

**\*\*\*ALERT\*\*\***

## **ATF Proposes Rulemaking on Reporting Thefts/Losses of Firearms**

On August 12, 2014, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) published in the Federal Register a notice proposing regulations requiring Federal Firearms Licensees (FFLs) to report firearms that are lost or stolen in transit. The complete text of the notice is here:

<http://www.gpo.gov/fdsys/pkg/FR-2014-08-12/pdf/2014-18874.pdf>

### **Background**

The proposed regulation would implement a provision of the Gun Control Act that requires FFLs to report to ATF and to appropriate local authorities the theft or loss of a firearm from inventory. Under the current ATF regulations in 27 C.F.R. § 478.39a, FFLs must report theft or loss of firearms within 48 hours of discovery by calling a toll-free number, preparing a written report on ATF Form 3310.11, and also reporting to appropriate local authorities.

What is unclear under the current regulations, however, is who is responsible for reporting when a firearm is lost or stolen in transit between FFLs, or how an FFL should deal with firearms lost or stolen in transit to an unlicensed purchaser. Consequently, many firearms lost in transit are not reported, and according to ATF, these firearms are diverted and used as crime guns.

### **Proposal**

To close the gaps outlined above, ATF proposes the transfer or/sender of a firearm bear the responsibility for reporting the theft or loss of that firearm when it occurs in transit. ATF notes that the sender is in the best position to know how and when the firearms were shipped and who to contact about a shipment discrepancy. The reporting requirement would also apply when a firearm is shipped to a non-licensee, as the shipping FFL would be the only licensee involved in the transaction.

### **Elimination of Duplicate Reporting Requirements for NFA Firearms**

The proposed rule would eliminate the duplicate reporting requirements that currently apply to the theft or loss of a firearm registered in accordance with the National Firearms Act (NFA). Existing regulations in 27 C.F.R. 479.141 requires persons to whom an NFA firearm is registered to send a letter notification to the NFA Branch if a registered firearm

is lost or stolen. If the registrant is also an FFL and the firearm is part of the FFL's inventory, the FFL must comply with the requirements of 27 C.F.R. 478.39a outlined above. The proposed rule would amend section 478.39a to provide that an FFL's submission of a completed Form 3310.11 to ATF satisfies the notification requirements of section 479.141 for registered NFA firearms.

### **Clarification of Record Keeping Requirements**

The proposed rule would retain most of the existing requirements for FFLs to report the theft or loss of firearms. The instructions on Form 3310.11 provide that FFLs must record the theft/loss as a disposition entry in the Acquisition and Disposition record and must include the ATF incident report numbers assigned by ATF and local authorities. These requirements will be moved into the regulations in section 478.39a, rather than being instructions on the form. The proposed rule would clarify that the disposition entry must be made no later than 7 days following discovery of the theft or loss. The regulations would also add a requirement that if a firearm previously reported as stolen or lost is later discovered by the FFL, the firearm must be entered into the record as an acquisition (if returned to inventory) or disposition (if its whereabouts are discovered but it is not inventory) and ATF must be advised of this information.

### **ATF Seeking Comment**

ATF is seeking comment on the following areas:

1. Additional reporting and record keeping requirements - whether the regulations should require FFL transferors to obtain a written or electronic confirmation of receipt from the common carrier, and whether this confirmation should be retained as part of an FFL's required records.
2. Costs and Benefits of Proposals - ATF specifically requests input from industry members on the following questions:
  - How many shipments of firearms occur annually?
  - To what extent do FFLs already arrange for written or electronic confirmation from the common carrier or other shipper for such shipments?
  - How often do FFLs retain records of confirmation currently?
  - How might such requirements be developed so as to minimize any additional burden by meshing with the FFL's regular business practices?

ATF will accept comments on this NPRM for a 90-day period ending on November 10, 2014. Comments may be submitted electronically at [www.regulations.gov](http://www.regulations.gov); via fax at [\(202\)648-9741](tel:2026489741); or via written submission to Brenda Raffath Friend, Mailstop 6N-602, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms and Explosives, 99 New York Avenue NE, Washington, DC 20226, ATTN: ATF 40P.

*Industry members are strongly encouraged to submit comments on this notice,*

*particularly if you believe the proposed rule will impose additional burdens on your business. Comments specifically addressing the costs and benefits of the proposed rule would be helpful.*

## **For More Information**

The above analysis is for informational purposes only and is not intended to be construed or used as legal advice. It does not anticipate all areas in which the proposed revisions could affect a business. Questions about this information can be directed to:

**Johanna Reeves:** [202.715.9941](tel:202.715.9941) | [jreeves@reevesdola.com](mailto:jreeves@reevesdola.com)

**Teresa Ficaretta:** [202.715.9183](tel:202.715.9183) | [tficaretta@reevesdola.com](mailto:tficaretta@reevesdola.com)

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