

## **Most Frequently Asked Firearms Questions and Answers**

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## **Prohibited Persons/NICS Denials:**

### ***1. I have been convicted of a felony. How do I reinstate my rights to possess a firearm?***

Persons who have been convicted of a “crime punishable by imprisonment for a term exceeding one year,” as defined by 18 U.S.C. § 921(a)(20), are prohibited from receiving or possessing firearms under Federal law, 18 U.S.C. § 922(g)(1). Felons whose convictions have been set-aside or expunged, or for which the person has been pardoned or has had civil rights restored are not considered convicted under section 922(g)(1), unless that person was expressly prohibited by the law of the jurisdiction in which the proceedings were held from possessing firearms. Persons convicted of a State offense should contact the State Attorney General’s Office in the State in which they reside and the State of the conviction for information concerning State and local firearms restrictions, and any alternatives that may be available, such as a gubernatorial pardon or civil rights restoration. A list of State Attorney General contact numbers may be found at <http://www.naag.org/>.

If your conviction is for a Federal offense, you would regain the ability to lawfully receive, possess, or transport firearms if you receive a Presidential pardon. You can find additional information about such pardons by contacting the Office of the Pardon Attorney online at [www.usdoj.gov/pardon/](http://www.usdoj.gov/pardon/).

The GCA includes a provision that gives ATF authority to grant relief from Federal firearms disabilities. 18 U.S.C. § 925(c). However, since 1992, ATF’s annual Congressional appropriation has prohibited ATF from expending any funds to investigate or act upon applications for relief from Federal firearms disabilities submitted by individuals. As long as this provision is included in ATF appropriations, ATF cannot act upon such applications for relief.

### ***2. Can a person prohibited by law from possessing a firearm acquire and use a black powder muzzle loading firearm?***

The Gun Control Act of 1968 (GCA) prohibits felons and certain other persons from possessing or receiving firearms and ammunition (“prohibited persons”). These categories can be found at 18 U.S.C. § 922(g) and (n) in <http://www.atf.gov/files/publications/download/p/atf-p-5300-4.pdf>.

However, Federal law does not prohibit these persons from possessing or receiving an antique firearm. The term “antique firearm” means any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898. The definition includes any replica of an antique firearm if it is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or uses rimfire or conventional centerfire ammunition which is no longer manufactured in the United States, and which is not readily available in ordinary channels of commercial trade. Further, any muzzle loading rifle, shotgun, or pistol which is designed to use black powder or black powder substitute, and which cannot use fixed ammunition, is an “antique firearm” unless it (1) incorporates a firearm frame or receiver; (2) is a firearm which is converted into a muzzle loading weapon; or (3) is a muzzle

loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof. *See* 18 U.S.C. § 921(a)(3), (a)(16).

Thus, a muzzle loading weapon that meets the definition of an “antique firearm” is not a firearm and may lawfully be received and possessed by a prohibited person under the GCA.

In addition, the GCA defines the term “ammunition” to mean “ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.” Because an “antique firearm” is not a “firearm,” it would be lawful for a prohibited person to receive or possess black powder designed for use in an “antique firearm.” Also, the Federal explosives laws do not make it unlawful for a prohibited person to acquire and possess black powder in quantities not exceeding fifty pounds if it is intended to be used solely for sporting, recreational, or cultural purposes in “antique firearms.” *See* 18 U.S.C. § 845(a)(5)

By contrast, a prohibited person may not receive or possess black powder firearms that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof. ATF has classified certain muzzle loading models as firearms. All of these models incorporate the frame or receiver of a firearm that is capable of accepting barrels designed to fire conventional rimfire or centerfire fixed ammunition. These muzzle loading models do not meet the definition of “antique firearm” as that term is defined in 18 U.S.C. § 921(a)(16), and are “firearms” as defined in 18 U.S.C. § 921(a)(3). Furthermore, as firearms, these and similar models, regardless of the barrel installed on the firearm or provided with the firearm, are subject to all provisions of the GCA. Persons who purchase these firearms from licensed dealers are required to fill out a Firearms Transaction Record, ATF Form 4473, and are subject to a National Instant Criminal Background Check System (NICS) check. Felons and other prohibited persons may not lawfully receive or possess these firearms or ammunition.

