



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington, DC 20226

www.atf.gov

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OPEN LETTER TO ALL CALIFORNIA FEDERAL FIREARMS LICENSEES

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received inquiries from California Federal firearms licensees (FFLs) concerning the correct procedure for completing Firearms Transaction Records, ATF Forms 4473, while complying with the California Department of Justice (CA DOJ) Dealer Record of Sale (DROS) Entry System (DES) transaction procedures. Specifically, FFLs have asked how to properly complete items 21a-d on ATF Form 4473 with respect to the State's 10-day waiting period, and how the waiting period affects delayed and cancelled transactions. In addition, FFLs have asked how to complete the ATF Form 4473 with respect to the new delayed time limitation and the undetermined transactions. The purpose of this Open Letter is to provide guidance on the issue, and assist licensees in complying with Federal firearms laws and regulations.

Federal law requires, with limited exceptions, that FFLs conduct a background check prior to transferring a firearm to a nonlicensee. In California, FFLs are required to perform the background requirement through the DES. This Open Letter addresses possible outcomes in reference to responses provided by the CA DOJ DROS system in regards to firearms transactions relating to background checks conducted prior to transferring firearms to nonlicensees.

The following are possible responses provided by the CA DOJ DROS system:

No DROS Response – Situations in which the FFL has submitted the purchaser's/transferee's information to CA DOJ, receives the DROS number, complies with CA 10-day waiting period, but does not receive a response from CA DOJ - **See attachment A**

Delayed and Release After Delayed DROS Response – Situations in which the FFL has submitted the purchaser's/transferee's information to CA DOJ and has been issued a "Delayed" notice and the final determination from CA DOJ results in a "Release After Delay" - **See attachment B**

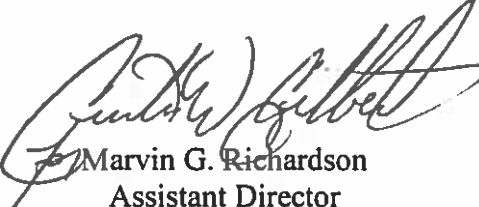
Delayed and Undetermined DROS Response – Situations in which the FFL has submitted the purchaser's/transferee's information to CA DOJ and has been issued a "Delayed" notice and the final determination from CA DOJ results in an "Undetermined" status - **See attachment C**

Cancelled DROS Response – Situations in which the FFL has submitted the purchaser's/transferee's information to CA DOJ, but the purchaser/transferee cancels the transaction - See attachment D

In accordance with 27 CFR 478.129(b), California FFLs who have initiated a DROS background check for a proposed firearms transaction, but the sale, delivery, or transfer of the firearm is not made, the FFL must record the transaction number on the Form 4473, and retain the Form 4473 for a period of not less than five years after the date of the inquiry. Therefore, where a Form 4473 is not completed within 30 calendar days immediately following a "Proceed", "Release After Delay", "Approved" or "Undetermined" response, the form must be retained pursuant to 27 CFR 478.129.

This Open Letter supersedes the "Open Letter to All CA Federal Firearms Licensees" dated April 19, 2013.

If you have any questions about the issues addressed in this letter, you may contact the Firearms Industry Programs Branch at fipb@atf.gov or by phone at (202) 648-7190.


Marvin G. Richardson
Assistant Director
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ATTACHMENT A

No DROS Response:

As mandated by California State law, an FFL must comply with a 10-day waiting period prior to transferring firearms to nonlicensed individuals. The 10-day waiting period begins after the FFL successfully submits the DROS to CA DOJ and receives the DROS number.

At the time the FFL contacts CA DOJ, the FFL must document the information in items 21a-c as follows:

1. The FFL records the date he or she contacted CA DOJ via the DES in item 21a;
2. The FFL records the transaction number provided by CA DOJ in item 21b;
3. While the 10-day waiting period is ongoing, FFLs are to leave item 21c blank until such time that the 10-day waiting period has ended or a "Delayed" or "Denied" response is received from CA DOJ.
4. If no response is received from CA DOJ upon the completion of the 10-day waiting period, the FFL may transfer the firearm to the purchaser.
5. The FFL must check the "Proceed" box prior to the transfer of the firearm.

ATTACHMENT B

Delayed and Release After Delayed DROS Response:

Under Federal law, a NICS check may be relied upon by the FFL only for use in a single transaction, and for a period not to exceed 30 calendar days from the date that NICS was initially contacted. If the transaction is not completed within the 30-day period, the FFL must initiate a new NICS check prior to completion of the transfer. California FFLs have asked whether the delivery of a firearm beyond 30 days from the initial completion of the Form 4473 and DROS can be effected without executing a new Form 4473.

In instances where CA DOJ issues a “Delayed” notice to a California FFL, the FFL must place the sale of the firearm on a temporary hold and wait for the final determination from CA DOJ. CA DOJ will research the prospective firearm purchaser’s criminal history records. If the result of the research is that person is eligible to receive a firearm, then CA DOJ will initiate a new background check. The results of that background check may be relied upon by the FFL for 30 days after the new background check results in a “Release After Delay” notice response from CA DOJ; there is no need for the transferee or FFL to complete a new Form 4473. Because CA DOJ provided the FFL with a transaction number for the original DROS, the FFL must use the original ATF Form 4473 that was completed with that transaction number. The FFL must document the information in items 21a-d as follows:

1. The FFL records the date he or she contacted CA DOJ via the DES in item 21a;
2. The FFL records the transaction number provided by CA DOJ in item 21b;
3. The FFL must check the “Delayed” box in item 21c upon receipt of a “Delayed” notice from CA DOJ;
4. When the FFL receives a “Release After Delay” response from CA DOJ within 30 consecutive days (24 hour periods) from the DROS transaction date and time, he or she must check the “Proceed” box in item 21d and record the date the response was received in the space provided at the right of the “Proceed” box;
5. The FFL must require the purchaser to sign and re-certify (in Section C of the ATF Form 4473) to his or her responses originally provided in Section A. The FFL must also complete the required information in Section D prior to the transfer of the firearm.

