

QUESTIONS AND ANSWERS

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A. GENERAL QUESTIONS

(A1) Does the law regulate who can be in the business?

Yes. The Gun Control Act (GCA), administered by the Bureau of Alcohol, Tobacco and Firearms (ATF) of the Department of the Treasury, contains Federal licensing standards for various firearms businesses (manufacturers, importers, and dealers). An example of these standards is that the applicant must have a business premises.

[18 U.S.C. 923(d), 27 CFR 178.47]

(A2) Who can get a license?

ATF will approve the application if the applicant:

- Is 21 years or more of age;
- Is not prohibited from shipping, transporting, receiving or possessing firearms or ammunition;
- Has not willfully violated the GCA or its regulations;
- Has not willfully failed to disclose material information or willfully made false statements concerning material facts in connection with his application;
- Has premises for conducting business or collecting; and,
- The applicant certifies that--
 - (1) the business to be conducted under the license is not prohibited by State or local law in the place where the licensed premises is located;
 - (2) within 30 days after the application is approved the business will comply with the requirements of State and local law applicable to the conduct of the business;
 - (3) the business will not be conducted under the license until the requirements of State and local law applicable to the business have been met;
 - (4) the applicant has sent or delivered a form to the chief law enforcement officer where the premises is located notifying the officer that the applicant intends to apply for a license; and
 - (5) secure gun storage or safety devices will be available at any place in which firearms are sold under the license to persons who are not licensees ("secure gun storage or safety device" is defined in 18 U.S.C. 921(a)(34)).

Editor's Note

The requirement to certify to the availability of gun storage or safety devices was enacted on October 22, 1998, by Public Law 105-277. The requirement is codified in section 923(d)(1)(G) of the GCA and becomes effective 180 days after the date of enactment.

[18 U.S.C. 923(d)(1), 27 CFR 178.47(b)]

(A3) Does the Federal Government issue a license or permit to carry a concealed weapon?

No. Neither ATF nor any other Federal agency issues such a permit or license. Carrying permits may be issued by a State or local government.

(A4) Do antique firearms come within the purview of the GCA?

No.

[18 U.S.C. 921(a)(3) and (16), 27 CFR 178.11 and 178.141(d)]

(A5) What kinds of ammunition are covered by the GCA?

Ammunition includes cartridge cases, primers, bullets or propellant powder designed for use in any firearm other than an antique firearm. Items **NOT** covered include blank ammunition, tear gas ammunition, pellets and nonmetallic shotgun hulls without primers.

Generally, no records are required for ammunition transactions. However, information about the disposition of armor piercing ammunition is required to be entered into a record by importers, manufacturers, and collectors. A license is not required for dealers in ammunition only.

[18 U.S.C. 921(a)(17) and 922(b)(5), 27 CFR 178.11]

(A6) Does the GCA control the sale of firearms parts?

No, except that frames or receivers of firearms are "firearms" as defined in the law and subject to the same controls as complete firearms. Silencer parts are also firearms under the GCA, as well as under the National Firearms Act (NFA). Certain machinegun parts, such as conversion parts or kits, are also subject to the NFA.

The GCA generally prohibits the transfer and possession of large capacity ammunition feeding devices manufactured after September 13, 1994. "Large capacity ammunition feeding devices" are those that can accept more than 10 rounds of ammunition.

[18 U.S.C. 921(a)(3), (24), and (31), 922(w), 27 CFR 178.11 and 178.40a]

(A7) Does the GCA prohibit anyone from making a handgun, shotgun or rifle?

With certain exceptions a firearm may be made by a nonlicensee provided it is not for sale and the maker is not prohibited from possessing firearms. However, a person is prohibited from making a semiautomatic assault weapon or assembling a nonsporting semiautomatic rifle or nonsporting shotgun from imported parts. In addition, the making of an NFA firearm requires a tax payment and 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 a Federal or State agency.

[18 U.S.C. 922(o), (r), (v), and 923, 27 CFR 178.39, 178.40, 178.41 and 179.105]

(A8) Are black powder dealers required to be licensed as an ammunition dealer under the GCA?

No. However, black powder dealers are subject to the provisions of 27 CFR Part 55, Commerce in Explosives, which requires that a dealer in any quantity of black powder must have a license as a dealer in low explosives.

B. UNLICENSED PERSONS

(B1) To whom may an unlicensed person transfer firearms under the GCA?

A person may sell a firearm to an unlicensed resident of his or her State, if the buyer is not prohibited by law from receiving or possessing a firearm, or to a licensee in any State. A firearm other than a curio or relic may not be transferred interstate to a licensed collector.

[18 U.S.C 922(a)(3) and (5), 922(b)(3), 27 CFR 178.29]

(B2) From whom may an unlicensed person acquire a firearm under the GCA?

A person may only buy a firearm within the person's own State, except that he or she may buy a rifle or shotgun, in person, at a licensee's premises in any State, provided the sale complies with State laws applicable in the State of sale and the State where the purchaser resides.

[18 U.S.C 922(a)(3) and (5), 922(b)(3), 27 CFR 178.29]

(B3) May an unlicensed person obtain a firearm from an out-of-State source if the person arranges to obtain the firearm through a licensed dealer in the purchaser's own State?

A person not licensed under the GCA and not prohibited from acquiring firearms may purchase a firearm from an out-of-State source and obtain the firearm if an arrangement is made with a licensed dealer in the purchaser's State of residence for the purchaser to obtain the firearm from the dealer.

[18 U.S.C 922(a)(3) and (5), 922(b)(3), 27 CFR 178.29]

(B4) May an unlicensed person obtain ammunition from an out-of-State source?

Yes, provided he or she is not a person prohibited from receiving firearms and ammunition.

[18 U.S.C. 922(g) and (n)]

(B5) Are there certain persons who cannot legally receive or possess firearms?

Yes, a person who -

- (1) Has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year;
- (2) Is a fugitive from justice;
- (3) Is an unlawful user of or addicted to any controlled substance;
- (4) Has been adjudicated as a mental defective or has been committed to a mental institution;
- (5) Is an alien illegally or unlawfully in the United States or an alien admitted to the United States under a nonimmigrant visa;
- (6) Has been discharged from the Armed Forces under dishonorable conditions;
- (7) Having been a citizen of the United States, has renounced his or her

citizenship;

(8) Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner; or

(9) Has been convicted of a misdemeanor crime of domestic violence

cannot lawfully receive, possess, ship, or transport a firearm.

A person who is under indictment or information for a crime punishable by imprisonment for a term exceeding 1 year cannot lawfully receive a firearm. Such person may continue to lawfully possess firearms obtained prior to the indictment or information.

[18 U.S.C. 922(g) and (n), 27 CFR 178.32(a) and (b)]

(B6) Do law enforcement officers who are subject to restraining orders and who receive and possess firearms for purposes of carrying out their official duties violate the law?

Not if the firearms are received and possessed for official use only. The law prohibits persons subject to certain restraining orders from receiving, shipping, transporting or possessing firearms or ammunition. To be disabling, the restraining order must:

1. specifically restrain the person from harassing, stalking, or threatening an "intimate partner" of the person (e.g., spouse);

2. be issued after a hearing of which notice was given to the person and at which the person had an opportunity to participate; and

3. include a finding that the person subject to the order represents a credible threat to the "intimate partner" or child of the "intimate partner" OR explicitly prohibits the use, attempted use, or threatened use of force against the partner.

However, the GCA has an exception for the receipt and possession of firearms and ammunition on behalf of a Federal or State agency. Therefore, the GCA does not prohibit a law enforcement officer under a restraining order from receiving or possessing firearms or ammunition for use in performing official duties. Possession of the firearm off duty would be lawful if such possession is authorized by the officer's department. An officer subject to a disabling restraining order would violate the law if the officer received or possessed a firearm or ammunition for other than official use. (See Question Q15 on officers' receipt and possession of firearms and ammunition after a conviction of a misdemeanor crime of domestic violence.)

[18 U.S.C. 922(g)(8), 925(a)(1)]

(B7) May a nonlicensee transport firearms for sporting or other lawful purposes?

Yes. Federal law provides a person, who is not prohibited by the GCA from receiving or transporting firearms, the right to transport a firearm under certain conditions, notwithstanding State or local law to the contrary. The firearms must be unloaded and in a locked trunk or, in a vehicle lacking a trunk, in a locked container other than the glove compartment or console. Also, the carrying and possession must be lawful at the place of origin and destination.

[18 U.S.C. 926A, 27 CFR 178.38]

(B8) May a nonlicensee ship a firearm through the U.S. Postal Service?

A nonlicensee may mail a shotgun or rifle to a resident of his or her own State or to a licensee in any State. Handguns are not mailable. A common or contract carrier must be used to ship a handgun. A nonlicensee may not transfer any firearm to a nonlicensed resident of another State.

The Postal Service recommends that longguns be sent by registered mail and that no marking of any kind which would indicate the nature of the contents be placed on the outside of any parcel containing firearms.

(B9) May a nonlicensee ship a firearm by carrier?

A nonlicensee may ship a firearm by carrier to a resident of his or her own State or to a licensee in any State. A common or contract carrier must be used to ship a handgun. In addition, Federal law requires that the carrier be notified that the shipment contains a firearm and prohibits common or contract carriers from requiring or causing any label to be placed on any package indicating that it contains a firearm.

[18 U.S.C. 922(a)(2)(A) and 922(e), 27 CFR 178.31]

(B10) May a nonlicensee ship firearms interstate for his or her use in hunting or other lawful activity?

Yes. A person may ship a firearm to himself or herself in 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. Persons other than the owner should not open the package and take possession of the firearm.