The following is a list of weapons that load from the muzzle and are classified as firearms, not antiques, under the GCA, because they incorporate the frame or receiver of a firearm:

- Savage Model 10ML (early, 1st version)
- Mossberg 500 shotgun with muzzle loading barrel
- Remington 870 shotgun with muzzle loading barrel
- Mauser 98 rifle with muzzle loading barrel
- SKS rifle with muzzle loading barrel
- PB sM10 pistol with muzzle loading barrel
- H&R/New England Firearm Huntsman
- Thompson Center Encore/Contender
- Rossi .50 muzzle loading rifle

This list is not complete and frequently changes. There may be other muzzle loaders also classified as firearms. As noted, any muzzle loading weapon that is built on a firearm frame or receiver falls within the definition of a firearm provided in 18 U.S.C. § 921(a)(3).

Finally, even though a prohibited person may lawfully possess an antique firearm under Federal law, State or local law may classify such weapons as “firearms” subject to regulation. Any

person considering acquiring a black powder weapon should contact his or her State Attorney General's Office to inquire about the laws and possible State or local restrictions. A list of State Attorney General contact numbers may be found at <http://www.naag.org/>.

- 3. *I was the subject of a NICS check when I attempted to purchase a firearm from an FFL, and I received a delayed response or a denial. Please tell me why I did not receive a "proceed" response.***

ATF does not operate the National Instant Criminal Background Check System (NICS). It is administered by the Federal Bureau of Investigation (FBI). Please contact the NICS Customer Service Center at (877) 444-6427 for further assistance. You can also find information about the NICS system by visiting the FBI's website at <http://www.fbi.gov/about-us/cjis/nics>.

## **Transferring/Shipping/Possession of Firearms:**

- 4. *May I lawfully transfer a firearm to an individual who resides in a different State? What if the individual resides within the same State?***

Under Federal law, an unlicensed individual is prohibited from transferring a firearm to an individual who does not reside in the State where the transferee resides. Generally, for a person to lawfully transfer a firearm to an unlicensed person who resides out of State, the firearm must be shipped to a Federal Firearms Licensee (FFL) within the recipient's State of residence. He or she may then receive the firearm from the FFL upon completion of an ATF Form 4473 and a NICS background check. More information can be obtained on the ATF website at [www.atf.gov](http://www.atf.gov) and <http://www.atf.gov/firearms/faq/unlicensed-persons.html>. The GCA provides an exception from this prohibition for temporary loans or rentals of firearms for lawful sporting purposes. For example, a friend visiting you may borrow a firearm from you to go hunting. Another exception is provided for transfers of firearms to nonresidents to carry out a lawful bequest or acquisition by intestate succession. This exception would authorize the transfer of a firearm to a nonresident who inherits a firearm under a will or by State law upon death of the owner. See 18 U.S.C. § 922(a)(5)(A).

In regard to transferring firearms between individuals residing in the same state, any person may sell a firearm to an unlicensed resident of the State where he resides as long as he or she does not know or have reasonable cause to believe the person is prohibited from receiving or possessing firearms under Federal law. Please note that there may be State and local laws that regulate firearm transactions. Any person considering acquiring or transferring a firearm should contact his or her State Attorney General's Office to inquire about the laws and possible State or local firearms restrictions. A list of State Attorney General contact numbers may be found at <http://www.naag.org/>.

- 5. *May I lawfully ship a firearm to myself in a different State?***

Any person may ship a firearm to himself or herself in the care of another person in the State where he or she intends to hunt or engage in any other lawful activity. The package should be

addressed to the owner of the firearm “in the care of” the out-of-State resident. Upon reaching its destination, persons other than the owner of the firearm must not open the package or take possession of the firearm. The out-of-State resident is encouraged to place the package in a safe and secure location until the owner of the firearm is available to take physical possession.