The transfer must be completed within the 30-day period immediately following the “Release After Delay” notice received from CA DOJ. If the customer does not pick up the firearm during this 30-day period and he or she returns to acquire the firearm at a later date, a new ATF Form 4473 and DROS is required. The State mandated 10-day waiting period would also apply.

ATTACHMENT C

Delayed and Undetermined DROS Response:

On January 1, 2014, California Assembly Bill (AB) 500 became effective and limited the time a DROS can be delayed by CA DOJ to a maximum of 30 days from the DROS transaction date. FFLs will continue to be advised of a "Delayed" status within 10 days, however, if CA DOJ is unable to make a determination regarding the purchaser's eligibility to own/possess a firearm within 30 days (30 consecutive 24 hour periods from the original DROS transaction date and time), CA DOJ will change the status from "Delayed" to "Undetermined" and the FFL may (at his or her discretion) transfer the firearm to the purchaser. CA DOJ will, prior to the expiration of the 30-day period, conduct a new National Instant Criminal Background Check (NICS) and provide the FFL with a new transaction number (NTN) by the 30th day of the original background check via the DES. After CA DOJ enters the new background check date, NTN and response (i.e. "Approved" or "Undetermined") in the DES, the FFL has 30 days from that date to transfer the same firearm identified on the original DROS or cancel the transaction.

Failure to complete the transfer within the new 30-day period will result in the FFL having to submit a new DROS. In addition, such DROS will be considered abandoned and must be cancelled by the FFL via the DES or Cancellation / Correction Form (BOF 958) issued by CA DOJ.

Therefore, when CA DOJ changes the status from "Delayed" to "Undetermined", the FFL must document the information in items 21a-d as follows:

1. The FFL must record the renewed NTN in item 21b;
2. The FFL must check the final response (e.g. "Approved", "Denied" or "Undetermined") and record the date of the response in item 21d. If after the FFL receives an "Undetermined" response and chooses to transfer the firearm, he or she must check the "No resolution was provided within 3 business days" box in item 21d and record the date the response was received in the space at the right of the "No resolution was provided within 3 business days" (which is the date on the CA DOJ issued "Undetermined Letter");
3. The FFL must require the purchaser to sign and re-certify (in Section C of the ATF Form 4473) to his or her responses originally provided in Section A. The FFL must also complete the required information in Section D prior to the transfer of the firearm.

The transfer must be completed within the 30-day period immediately following the final response (i.e. "Approved" or "Undetermined") received from CA DOJ. If the customer does not pick up the firearm during this 30-day period and he or she returns to acquire the firearm at a later date, a new DROS is required. The State mandated 10-day waiting period would also apply. The FFL must check the "No resolution was provided within 3 business days" box in item 21d and retain the Form 4473 in accordance with 27 CFR 478.129.

ATTACHMENT D

Cancelled DROS Response:

FFLs have also asked how to record cancelled transactions on the ATF Form 4473 since they are required to cancel transactions in the DES when the prospective purchaser cancels a transaction or does not return to purchase the firearm.

In instances where a prospective purchaser cancels a transaction within 10 days of the initial DROS, and no other response was received by CA DOJ, the FFL can cancel the transaction in the DES. The FFL must document the information in items 21a-c of the ATF Form 4473 as follows:

1. The FFL records the date he or she contacted CA DOJ via the DES in item 21a;
2. The FFL records the transaction number provided by CA DOJ in item 21b;
3. The FFL must leave item 21c blank. (Only NICS can cancel a transaction, and will notify the FFL accordingly.)

In instances where the FFL cancels the DROS after the California State law mandated 10-day waiting period has ended and no other response was received by CA DOJ, the FFL can cancel the transaction in the DES for up to 90 days. For any DROS that is in excess of 90 days, the FFL must use the Cancellation / Correction Form (BOF 958) issued by CA DOJ. The FFL must document the information in items 21a-d of the ATF Form 4473 as follows:

1. The FFL records the date he or she contacted CA DOJ via the DES in item 21a;
2. The FFL records the transaction number provided by CA DOJ in item 21b;
3. The FFL must check the "Proceed" box item 21c. This is because no response from CA DOJ within the 10-day waiting period constitutes a "Proceed."
4. The FFL must leave item 21d blank.

In instances where the FFL cancels the DROS after the California State law mandated 10-day waiting period has ended, the FFL received an initial "Delayed" response from CA DOJ, followed by an "Undetermined" response after 30 consecutive days (24 hour periods) from the original DROS transaction date and time, and does not transfer the firearm, the FFL must document the information in items 21a-d.

1. The FFL records the date he or she contacted CA DOJ via the DES in item 21a;
2. The FFL records the original and renewed transaction numbers provided by CA DOJ in item 21b;
3. The FFL must check the "Delayed" box in 21c;
4. The FFL must check the "No resolution was provided within 3 business days" in item 21d and record the date the response was received in the space at the right of the "No resolution was provided within 3 business days" (which is the date on the CA DOJ issued "Undetermined Letter"). In addition, the FFL must retain the Form in accordance with 27 CFR 478.129.

Note that items 33-35 of the Form 4473 must only be completed for CA DOJ Denied/Cancelled Transactions. FFLs may leave items 33-35 blank for prospective purchaser and/or FFL cancelled transactions.