

The estimated average burden associated with this collection is 25 minutes per respondent or recordkeeper, depending on individual circumstances. Comments about the accuracy of this burden estimate and suggestions for reducing it should be directed to Reports Management Officer, Document Services Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.