

Definition of “Engaged in the Business” as a Dealer in Firearms

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U.S. Department of Justice

Bureau of Alcohol, Tobacco, Firearms and Explosives

Definition of “engaged in the business” as a dealer

- On June 25, 2022, Congress passed the Bipartisan Safer Communities Act (BSCA). Among other provisions, section 12002 of the BSCA broadened the definition of “engaged in the business” by eliminating the requirement that a person’s “principal objective” of purchasing and reselling firearms must include both “livelihood and profit” and replacing it with a requirement that the person must intend “**to predominantly earn a profit.**”

18 U.S.C. 921(a)(21): The term “engaged in the business” means—

- (C) as applied to a dealer in firearms, as defined in section 921(a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business ~~with the principal objective of livelihood and profit to~~ **predominantly earn a profit** through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;
- **This definition applies only to wholesale and retail dealers, but not to gunsmiths, manufacturers, importers, or pawnbrokers.**

Definition of “engaged in the business” as a dealer

These BSCA amendments were enacted after several tragic mass shootings. In one incident between Midland and Odessa, Texas, the perpetrator had previously been adjudicated by a court as a mental defective and was prohibited from possessing firearms under 18 U.S.C. 922(g)(4). After being denied a firearm from a licensed sporting goods store, he circumvented the NICS background check process by purchasing the AR-15 variant rifle he used in the shooting from an unlicensed individual without having to undergo a background check. The private seller later pled guilty to dealing in firearms without a license and to filing a false tax return due to his failure to report that major source of income.

- The Final Rule, 89 FR 28968, became effective on May 20, 2024.
- Notice of the rule was published for a 90-day comment period during which we received nearly 388,000 comments.

Definition of “engaged in the business”

§ 478.13 Definition of “engaged in the business as a dealer in firearms other than a gunsmith or a pawnbroker.”

(a) *Definition.*

A person [defined broadly in 18 U.S.C. 921(a)(1) and 27 CFR 478.11 to include both individuals and legal entities] who devotes time, attention, and labor to dealing in firearms [devotion to dealing may or may not result in any sales] as a regular course of trade or business [regularly is a term of frequency of that devotion of time and effort to dealing] to predominantly earn a profit through the repetitive purchase and resale of firearms. [intent does not require actual sales]

The term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of the person’s personal collection of firearms. In addition, the term shall not include an auctioneer who provides only auction services on commission to assist in liquidating firearms at an estate-type auction; provided, that the auctioneer does not purchase the firearms, or take possession of the firearms for sale on consignment.

- This differs from a “consignment-type” auctioneer (consignee), who is given the legal authority by the consignor to take their firearms into the auctioneer’s inventory and who would need to be licensed.

Definition of “personal collection”

§ 478.11 Meaning of terms. * * *

Personal collection. (1) General definition.

Personal firearms that a person accumulates for study, comparison, exhibition (e.g., collecting curios or relics, or collecting unique firearms to exhibit at gun club events), or for a hobby (e.g., noncommercial, recreational activities for personal enjoyment, such as hunting, skeet, target, or competition shooting, historical re-enactment, or noncommercial firearms safety instruction).

The term shall not include any firearm purchased for the purpose of resale with the predominant intent to earn a profit (e.g., primarily for a commercial purpose or financial gain, as distinguished from personal firearms a person accumulates for study, comparison, exhibition, or for a hobby, but which the person may also intend to increase in value).

Definition of “personal collection” (con’t)

§ 478.11 Meaning of terms. * * *

Personal collection. (1) **General definition. [con’t]**

* * *

In addition, the term shall not include firearms accumulated primarily for personal protection: *Provided*, that nothing in this definition shall be construed as precluding a person from lawfully acquiring firearms for self-protection or other lawful personal use.

- By definition, all firearms are “weapons” that will, are designed to, or may readily be converted to expel a projectile, and are therefore instruments of offensive or defensive combat.
- Including all firearms usable for self-defense would allow the limited definitional exclusions for personal collections to swallow the law’s rule that dealers in firearms must be licensed, because one could nearly always claim that a firearm was purchased or sold to improve or liquidate the firearms one keeps for self-defense.