(B11) May a person who is relocating out-of-State move firearms with other household goods?

Yes. A person who lawfully possesses a firearm may transport or ship the firearm interstate when changing his or her State of residence.

Certain NFA firearms must have prior approval from the Bureau of ATF, NFA Branch, Washington, DC 20226, before they may be moved interstate. The person must notify the mover that firearms are being transported. He or she should also check State and local laws where relocating to ensure that movement of firearms into the new State does not violate any State law or local ordinance.

[18 U.S.C. 922(a)(4), 27 CFR 178.28 and 178.31]

(B12) What constitutes residency in a State?

The State of residence is the State in which an individual is present with the intention of making a home in that State. A member of the Armed Forces on active duty is a resident of the State in which his or her permanent duty station is located. If a member of the Armed Forces maintains a home in one State and the member's permanent duty station is in a nearby State to which he or she commutes each day, then the member may purchase a firearm in either the State where the duty station is located or the State where the home is maintained. An alien who is legally in the United States is considered to be a resident of a State only if the alien is residing in that State and has resided in that State continuously for a period of at least 90 days prior to the date of sale of the firearm (See also **Item 5**, "Sale of Firearms to Aliens in the United States", under Items of Interest).

[18 U.S.C. 921(b) and 922(b)(3), 27 CFR 178.11]

(B13) May a person who resides in one State and owns property in another State purchase a handgun in either State?

If a person maintains a home in 2 States and resides in both States for certain periods of the year, he or she may, during the period of time the person actually resides in a particular State, purchase a handgun in that State. But simply owning property in another State does not qualify the person to purchase a handgun in that State.

(B14) May foreign visitors and other aliens legally in the United States buy firearms?

An alien legally in the United States who has been admitted into the country under a nonimmigrant visa is generally prohibited from receiving or possessing firearms and a licensee may not lawfully transfer firearms to such alien. In addition, a foreign visitor is not a resident of a State and, therefore, may not purchase **and** take delivery of a firearm in the United States. A foreign visitor may purchase a firearm and have it exported by a licensee. The licensee must obtain an export license from the State Department for this type of transaction.

In addition, an alien legally in the United States would have a State of residence and may acquire firearms in that State only if he or she is residing in that State and has resided in that State continuously for at least 90 days prior to the purchase. Aliens acquiring firearms from licensees are required to prove their identity and residency by presenting government-issued photo identification and substantiating documentation showing that he or she has resided in the State continuously for the 90-day period, for example, utility bills, lease agreements, credit card statements, pay stubs or other documents from the purchaser's place of employment.

See also **Item 6**, "Sale of Firearms to Aliens in the United States", under Items of Interest.

[18 U.S.C. 921, 922(b)(3), (d), (g), 27 CFR 178.11, 178.99(a)]

(B15) May a parent or guardian purchase firearms or ammunition as a gift for a juvenile (less than 18 years of age)?

Yes. However, possession of handguns by juveniles (less than 18 years of age) is generally unlawful. Juveniles may only receive and possess handguns with the written permission of a parent or guardian for limited purposes, e.g., employment, ranching, farming, target practice or hunting.

[18 U.S.C. 922(x)]

(B16) Are curio or relic firearms exempt from the provisions of the GCA?

No. Curios or relics are still firearms subject to the provisions of the GCA; however, curio or relic firearms may be transferred in interstate commerce to licensed collectors or other licensees.

C. LICENSING

(C1) How does one get a license?

Submit ATF Form 7, Application for License, or ATF Form 7CR, Application for License (Collector of Curios or Relics), with the appropriate fee in accordance with the instructions on the form. These forms may be obtained

from the Firearms and Explosives Licensing Center in Atlanta, Georgia or your local ATF office.

[18 U.S.C. 923, 27 CFR 178.44]

(C2) May one license cover several locations?

No. A separate license must be obtained for each location. Storage facilities are not required to be covered by a separate license. However, the records maintained on licensed premises must reflect all firearms held in the separate storage facility. Firearms may be shipped directly to separate storage facilities as long as they are properly recorded as an acquisition in the licensee's records.

[27 CFR 178.50]

(C3) Does an importer or manufacturer of firearms also need a dealer's license?

No, as long as the importer or manufacturer is engaged in business at the licensed importing or manufacturing premises in the same type of firearms authorized by the license.

[27 CFR 178.41(b)]

(C4) If a person timely files an application for renewal of a license and the present license expires prior to receipt of the new license, may the person continue to conduct the business covered by the expired license?

Yes. A person who timely files an application for renewal of a license may continue operations authorized by the expired license until the application is finally acted upon. An application is timely filed when it is received at the appropriate P.O. Box in Dallas, Texas with the appropriate renewal fee prior to the expiration date of the license.

If a person does not timely file a license renewal application and the license expires, the person must file ATF Form 7, Application for License, or an ATF Form 7CR, Application for License (Collector of Curios or Relics), as required by 27 CFR 178.44, submit the application fee applicable to a new business, and obtain the required license before continuing business activity.

[27 CFR 178.45]

(C5) Must a licensed importer's, manufacturer's, or dealer's records be surrendered to ATF if the licensee discontinues business?

If the business is being discontinued completely, the licensed dealer, manufacturer or importer is required, within 30 days, to forward the business records to the following address:

**Bureau of ATF
Out-of-Business Records Center
2029 Stonewall Jackson Drive
Falling Waters, West Virginia 25419**

Failure to surrender your required records is a felony and could result in the licensee being fined up to \$250,000, imprisoned up to 5 years, or both. A licensee discontinuing business must immediately notify the Licensing Center in Atlanta, Georgia.

If someone is taking over the business, the original licensee will underline the final entry in each bound book, note the date of transfer, and

forward all records and forms to the successor (who must apply for and receive his or her own license before lawfully engaging in business) or forward the records and forms to the ATF Out-of-Business Records Center. If the successor licensee receives records and forms from the original licensee, the successor licensee may choose to forward these records and forms to the ATF Out-of-Business Record Center. The successor licensee will begin business with a new set of records reflecting any beginning inventory on hand.

[18 U. S. C. 923(g)(4), 27 CFR 178.127]

(C6) What records am I required to forward to ATF upon discontinuance of my business?

The records consist of the licensee's bound acquisition/disposition (A/D) records, ATF Forms 4473, ATF Forms 5300.35 (the Brady forms), ATF Forms 3310.4 (Report of Multiple Sale or Other Disposition of Pistols and Revolvers), ATF Forms 3310.11 (Federal Firearms Licensee Theft/Loss Report), records of transactions in semiautomatic assault weapons, and law enforcement certification letters. If the licensee was granted a variance to use a computerized recordkeeping system, the licensee is required to provide a complete print-out of the entire A/D records, and an ASCII text file (conforming to common industry standards) along with a file description.

[27 CFR 178.127]

(C7) May a successor owner of a business entity, other than one who is a successor under the provisions of 27 CFR 178.56 (for example, the surviving spouse or child, or a receiver or trustee in bankruptcy), commence a firearms business prior to receiving a Federal firearms license in the successor's name?

No. Each person intending to engage in business as a firearms dealer, importer or manufacturer or an ammunition importer or manufacturer must obtain the required Federal firearms license prior to commencing business.

[27 CFR 178.41]

(C8) Does a Federal firearms license allow the licensee to carry a firearm in the course of business?

No. A Federal firearms license confers no right or privilege to carry a firearm, concealed or otherwise. Permits to carry are issued by State or local authorities.

[27 CFR 178.58]

(C9) May a person obtain a dealer's license to engage in business only at gun shows?

No. A license may only be issued for a permanent premises at which the license applicant intends to do business. A person having such license may conduct business at gun shows located in the State in which the licensed premises is located and sell and deliver curio or relic firearms to other licensees at any location.

[18 U.S.C. 923(a) and (j)]

(C10) May a licensee change the location of the licensed business or activity?

To change your location, you must file an application for an amended license, ATF Form 5300.38, not less than 30 days prior to the move. You must obtain the amended license before commencing business at the new location.

The application for an amended license would include the certification of compliance with State and local laws and notification of local law enforcement officials as outlined in Question **A2**. Tear-out Forms 5300.38 for changing the location of a licensed business are in the back of this publication.

[27 CFR 178.52]

D. ATF FORM 4473 - FIREARMS TRANSACTION RECORD

(D1) Where can a dealer get ATF Forms 4473?

They are available free of charge from the ATF Distribution Center. The current address is P.O. Box 5950, Springfield, VA 22150-5950. Please order a quantity of forms estimated for 6 months use.

(D2) Is an ATF Form 4473 needed in the transfer of a firearm by a nonlicensee?

No. ATF Form 4473 is required only for transfers by a licensee.

[27 CFR 178.124]

(D3) Does a dealer have to execute ATF Form 4473 to take a weapon out of the dealer's inventory for his or her own use?

No. However, the "bound book" must be properly posted to reflect the disposition of the firearm from business inventory to personal use.

[27 CFR 178.124, 178.125a]

(D4) Who signs ATF Form 4473 for the seller?

ATF Form 4473 must be signed by the person who verified the identity of the buyer.

[27 CFR 178.124(c)]

(D5) Is a Social Security card a proper means of identification?

No. A Social Security card, alien registration card, or military identification alone does not contain sufficient information to identify a firearms purchaser. However, a purchaser may be identified by any combination of documents which together establish all of the required information: Name, residence address, date of birth or age, signature, and photograph of the holder. In addition, the documents used to establish the purchaser's identity must have been issued by a government agency.

[27 CFR 178.124(c)]

(D6) When must the ATF Form 4473 be signed?

