

## Questions and Answers: Final Rule 2022R-17F

### Definitions of “Dealer” Engaged in the Business” and Other Terms

#### **Q – Why does the Final rule change the definition of a “dealer”?**

A – The Gun Control Act was passed in 1968, and the Firearms Owners’ Protection Act modified it in 1986. Since then, there have been significant advancements in manufacturing (e.g., 3D printing) and distribution technology (e.g., Internet), and changes in the marketplace and products (e.g., large-scale gun shows). These have increased the ways in which individuals shop for firearms and have therefore created a need for more clarity in the regulatory definition of “dealer” in the diverse modern marketplace, especially with the BSCA amendments to what constitutes being “engaged in the business” as a dealer. The final rule amended the definition of “dealer” to clarify that, under the changes to “engaged in the business” made by the BSCA, a person still meets the statutory definition of a dealer in firearms in the modern marketplace, regardless of where they buy and sell firearms, regardless of which medium they use to do so, and regardless of which medium of payment or exchange they use.

#### **Q – What does it mean to be “engaged in the business” as a wholesale or retail dealer?**

A – A person is “engaged in the business” when the person devotes time, attention, and labor to dealing in firearms as a regular course of trade or business 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 the person’s personal collection of firearms. 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.

The definition focuses on whether the intent underlying the sale or disposition of firearms is predominantly one of obtaining pecuniary gain. There is no statutory requirement that firearms actually be sold; indeed, a dealer may routinely (i.e., “regularly”) devote time and resources working toward that goal as a course of trade or business, but never find a buyer or consummate any sales due to insufficient demand or poor sales practices. Thus, the way that Congress drafted and amended the statute, and the way that courts have repeatedly interpreted it, no actual sales are required if the intent element is met, and the person’s conduct demonstrates their devotion of time, attention, and labor to dealing in firearms as a regular course of trade or business.

Under the BSCA, a person’s intended use for the income they receive from the sale or disposition of firearms is not relevant to the question of whether they intended to predominantly earn pecuniary gain. If a person must sell their previously acquired firearms to generate income for subsistence, such as to pay medical or tuition bills, they are still subject to the same considerations as persons who intend to sell their firearms to go on a vacation, increase their savings, or buy a sports car. If persons repetitively resell firearms and actually earn pecuniary (or monetary) gain, whether or not it was for support or subsistence, that gain is evidence

demonstrating the intent element of being engaged in the business. However, a single or an isolated sale of firearms that generates pecuniary gain would not alone be sufficient to qualify as being engaged in the business without additional conduct indicative of firearms dealing. The issue is whether the person who exchanged the firearms for money, goods, or services was devoting time, attention, and labor to dealing in firearms as a regular course of trade or business and had the predominant *intent* to earn a profit through *repetitive* firearms purchases and resales.

For example, a person who bought a firearm 40 years ago and now sells it for a substantial profit to augment income during retirement is not engaged in the business based on this single firearms transfer because their intent was not to earn that pecuniary gain through repetitive purchases and resales of firearms and they are likely not dealing in firearms as a regular course of trade or business. Put another way, a bona fide collector, whose motive is not predominantly to profit, may make incidental profit in the course of enhancing a personal collection, which would not be engaged in the business.

**Q – How does the final rule help to clarify the definition of a “dealer” engaged in a firearms business?**

A – The final rule clarifies the definition of a “dealer” engaged in the business by defining the terms “purchase,” “sale,” and “something of value.” For consistency, the terms explain types of transactions and their meanings are derived from standard dictionary definitions and court cases. The definitions of “purchase” and “sale” include derivative terms, such as “purchases,” “purchasing,” etc. They define the terms as obtaining or disposing of a firearm “in exchange for something of value.” “Something of value” includes money, credit, personal property (including another firearm or ammunition), a service, a controlled substance, or any other medium of an agreed exchange or valuable consideration, legal or illegal.

**Q. Is the term “occasional” defined in the BCSA or the final rule when addressing sales, exchanges, or purchases of firearms?**

A. No. The term “occasional” is not defined in the regulatory text; however, the plain and ordinary meaning of that term is “infrequent or irregular occurrence.” However, regular or routine sales, exchanges, or purchases of firearms (even part-time) for the enhancement of a personal collection or for a hobby would not fall within the meaning of that term.

**Q – If I only dedicate a few hours to selling firearms to predominantly earn a profit, am I considered a “dealer”?**

A – Yes. The term includes any person who engages in such business or occupation on a part-time basis.

**Q – Does the final rule require every private sale of a firearm be processed through a licensed dealer?**

A – No. Individuals may continue to make intrastate private sales without a license provided they do not rise to the level of being “engaged in the business,” and the transactions are otherwise compliant with law.

