



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

December 8, 2011

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OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES

Since 1998, the Gun Control Act (GCA) has prohibited certain nonimmigrant aliens from receiving or possessing firearms or ammunition that have a connection to interstate commerce. *See* 18 U.S.C. § 922(g)(5)(B). In a regulation published on February 5, 2002, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) interpreted this restriction to apply to all aliens present in the United States in a nonimmigrant classification as defined by section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(15)), unless they qualified for one of the exceptions contained in 18 U.S.C. § 922(y)(2). *See* 27 C.F.R. § 478.11. ATF's Firearms Transaction Record Part 1 – Over-the-Counter (Form 4473) reflects this interpretation of the GCA.

Recently, the Office of Legal Counsel, U.S. Department of Justice, (OLC) has informed ATF that its interpretation of the scope of persons prohibited by section 922(g)(5)(B) is overly broad. That is, OLC determined that the prohibition contained in section 922(g)(5)(B) does not extend to all nonimmigrant aliens present in the United States, but only extends to aliens who were admitted to the United States under a nonimmigrant visa. Some nonimmigrant aliens, including most Canadian visitors, as well as aliens admitted under the Visa Waiver program, are allowed to be present in the United States without a nonimmigrant visa. Those aliens, and others who are lawfully in the country without a visa, are not within the scope of the GCA prohibition. This interpretation of the scope of persons prohibited by section 922(g)(5)(B) extends to the scope of transfers of firearms by sellers (including Federal firearms licensees) under 922(d)(5)(B).

ATF is in the process of amending its regulations and forms to conform with OLC's determination concerning the proper scope of the GCA. We anticipate that this process will be completed as expeditiously as possible. Until that process is complete, however, the current regulations have the force of law. Accordingly, Federal firearms licensees should continue to use the current forms and abide by the current regulations.

ATF is committed to assisting you in complying with Federal firearms laws. If you have any questions, please contact ATF's Firearms Industry Programs Branch at (202) 648-7190

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