Part I (yellow) used for over-the-counter sales must be completed, signed and dated by the buyer prior to delivery of the firearm.

Part II (green) used for intrastate non-over-the-counter sales must be completed, signed and dated in duplicate by the buyer at the time of sale.

[27 CFR 178.124(c), 178.124(f)]

E. RECORDS REQUIRED - LICENSEES

(E1) What is a "bound book?"

A "bound book" is a permanently bound book or an orderly arrangement of loose-leaf pages which must be maintained on the business premises. In either event, the format must follow that prescribed in the regulations and the pages must be numbered consecutively.

[27 CFR 178.125]

(E2) May a dealer keep more than one "bound book" at the same time?

Yes. A dealer in firearms is not limited to using only one "bound book." A few dealers account for different brands or types of firearms in separate "bound books." Many maintain a separate repair "bound book."

[27 CFR 178.125]

(E3) Does the Government sell a record book for licensees to use in recording their receipts and dispositions of firearms?

No. Certain trade associations have them available at nominal cost. Your supplier should be able to tell you about this.

(E4) What is the dealer's responsibility where a variation from normal regulatory practice has been authorized?

The ATF letter authorizing the variation must be kept at the licensed premises and available for inspection. For businesses with more than a single licensed outlet, each outlet covered by the variation must have a copy of the letter authorizing the change.

[27 CFR 178.22, 178.125(h)]

(E5) How much time does a dealer have to record acquisitions and dispositions of firearms in his or her "bound book"?

If commercial records are kept containing the required information, are available for inspection, and are separate from other commercial documents, dealers have 7 days from the time of receipt or disposition to record the receipt or disposition in the "bound book."

Receipts not covered by these records must be entered in the "bound book" by the close of the next business day after the acquisition or purchase. If a disposition is made before the acquisition has been entered in the "bound book," the acquisition entry must be made at the same time as the disposition entry.

[27 CFR 178.125(d)-(i)]

(E6) Are the ammunition recordkeeping requirements the same as for firearms?

No. No records are required for ammunition other than armor piercing ammunition. Disposition records must be kept by licensed manufacturers, importers, and collectors for transactions in armor piercing ammunition.

[27 CFR 178.125]

(E7) Are rental firearms subject to recordkeeping control?

Yes, but the recordkeeping is not imposed on the loan or rental of firearms for use only on the premises.

[27 CFR 178.97]

(E8) May a licensee who has firearms in his or her private collection sell any of these firearms without making firearms record entries?

No. A licensee may sell a firearm from his or her personal collection, subject only to the restrictions on firearm sales by unlicensed persons, provided the firearm has been entered in the licensee's bound book and transferred to the licensee's private collection at least 1 year prior to the sale. On selling the personal firearm after 1 year, the sale must be recorded in a "bound book" for disposition of personal firearms, but no ATF Form 4473 is required.

[27 CFR 178.125a]

(E9) May a licensee maintain computer records in lieu of the "bound book"?

Yes. The Regional Director (Compliance) or other designated ATF official must approve a request for a recordkeeping variance before the licensee may use a computer system in lieu of the "bound book" record required by the regulations.

[27 CFR 178.22 and 178.125(h)]

F. CONDUCT OF BUSINESS - LICENSEES

(F1) Does the Federal firearms law require licensees to comply with State laws and local published ordinances which are relevant to the enforcement of the GCA?

Yes. It is unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver any firearm or ammunition to any person if the person's purchase or possession would be in violation of any State law or local published ordinance applicable at the place of sale or delivery. (See Question **A2** for requirement to comply with State and local law to qualify for a license.)

[18 U.S.C. 922(b)(2), 27 CFR 178.99(b)(2)]

(F2) May a licensed dealer sell a firearm to a nonlicensee who is a resident of another State?

Generally, a firearm may not be lawfully sold by a licensed dealer to a nonlicensee who resides in a State other than the State in which the seller's licensed premises is located. However, the sale may be made if the firearm is shipped to a licensed dealer whose business is in the purchaser's State of residence and the purchaser takes delivery of the firearm from the dealer in his or her State of residence. In addition, a licensee may sell a rifle or shotgun to a person who is not a resident of the State where the licensee's business premises is located in an over-the-counter transaction, provided the transaction complies with State law in the State where the licensee is located and in the State where the purchaser resides and provided the sale complies with all applicable Federal laws.

[18 U.S.C. 922(b)(3)]

(F3) May a dealer sell firearms to law enforcement agencies and individual officers in another State?

Yes. Sales and deliveries of firearms to out-of-State police and sheriff departments are not prohibited by the GCA. A dealer may also sell or

ship firearms, other than NFA firearms, to an individual law enforcement officer, regardless of age, if the dealer has a signed statement of the officer's agency, stating that the items are to be used in the buyer's official duties and that the officer has not been convicted of a misdemeanor crime of domestic violence. ATF Form 4473 need not be executed, and the Brady law is not applicable; however, the bound book must be properly posted, and the signed statement included in the dealer's records. (For information on sales of semiautomatic assault weapons to individual law enforcement officers, see Question 011.) For further information on sales of firearms to law enforcement officers, see **Item 4**, "Sales of Firearms to Law Enforcement Officers", under Items of Interest.

[27 CFR 178.141]

(F4) May an employee of a licensed dealer, such as a manager or clerk, who is under 21 years of age, sell handguns and ammunition suitable for use in handguns for the licensee?

Yes, if the employee is not a prohibited person (e.g., a felon). However, to sell handguns, a person less than 18 years of age must have the prior written consent of a parent or guardian and the written consent must be in the person's possession at all times. Also, the parent or guardian giving the written consent may not be prohibited by law from possessing a firearm.

[18 U.S.C. 922(x)]

(F5) As a licensed dealer, must I advise ATF if I sell more than one handgun to an individual?

If you sell more than one handgun to any nonlicensee during a period of 5 consecutive business days, the sale must be reported on ATF Form 3310.4, Report of Multiple Sale or Other Disposition of Pistols and Revolvers, and forwarded to the ATF office specified on the form no later than the close of business on the day the second handgun was sold. A copy of the form must also be sent to the State police or the local law enforcement agency where the sale occurred. A copy must also be kept in the records of the dealer.

[18 U.S.C. 923(g)(3), 27 CFR 178.126a]

(F6) Does a customer have to be a certain age to buy firearms or ammunition from a licensee?

Yes. Longguns and longgun ammunition may be sold only to persons 18 years of age or older. Sales of handguns and ammunition for handguns are limited to persons 21 years of age and older. Although some State and local ordinances have lower age requirements, dealers are bound by the minimum age requirements established by the GCA. If State law or local ordinances establish a higher minimum age, the dealer must observe the higher age requirement.

[18 U.S.C. 922(b)(1), 27 CFR 178.99(b)]

(F7) May a licensee sell interchangeable ammunition such as .22 cal. rimfire to a person less than 21 years old?

Yes, provided the buyer is 18 years of age or older, and the dealer is satisfied that it is for use in a rifle. If the ammunition is intended for use in a handgun, the 21 year old minimum age requirement is applicable.

[18 U.S.C. 922(b)(1), 27 CFR 178.99(b)]

(F8) In transactions between licensees, how is the seller assured that a

purchaser of a firearm is a licensed dealer?

Verification must be established by the transferee furnishing to the transferor a certified copy of the transferee's license and by any other means the transferor deems necessary.

[27 CFR 178.94]

(F9) Must a multi-licensed business submit a certified copy of each of its licenses when acquiring firearms?

No. It need only provide the seller a list, certified to be true, correct and complete, containing the name, address, and license number and expiration date for each location.

[27 CFR 178.94]

(F10) May a licensee continue to deliver to a business whose license has expired?

Yes, for a period of 45 days following the expiration date of the license. After the 45-day period, the transferor is required to verify the licensed status of the transferee with the Chief, Firearms and Explosives Licensing Center. If the transferee's license renewal application is still pending, the transferor must obtain evidence from the Regional Director (Compliance) that a license renewal application has been timely filed by the transferee and is still pending.

[27 CFR 178.94]

(F11) Is a license required to engage in the business of selling small arms ammunition?

No. A license is not required for a dealer in ammunition only, but a manufacturer or an importer must be licensed.

(F12) May licensed dealers sell firearms at gun shows?

Generally, a licensee may sell firearms at a gun show located only in the same State as that specified on the seller's license. However, a licensee may sell curio or relic firearms to another licensee at any location. The transfer of NFA firearms may be lawfully made only upon an ATF approved transfer application.

[18 U.S.C. 923(j), 27 CFR 178.100]

(F13) What may a licensed dealer do at an out-of-State gun show?

A licensed dealer may sell and deliver curio or relic firearms to another licensee at an out-of-State gun show. With respect to other firearms transactions, a licensed dealer may only display and take orders for firearms at an out-of-State gun show. In filling any orders for firearms, the dealer must return the firearms to his or her licensed premises and deliver them from that location. Any firearm ordered by a nonlicensee must be delivered or shipped from the licensee's premises to a licensee in the purchaser's State of residence, and the purchaser must obtain the firearm from the licensee in the purchaser's State. Except for sales of curio or relic firearms to other licensees, sales of firearms and simultaneous deliveries at the gun show, whether to other licensees or to nonlicensees, violate the law because the dealer would be unlawfully engaging in business at an unlicensed location.

[18 U.S.C. 922(a)(1), (b)(3), 923(a), (j)]

(F14) Who may ship firearms through the U.S. Postal Service?

Federal firearm licensees may deposit an unloaded firearm in the mails for conveyance to any officer, employee, agent, or watchman who is eligible under 18 U.S.C. 1715 to receive pistols, revolvers, and other firearms capable of being concealed on the person for use in connection with his or her official duties.