**6. *May I lawfully ship a firearm directly to an out-of-State licensee, or must I have a licensee in my State ship it to him? May the licensee return the firearm to me, even if the shipment is across State lines?***

Any person may ship firearms directly to a licensee in any State, with no requirement for another licensee to ship the firearm. However, handguns and other concealable firearms are not mailable through the United States Postal Service and must be shipped via private common or contract carrier (18 U.S.C. § 1715). The USPS and private common or contract carriers may also have additional restrictions on firearms shipments by unlicensed persons. Firearms shipped to FFLs for repair or any other lawful purpose may be returned to the person from whom received without transferring the firearm through an FFL in the recipient’s State of residence. FFLs may also return a replacement firearm of the same kind and type to the person from whom received (18 U.S.C. § 922(a)(2)(A)). An ATF Form 4473 is required for the return of the firearm, except in instances when a firearm is delivered to a licensee for the sole purpose of repair or customizing, and the same firearm or a replacement firearm is returned to the person from whom received (27 CFR § 478.124(a)).

**7. *What age must a person be to purchase a firearm from an FFL? Do those requirements apply when purchasing from other non-licensees?***

It is unlawful for any Federal firearms licensee (FFL) to sell or deliver any firearm or ammunition to anyone he knows or has reasonable cause to believe is less than eighteen years of age. It is unlawful for an FFL to sell or deliver a firearm other than a rifle or shotgun or ammunition for a firearm other than a rifle or shotgun to any individual who he knows or has reasonable cause to believe is less than 21 years of age. See 18 U.S.C. § 922(b)(1).

However, an unlicensed individual may sell or transfer any firearm to an individual over the age of 18 who resides in the same State, provided that he does not know or have reasonable cause to believe the person is prohibited from receiving or possessing firearms under Federal law.

Please note that there may be State laws that prohibit the possession of firearms, including handguns, by an individual who is under 21 years of age. You should contact your State’s Attorney General Office to inquire about the laws and possible restrictions in your State concerning possession of firearms. A list of State Attorney General Offices may be found at <http://www.naag.org/>.

## **Registration/Concealed Carry Permits/State Issues:**

**8. *How do I register my firearm or remove my name from a firearms registration?***

There is no Federal registration requirement for most conventional sporting firearms. Only those firearms subject to the National Firearms Act (NFA) (e.g., machineguns, short-barrel firearms, silencers, destructive devices, any other weapons) must be registered with ATF. For information on the registration and transfer provisions of the National Firearms Act, please refer to the ATF NFA Handbook at <https://www.atf.gov/sites/default/files/assets/pdf-files/atf-p-5320-8.pdf> or contact the ATF NFA Branch at (304) 616-4500. Please note that firearms registration may be required by State or local law. Any person considering acquiring a firearm should contact his or her State Attorney General's Office to inquire about the laws and possible State or local restrictions. A list of State Attorney General contact numbers may be found at <http://www.naag.org/>.

Firearms owners are encouraged to maintain personal records of their firearms to aid in recovery or investigation by State or local law enforcement agencies in the event a privately-owned firearm is stolen or lost. ATF recommends utilizing ATF Form 3312.8, Personal Firearms Record.

**9. Does ATF issue a Concealed Carry Permit (CCP) that authorizes a person to carry a firearm throughout the United States?**

Neither ATF nor any other Federal agency issues such a permit or license. CCPs may be issued by a State or local government.

