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Via Email Only - [fipb@atf.gov](mailto:fipb@atf.gov)

US Department of Justice  
**BATFE**  
Firearms Industry Programs Branch  
Attn.: Nicholas E. O'Leary

**Subject – Clarification on NICS check requirements for NFA items involving a Trust**

Dear Mr. O'Leary –

Dakota Silencer is a licensed SOT dealer in both South Dakota and North Dakota (FFL # X-XX-XXXXXX & FFL # X-XX-XXXXXX). I am writing to request clarification on the following issue: If a Form 4 is approved, is the SOT/FFL required to run a NICS background check on the person (authorized by the trust) picking up the NFA item.

The reason for the request is because of conflicting information we have received from various ATF offices. Based on our conversations with the St. Paul, MN ATF firearms industry branch, we have been advised that NICS background checks are not required for any ATF approved Form 4 NFA transfer, which includes an approved Form 4 through a trust where the transferee on the Form 4473 is acting on behalf of the trust.

We are currently applying for an additional FFL License / SOT in Nebraska. We were instructed by XXXXXXXXXXXX, IOI from the Omaha ATF field office, during our recent ATF FFL qualification meeting, that we must be executing NICS background checks on all individuals with an ATF approved Form 4 through a trust. Mr. XXXXXXXX specifically cites the NFA Handbook statement 9.12.1 noted below. We were also advised that any NFA trust related transfers we had done previously, not following these requirements, needed to be corrected.

We have also contacted the Firearms Industry Programs Branch, specifically, Gary R. Taylor, and he has advised us that no NICS background check is required in this situation. Based on our review of the relevant authority, it is our opinion that a NICS background check on the person picking up the NFA item is not required. As a result of our review of the relevant authorities, we have discovered the following discrepancies:

Section 9.12.1 of the NFA Handbook states as follows: "NFA Transfers to other than individuals. Subsequent to the approval of an application requesting to transfer an NFA firearm to, or on behalf of, a partnership, company, association, trust, estate, or corporation, the authorized person picking up the firearm on behalf of, a partnership, company, association, trust, estate, or corporation from the FFL must complete the Form 4473 with his/her personal information and undergo a NICS check. See also, question P60 in the ATF FAQs."

The "Preface" to the NFA handbook clearly states that the handbook is not a "law book", and although Section 9.12.1 appears to require the NICS background check, we are unable to find any clear "legal" authority requiring the NICS background check. Additionally, according to a November 2008 ATF Newsletter issued by the US Department of Justice, BATFE,: "Approved NFA transfers are exempt from the NICS background check. So, when the FFL arranges for the disposition of the NFA firearm to a representative of the corporation or other entity, only the ATF Form 4473, Firearms Transaction Record, must be completed by the representative of the corporation or other entity."

As additional support for our position, the NFA FAQ's from the ATF website states as follows:

**"Q: Are there exceptions to the Brady law's requirement for a NICS check prior to a licensee's transfer of a firearm to an unlicensed individual?"**

*Firearm transfers are exempt from the requirement for a NICS check in 3 situations. These include transfers: (1) to buyers having a State permit that has been recognized by ATF as an alternative to a NICS check; (2) of National Firearms Act weapons approved by ATF; and (3) certified by ATF as exempt because compliance with the NICS check requirement is impracticable.*

*[18 U.S.C. 922(t), 27 CFR 478.102(d)]"*

Because the approval of a Form 4 would meet the requirements of (2) in the NFA FAQ, it appears that the NICS background check on the individual picking up the NFA item would not be required.

Finally, a review of the Form 4473 would also confirm that a NICS background check is not required in this situation. According to Question #22 on the Form 4473: "No NICS check was required because the transfer involved only National Firearms Act firearm(s)."

Although we believe the NICS background check is not required, due to discrepancies in BATFE publications and recent discrepancies in feedback from different ATF regional and field offices, we are respectfully seeking written clarification on this matter.

Thank you in advance for your attention to this matter. I look forward to receiving a response soon.

Sincerely,



Brandon L. Maddox, Pharmacist, MBA

CC: Hans C. Hummel, Area Supervisor via email