However, any person proposing to mail a handgun must file with the postmaster, at the time of mailing, an affidavit signed by the addressee stating that the addressee is qualified to receive the firearm, and the affidavit must bear a certificate stating that the firearm is for the official use of the addressee. See the current Postal Manual for details.

The Postal Service recommends that all firearms be sent by registered mail and that no marking of any kind which would indicate the nature of the contents be placed on the outside of any parcel containing firearms. (See also Question B8.)

(F15) Must a dealer record firearms received on consignment?

Yes. Firearms received for sale on consignment must be entered in the dealer's "bound book."

Sales of the firearms are handled in the same manner as other firearm sales. Return of the remaining firearms by the licensee to the consignor is entered in the dealer's disposition record, and the consignor must complete an ATF Form 4473 if the consignor is a nonlicensee. It should also be noted that the sale of such firearms or their return to the consignor must also comply with the Brady law.

(F16) To whom does a dealer report stolen firearms?

A theft or loss of firearms must be reported to your local police as well as to ATF within 48 hours after the discovery. Licensees should notify ATF on the 24-hour, 7 days a week toll free line at 1-800-800-3855 and by preparing and submitting ATF Form 3310.11, Federal Firearms Licensee Theft/Loss Report.

Theft or loss of NFA firearms should also be reported to the NFA Branch, (202) 927-8330, immediately upon discovery.

[18 U.S.C. 923(g)(6), 27 CFR 178.39a and 179.141]

(F17) If my firearms are stolen, what do I do about my records?

Take an inventory of stock on hand and enter "stolen" and the date in the disposition section of the "bound book" for those stolen firearms. In addition, at the time a licensee reports the theft on the ATF toll free line, the licensee will be provided a control number that should be placed in the records as well as on ATF Form 3310.11, Federal Firearms Licensee Theft/Loss Report.

[18 U.S.C. 923(g)(6), 27 CFR 178.39a]

(F18) How many copies of the ATF Form 3310.4, Report of Multiple Sale or Other Disposition of Pistols and Revolvers, must be completed and what becomes of each copy?

ATF Form 3310.4 must be completed in triplicate (3 copies). The original is sent to ATF's National Tracing Center by FAX at 1-877-283-0288 or

by mail to Box 1061, Falling Waters, West Virginia 25419-1061. A copy is to be sent to the designated State police or the local law enforcement agency in the jurisdiction where the sale took place. The remaining copy is to be retained in the records of the dealer and held for not less than 5 years.

[27 CFR 178.126a, 178.129]

(F19) What is my responsibility to respond to a request to trace a firearm?

A licensee must provide the requested information immediately and in no event later than 24 hours after receipt of a request by ATF for information required to be kept. Failure to respond to the request for trace information can result in monetary fines, imprisonment, and/or revocation of the licensee's Federal firearms license.

[18 U.S.C. 923(g)(7), 27 CFR 178.25a]

(F20) Does the requirement to give written notification to handgun transferees about juvenile handgun possession apply to a licensed dealer who returns firearms to their owners, for example, handguns that the dealer repaired?

Yes. The requirement to give written notification to nonlicensees to whom handguns are transferred applies to the return of handguns, as well as to their sale. However, the requirement does not apply where a handgun is delivered to a customer through another licensee. The licensee who delivers the handgun must provide the notification.

[18 U.S.C. 922(x), 27 CFR 178.103]

(F21) Does the requirement to post a sign on the licensed premises about juvenile handgun possession apply to a licensed dealer who only disposes of handguns to nonlicensees who do not appear at the dealer's premises?

No. The sign posting requirement does not apply where the licensee only disposes of handguns to nonlicensees who do not appear at the licensed premises, for example, the licensee ships repaired or replacement handguns to nonlicensees.

[18 U.S.C. 922(x), 27 CFR 178.103]

G. COLLECTORS

(G1) Is there a specific license which permits a collector to acquire firearms in interstate commerce?

Yes. The person may obtain a collector's license; however, this license applies only to transactions in curio or relic firearms.

[27 CFR 178.41(c), (d), 178.50(b) and 178.93]

(G2) Does a collector's license afford any privileges to the licensee with respect to acquiring or disposing of firearms other than curios or relics in interstate or foreign commerce?

No. A licensed collector has the same status under the GCA as a nonlicensee except for transactions in curio or relic firearms.

[27 CFR 178.93]

(G3) Does a license as a collector of curio or relic firearms authorize the collector to engage in the business of dealing in curios or relics?

No. A dealer's license must be obtained to engage in the business of dealing in any firearms, including curios or relics. A collector's license only enables the collector to obtain curio and relic firearms interstate.

[18 U.S.C. 922(a) and 923(a)(1), 27 CFR 178.41]

(G4) Since a licensed firearms dealer may legally receive firearms interstate, including curios or relics, is there any reason why a dealer would need both a dealer's license and collector's license?

No.

[27 CFR 178.50(b)]

(G5) Are licensed collectors required to execute ATF Form 4473 for transactions in curio or relic firearms?

No. Licensed collectors are only required to keep a "bound book" record.

[27 CFR 178.125(f)]

(G6) Are licensed collectors' transfers of curio or relic firearms subject to the Brady law, including the provision for making background checks on transferees?

No, but it is unlawful to transfer a firearm to any person knowing or having reasonable cause to believe that such person is a felon or is within any other category of person prohibited from receiving or possessing firearms. (See also Questions P13 and P14.)

[18 U.S.C. 922(d), 27 CFR 178.32(d)]

(G7) Are licensed collectors required to comply with the requirements that written notification be given to handgun transferees and signs be posted on juvenile handgun possession?

The requirement that written notification concerning juvenile handgun possession be given by licensees to a nonlicensee to whom a handgun is delivered applies to curio or relic handguns transferred by licensed collectors. However, the sign posting requirement does not apply to licensed collectors. In the case of collectors, a requirement to post signs at the licensed premises would serve no purpose because the premises is not a business premises open to the public and licensed collectors may lawfully dispose of curio or relic handguns away from their licensed premises.

[18 U.S.C. 922(x), 27 CFR 178.103]

(G8) Are licensed collectors required to turn in their acquisition/disposition records to ATF if their collector's license is not renewed or they discontinue their collecting activity?

No. The GCA requires the delivery of required records to the Government within 30 days after a firearms "business" is discontinued. A license as a collector of curios or relics does not authorize any business with respect to firearms. This is in contrast to firearms importers, manufacturers, and dealers who are licensed to engage in a firearms business. Therefore, the records required to be kept by licensed collectors under the law and regulations are not business records and are not required to be turned in to ATF when collector's licenses are not renewed or collecting activity under such licenses is discontinued.

[18 U.S.C. 923(g)(4), 27 CFR 178.127]

H. MANUFACTURERS

(H1) Must a person who engages in the business of manufacturing and importing firearms have a separate license to cover each type of business?

Yes. A separate license is required to cover each of these types of businesses.

[27 CFR 178.41]

(H2) May a person licensed as a manufacturer of ammunition also manufacture firearms?

No. A person licensed as a manufacturer of ammunition may not manufacture firearms unless he or she obtains a license as a firearms manufacturer.

(H3) May a person licensed as a manufacturer of firearms also manufacture ammunition?

Yes. The person may also manufacture ammunition (not including destructive device ammunition or armor piercing ammunition) without obtaining a separate license as a manufacturer of ammunition.

(H4) Is one who reloads ammunition required to be licensed as a manufacturer?

Yes, if the person engages in the business of selling or distributing reloads for the purposes of livelihood or profit. No, if the person reloads only for personal use.

[27 CFR 178.41]

(H5) Must a licensed manufacturer pay excise taxes?

Yes. Licensed manufacturers incur excise tax on the sale of firearms and ammunition manufactured. (See Item 16 under "Items of Interest".)

I. GUNSMITHS

(I1) Is a license needed to engage in the business of engraving, customizing, refinishing or repairing firearms?

Yes. A person conducting such activities as a business is considered to be a gunsmith within the definition of a dealer.

[27 CFR 178.11]

(I2) Does a gunsmith need to enter in a permanent "bound book" record every firearm received for adjustment or repair?

If a firearm is brought in for repairs and the owner waits while it is being repaired or if the gunsmith is able to return the firearm to the owner during the same business day, it is not necessary to list the firearm in the "bound book" as an "acquisition." If the gunsmith has possession of the firearm from one business day to another or longer, the firearm must be recorded as an "acquisition" and a "disposition" in the permanent "bound book" record.

[27 CFR 178.125(e)]

(I3) Is ATF Form 4473 required when a gunsmith returns a repaired firearm?

No, provided the firearm is returned to the person from whom received.

[27 CFR 178.124(a)]

(I4) May a gunsmith make immediate repairs at locations other than his or her place of business?

Yes.

(I5) May a licensed gunsmith receive an NFA firearm for purposes of repair?

Yes, for the sole purpose of repair and subsequent return to its owner. It is suggested that the owner obtain permission from ATF for the transfer by completing and mailing ATF Form 5 to the NFA Branch and receive approval prior to the delivery. The gunsmith should do the same prior to returning the firearm.

Only the face of the form need be completed in each instance. ATF Forms 5 may be obtained from the Bureau of ATF, NFA Branch, Washington, DC 20226, (202) 927-8330.

(I6) Is a licensed gunsmith required to comply with the requirements to give written notification to handgun transferees and post signs on juvenile handgun possession?