**Q. Does the final rule apply to persons who deal solely in component parts of a complete weapon?**

A. The final rule applies to dealing in “firearms,” as that term is defined by 18 U.S.C. § 921(a)(3). This includes a weapon that will, is designed to, or may readily be converted to expel a projectile by the action of an explosive under 18 U.S.C. § 921(a)(3)(A), and the frame or receiver of any such weapon under 18 U.S.C. § 921(a)(3)(B). Persons who engage in the business of dealing in firearms under the GCA must be licensed.

**Q - Will the definition of “engaged in the business” in the final rule affect gunsmiths or pawnbrokers?**

A – No, the final rule did not change the definition of "engaged in the business" as it applies to gunsmiths and pawnbrokers. The term "with the principal objective of livelihood and profit" still applies to those "engaged in the business" as gunsmiths. The term “engaged in the business” does not apply to pawnbrokers because all pawnbrokers whose business includes the taking of any firearm as security for the repayment of money would automatically be a ‘dealer.’

**Q. If a person sells their personal firearm and actually makes a profit, does that equate to being engaged in the business as a dealer requiring a license?**

A. No. A person actually “selling at a profit does not equate to engaging in the business” because a showing of actual profit, whether or not expenses or inflation are considered, is not required to be engaged in the business. Rather, it is the predominant *intent* of obtaining pecuniary gain from sale or disposition of firearms that matters. *See* 18 U.S.C. § 921(a)(22). Moreover, because the person’s predominant intent to profit is the relevant fact, it does not matter how or whether actual profit is calculated.

*Definition of “predominantly earn a profit”*

**Q – Is the term “predominately earn a profit” a new definition?**

A – Yes. The definition of that term was added to the GCA as part of the BSCA, and the final rule adds the statutory definition to the Code of Federal Regulations.

**Q – What does it mean to “predominantly earn a profit”?**

A – To “predominantly earn a profit” means that the intent underlying the sale or disposition of firearms as predominantly one of obtaining pecuniary gain, as opposed to other intents, such as

improving or liquidating a personal firearms collection. For purposes of this definition, a person may have the intent to profit even if the person does not actually obtain the intended pecuniary gain from the sale or disposition of firearms. However, there is no requirement to prove profit, including the intent to profit, where a person engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism.

**Q – Does the definition of the new term “predominantly earn a profit” apply to all persons who “engage in the business”?**

A – No. The definition applies only to wholesale and retail dealers in firearms. The definition of “principal objective of livelihood and profit” remains in the regulations because it is still applicable to persons “engaged in the business” as a manufacturer, importer, or gunsmith. Those terms were not changed by the BSCA or this rule.

### *Background Checks*

**Q – Does this final rule create universal background checks?**

A – No. Congress has not passed a law to require universal background checks, and this rule does not require unlicensed individuals who are not engaged in the business of manufacturing, importing, or dealing in firearms to run background checks for private firearm sales between individuals. The concept of “universal background checks” is not defined in Federal law, but is commonly understood to require persons to run background checks whenever a private, unlicensed person transfers a firearm to another, and some States have imposed this requirement. Congress decided that only persons engaged in the business of manufacturing, importing, or dealing in firearms must obtain a license and run National Instant Criminal Background Check System (NICS) background checks on firearm transferees. Nonetheless, increasing licensure of persons who are currently engaged in the business of dealing in firearms will necessarily ensure that they will run NICS background checks when they transfer firearms at gun shows, over the Internet, and by other means, as Congress intended.

### *Location questions*

**Q – Does the location or venue of where I sell impact whether I am considered a “dealer”?**

A – No. The term includes such activities wherever, or through whatever medium, they are conducted, such as at a gun show or event, flea market, auction house, or gun range or club; at one’s home; by mail order; over the Internet (e.g., online broker or auction); through the use of other electronic means (e.g., text messaging service, social media raffle, or website); or at any other domestic or international public or private marketplace or premises.

**Q – Does this mean that a person must have a license to “engage in the business” of buying or selling firearms outside the United States, even over the Internet?**

A – Under the GCA, firearms purchases or sales requiring a dealer’s license from within the U.S. may involve conduct outside the U.S. For example, the statute has long prohibited anyone without a license from shipping, transporting, or receiving any firearm in foreign commerce while being “engaged in the business” of dealing in firearms. This and other related provisions remain in effect. As an example, say Kieran has a job outside the firearms industry, but to supplement his income, he has been buying firearms from friends and reselling them through an Internet site. He has successfully sold a few firearms this way and has several more listed for sale at any one time. Kieran must be licensed because he is devoting time, attention, and labor to dealing in firearms as a regular course of trade of business, even though his business is part-time.

