



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 7, 2020

The Honorable Briscoe Cain
Chair, House Select Committee on Driver's License Issuance & Renewal
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. 0305

Re: Extension of driver's license expiration dates due to COVID-19 and its effect on firearms purchases (RQ-0346-KP)

Dear Representative Cain:

You ask for an opinion on "how the Governor's executive order extending the expiration date of a Texas driver's license that expired on or after March 13, 2020 affects a federally licensed firearm dealer in the transfer/sale of a firearm to a Texas resident who attempts to use" such license to purchase a firearm.¹ Your question arises in the context of the COVID-19 pandemic and the Governor's proclamation of March 13, 2020, declaring a state of disaster in Texas.²

As background, you tell us that on March 18, 2020, the Governor "directed the Department of Public Safety (DPS) to temporarily waive expiration dates" for driver's licenses and other identification forms.³ *See* Request Letter at 1; *See also* TEX. GOV'T CODE § 418.016 (authorizing the Governor to suspend certain laws and rules). You refer us to DPS guidance stating that a Texas driver's license or identification card that expires on or after March 13, 2020, "falls under the period that encompasses the State of Disaster Declaration related to COVID-19 and will remain valid for 60 days after which time DPS issues public notice that the extension period for this

¹Letter from Honorable Briscoe Cain, Chair, House Select Comm. on Driver's License Issuance & Renewal, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Apr. 14, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0346KP.pdf> ("Request Letter").

²*See* Governor of the State of Texas Disaster Proclamation (Mar. 13, 2020), <https://gov.texas.gov/news/post/governor-abbott-declares-state-of-disaster-in-texas-due-to-covid-19>. The Governor extended the declaration on April 12, 2020. *See* Governor of the State of Texas Disaster Proclamation (Apr. 12, 2020), <https://gov.texas.gov/news/post/governor-abbott-extends-disaster-declaration-for-covid-192>.

³*See* <https://gov.texas.gov/news/post/governor-abbott-dps-waive-expiration-dates-for-driver-licenses>.

disaster declaration has been lifted.”⁴ Request Letter at 2 (quoting from DPS press release⁵ from March 19, 2020). You tell us the specific provisions suspended are rules 15.32 and 15.34 in chapter 37 of the Texas Administrative Code. *Id.*; *see also* 37 TEX. ADMIN. CODE §§ 15.32 (Tex. Dep’t of Pub. Safety, Expiration Date on Expired License), 15.34 (Tex. Dep’t of Pub. Safety, Renewal Period Prior to Expiration).

You explain that the temporary suspension of the expiration dates prevents Texas gun stores from “selling firearms to Texas residents whose only form of government issued identification containing their name, date of birth, and photograph is [a] driver license that expired on or since March 13, 2020.”⁶ Request Letter at 3. The reason, you explain, is that the federal form required for transferring a firearm—ATF Form 4473—requires the “seller to record the expiration date of the government identification document” used to purchase the firearm. *Id.*⁷ You state that because driver’s licenses “that expired on or after March 13, 2020 have been extended for 60 days after DPS provides further public notice that normal Driver License operations have resumed, there is currently no exact date” the driver’s license expires. *Id.* at 4. You ask specifically whether question 18.a on ATF Form 4473 could be properly completed “if for example, 60 days were added to the expiration date printed on the face of the” driver’s license. *Id.* And given that question 18.a requires the “Expiration Date of Identification (if any),” you alternatively ask “whether a driver license could, for the time being, be legally treated as having no expiration date.” *Id.* at 4–5.

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) promulgated ATF Form 4473 under the authority of title 18, United States Code, section 923(g)(1)(A).⁸ Subsection

⁴The governor’s press release states that the suspension of the administrative code provisions “will be in effect until 60 days after the DPS provides further public notice that normal Driver License operations have resumed.” <https://gov.texas.gov/news/post/governor-abbott-dps-waive-expiration-dates-for-driver-licenses>. We acknowledge that this language differs from the language in the DPS press release to which you refer. For the purposes of this opinion, the relevant issue is not how long the driver’s license remains valid but that there is a future date after which the driver’s license is no longer valid.

⁵*See* https://www.dps.texas.gov/director_staff/media_and_communications/pr/2020/0319a.

⁶Potential buyers may provide a combination of specified valid government-issued documents to satisfy the identification requirements of the law. *See* Form 4473, OMB No. 1140-0020 at 5 (Oct. 2016) (question 18.a instructions), <https://www.atf.gov/firearms/docs/4473-part-1-firearms-transaction-record-over-counter-atf-form-53009/download>. However, your question and this opinion is limited to those individuals “whose only form of government issued identification containing their name, date of birth, and photograph is a driver’s license that expired on or since March 13, 2020.” Request Letter at 3.

⁷*See also* Form 4473, OMB No. 1140-0020 at 2 (Oct. 2016), <https://www.atf.gov/firearms/docs/4473-part-1-firearms-transaction-record-over-counter-atf-form-53009/download>.