The requirement that written notification on juvenile handgun possession be given to a nonlicensee to whom a handgun is delivered applies to all Federal firearms licensees. It also applies to the return of handguns to their owners, as well as to their sale. Thus, a gunsmith who repairs or customizes a nonlicensee's handgun must provide the notification to the nonlicensee when the handgun is returned. The sign posting requirement also applies to gunsmiths, unless the gunsmith only disposes of handguns to nonlicensees who do not appear at the gunsmith's licensed premises, for example, when repaired handguns are shipped to nonlicensees.

[18 U.S.C. 922(x), 27 CFR 178.103]

(I7) Is a licensed gunsmith's return of repaired or customized firearms to their owners subject to the Brady law, including the provision for making background checks on transferees?

No, but it is unlawful to transfer a firearm to any person knowing or having reasonable cause to believe that such person is a felon or is within any other category of person prohibited from receiving or possessing firearms. (See also Question P25.)

[18 U.S.C. 922(d), 27 CFR 178.32(d)]

J. PAWNBROKERS

(J1) What disposition records must be kept by a pawnbroker upon the redemption of a pawned firearm?

The redemption of a pawned firearm is a "disposition" of a firearm under Federal firearms law and is subject to all the recordkeeping requirements under the GCA. Disposition must be properly entered in the pawnbroker's

"bound book," and ATF Form 4473 must be executed in connection with the redemption. (See also Question J4.)

[27 CFR 178.124 and 178.125]

(J2) What is the procedure for a licensed pawnbroker to return a firearm?

The procedure varies, depending upon the firearm and the situation.

Some Examples -

(1) Pawnbroker and nonlicensee are residents of the same State: The pawnbroker may return a handgun or longgun to either the person who pawned it or a holder of the pawn ticket who resides in the pawnbroker's State. Use ATF Form 4473, Part I (yellow) at the time of redemption.

(2) Pawnbroker and nonlicensee are not residents of the same State:

a. The pawnbroker may return a handgun only to the person who pawned it, using ATF Form 4473, Part I (yellow) at the time of redemption.

b. The pawnbroker may return a rifle or shotgun to the person who pawned it.

c. The pawnbroker may transfer a rifle or shotgun to the holder of a pawn ticket who did not pawn it at the licensed premises, provided that the transaction complies with the law of the State where the pawnbroker's business is located and the law of the State where the pawn ticket holder resides. An ATF Form 4473, Part I (yellow) is used for this transaction.

[18 U.S.C. 922(a)(2) and 922(b)(3)]

(J3) Are there prohibited categories of persons from whom a pawnbroker should not accept firearms?

Yes. The pawnbroker cannot lawfully return a firearm to a person who is underage or within a prohibited category of persons to whom the sale or other disposition of the firearm would be unlawful. For example, a pawnbroker cannot lawfully return a pawned handgun to a person who is less than 21 years of age, nor can he or she return a firearm to a convicted felon or to anyone else who is prohibited from receiving the firearm. (See also Question J5.)

[18 U.S.C. 922(d), 27 CFR 178.99]

(J4) Are licensed pawnbrokers required to comply with the requirements that written notification be given to handgun transferees and signs be posted on juvenile handgun possession?

The requirement that written notification on juvenile handgun possession be given to a nonlicensee to whom a handgun is delivered applies to all types of Federal firearms licensees. It also applies to the return of handguns to their owners, as well as to their sale. Thus, a pawnbroker who returns a handgun to its owner upon its redemption from pawn must provide the notification to the owner. The sign posting requirement also applies to licensed pawnbrokers.

[18 U.S.C. 922(x), 27 CFR 178.103]

(J5) Are licensed pawnbrokers' firearms sales or return of firearms redeemed from pawn subject to the Brady law, including the provision for making

background checks of transferees?

Yes. As provided by Public Law 105-277, enacted on October 21, 1998, a licensed pawnbroker may also contact the National Instant Criminal Background Check System (NICS) for a background check on a person at the time the person offers to pawn a firearm. If NICS advises the pawnbroker that receipt or possession of the firearm by the person attempting to pawn the firearm would violate the law, the pawnbroker must advise local law enforcement within 48 hours after receipt of the information. A pawnbroker who contacts NICS about a person prior to accepting the person's firearm in pawn must still comply with the requirements of the Brady law at the time of the firearm's redemption, i.e., NICS must again be contacted for a background check on the person at the time of redemption. (See also questions **P18** through **P24**.)

K. AUCTIONEERS

(K1) Does an auctioneer who is involved in firearms sales need a dealers license?

Generally speaking, there are two types of auctions: estate-type auctions and consignment auctions. In estate-type auctions, the articles to be auctioned (including firearms) are being sold by the executor of the estate of an individual. In these cases the firearms belong to and are possessed by the executor. The auctioneer is acting as an agent of the executor and assisting the executor in finding buyers for the firearms. The firearms are controlled by the estate, and the sales of firearms are being made by the estate. In these cases, the auctioneer does not meet the definition of engaging in business as a dealer in firearms and would not need a license. An auctioneer who has a license may perform this function away from his or her licensed premises.

In consignment-type auctions, an auctioneer often takes possession of firearms in advance of the auction. These firearms are generally inventoried, evaluated, and tagged for identification. The firearms belong to individuals who have entered into a consignment agreement with the auctioneer giving that auctioneer authority to sell the firearms. The auctioneer has possession and control of the firearms. Under these circumstances, an auctioneer would generally need a license.

An auctioneer who buys firearms for purposes of resale will also need a license.

(K2) If a licensed auctioneer is making sales of firearms, where may those sales be made?

Firearms may be displayed at an auction site away from the auctioneer's licensed premises and sales of the firearms can be agreed upon at that location, but delivery may only be made to purchasers after the firearms have been returned to the auctioneer's licensed premises. The simultaneous sale and delivery of the auctioned firearms away from the licensed premises would violate the law, i.e., engaging in business at an unlicensed location. However, if the auctioneer is assisting an estate dispose of firearms, the estate is the seller of the firearms, and the estate is in control and possession of the firearms, the firearms would not have to be returned to the licensed premises prior to their delivery. (See also Question **K1**.)

L. IMPORTING AND EXPORTING

(L1) May a licensed dealer who does not have an importer's license make an occasional importation?

Yes. A licensee may make an occasional importation of a firearm for a nonlicensee or for the licensee's personal use (not for resale). The licensee must first submit an ATF Form 6, Part I to the Imports Branch for approval. The licensee may then present the approved Form 6 and completed ATF Form 6A to the U.S. Customs Service. Contact the Bureau of ATF, Imports Branch, Washington, DC 20226, (202) 927-8320 for forms.

(L2) Does a licensee need an export license to export a firearm?

The GCA does not provide for an export license. However, firearms and ammunition shall be exported in accordance with provisions of the Arms Export Control Act of 1976 and a license must be obtained from the Office of Defense Trade Controls, PM/DTC, SA-6, Room 228, U.S. Department of State, Washington, DC 20522-0602; (703) 875-6644. In the case of exporting NFA firearms, a permit, ATF Form 9, must be obtained from ATF.

The export of sporting shotguns is regulated by the U.S. Department of Commerce. For further information, contact them at their nearest district office or the Bureau of Export Administration, Export Counseling Division, U.S. Department of Commerce, 14th St. & Pennsylvania Ave. N.W., Washington, DC 20230, (202) 482-4811.

[22 U.S.C. 2778, 27 CFR 179.114-179.116]

M. FIREARMS - NATIONAL FIREARMS ACT (NFA)

(M1) The types of firearms that must be registered in the National Firearm Registration and Transfer Record are defined in the NFA and in 27 CFR Part 179. What are some examples?

Some examples of the types of firearms that must be registered are:

Machineguns;

The frames or receivers of machineguns;

Any combination of parts designed and intended for use in converting weapons into machineguns;

Any part designed and intended solely and exclusively for converting a weapon into a machinegun;

Any combination of parts from which a machinegun can be assembled if the parts are in the possession or under the control of a person;

Silencers and any part designed and intended for fabricating a silencer;

Short-barreled rifles;

Short-barreled shotguns;

Destructive devices; and,

"Any other weapons."

A few examples of destructive devices are:

Molotov cocktails;

Anti-tank guns (over caliber .50);
Bazookas; and,
Mortars.

A few examples of "any other weapon" are:

H&R Handyguns;
Ithaca Auto-Burglar guns;
Cane guns; and,
Gadget-type firearms and "pen" guns which fire fixed ammunition.

(M2) How can an individual legally acquire NFA firearms?

Basically, there are 2 ways that an individual (who is not prohibited by Federal, State, or local law from receiving or possessing firearms) may legally acquire NFA firearms:

(1) By lawful transfer of a registered weapon from its lawful owner residing in the same State as the transferee. Obtain any forms needed from the Bureau of ATF, NFA Branch, Washington, DC 20226.

(2) By obtaining prior approvals to make NFA firearms.

[27 CFR 179.84-179.87 and 179.62-179.67]

(M3) What is the tax on making an NFA firearm?

The tax is \$200 for making any NFA firearm, including "any other weapon."

(M4) How is this tax paid?

A money order or check made payable to the Bureau of ATF together with the application forms are to be mailed to the Bureau of ATF, NFA Branch, Washington, DC 20226.

(M5) What is an unserviceable firearm?

An unserviceable firearm is defined as one which is incapable of discharging a shot by means of an explosive and which is incapable of being readily restored to a firing condition.

An acceptable method of rendering most firearms unserviceable is to fusion weld the chamber closed and fusion weld the barrel solidly to the frame. Certain unusual firearms require other methods to render the firearms unserviceable.

An unserviceable NFA firearm is still subject to the controls of the NFA, but may be transferred tax free as a curio or ornament. Contact the Bureau of ATF, Firearms Technology Branch, Washington, DC 20226, (202) 927-7910 for instructions.