In addition, the BSCA amended the GCA to expressly prohibit smuggling or knowingly taking a firearm out of the U.S. with intent to engage in actions that would be a felony in the U.S. Dealing in firearms without a license is such a felony. Therefore, unlicensed persons who purchase firearms and smuggle or take them into or out of the U.S. for resale, or attempt to do so, would still be “engaging in the business” as a dealer without a license, among other violations.

**Q – Given that firearms transactions can originate from anywhere in the United States, must a dealer have a fixed premises to buy and sell firearms?**

A – Yes. Regardless of where a dealer buys and sells firearms, or through which medium, in order to obtain a license under the GCA, a dealer must still have a fixed premises in a particular state from which to conduct business subject to the license. They must also still comply with all applicable state and local laws regarding the conduct of such business. 18 U.S.C. § 923(d)(1)(E), (F); 27 CFR 478.47(b).

### *Minimum threshold questions*

**Q – Does the final rule set a minimum threshold number of firearms purchased or sold to be considered “engaged in the business”? If “no,” why not?**

A – No. While selling large numbers of firearms or engaging or offering to engage in frequent transactions may be highly indicative of business activity, the final rule does not set a minimum number of firearms purchased or resold that triggers the licensing requirement. Similarly, there is no minimum number of transactions that determines whether a person is “engaged in the business” of dealing in firearms. Courts have held that even one transaction or attempted transaction can constitute “engaging in the business” if other factors or intent are present. Establishing a minimum threshold would enable people to try to get around laws established for public safety, like background checks and records through which firearms involved in crime can be traced. To determine whether an individual is “engaged in the business” the rule looks at the

totality of circumstances. Even a single isolated transaction, or offer to engage in a transaction, *when combined with other evidence*, may be sufficient to require a license, such as by holding oneself out a source to purchase and resell more firearms.

**Q – Since the final rule does not set a minimum threshold number of firearms, what criteria does it put forward to determine if a person is “engaged in the business” as a dealer?**

A – The final rule established rebuttable presumptions to help unlicensed persons, industry operations personnel, and others determine when a person is presumed to be “engaged in the business” requiring a dealer’s license. There are two sets of rebuttable presumptions in this rule: one set of conduct that demonstrates when a person is “engaged in the business” as a dealer requiring a license, and another set that independently indicates when a person has the intent to “predominantly earn a profit” from sales or other dispositions of firearms.

### *Rebuttable presumption questions*

**Q – What is the basis for the rebuttable presumptions?**

A – The rebuttable presumptions are supported by ATF’s investigative and regulatory enforcement experience. Additionally, these presumptions are consistent with the case-by-case analytical framework long applied by the courts in determining whether a person has violated 18 U.S.C. §§ 922(a)(1)(A) and 923(a) by engaging in the business of dealing in firearms without a license even under the pre-BSCA definition. The fundamental purpose of the GCA would be severely undermined if persons were allowed to repetitively purchase and resell firearms to predominantly earn a profit without conducting background checks, keeping records, and otherwise complying with the license requirements of the GCA simply because the effort needed to conduct commerce in general has dramatically diminished.

**Q – What are the rebuttable presumptions showing that a person is “engaged in the business” as a dealer?**

A – A person is presumed to be engaged in the business of dealing in firearms, absent reliable evidence to the contrary, when it is shown that the person—

- Resells or offers for resale firearms, and also represents to potential buyers or otherwise demonstrates a willingness and ability to purchase and resell additional firearms (i.e., to be a source of additional firearms for resale);
- Repetitively purchases for the purpose of resale, or repetitively resells or offers for resale, firearms—
  - Through straw or sham businesses, or individual straw purchasers or sellers; or
  - That cannot lawfully be purchased, received, or possessed under Federal, State, local, or Tribal law, including:

- Stolen firearms (*e.g.*, 18 U.S.C. § 922(j));
  - Firearms with the licensee’s serial number removed, obliterated, or altered, or not identified as required by law (*e.g.*, 18 U.S.C. § 922(k) or 26 U.S.C. § 5861(i));
  - Firearms imported in violation of law (*e.g.*, 18 U.S.C. § 922(l), 22 U.S.C. § 2778, or 26 U.S.C. §§ 5844, 5861(k)); or
  - Machineguns or other weapons defined as firearms under 26 U.S.C. § 5845(b) that cannot lawfully be possessed (*e.g.*, 18 U.S.C. § 922(o); 26 U.S.C. § 5861(d));
- Repetitively resells or offers for resale firearms—
  - Within 30 days after the person purchased the firearms; or
  - Within one year after the person purchased the firearms if they are—
    - New, or like new in their original packaging; or
    - The same make and model, or variants thereof;
- 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 27 CFR 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 former licensee inventory after the license was terminated in accordance with 27 CFR 478.57(b)(2) or 478.78(b)(2); or
- 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:
  - 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
  - One year has passed from the date of transfer to the licensee’s personal collection or otherwise as personal firearms.