## **Licensing Requirements (Dealer/Manufacturer/Importer/Exporter):**

**10. At what point should I obtain a Federal firearms license (FFL)? How do I obtain a FFL?**

Federal law requires a Federal firearms license if you are engaged in the business as a firearms dealer, manufacturer or importer. A person is engaged in those businesses, as it applies to each license type, as follows:

1. **Manufacturer of firearms** -- a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured (18 U.S.C. § 921(a)(21)(A));
2. **Manufacturer of ammunition** -- a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured (18 U.S.C. § 921(a)(21)(B));
3. **Dealer in firearms** -- 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 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 (18 U.S.C. § 921(a)(21)(C));

4. ***Dealer in firearms (gunsmith)*** -- a person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms (18 U.S.C. § 921(a)(21)(D));
5. ***Dealer in firearms (pawnbroker)*** – a person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money (18 U.S.C. § 921(a)(12));
6. ***Importer of firearms*** -- a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported (18 U.S.C. § 921(a)(21)(E));
7. ***Importer of ammunition*** -- a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported (18 U.S.C. § 921(a)(21)(F)).

The term “principal objective of livelihood and profit” is further defined as the intent underlying the sale or disposition of firearms as predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents such as improving or liquidating a personal firearms collection: Provided, that proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism.

Note that there is no particular minimum number of firearms that must be sold, manufactured, or imported specified by law to be “engaged in the business.” Whether a person has been engaged in the business of dealing, manufacturing, or importing firearms, is made on a case-by-case basis. Considerations include, but are not limited to: the quantity of firearms sold, manufactured, or imported; the frequency of transactions over a period of time; the intent of the person in acquiring and disposing of firearms; and any representations made to the buyer regarding the person’s ability and willingness to obtain or transfer firearms. We recommend that you contact your local ATF office (<http://www.atf.gov/field/index.html>) to evaluate the facts and circumstances of your particular case.

Information on how to become a Federal firearms licensee is available at:

<http://www.atf.gov/firearms/how-to/become-an-ffl.html>.

***11. Do I need a Federal firearms license to make a firearm for my own personal use, provided it is not being made for resale?***

Firearms may be lawfully made by persons who do not hold a manufacturer’s license under the GCA provided they are not for sale or distribution and the maker is not prohibited from receiving or possessing firearms. However, a person is prohibited from assembling a non-sporting semiautomatic rifle or shotgun from 10 or more imported parts, as set forth in regulations in 27 CFR 478.39. In addition, the making of an NFA firearm requires a tax payment and advance approval by ATF. An application to make a machinegun will not be approved unless documentation is submitted showing that the firearm is being made for the official use of a

Federal, State or local government agency (18 U.S.C. § 922(o),(r); 26 U.S.C. § 5822; 27 CFR §§ 478.39, 479.62, and 479.105).

Additionally, although markings are not required on firearms manufactured for personal use (excluding NFA firearms), owners are recommended to conspicuously place or engrave a serial number and/ or other marks of identification to aid in investigation or recovery by State or local law enforcement officials in the event of a theft or loss of the privately owned firearm.

***12. How do I permanently export a firearm to another country? What type of license, if any, do I need to obtain?***

The Gun Control Act (GCA) does not require an export license. Export provisions of the Arms Export Control Act of 1976 for firearms, excluding sporting shotguns, fall under the purview of the Department of State. Regulations implementing this Act generally require a license to be obtained from the Directorate of Defense Trade Controls, Department of State, PM/DDTC, SA-1, Room 1200, 2401 E St., N.W., Washington, DC 20037; (202) 663-1282. Additional information may be accessed online at: <http://www.pmddtc.state.gov/index.html>.

The export of sporting shotguns and ammunition for sporting shotguns is regulated by the U.S. Department of Commerce rather than the U.S. Department of State. An export license is generally needed to export these shotguns and shotgun ammunition. For further information, please contact your nearest Department of Commerce district office or the Bureau of Industry and Security, Outreach and Educational Services Division, U.S. Department of Commerce, 14th St. & Pennsylvania Ave. N.W., Washington, DC 20230, (202) 482-4811. Additional information may be accessed online at: <http://www.bis.doc.gov/licensing/exportsoffirearms.htm>.