⁸A recent federal judicial opinion described the role of ATF Form 4473:

The Brady Handgun Violence Prevention Act (the “Brady Act”) created the National Instant Criminal Background Check System (“NICS Background Check”) to prevent the transfer of firearms to individuals barred from firearm possession by federal or state law. All persons attempting to purchase firearms must undergo an NICS Background Check. As part of that procedure, prospective

923(g)(1)(A) provides, in relevant part, that a “licensed dealer shall maintain such records of . . . sale, or other disposition of firearms . . . for such period, and in such form, as the Attorney General may by regulations prescribe.” 18 U.S.C. § 923(g)(1)(A). Rule 478.124, adopted thereunder, prohibits licensed dealers from selling or otherwise disposing “of any firearm to any person, other than another licensee, unless the licensee records the transaction on a firearms transaction record Form 4473.” 27 C.F.R. § 478.124(a). Rule 478.124 also requires the dealer to “verify the identity of the transferee by examining the identification document (as defined in § 478.11) presented, and [to] note on the Form 4473 the type of identification used.” 27 C.F.R. § 478.124(c)(3)(i). Rule 478.11, referenced in Rule 478.124(c)(3), defines an “identification document” as a

document containing the name, residence address, date of birth, and photograph of the holder and which was made or issued by or under the authority of the United States Government, a State, political subdivision of a State, . . . which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

27 C.F.R. § 478.11. An ATF guidance document advises that the “identification document must also be valid (e.g., unexpired).”⁹ *See* Form 4473, OMB No. 1140-0020 at 5 (Oct. 2016) (question 18.a instructions requiring the buyer to provide a valid government-issued photo identification document to the seller).

The question how to appropriately complete a form promulgated by the ATF is best answered by that federal agency.¹⁰ The ATF regulates and enforces federal laws regarding the transfer of firearms, and any guidance provided by this office on the issue is not binding on the ATF. We therefore refrain from providing definitive guidance on how to comply with ATF procedures. But we can generally discuss the implications of the driver’s license extension and possible options for completing ATF Form 4473. As an initial matter, we note that a Texas driver’s license that on its face lists an expiration date of March 13, 2020, or later is not expired under the Governor’s suspension of laws and related DPS guidance.

customers must complete a firearms transaction record known as the ATF Form 4473, which elicits personal information and propounds questions to certify that the customer is qualified to possess a firearm under the enumerated Brady Act factors. The Form 4473 information is then compared against databases from multiple agencies, including the Federal Bureau of Investigation’s National Crime Information Center.

Montgomery v. Cuomo, 291 F. Supp. 3d 303, 307 n.1 (W.D.N.Y. 2018) (citations and quotation marks omitted).

⁹*See* Bureau of Alcohol, Tobacco, Firearms, and Explosives, *What form of identification must a licensee obtain from a transferee of a firearm?* <https://www.atf.gov/firearms/qa/what-form-identification-must-licensee-obtain-transferee-firearm>.

¹⁰This office sought input from ATF in answering your request, but to date we have not received guidance on the appropriate method for completing ATF Form 4473 for those Texans whose licenses list an expiration date on or after March 13, 2020.

With regard to completion of ATF Form 4473, we first consider your suggestion that the license be temporarily treated as having no expiration date. *See* Request Letter at 4–5. A driver’s license that on its face expires on or after March 13, 2020, remains valid until 60 days after the DPS issues public notice that the extension period for this disaster declaration has been lifted.¹¹ After that day, the license will expire. And while that date may currently be undetermined, a future date exists after which the driver’s license is no longer valid. To the extent a seller leaves question 18.a blank, the form suggests the identification document never expires. Title 18, section 924(a)(1)(A) of the United State Code prohibits a person from “knowingly mak[ing] any false statement or representation with respect to the information required . . . to be kept in the records” of a dealer. 18 U.S.C. § 924(a)(1)(A). Thus, we cannot conclude that treating the license as having no expiration date is an advisable solution for a seller.

You also suggest that the seller could add 60 days to the expiration date printed on the face of the identification document. *See* Request Letter at 4. You propose that “a license that expired March 13, 2020 would then be legally considered to expire on May 12, 2020,” and you suggest that the seller fill in question 18.a with the May 12, 2020 date. *Id.* n.9. Under DPS guidance, licenses will expire 60 days “after which time DPS issues public notice that the extension period for this disaster declaration has been lifted.”¹² No such notice has been given, so no licenses have yet expired under this provision. Thus, adding 60 days to the expiration date printed on the driver’s license as an expiration date is not an accurate representation of the legal expiration date and is also not an advisable solution for a seller.¹³ Accordingly, we must ultimately leave it to the ATF to determine the appropriateness of any entry on ATF Form 4473.

¹¹*See also supra* note 4.

¹²*Id.*

¹³As a practical matter, most individuals with expired driver’s licenses may renew their driver’s license online. The expired driver’s license cannot be expired over 2 years. *See* 37 TEX. ADMIN. CODE § 15.35 (Tex. Dep’t of Pub. Safety, Renewal of a Texas Driver License Expired Over Two Years). By definition, here, a driver’s license that expired on or after March 13, 2020, has been expired for less than two years. Thus, provided an individual satisfies the other conditions that apply to a driver’s license renewal, he or she can renew his or her driver’s license online and use the new expiration date to complete ATF Form 4473. *See supra* note 4. *See also* <https://www.dps.texas.gov/driverlicense/renewal.htm> (providing instructions on online renewal of driver’s licenses).

S U M M A R Y

In the context of the COVID-19 pandemic and the declared state of disaster in Texas, the Governor suspended provisions of the driver's license regulations regarding license expiration dates. A Texas driver's license that on its face lists an expiration date of March 13, 2020, or later is not expired under the Governor's suspension of laws and related DPS guidance until 60 days after the DPS provides further public notice that normal Driver's License operations have resumed.

Treating the driver's license as if it has no expiration date or adding a period of 60 days to the expiration date shown on the face of the driver's license are not advisable solutions for purposes of the ATF Form 4473 required in a transfer of firearms. The federal Bureau of Alcohol, Tobacco, Firearms, and Explosives regulates and enforces federal laws regarding such transfers, and any guidance provided by this office on the issue is not binding on the ATF. We therefore leave it to the ATF to determine the appropriateness of any entry on ATF Form 4473.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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