**Q – What are the rebuttable presumptions showing that a person has the predominant intent to earn a profit?**

A – A person is presumed to have the intent to predominantly earn a profit through the repetitive purchase and resale of firearms, absent reliable evidence to the contrary, when it is shown that the person—

- Repetitively or continuously advertises, markets, or otherwise promotes a firearms business (*e.g.*, advertises or posts firearms for resale, including through the Internet or other digital means, establishes a website to offer their firearms for resale, makes available business cards, or tags firearms with sales prices), regardless of whether the person incurs expenses or only promotes the business informally;

- Repetitively or continuously purchases, rents, or otherwise exchanges (directly or indirectly) something of value to secure permanent or temporary physical space to display firearms they offer for resale, including part or all of a business premises, a table or space at a gun show, or a display case;
- Makes and maintains records to document, track, or calculate profits and losses from firearms repetitively purchased for resale;
- Purchases or otherwise secures merchant services as a business (e.g., credit card transaction services, digital wallet for business) through which the person intends to repetitively accept payments for firearms transactions;
- Formally or informally purchases, hires, or otherwise secures business security services (e.g., a central station-monitored security system registered to a business, or guards for security) to protect firearms assets and repetitive firearms transactions;
- Formally or informally establishes a business entity, trade name, or online business account, including an account using a business name on a social media or other website, through which the person makes, or offers to make, repetitive firearms transactions; or
- Secures or applies for a State or local business license to purchase for resale or to resell merchandise that includes firearms.

**Q – Does a person have to meet all of the rebuttable presumptions to be considered “engaged in the business”?**

A – No. Any one of the listed circumstances independently gives rise to a presumption that a person is “engaged in the business” as a dealer or has “predominant intent to earn a profit” from firearms transactions. Furthermore, the listed conduct is not exhaustive of the conduct that may show that, or be considered in determining whether, a person is “engaged in the business” of dealing in firearms has the requisite intent. There are many other fact patterns that do not fall within the specific conduct that presumptively requires a license under this rule (e.g., firearms that were repetitively resold after one year from date of purchase, or that were not in a like-new condition), but that reveal one or more preparatory steps that presumptively demonstrate a predominant intent to earn a profit from firearms transactions.

**Q – How do these rebuttable presumptions work?**

A – A presumption under “engaged in the business” means that persons must assume they need a Federal firearms license if doing one or more of the activities listed in the regulation. However, if the government were to produce evidence showing any of the presumptions in a civil or administrative proceeding, the presumptions would be rebuttable because the person engaging in the conduct could refute the presumption by showing, with reliable evidence, other facts that demonstrate their conduct did not meet the requirements to be a dealer. It is important to note that, in these proceedings, the burden of persuading the fact finder never shifts from the Government or plaintiff.



Similarly, a presumption under to “predominantly earn a profit” means that persons must assume they have the intent to predominantly earn a profit if they engage in any of the activities listed in the presumptions in the definition of “predominantly earn a profit.” In other words, when reliable evidence shows conduct falling under one of the presumptions, it indicates that the person has taken at least preliminary steps to be considered to be “engaged in the business” requiring a license. Each presumption is rebuttable because the person doing the action can refute the presumption by showing, with reliable evidence, that they did not have that purpose or intent when they sell or dispose of firearms.

**Q – When do the rebuttable presumptions apply?**

A – The rebuttable presumptions are used as an evidentiary tool by fact finders in civil and administrative proceedings, but not in criminal proceedings. *See* 27 CFR 478.11. Civil and administrative proceedings would include, for example, civil asset forfeiture and administrative licensing proceedings. However, rebuttable presumptions may be useful to criminal courts in criminal cases, for example, when instructing juries regarding permissible inferences.

**Q – May I provide rebuttal evidence to either category of presumptions?**

A – Yes. Such evidence may be used to indicate that a person was not engaged in the business or to rebut the presumptions. The rule also states that this list of rebuttal evidence is not exhaustive.

*Questions on specific presumptions*

**Q – Due to financial hardship, I sell one of more firearms at fair market value. Am I considered to be engaged in the business as a dealer in firearms?”**

A – An isolated sale of a firearm at fair market value due to financial hardship or disability by itself generally will not cause a person to be considered engaged in the business. The statute’s definition of engaged in the business focuses only on a person’s devotion to that business and intent to earn pecuniary gain. As a result, if a person is regularly reselling firearms with predominant intent to profit, evidence that they are doing so because of financial hardship or disability does not rebut any of the elements that constitute being engaged in the business. But if they make an isolated sale of a firearm, even for one of those reasons, they generally are not presumed to be engaging in the business unless they are also doing something else that indicates they are devoting time, attention, and labor to a regular course of dealing in firearms with intent to profit.

