U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington, DC 20226

www.atf.gov

July 28, 2017

903010:RML
808562
27 CFR 478.100
5300

Mr. Mark Barnes
Mark Barnes & Associates
1350 I Street NW
Suite 260
Washington, DC 20005

Re: Guidance and Policy regarding the sale of firearms at trade shows by Out-of-State FFLs

Dear Mr. Barnes,

This is in response to your letter dated to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) on June 12, 2017. You are requesting clarification regarding transfers of firearms between an out-of-State Federal firearms licensee (FFL) and an in-State FFL dealer at a gun show due to what you describe as inconsistent and impractical guidance received from various Field Divisions regarding FFL to FFL transfers at gun show.

You stated during a recent meeting between ATF Field Division personnel and licensed dealers, ATF outlined how out-of-State and in-State licensed dealers 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 June 2010 FFL Newsletter. The following procedure for out-of-state dealer transactions was explained in the meeting as the correct procedure:

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.

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).

In your letter, you state that 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.

As you know, a significant part of the GCA concerns the licensing and recordkeeping requirements pertaining to the manufacture, importation, distribution, and sale of firearms.

After the GCA was enacted, ATF issued Rev. Rul. 69-59 which restricts a licensee attending any gun show (whether in-State or out-of-State) to displaying his firearms, taking orders, and returning to his licensed business premises to complete the sale and delivery of the firearms, including proper entry of the transaction into the licensee's records. Rev. Rul. 69-59 states, in part:

> *Therefore, a person holding a valid license may engage in the business covered by the license only at the specific business premises for which the license has been obtained. Thus, a licensee may not sell firearms or ammunition at a gun show held on premises other than those covered by his license. He may, however, have a booth or table at such a gun show at which he displays his wares and takes orders for them, provided that the sale and delivery of the firearms or ammunitions are to be lawfully effected from his licensed business premises only and his records properly reflect such transactions.*

In 1986, the GCA was amended and thereby overruled a portion of Rev. Rul 69-59, allowing licensees to sell firearms at gun shows in the State in which their licensed premises are located. The GCA was further amended in 1997 to allow licensees to sell curio and relic firearms to other licensees at any location.

ATF recognizes that nothing in the GCA prohibits a licensed dealer from attending an out-of-State gun show, displaying firearms at his booth, and taking orders from other licensees and non-licensed customers. However, an out-of-State dealer can only complete sales by taking the firearms ordered back to his licensed premises and delivering the firearms from that location to a dealer whose licensed premises are located in the same State as the customer.

Likewise, sales between licensed dealers must be made from the selling dealer's licensed business premises. ATF's longstanding position, both the statutory language of the Gun Control Act of 1968 (GCA) and its legislative history support restricting licensees to conducting firearms business from their licensed business premises. This is based, in part, on the GCA, 18 U.S.C. §§ 923(a) and 923(d)(1)(E),which requires that those engaged in the business obtain a license, and that an applicant have business premises. However, pursuant to the 1986 amendment, section 923(j) permits licensees to conduct business at a bona fide gun show "in the State which is specified on the license." While a licensee may freely purchase firearms from other licensees or non-licensees while away from his licensed premises, a licensee cannot sell firearms away from his licensed premises – including out-of-State gun shows, as these are not "in the State specified on the license. In fact, ATF has recognized since 1969 that a licensee cannot bring firearms to an out-of-State gun show hoping to find unlicensed purchasers, and then spontaneously transfer the firearms at the gun show to any willing in-State licensee to complete the transaction. Therefore, a licensee may not sell firearms on-the-spot at an out-of-State gun show because such transactions amount to unlawfully engaging in the business of dealing firearms at an unlicensed location.

Gun Shows and Consigned Firearms

ATF has recognized that, to avoid various costs (*e.g.,* delayed delivery, damage to firearms during shipment, expenses, etc.), licensed dealers want to conduct business at out-of-State gun shows without having to return the firearms to their licensed premises and only to ship them from that location. In order to facilitate these needs, ATF has recognized advance consignment as a possibility, to the extent these agreements are not considered "sales" and are effectuated within the confines of Federal, State and local firearms laws. Specifically, ATF allows for an advance consignment of firearms between an out-of-State licensee and an in-State licensee attending a gun show.

ATF has previously advised that Federal firearms law permits an out-of-State licensee, prior to a gun show, to arrange, via facsimile, email, etc., sent from its licensed premises, to another licensee, for a transfer of firearms, and then personally deliver those firearms from the out-of-State licensee's premises to an in-State licensee at the gun show. ATF recommends that any such consignment agreement be in writing and signed and dated by both FFLs. Such a transaction is not equivalent to unlawful off-premises dealing whereby a dealer attends an out-of-State gun show with an inventory of firearms, finds unlicensed purchasers for the firearms, and then transfers the firearms to an in-State licensee to complete the transaction. They key distinction between legal advance consignments and illegal off-premises dealing at out-of-State

Mr. Mark Barnes
Mark Barnes & Associates

gun shows is that the transfer of firearms occurs at the out-of-State dealer's licensed business premises before the gun show even if the firearms are delivered at the out-of-State gun show.

Once the in-State licensee takes possession of the consigned firearms, the out-of-State licensee relinquishes control and therefore cannot display these firearms at his table if that licensee is an exhibitor at the gun show.

Upon conclusion of the gun show, any remaining unsold consigned inventory in the in-State licensee's possession can be transferred at such time to the out-of-State licensee for the out-of-State licensee to transport back to his business premises.

Accordingly, to avoid any appearance of a sale of firearms away from the licensed business premises, the licensee should document the consignment agreement in writing (*e.g.,* facsimile, email, etc.) to avoid the appearance of a sale of a firearm away from the business premises by an out-of-State licensee. In summary, an out-of-State licensee who has entered in to a valid consignment agreement with an in-State licensee may deliver the firearms referenced in the agreement to the in-State licensee at a gun show located in the in-State licensee's State because that is deemed the in-State licensee's business premises under the statute. That in-State licensee may lawfully transfer those firearms to any in-State resident in compliance with the provisions of the GCA. Following the gun-show, the in-State licensee may return the firearms to the out-of-State licensee. All GCA recordkeeping requirements apply to these transactions.

We trust the foregoing has been responsive to your request. If you should have further questions, please contact the Firearms Industry Programs Branch at fipb@atf.gov or (202) 648-7190.

Sincerely yours,

Ricll Courtney

for Edward C. Courtney
Chief, Firearms Industry Programs Branch

Enclosure: Original request