[27 CFR 179.11 and 179.91]

(M6) What is the status of an unregistered NFA firearm acquired through seizure or abandonment by a State?

When NFA firearms are desired for official use, they must be registered by filing ATF Form 10 with the Bureau of ATF, NFA Branch, Washington, DC 20226.

Since approval is conditioned on an "official use only" basis, subsequent transfers on ATF Form 5 cannot be approved except to a government agency for official use.

[27 CFR 179.104]

(M7) May a private citizen who owns an NFA firearm which is not registered have the firearm registered?

No. An unregistered NFA firearm is a contraband firearm and it is unlawful to possess the weapon. The possessor should contact the nearest ATF office to arrange for its disposition.

[26 U.S.C. 5861(d)]

(M8) What can happen to someone who has an NFA firearm which is not registered to him?

Violators may be fined not more than \$250,000, and imprisoned not more than 10 years, or both. In addition, any vessel, vehicle or aircraft used to transport, conceal or possess an unregistered NFA firearm is subject to seizure and forfeiture, as is the weapon itself.

[49 U.S.C. 781-788, 26 U.S.C. 5861, 26 U.S.C. 5872]

(M9) What should a person do if he or she comes into possession of an unregistered NFA firearm?

Contact the nearest ATF office immediately.

(M10) Are there any exemptions from the making or transfer tax provisions of the NFA?

Yes. These are noted below, along with the required form number.

You will have to contact the Bureau of ATF, NFA Branch, Washington, DC 20226, (202) 927-8330. Completed forms must be approved by the NFA Branch prior to the making or transfer:

(1) Tax exempt transfer and registration of a firearm between special (occupational) taxpayers: ATF Form 3.

(2)(a) Tax-exempt making of a firearm on behalf of a Federal or State agency: ATF Form 1. Tax-exempt transfer and registration of the firearm: ATF Form 5.

(b) A licensed manufacturer under contract to make NFA firearms for the U.S. Government may be granted exemption from payment of the special (occupational) tax as a manufacturer of NFA firearms and exemption from all other NFA provisions (except importation) with respect to the weapons made to fulfill the contract. Exemptions are obtained by writing the NFA Branch, stating the contract number(s) and the anticipated date of termination. This exemption must be renewed each year prior to July 1.

(3) Tax-exempt transfer and registration of an unserviceable firearm which is being transferred as a curio or ornament; tax exempt transfer of a firearm to a lawful heir: ATF Form 5.

[26 U.S.C. 5851, 27 CFR 179.69, 179.70, 179.88, 179.89, 179.90 and 179.91]

(M11) How does a person qualify to import, manufacture, or deal in NFA firearms?

The person must be licensed under the GCA and pay the required special (occupational) tax imposed by the NFA. In addition, an importer (except importers of sporting shotguns and shotgun ammunition) must also be registered with ATF under the Arms Export Control Act of 1976.

After becoming licensed under the GCA, he or she must file ATF Form 5630.7 with the appropriate tax payment in the entire amount with ATF.

[26 U.S.C. 5801, 18 U.S.C. 923, 27 CFR 47.31, 178.41, 179.34 and 179.193]

(M12) When must firearms special (occupational) taxes be paid, how much are the taxes, and how are they paid?

On first engaging in business and thereafter on or before the first day of July, these taxes must be paid in full. The current taxes are set out in the following table. Taxes are paid in the manner discussed in Question M11, above.

**SPECIAL (OCCUPATIONAL) TAX RATES
UNDER THE NFA**

CLASS OF TAXPAYER	ANNUAL FEE
1 Importer of Firearms (Including "Any Other Weapons")	\$1000.00
2 Manufacturer of Firearms (Including "Any Other Weapons")	\$1000.00
3 Dealer of Firearms (Including "Any Other Weapons")	\$ 500.00
1 Importer of Firearms (Including "Any Other Weapons") REDUCED*	\$ 500.00
2 Manufacturer of Firearms (Including "Any Other Weapons") REDUCED*	\$ 500.00

* REDUCED = Rates which apply to certain taxpayers whose total gross receipts in the last taxable year are less than \$500,000.

(M13) Does a single special (occupational) tax payment entitle a person or firm to import and manufacture firearms?

No. A separate special (occupational) tax payment must be made for each of these activities. However, Class 1 and Class 2 special (occupational) taxpayers are qualified to deal in NFA firearms without also having to pay special (occupational) tax as a Class 3 dealer.

[27 CFR 179.39]

(M14) May a licensed collector obtain NFA firearms in interstate commerce?

Only if the firearms are classified as curios or relics, are registered, and are transferred in accordance with the provisions of the NFA. In addition, the collector must meet the requirements set forth under Question M15.

(M15) What are the required transfer procedures for an individual who is not qualified as a manufacturer, importer, or dealer of NFA firearms?

ATF Form 4 (5320.4) must be completed, in duplicate. The transferor must first complete the face of the form. The transferee must complete the transferee's certification on the reverse of the form and have the "Law Enforcement Certification" completed by the chief law enforcement officer.

The transferee is to affix, on each copy of the form, a 2-inch by 2-inch photograph of the transferee taken within the past year (proofs, group photographs or photocopies are unacceptable). The transferee's address must be a street address, not a post office box. If there is no street address, specific directions to the residence must be included.

If State or local law requires a prior permit or license to purchase, possess, or receive NFA firearms, a copy of the transferee's permit or license must accompany the application. A check or money order for \$200 (\$5 for transfer of "any other weapon") shall be made payable to ATF by the transferor. All signatures on both copies must be in ink.

Submit fingerprints on FBI Form FD-258, in duplicate. Fingerprints must be taken by a person qualified to do so, and must be clear and classifiable. If wear or damage to the fingertips do not allow clear prints, and if the prints are taken by a law enforcement official, a statement on his or her official letterhead giving the reason why good prints are unobtainable should accompany the fingerprints.

Forward completed information and appropriate tax payment to the Bureau of ATF, P.O. Box 73201, Chicago, IL 60673. Transfer of the NFA firearm may be made only upon approval of the ATF Form 4 by the NFA Branch. If the application is approved, the original of the form with the cancelled stamp affixed showing approval will be returned to the applicant. Otherwise, the tax will be refunded.

Upon approval of the ATF Form 4, the transferor should transfer the firearm as soon as possible, since the firearm is now registered to the transferee.

[26 U.S.C. 5812, 27 CFR 179.83-179.86]

(M16) How does an individual obtain authorization to make an NFA firearm?

Prior to making the firearm, the individual must submit ATF Form 1, Application to Make and Register a Firearm, to the Bureau of ATF, NFA Branch, Washington, DC 20226, and receive approval. The applicant must follow the procedures described in Question M15 concerning completion of the form, including photographs, fingerprints and certifications. The applicant must forward the original and a duplicate of the form along with a check or money order for \$200 made payable to the Bureau of ATF. If the application is approved, the original of the form with the cancelled stamp affixed showing approval will be returned to the applicant. Otherwise, the tax will be refunded.

[26 U.S.C 5822, 27 CFR 179.62-179.65]

(M17) Are parts which would convert a firearm into an NFA firearm subject to registration?

Yes. Examples:

An M-2 conversion kit;

Any part designed and intended solely and exclusively to convert a weapon into a machinegun. (See Question M1.)

(M18) May a licensed firearms dealer, qualified to deal in NFA firearms, transfer a firearm to an unlicensed person in another State?

No. The GCA generally prohibits the interstate transfer of a firearm from a licensed dealer to a nonlicensee, except for an over-the-counter sale of a longgun to an unlicensed person where the sale complies with the legal requirements in the States of both buyer and seller.

[18 U.S.C. 922(a)(2) and (b)(3), 27 CFR 178.29-178.30]

(M19) What law enforcement officials' certifications on an application to transfer or make an NFA weapon are acceptable to ATF?

As provided by regulations, certifications by the local chief of police, sheriff of the county, head of the State police, or State or local district attorney or prosecutor are acceptable. The regulations also provide that certifications of other officials are appropriate if found in a particular case to be acceptable to the Director. Examples of such other officials include State attorneys general and judges of State courts having authority to conduct jury trials in felony cases.

[27 CFR 179.63, 179.85]

(M20) Is the chief law enforcement officer required to sign the law enforcement certification?

No. Although ATF cannot approve an application to make or transfer an NFA weapon without a law enforcement certification, no official is required to sign the certification.

(M21) If the chief law enforcement official whose jurisdiction includes the proposed transferee's residence refuses to sign the "law enforcement certification," will the signature of an official in another jurisdiction be acceptable?

No.

(M22) Does the registered owner of a destructive device, machinegun, short barreled shotgun, or short barreled rifle need authorization to lawfully transport such items interstate?

Yes, unless the owner is a qualified dealer, manufacturer or importer, or a licensed collector transporting only curios or relics. Prior approval must be obtained, even if the move is temporary, and is requested by either submitting a letter application containing all necessary information, or by submitting ATF Form 5320.20 to the Bureau of ATF, NFA Branch, Washington, DC 20226. Possession of the firearms must still comply with State and local laws.

[27 CFR 178.28]

(M23) If an individual is changing his or her State of residence and the individual's application to transport the NFA firearm cannot be approved, what options does a lawful possessor have?

NFA firearms may be left in a safe deposit box in his or her former State of residence. Also, the firearm could be left or stored in the former State of residence at the house of a friend or relative in a locked room or

container to which only the registered owner has a key. The friend or relative should be supplied with a copy of the registration forms and a letter from the owner authorizing storage of the firearm at that location. The NFA Branch must be notified of the location at which the firearms are stored.