**Q – Is every firearm sale deemed to be done with a predominant intent to earn a profit (PEP), thus requiring a license?**

A – No. For example, a person may wish to get rid of unsuitable or damaged firearms quickly, so the person intends to sell them at a loss for less than fair market value. In that case, there is only an intent to minimize a pecuniary loss, not obtain a pecuniary gain. Likewise, a person who transfers firearms—as bona fide gifts; occasionally to obtain more valuable, desirable, or useful firearms for the person’s personal collection; occasionally to a licensee or to a family member for lawful purposes; to liquidate all or part of a personal collection; or to liquidate firearms that are inherited, or pursuant to court order—does not usually have a *predominant* intent to earn a profit from those activities. This is true even if the seller has a secondary motive to earn pecuniary gain from those sales. To make this clear, the final regulatory text now expressly states that any such evidence, if reliable, may be used to rebut the PEP presumptions.

**Q – I plan to buy undervalued firearms for profit but will not sell them directly to nonlicensees; I will consign them to a Federal firearms licensee who will then sell them. Do I need a license?**

A – A person who consigns firearms for sale (consignor) may have a predominant intent to earn a profit from the sale of the firearms; however, that does not finish the fact-specific inquiry because that person is often not devoting time, attention, and labor to dealing in firearms. The person engaged in the business is the seller who accepts the firearms on consignment (consignee), is paid to take the firearms into a business inventory for resale, and determines the manner in which to market and resell them on the consignor’s behalf. Like consignment-type auctioneers, firearms consignment businesses must be licensed because they are devoting time, attention, and labor to dealing in firearms as a regular course of trade or business to predominantly earn a profit through the repetitive purchase and resale of firearms.

**Q – I intend to buy and sell firearms for a profit. At what dollar amount threshold must one eclipse before their activities rise to the level such that they “predominantly earn a profit” and, thus, require a license?**

A – The amount of money a person makes when intending to earn a profit through repetitively purchasing and reselling firearms is relevant in determining whether a person is engaged in the business. The fact that a person earns a large amount of profit from repetitively reselling firearms is evidence that a person had a predominant intent to profit from those sales. However, there is no statutory requirement that a person actually make a certain amount of money to have a predominant intent to profit. Persons who operate a part-time firearms business that earns a certain dollar amount per year, or even a firearms business that loses money due to poor salesmanship or lack of demand, would still be engaged in the business if they devoted time, attention, and labor to dealing with the predominant intent to profit through repetitive purchases and resales of firearms. It is the seller’s motivation that determines whether a person needs a license, not the number of sales or amount of profit.

**Q – I intend to profit from the sale of one or more of my firearms, am I engaged in the business of dealing in firearms and thus require a license?**

A – The intent to profit is only one element of being engaged in the business. A person would not be engaged in the business unless other statutory requirements are present, including the requirements that the person “devote[] time, attention, and labor to dealing in firearms as a regular course of trade or business” and that the person is engaging, or intends to engage, in “the repetitive purchase and resale of firearms.” 18 U.S.C. § 921(a)(21)(C).

**Q – I maintain records of firearms purchased along with the costs of those firearms, am I therefore presumed to “predominantly earn a profit?”**

A – A person who “makes and maintains records to document, track, or calculate profits and losses from firearms repetitively purchased for resale” is presumed to be acquiring firearms to predominantly earn a profit. However, records for firearms purchased, along with the cost of those firearms, may be maintained for other commercial or noncommercial purposes and would not necessarily indicate an intent to “predominantly earn a profit.”

**Q – I intend to list firearms for sale in an online forum such as Facebook Marketplace. Am I presumed to have intent to predominantly earn a profit from the firearms acquired and the few I may sell?**

A – *Repetitively or continuously* advertising, marketing, or promoting a firearms business provides a clear basis for presuming that a person has a predominant intent to profit from firearms sales. Like other presumptions, this one may be refuted with reliable evidence to the contrary. The presumption relates to advertising a “business,” but persons who wish to dispose of all or part of a personal collection, or “trade up” to enhance their personal collection, for example, are likely to occasionally offer for resale firearms from their personal collection online. To be engaged in the business, those offers must be accompanied by additional evidence (e.g., repetitive offers for resale within 30 days after the firearms were purchased, or within one year after purchase if the firearms are new/like-new in their original packaging or of the same make and model). That is not to say that other fact patterns will not demonstrate “engaging in the business.”

