



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Enforcement Programs and Services

Washington, DC 20226

March 17, 2021

OPEN LETTER TO ALL SOUTH DAKOTA FEDERAL FIREARMS LICENSEES

The purpose of this Open Letter is to advise you of an important change to the procedure you must follow to comply with the Brady Handgun Violence Prevention Act (Brady Law), 18 U.S.C. § 922(t), when transferring a firearm to an unlicensed person.

The Brady Law generally requires Federal firearms licensees (FFLs) to initiate a National Instant Criminal Background Check System (NICS) check before transferring a firearm to an unlicensed person. Nonetheless, pursuant to 18 U.S.C. § 922(t)(3), the Brady Law contains exceptions to the NICS check, including an exception for holders of certain State permits to possess, carry, or acquire firearms. The law and implementing regulations provide that permits issued within the past five years may qualify as alternatives to the NICS check if certain other requirements are satisfied. Most importantly, the authority issuing the permit must conduct a NICS background check, and if the applicant is a non-U.S. citizen, the check must also include an Immigration Alien Query (IAQ) check, and must deny a permit to anyone prohibited from possessing firearms under Federal, State or local law. In order for the issuing authority to perform an IAQ check, each non-U.S. citizen applicant must provide the following information: date of birth, country of birth, and alien number or alien admission number. Otherwise, the required NICS check would be incomplete, and the State permit would not qualify as an alternative to a NICS check.

Currently, South Dakota Gold Card Concealed Carry Permit and Enhanced Concealed Carry Permits issued on or after January 1, 2017, qualify as alternatives to a NICS background check. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has reviewed South Dakota's Regular Concealed Carry Permit and determined that it also meets the requirements as an alternative to the NICS background check requirement. Please be advised that a South Dakota Regular Concealed Carry Permit, issued on or after July 1, 2018, can be used as an alternative to the required NICS background check.

As provided in 18 U.S.C. § 922(t)(1)(C) and 27 C.F.R. § 478.102(a)(3), if you transfer a firearm to an unlicensed person pursuant to one of these permit alternatives, you must comply with the following requirements:

1. Have the transferee complete and sign ATF Form 4473, Firearms Transaction Record;

2. Verify the identity of the transferee through a Government-issued photo identification (*e.g.*, driver's license, passport);
3. Verify that the permit is either a South Dakota Regular Concealed Carry Permit issued on or after July 1, 2018; or a South Dakota Gold Card Concealed Carry Permit or Enhanced Concealed Carry Permit issued on or after January 1, 2017;
4. Verify that the permit was issued within five years from the date of issuance by the State in which the transfer is to occur, and has not expired under State law; and
5. Either retain a copy of the transferee's permit and attach it to the Form 4473, or record on the Form 4473 any identifying number from the permit, the date of issuance, and the expiration date of the permit.

If you have any questions about this Open Letter, please call ATF's Firearms Industry Programs Branch at (202) 648-7190.



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