The firearms may also be transferred under the procedures referred to in Question **M15** or abandoned to ATF.

(M24) May a transferor submit an application to transfer an NFA firearm prior to the date on which the transferor receives the weapon?

No.

(M25) If a person has a pistol and an attachable shoulder stock, does this constitute possession of an NFA firearm?

Yes, unless the barrel of the pistol is at least 16 inches in length (and the overall length of the firearm with stock attached is at least 26 inches). However, certain stocked handguns, such as original semiautomatic Mauser "Broomhandles" and Lugers, have been removed from the purview of the NFA as collectors' items.

[27 CFR 179.11]

(M26) Does the owner of a registered NFA firearm have to have any evidence to show it is registered lawfully to him or her?

Yes. The approved application received from ATF serves as evidence of registration of the NFA firearm in the owner's name. This document must be kept available for inspection by ATF officers. It is suggested that a photocopy of the approved application be carried by the owner when the weapon is being transported.

(M27) What is the status of deactivated, unloaded or dummy grenades, artillery shell casings and similar devices?

Such devices would merely be ornaments and not within the purview of the NFA. However, such devices would have to be cut or drilled in such a manner as to preclude possible use as ammunition components for destructive devices.

(M28) Are muzzleloading cannons classified as destructive devices?

Generally, no. Muzzleloading cannons not capable of firing fixed ammunition and manufactured in or before 1898 and replicas thereof are antiques and not subject to the provisions of either the GCA or the NFA.

[26 U.S.C. 5845, 27 CFR 179.11]

(M29) Are grenade and rocket launcher attachments destructive devices?

Grenade and rocket launcher attachments for use on military type rifles generally do not come within the definition of destructive devices. However, the grenades and rockets used in these devices are generally within the definition.

[26 U.S.C. 5845, 27 CFR 179.11]

(M30) What is a "conversion kit?"

A conversion kit is any part or combination of parts designed and intended for use in converting a weapon into a machinegun. A conversion kit is a machinegun for purposes of the NFA.

[26 U.S.C. 5845, 27 CFR 179.11]

N. MACHINEGUNS - NATIONAL FIREARMS ACT (NFA)

(N1) May an unlicensed person make a machinegun?

Generally, no. But, in the event that documentation can be provided, along with the Application to Make a Machinegun, which establishes that the weapon is being made for distribution to a Federal or State agency, an individual may be permitted to make the machinegun.

[18 U.S.C. 922(o)(2), 27 CFR 179.105(e)]

(N2) May machineguns be transferred from one registered owner to another?

Yes. If the machinegun was lawfully registered and possessed before May 19, 1986, it may be transferred pursuant to an approved ATF Form 4.

[18 U.S.C. 922(o)(2)]

**O. SEMIAUTOMATIC ASSAULT WEAPONS AND
LARGE CAPACITY AMMUNITION FEEDING DEVICES**

(O1) What restrictions does Federal law impose on semiautomatic assault weapons?

It is generally unlawful for a person to manufacture, transfer, or possess semiautomatic assault weapons after September 13, 1994, the effective date of the law. See the exceptions listed in Question 05.

[18 U.S.C. 922(v)(1)]

(O2) How does the law define the term "semiautomatic assault weapon?"

The term "semiautomatic assault weapon" is defined to include 19 named models of firearms and semiautomatic rifles, semiautomatic pistols, and semiautomatic shotguns that have at least 2 of the features specified in the law. Frames or receivers for firearms are not regulated as semiautomatic assault weapons, since they could be assembled as a firearm other than the 19 named models of firearms. Likewise, frames or receivers are not semiautomatic assault weapons under the "features" test of the law because they do not yet have the features necessary to bring them within the definition.

Semiautomatic assault weapons in knockdown (disassembled) condition consisting of a receiver and all parts needed to assemble a complete semiautomatic assault weapon are subject to regulation if the parts are segregated or packaged together and held by a person as the parts for the assembly of a particular firearm.

[18 U.S.C. 921(a)(30)]

(O3) What restrictions does Federal law impose on large capacity ammunition feeding devices?

It is generally unlawful for a person to transfer or possess a large capacity ammunition feeding device manufactured after September 13, 1994, the effective date of the law. See the exceptions listed in Question 05.

[18 U.S.C. 922(w)(1)]

(04) How does the law define the term "large capacity ammunition feeding device?"

The term "large capacity ammunition feeding device" is defined as a magazine, belt, drum, feed strip, or similar device manufactured after September 13, 1994, that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition. Large capacity ammunition feeding devices in knockdown (disassembled) condition consisting of all parts needed to assemble a complete large capacity ammunition feeding device are subject to regulation if the parts are segregated or packaged together and held by a person as the parts for the assembly of a particular device.

[18 U.S.C. 921(a)(31)]

(05) What exceptions from the prohibitions on semiautomatic assault weapons and large capacity ammunition feeding devices are provided in the law?

Exceptions are provided for semiautomatic assault weapons and large capacity ammunition feeding devices -

(1) lawfully possessed on or before the date of enactment;

(2) manufactured for, transferred to, or possessed by governmental entities or law enforcement officers employed by governmental entities for official use;

(3) transferred to licensees maintaining on-site security at a nuclear power plant required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials;

(4) transferred to law enforcement officers by the officer's agency upon the officer's retirement; and

(5) manufactured, transferred, or possessed by licensed manufacturers or licensed importers for the purposes of testing or experimentation as authorized by ATF.

Ammunition feeding devices having a capacity of more than 10 rounds of ammunition that were manufactured on or before September 13, 1994, are excluded from the definition of "large capacity ammunition feeding device" and, therefore, are not subject to the prohibitions.

[18 U.S.C. 922(v)(2), (v)(4), (w)(2) and (w)(3)]

(06) If an NFA firearm has 2 or more of the features specified in the law for semiautomatic assault weapons, will the firearm be regulated under both statutes?

Any firearm that falls within the definition of "semiautomatic assault weapon" and the NFA definition of "firearm" is subject to both laws.

(07) Are replacement parts for grandfathered semiautomatic assault weapons and large capacity ammunition feeding devices subject to regulation under the law?

No. Parts may be replaced in grandfathered semiautomatic assault weapons and grandfathered feeding devices without violating the law. However, if the frame or a receiver for a semiautomatic assault weapon is defective, the replacement must be made by the weapon's manufacturer or importer. The replacement receiver must be marked with the same serial number as the

original receiver, and the original receiver must be destroyed. However, a manufacturer or importer who is unable to mark the replacement receiver with the same serial number as the original receiver may seek a marking variance in accordance with 27 CFR 178.92. In addition, the permanent records of the manufacturer or importer should indicate that the receiver for the weapon has been replaced.

(08) May law enforcement officers purchase and possess semiautomatic assault weapons and high capacity ammunition feeding devices?

Yes. The law provides exceptions for law enforcement officers purchasing assault weapons and magazines for official use. However, assault weapons may not be lawfully distributed to, or received or possessed by, an officer having been convicted of a misdemeanor crime of domestic violence. A licensee may lawfully transfer these items to a law enforcement officer and the officer may lawfully receive and possess them if:

(1) the officer is a "peace officer" having the authority to arrest persons for violations of the law and to obtain and execute search warrants;

(2) the officer is employed by a government agency; and

(3) in the case of a semiautomatic assault weapon, the officer has not been convicted of a misdemeanor crime of domestic violence.

(09) May law enforcement officers keep their semiautomatic assault weapons and large capacity ammunition feeding devices when they retire or leave their employment with a law enforcement agency?

No. They may not lawfully keep semiautomatic assault weapons and large capacity ammunition feeding devices that they purchased or acquired as their own property. However, the law provides an exception for items that belong to a law enforcement agency and are transferred by the agency to an officer upon the officer's retirement from, or termination of his or her employment with, the agency. Neither this exception nor the exception for official use permits officers to retain their own weapons or feeding devices after retiring or leaving the agency or to acquire additional items. Officers who retire or leave their employment with a law enforcement agency should transfer assault weapons and large capacity ammunition feeding devices that are their own property to a Federal firearms licensee or another qualified officer.

[18 U.S.C. 922(v)(4), (w)(3)]

(010) If a person is in possession of a frame or receiver for a semiautomatic assault weapon on the date of enactment, may the person acquire the rest of the parts and assemble a complete semiautomatic assault weapon?

No. It is unlawful to make such weapon after the law's effective date.

[18 U.S.C. 922(v)(1)]

(011) What documentation must a manufacturer, importer, or dealer obtain from law enforcement officers who purchase semiautomatic assault weapons and large capacity ammunition feeding devices for official use?

Licensees may transfer semiautomatic assault weapons and large capacity ammunition feeding devices to law enforcement officers with the following documentation:

(1) a written statement from the purchasing officer, under penalty of perjury, stating that the weapon or device is being purchased for use in performing official duties and that the weapon or device is not being acquired

for personal use or for purposes of transfer or resale; and

(2) a written statement from a supervisor of the purchasing officer, under penalty of perjury, stating that the purchasing officer is acquiring the weapon or feeding device for use in official duties, that the weapon or device is suitable for use in performing official duties, and that the weapon or device is not being acquired for personal use or for purposes of transfer or resale. In the case of a transfer of a semiautomatic assault weapon, the supervisor's written statement must also state that a records check reveals that the purchasing officer has no convictions for misdemeanor crimes of domestic violence.

In the case of semiautomatic assault weapons, licensees are required to retain the above statements in their permanent records for a period of 5 years.

[27 C.F.R. 178.129, 178.132, 178.134]

(O12) May licensed manufacturers, licensed importers, and licensed dealers stockpile semiautomatic assault weapons for future sales to law enforcement agencies and law enforcement officers employed by such agencies?