**Q – Is a nonlicensee who rents space to display firearms they offer for sale presumed to have intent to predominantly earn a profit from the firearms they sell?**

A – A person is presumed to have the intent to predominantly earn a profit through the repetitive purchase and resale of firearms, absent reliable evidence to the contrary, when the person “*repetitively or continuously* purchases or rents, or otherwise exchanges (directly or indirectly) something of value to secure permanent or temporary physical space to display firearms they offer for resale, including part or all of a business premises, a table or space at a gun show, or a

display case.” Of course, like the other presumptions, this one may be refuted with reliable evidence to the contrary.

**Q – I created a name under which I will sell my firearms. Am I presumed to have intent to predominantly earn a profit from the firearms I sell?**

A – A person is presumed to have the intent to predominantly earn a profit through the repetitive purchase and resale of firearms, absent reliable evidence to the contrary, when the person “formally or informally establishes a business entity, trade name, or online business account, including an account using a business name on a social media or other website, through which the person makes, or offers to make, repetitive firearms transactions.” Of course, like the other presumptions, this one may be refuted with reliable evidence to the contrary.

**Q – I obtained a government license to buy and sell merchandise, including firearms. Am I presumed to have intent to predominantly earn a profit from the firearms I sell?**

A – A person is presumed to have the intent to predominantly earn a profit through the repetitive purchase and resale of firearms, absent reliable evidence to the contrary, when the person “secures or applies for a State or local business license to purchase for resale or to resell merchandise that includes firearms.” Of course, like the other presumptions, this one may be refuted with reliable evidence to the contrary.

**Q – I have previously conducted firearms transfers that fit conduct presumed to be engaged in the business. Am I going to be prosecuted? If I apply for a license, will it be denied?**

A – The final rule is effective 30 days after publication in the *Federal Register*. Once effective, the presumptive conduct may be used in civil proceedings. But even if a person is presumed to be engaged in the business of dealing in firearms under one of the presumptions in the rule, there would still need to be evidence that the person “willfully” engaged in that business without a license. The kinds of civil proceedings where a presumption can be used include, for example, a forfeiture proceeding on firearms seized as a result of being engaged in the business without a license, or a licensing proceeding to deny a license application.

### *Conduct not presumed to be engaged in the business*

**Q – Does the final rule provide examples of when a person would *not* be presumed to be engaged in the business requiring a license as a dealer?**

A – Yes. Under this final rule, a person would not be presumed to be “engaged in the business” requiring a license as a dealer when reliable evidence shows the person transfers firearms only:

- As bona fide gifts;

- Occasionally to obtain more valuable, desirable, or useful firearms for their personal collection;
- Occasionally to a licensee or to a family member for lawful purposes;
- To liquidate (without restocking) all or part of their personal collection; or
- To liquidate firearms
  - That are inherited; or
  - Pursuant to a court order; or
- To assist in liquidating firearms as an auctioneer when providing auction services on commission at an estate-type auction.

The final rule provides objectively reasonable standards for when a person is presumed to be “engaged in the business” to strike an appropriate balance that captures persons who should be licensed, without limiting or regulating activity truly for the purposes of a hobby or enhancing a personal collection.

**Q – What is the definition of “personal collection”?**

A – 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). While firearms accumulated primarily for personal protection are not included in the definition of “personal collection,” nothing in the regulations precludes a person from lawfully acquiring firearms for self-protection or other lawful personal use.

**Q – Does the final rule place additional restrictions on law-abiding citizens who wish to transfer firearms to family or friends, or to sell all or part of a personal collection of firearms?**

A – This rule does not place additional restrictions on law-abiding citizens who occasionally acquire or sell personal firearms to enhance a personal collection or for a hobby. This rule does not prevent law abiding persons from purchasing or possessing firearms, from selling inherited firearms, or from using their personal firearms for lawful purposes such as self-defense, re-enactments, or hunting. The rule includes a non-exhaustive list of conduct that does not constitute being engaged in the business and that may also be used to rebut the presumptions, as well as other examples of conduct that does not demonstrate a predominant intent to profit.

*Selling firearms*

**Q – I inherited firearms and want to sell them. Do I need a license?**

A – The definition of “Engaged in the business as a dealer in firearms other than a gunsmith or a pawnbroker,” requires that a person’s activity of acquiring and selling firearms is “to predominantly earn a profit” 27 CFR 478.13(e) details the “*Conduct not presumed to be engaged in the business or predominantly to earn a profit*” which includes “liquidat[ing] firearms that are inherited” as follows:

- The person transfers firearms only as bona fide gifts;
- Occasionally sells firearms only to obtain more valuable, desirable, or useful firearms for their personal collection;
- Occasionally to a licensee or to a family member for lawful purposes;
- To liquidate firearms that are inherited or pursuant to a court order, or
- To assist in liquidating firearms as an auctioneer when providing auction services on commission at an estate-type auction.