Definition of “personal collection” (*con’t*)

§ 478.11 Meaning of terms. * * *

Personal collection. **(2) Personal collection of licensee.**

In the case of a firearm imported, manufactured, or otherwise acquired by a licensed manufacturer, licensed importer, or licensed dealer, the term shall include only a firearm described in paragraph (1) of this definition that was—

- (i) **Acquired or transferred without the intent to willfully evade** the restrictions placed upon licensees under 18 U.S.C. chapter 44;
- (ii) **Recorded by the licensee as an acquisition** in the licensee’s acquisition and disposition record in accordance with § 478.122(a), § 478.123(a), or § 478.125(e) (unless acquired prior to licensure and not intended for sale);
- (iii) **Recorded as a disposition from the licensee’s business inventory** to the licensee’s personal collection or otherwise as a personal firearm in accordance with § 478.122(a), § 478.123(a), or § 478.125(e) (unless acquired prior to licensure and not intended for sale);
- (iv) **Maintained in such personal collection or otherwise as a personal firearm (whether on or off the business premises) for at least one year** from the date the firearm was so transferred, in accordance with 18 U.S.C. 923(c) and 27 CFR 478.125a; and
- (v) **Stored separately from, and not commingled with the business inventory.** When stored or displayed on the business premises, the personal collection and other personal firearms shall be appropriately identified as “not for sale” (e.g., by attaching a tag).

- This is based on 18 U.S.C. 923(c), 27 CFR 478.125a, and longstanding ATF guidance, such as IC 72-30.

Definition of “responsible person”

§ 478.11 Meaning of terms. * * *

Responsible person. Any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of a sole proprietorship, corporation, company, partnership, or association, insofar as they pertain to firearms.

- Includes sole proprietors and LLCs, consistent with the definition in the instructions on ATF Form 7.

Definition of “former licensee inventory”

§ 478.11 Meaning of terms. * * *

Former licensee inventory. Firearms that were in the business inventory of a licensee at the time the license was terminated. Such firearms differ from a personal collection and other personal firearms in that they were purchased repetitively before the license was terminated as part of a licensee’s business inventory with the predominant intent to earn a profit.

Liquidation of “former licensee inventory”

§ 478.57 Discontinuance of business. [without notice of denial, suspension, or revocation of license]
§ 478.78 Operations by licensee after notice. [of denial, suspension, or revocation of license]

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(b) Upon final disposition of license proceedings to disapprove or terminate a license (i.e., by revocation or denial of renewal), the former licensee shall within 30 days, or such additional period approved by the Director for good cause, either:

(1) Liquidate the former licensee inventory by selling or otherwise disposing of the firearms to a licensed importer, licensed manufacturer, or licensed dealer for sale, auction, or pawn redemption in accordance with this part; or

(2) Transfer the former licensee inventory to a responsible person of the former licensee to whom the receipt, possession, sale, or other disposition is not prohibited by law. Any such transfer, however, does not negate the fact that the firearms were repetitively purchased, and were purchased with the predominant intent to earn a profit by repetitive purchase and resale.

Liquidation of “former licensee inventory” (*con’t*)

§ 478.57 Discontinuance of business.

§ 478.78 Operations by licensee after notice.

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(c) Transfers of former licensee inventory to a licensee or responsible person in accordance with paragraphs (b)(1) or (b)(2) of this section shall be appropriately recorded as dispositions, in accordance with §§ 478.122(b), 478.123(b), or 478.125(e), prior to delivering the records after discontinuing business consistent with § 478.127. [need to close out open entries] Except for the sale of former licensee inventory to a licensee within 30 days (or approved period) in accordance with paragraph (b)(1) of this section, **or occasional sale of a firearm from such inventory thereafter to a licensee**, a former licensee (or responsible person of such former licensee) who resells any such inventory, including former licensee inventory transferred in accordance with paragraph (b)(2), is subject to the presumptions in § 478.13 (definition of “engaged in the business” as a dealer in firearms other than a gunsmith or pawnbroker) that apply to a person who repetitively purchased those firearms for the purpose of resale.

(d) The former licensee shall not continue to engage in the business of importing, manufacturing, or dealing in firearms by importing or manufacturing additional firearms for purposes of sale or distribution, or purchasing additional firearms for resale (i.e., “restocking”).

Definition of “engaged in the business”: Presumptions

§ 478.13 Definition of “engaged in the business as a dealer in firearms other than a gunsmith or a pawnbroker.”