**Q – I have many firearms purchased for self-protection, but now want to sell them for a profit. How does this rule apply to me?**

While firearms accumulated primarily for personal protection are not included in the definition of “personal collection,” nothing in the rule precludes a person from lawfully acquiring firearms for self-protection or other lawful personal use. Additionally, the rule does not prevent unlicensed persons from making isolated sales of firearms that were purchased for self-protection so long as the person does not otherwise demonstrate they are devoting time, attention, and labor to dealing in self-protection firearms as a regular course of trade or business.

**Q – I have many firearms purchased for hunting, but now want to sell them for a profit. How does this rule apply to me?**

A – Firearms purchased for the hobby of hunting fall within the rule’s definition of “personal collection” and may, for example, be sold occasionally to obtain more valuable, desirable, or useful firearms for the person’s personal collection, occasionally to a licensee or to a family member for lawful purposes, or sold as part of a liquidation (without restocking) of all or part of a personal collection. This is true even if the seller has a secondary motive to obtain pecuniary gain from those sales.

**Q – I sold a firearm I no longer wanted to someone on Craig’s list. In discussing firearms with the person, I learned she was in the market for another firearm I owned and was also willing to sell. Am I able to sell this second firearm to her without getting licensed? Am I able to sell four more without a license?**

A – A person actually “selling at a profit” does not equate to “engaging in the business” because a showing of actual profit - whether or not expenses and/or inflation are considered - is not required to be “engaged in the business.” Rather, it is the predominant *intent* of obtaining

pecuniary (or monetary) gain from sale or disposition of firearms that matters. See 18 U.S.C. § 921(a)(22). Moreover, because the person’s predominant intent to profit is the relevant fact, it does not matter how or whether actual profit is calculated. The fact-specific inquiry is whether the person is devoting time, attention, and labor to dealing in firearms as a regular course of trade or business and had the predominant *intent* to earn a profit through *repetitive* firearms purchases and resales.

### Auctioneers

**Q – Will the final rule affect auctioneers who conduct “estate-type” auctions and require them to obtain a Federal firearms license?**

A – Generally, no, provided that the auctioneer does not purchase the firearms or take possession of the firearms for sale on consignment.

**Q – Do auctioneers who conduct “consignment-type” auctions need to obtain a Federal firearms license?**

A – “Consignment-type” auctions differ from “estate-type” auctions because a “consignment-type” auctioneer is paid to accept firearms into a business inventory and then resells them in lots, or over a period of time. In this scenario, the auctioneer generally inventories, evaluates, and tags the firearms for identification. Therefore, consistent with ATF’s longstanding interpretation, an auctioneer conducting “consignment-type” auctions would generally need to be licensed. *See e.g.*, ATF FFL Newsletter, May 2001, at 3.

### Licensee personal collections, and disposing of inventory when the license terminates due to expiration, surrender, revocation, or denial of renewal

**Q – Under the final rule, may a licensed importer, manufacturer, or dealer maintain a personal collection of firearms?**

A – Yes, however, firearms in the licensee’s personal collection must follow all the rules for transfers from the licensee’s business inventory to their personal collection or otherwise as a personal firearm. To be a “personal collection” of a licensee, the firearm(s) must be:

- (i) Acquired or transferred by the licensee without the intent to willfully evade the restrictions placed upon licensees under chapter 44, title 18, United States Code;
- (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).

**Q – If I no longer have a license, does anything happen to my personal collection of firearms?**

A – No. Provided you did not transfer the firearms to your personal collection or otherwise as a personal firearm to willfully evade the restrictions placed on licensees, and waited one year from the date of transfer, you will not be presumed to be engaged in the business. You may retain and sell firearms in your personal collection as long as you do not again "engage in the business."

**Q – Under the final rule, what options will licensees have to dispose of business inventory upon termination of a license?**

A – Upon termination of a license (*i.e.*, license revocation, denial of license renewal, license expiration, or surrender of license), the business inventory becomes "former licensee inventory." The former licensee must, within 30 days (or such additional period approved by ATF 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. After that period, the former licensee may occasionally sell former licensee inventory to an active licensee without being presumed to be engaged in the business. Transfers of former licensee inventory to a licensee or responsible person must be appropriately recorded to the licensee or responsible person as dispositions prior to delivering the records after discontinuing business. This provision clarifies the procedures that former licensees, and responsible persons acting on behalf of such licensees, must follow when they liquidate business inventory upon termination of their license. *See* 27 CFR 478.57 and 478.78.

**Q – What is "former licensee inventory"?**

A – 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.

**Q – Do the liquidation of former licensee inventory provisions apply to licensed importers and manufacturers?**

A – Yes.