*(c) Presumptions that a person is engaged in the business as a dealer. * * **

- For further clarification, the final rule lists specific activities when a person is “engaged in the business as a dealer,” and a second list of presumptions that show when a person is presumed to have the intent “to predominantly earn a profit.” The presumptions are based on conduct that ATF and courts have found to be consistent indicators that a person is EIB.

(g) Presumptions, conduct, and rebuttal evidence not exhaustive. The activities set forth in the rebuttable presumptions in paragraphs (c) and (d)(2) of this section, and the activities and rebuttal evidence set forth in paragraphs (e) and (f) of this section, are not exhaustive of the conduct or evidence that may be considered in determining whether a person is engaged in the business of dealing in firearms, or has the intent to predominantly earn a profit through the repetitive purchase and resale of firearms.

(h) Criminal proceedings. The rebuttable presumptions in paragraphs (c) and (d)(2) of this section shall not apply to any criminal case, although they may be useful to courts in criminal cases, for example, when instructing juries regarding permissible inferences.

- The presumptions apply only in civil and administrative proceedings, such as license denials and civil forfeiture cases, to shift the burden of producing evidence. The rule does not mandate the presumptions in criminal cases; however, the presumptions may be useful to courts in criminal cases, such as when instructing juries regarding permissible inferences.

“Engaged in the business”: Presumptions (*con’t*)

§ 478.13 Definition of “engaged in the business as a dealer in firearms other than a gunsmith or a pawnbroker.”

(c) Presumptions that a person is engaged in the business as a dealer.

In civil and administrative proceedings, a person shall be presumed to be engaged in the business of dealing in firearms as defined in paragraph (a) of this section, absent reliable evidence to the contrary, when it is shown that the person—* * *

- (4) As a former licensee (or responsible person acting on behalf of the former licensee), resells or offers for resale to a person (other than a licensee in accordance with §§ 478.57 or 478.78) **firearms that were in the business inventory of the former licensee at the time the license was terminated** (i.e., license revocation, denial of license renewal, license expiration, or surrender of license), **whether or not such firearms were transferred to a responsible person of the former licensee after the license was terminated** in accordance with §§ 478.57(b)(2) or 478.78(b)(2); or
 - This addresses “former licensee inventory” – after license termination
- (5) As a former licensee (or responsible person acting on behalf of the former licensee), resells or offers for resale **firearms that were transferred to the licensee’s personal collection or otherwise as personal firearms** in accordance with 18 U.S.C. 923(c) and 27 CFR 478.125a(a) **prior to the time the license was terminated, unless:**
 - (i) The firearms were received and transferred **without any intent to willfully evade** the restrictions placed on licensees by chapter 44, title 18, United States Code; and
 - (ii) **One year has passed from the date of transfer** to the licensee’s personal collection or otherwise as personal firearms.
 - This addresses firearms transferred to a personal collection or otherwise as a personal firearm before license termination

Licensee to licensee transfers



§ 478.124 Firearms transaction record.

(a) A licensed importer, licensed manufacturer, or licensed dealer shall not sell or otherwise dispose, temporarily or permanently, of any firearm to any person, other than another licensee, unless the licensee records the transaction on a firearm transaction record, Form 4473: *Provided*, that a firearms transaction record, Form 4473, shall not be required to record the disposition made of a firearm delivered to a licensee for the sole purpose of repair or customizing when such firearm or a replacement firearm is returned to the person from whom received; *provided further*, that a firearms transaction record, Form 4473, shall not be used if the sale or other disposition is being made to another licensed importer, licensed manufacturer, or licensed dealer, or a curio or relic to a licensed collector, including a sole proprietor who transfers a firearm to their personal collection or otherwise as a personal firearm in accordance with § 478.125a. When a licensee transfers a firearm to another licensee, the licensee shall comply with the verification and recordkeeping requirements in § 478.94 and Subpart H of part 478.

- Where an individual sole proprietor is the licensee and is transferring the firearm to themselves, they are still a licensee recipient and thus cannot use an ATF Form 4473 because this form may be used only for dispositions to nonlicensees.
- However, an individual sole proprietor must use an ATF Form 4473 to permanently transfer firearms to their unlicensed employees, including unlicensed individual responsible persons.
- If a licensee properly transfers a firearm to a nonlicensee using an ATF Form 4473, the one-year waiting period and personal bound book record requirements of section 923(c) do not apply. Those requirements apply only to firearms maintained in a personal collection of the licensee (or a responsible person acting on behalf of the licensee), including a sole proprietor.