**Q – Is a former licensee (or a responsible person acting on their behalf) presumed to be engaged in the business without a license if they thereafter sell off former licensee inventory more than 30 days after license termination?**

A – Yes, unless the sale is only occasionally to a licensee.

**Q – Can a licensee who knows they will be going out of business simply transfer to a “personal collection” all of their business inventory the day before license termination, and several days later, sell off the entire inventory as liquidation of a “personal collection” without background checks or transaction records?**

A – No. Such firearms were not personal firearms “acquired for study, comparison, exhibition, or for a hobby.” However, consistent with section 923(c), once the one-year period has passed, the former licensee will no longer be presumed to be engaged in the business without a new license if they later liquidate all or part of the personal collection, assuming the firearms were received and transferred prior to license termination without any intent to willfully evade the restrictions placed on licensees by the GCA. This includes licensees whose licenses were revoked or denied renewal due to willful violations if they transferred business inventory firearms to their personal collection prior to license termination in accordance with the law.

### *Federal Firearms Licensees and ATF Form 4473*

**Q – I have a Federal firearms license. If I intend to acquire a firearm for my own personal collection, do I complete an ATF Form 4473 when purchasing that firearm from another licensee?**

A – No, when a licensee is transferring a firearm to another licensee, the transferor licensee must verify the recipient's identity and license status by examining a certified copy of the recipient's license, and as stated in this final rule, cannot use a Form 4473 to document the transaction. Once acquired, the licensee must record the receipt of all firearms in their bound record. See 27 CFR §§ 478.122(a), 478.123(a), or 478.125(e).

**Q – As a licensee, do I complete an ATF Form 4473 when transferring firearms I have acquired to a personal collection?**

A – It depends. If you are an individual sole proprietor transferring the firearm to yourself, you do not need to complete an ATF Form 4473, but must record the disposition of the firearm as a transfer to the “personal firearms collection” (as prescribed by paragraph (2)(iii) 27 CFR 478.11 of the definition of “personal collection”). If you are a business entity (other than a sole proprietor) transferring the firearm to a personal collection of an individual responsible person, you must execute an ATF Form 4473, conduct the requisite NICS background check (as prescribed by 27 CFR 478.124 and 27 CFR 478.102), and record the NICS-approved disposition of the firearm in their bound record as prescribed by 478.122(b), 478.123(b), or 478.125(e).

### Responsible Persons

**Q – Does the final rule add a definition for “responsible person”?**

A – Yes. This definition comes from 18 U.S.C. § 923(d)(1)(B) and has long been reflected on the Form 7 application for license and other ATF publications. Adding the definition through this rule helps make this consistent and reliable for people to understand who must be listed on the Form 7 application when applying for a Federal firearms license, and to whom, and by whom, firearms may be lawfully transferred upon termination of a license. The definition encompasses 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. It does not include, for example, sales associates, logistics personnel, human resources personnel, engineers, and other employees who cannot make management or policy decisions on behalf of the licensee with respect to the firearms business and who might have little control over or understanding of the firearms business operations or license status. All licensees (including sole proprietors and limited liability companies) must inform ATF when they change responsible persons who have the authority to make management or policy decisions with respect to firearms to ensure they undergo a background check.

### Impact on Public Safety

**Q – What impact will the final rule have on public safety?**

A – The final rule implements changes to the GCA made by the BSCA. As a result of these changes, more persons who are engaged in the business of dealing in firearms will become licensed, run NICS background checks, and maintain transaction records through which firearms involved in crime can be traced.

**Q – Do you anticipate that the final rule will help reduce illicit firearms trafficking?**

A – Yes. Many ATF criminal gun trafficking investigations reveal that guns used in crimes involve close-to-retail diversions of guns from legal firearms commerce into the hands of criminals, including straw purchases from FFLs, trafficking by FFLs, and illegal transfers by unlicensed sellers. As more persons become licensed (as required by the GCA, amended by the BSCA), the multiple sales forms, out-of-business records, demand letter records, theft and loss reports, and trace responses provided to ATF by those dealers during criminal investigations will provide law enforcement with additional crucial crime gun intelligence. Law enforcement can use this information to better target limited resources to pursue illicit firearms traffickers nationally and internationally.

### Effect on ATF Rulings.

**Q – Does the final rule have an effect on any prior ATF rulings?**

A – Yes. ATF Ruling 96-2, *Engaging in the Business of Dealing in Firearms (Auctioneers)* (Sept. 1996) has been superseded by this final rule.

### Outreach

**Q – Will ATF be providing additional outreach on the final rule?**

A – Yes. Specifically, ATF will update the August 2023 guidance document titled, “Do I Need a License to Buy and Sell Firearms?” to include additional details that conform with this final rule. ATF will provide training and outreach as it routinely does, but such activities are not included in the final rule or the regulation.