Yes. Semiautomatic assault weapons may be transferred directly to law enforcement agencies with a purchase order. Licensed manufacturers and licensed dealers may transfer semiautomatic assault weapons to any Federal firearms licensee upon obtaining evidence that the weapons will only be disposed of to law enforcement agencies and law enforcement officers for official use. Examples of acceptable evidence include the following:

1. Contracts between the manufacturer and dealers stating that the weapons may only be sold to law enforcement agencies and law enforcement officers.

2. Copies of purchase orders submitted to the licensee by law enforcement agencies.

3. Copies of letters submitted to the licensee by government agencies or law enforcement officers expressing an interest in purchasing the weapons.

4. Letters from dealers to the manufacturer stating that sales will only be made to law enforcement agencies or law enforcement officers.

5. Letters from law enforcement officers as described in Question O11.

The above evidence must be maintained in the records of Federal firearms licensees for a period of 5 years.

ATF Form 6 applications for the importation of nonsporting weapons, including semiautomatic assault weapons, are approved only if the importer submits a purchase order from a governmental entity. Therefore, importers and dealers may not maintain an inventory of imported assault weapons.

[18 U.S.C. 922(v)(4), 27 C.F.R. 178.40, 178.129(e); ATF Rul. 80-8]

(O13) Will manufacturers, importers, and dealers in large capacity ammunition feeding devices be permitted to stockpile devices for sale to governmental entities?

Yes. Possession and transfer of these devices by manufacturers, importers, or dealers will be presumed to be lawful if they maintain evidence that the devices are possessed and transferred for sale to government agencies and law enforcement officers employed by such agencies. Examples of

acceptable evidence are the same as those set forth in Question O11, relating to semiautomatic assault weapons.

The importation of ammunition feeding devices requires an approved ATF Form 6 issued by ATF. ATF will approve an ATF Form 6 application to import such devices when submitted with a purchase order from a law enforcement agency or evidence that the device is being imported for sale to a government agency or law enforcement officer employed by such agency. A Form 6 will also be approved when an application is submitted with a statement by the importer that the devices are being acquired for resale to law enforcement agencies and/or law enforcement officers for official use. ATF will stamp or type a restriction on the Form 6 stating that the devices are approved for importation and sale only to law enforcement agencies or law enforcement officers in accordance with 18 U.S.C. 922(w)(3). A Form 6 will also be approved if there is physical or documentary evidence establishing that the magazines were manufactured on or before September 13, 1994. Examples of such evidence are listed in 27 CFR 178.119(c)(7). Imported magazines manufactured on or before September 13, 1994, may be sold without restriction.

[18 U.S.C. 922(w)(3), 27 CFR 178.40a and 178.119]

(O14) What markings must appear on semiautomatic assault weapons manufactured after September 13, 1994?

In addition to the markings required of all firearms pursuant to 27 C.F.R. 178.92(a)(1), the frames or receivers for semiautomatic assault weapons must be marked "RESTRICTED LAW ENFORCEMENT/GOVERNMENT USE ONLY" or, in the case of weapons manufactured for export, "FOR EXPORT ONLY."

[18 U.S.C. 923(i), 27 CFR 178.92(a)(2)]

(O15) What markings must appear on large capacity ammunition feeding devices manufactured after September 13, 1994?

Persons who import large capacity ammunition feeding devices manufactured after September 13, 1994, or manufacture large capacity ammunition feeding devices must legibly identify each device imported or manufactured by serial number and other prescribed markings. The same serial number may be used for all devices manufactured or imported. Such devices must also be marked "RESTRICTED LAW ENFORCEMENT/GOVERNMENT USE ONLY" or, in the case of devices manufactured for export, "FOR EXPORT ONLY." Domestically made devices must also be marked with the name, city and State of the manufacturer. Imported devices must be marked with the name of the manufacturer, country of origin, and name, city and State of the importer. Persons who manufacture or import metallic links for use in the assembly of belted ammunition are only required to place the prescribed identification marks on the containers used for packaging the links.

[18 U.S.C. 923(i), 27 CFR 178.92(c)]

(O16) Are fixed magazines for weapons specified in APPENDIX A to 18 U.S.C. 922 and fixed magazines for manually operated firearms which hold more than 10 rounds of ammunition "large capacity ammunition feeding devices?"

The law specifically provides that the prohibition on semiautomatic assault weapons shall not apply to any of the firearms specified in Appendix A or any firearm that is manually operated by bolt, pump, lever, or slide action. Accordingly, weapons listed in Appendix A with fixed magazines and manually operated firearms with fixed magazines are exempt from both the assault weapon and feeding device provisions of the law.

[18 U.S.C. 922(v)(3), 922(w)]

(O17) What evidence is sufficient for Federal firearms licensees to be sure that particular semiautomatic assault weapons are "grandfathered" weapons which are not subject to the restrictions on possession and transfer?

The requirement that semiautomatic assault weapons be marked "RESTRICTED LAW ENFORCEMENT/GOVERNMENT USE ONLY" was not effective until July 5, 1995. Thus, semiautomatic assault weapons manufactured from September 13, 1994-July 4, 1995, may not be marked with the restrictive markings. Additionally, sporting weapons may have been modified after September 13, 1994, so that they are semiautomatic assault weapons, e.g., a pistol grip and magazine extension are installed on a sporting shotgun. Licensees obtaining semiautomatic assault weapons which do not have the restrictive marking should obtain from the seller an invoice, bill of sale, or other documentation indicating that the weapon in its present configuration was lawfully possessed on or before September 13, 1994.

[27 CFR 178.92(a)(2)]

(O18) May semiautomatic assault weapons which have been classified as curios or relics be imported?

Not unless they are being imported for sale to a government agency or law enforcement officer employed by such agency for official use. Since ATF will not approve an importation which would place the importer in violation of the law, ATF would not authorize the importation of semiautomatic assault weapons, even if classified as curios or relics, unless the importer provided evidence that the weapons were being imported for sale to a governmental entity or other exempt purchaser.

[18 U.S.C. 922(v)]

(O19) May a licensed dealer lawfully acquire semiautomatic assault weapons manufactured after September 13, 1994, remove the features that bring them within the definition of such weapons in the law, and sell the weapons to the public?

No. The law prohibits possession of semiautomatic assault weapons manufactured after September 13, 1994. However, an exception is provided for licensed dealers possessing and dealing in such weapons that have been manufactured for and are possessed for transfer to government agencies. A dealer's possession of the weapons for sale or transfer to the public is not among the exceptions to the prohibition on their possession. Thus, a dealer who acquires such weapons for the purpose of stripping them of their assault weapon features and selling the modified weapons to the public violates the law. This is true even if the dealer strips the assault weapon features from the weapons so that they no longer meet the definition of semiautomatic assault weapon. The dealer may also have violated the law by making false statements to a supplier that the weapons were being acquired under an exception to the prohibition, e.g., for sales to law enforcement agencies or law enforcement officers.

[18 U.S.C. 922(v), 27 CFR 178.40(c)]

P. BRADY LAW

Editor's Note

Unless otherwise noted, these questions and answers relate to the permanent provisions of the Brady law found in section 922(t) of the Gun Control Act. These provisions, including the requirement for licensees to initiate background checks of individuals to whom all types of firearms are

transferred by contacting the National Instant Criminal Background Check System (NICS), became effective on November 30, 1998. They replace the interim provisions of the Brady law that imposed a Federal 5-day waiting period on licensees' sales of handguns and required the sending of Brady forms to State or local officials.

(P1) Does the Brady law require a 5-day waiting period before a firearm can be transferred?

No. Instead of waiting 5 days for a background check through a local law enforcement officer, licensees will initiate a background check through the National Instant Criminal Background Check System (NICS). For the most part, these background checks will be immediate. In some circumstances, however, licensees will have to wait up to 3 business days before getting a response from NICS.

(P2) Who must comply with the requirements of the Brady law?

Federally licensed firearms importers, manufacturers, and dealers must comply with the Brady law prior to the transfer of any firearm to a nonlicensed individual.

(P3) When did the provisions of the permanent Brady law take effect?

The permanent Brady law went into effect on November 30, 1998. Accordingly, any transfer occurring on or after November 30, 1998, is subject to the requirements of this law.

(P4) Is NICS operated by ATF?

No. NICS is operated by the Federal Bureau of Investigation (FBI).

(P5) Do all NICS checks go through the FBI's NICS Operations Center?

No. In many States, licensees initiate NICS checks through the State point of contact (POC). In some cases, the State POC is also the agency that does background checks for firearms transactions under State law.

(P6) If the State is acting as a point of contact (POC), does that mean that all NICS checks go through the POC rather than the FBI?

That depends on the State. In some States, the POC conducts background checks for all firearms transactions. In other States, licensees must contact the POC for handgun transactions and the FBI for longgun transactions. In some States, NICS checks for pawn redemptions are handled by the FBI.

(P7) How does a licensee know whether to contact the FBI or a State point of contact (POC) in order to initiate a NICS check?

Prior to November 30, 1998, ATF sent an open letter to licensees in each State, providing the licensees with instructions as to how to initiate a NICS check in their State. Your local ATF office can also advise you on the appropriate point of contact for NICS checks.

(P8) Is there a charge for NICS checks?

The FBI does not charge a fee for conducting NICS checks. However, States that act as points of contact for NICS checks may charge a fee consistent with State law.

(P9) Must licensees enroll with the FBI to get access to NICS?

Licensees must be enrolled with the FBI before they can initiate NICS checks through the FBI's NICS Operations Center. Licensees who have not received an enrollment package from the FBI should call the FBI NICS Operations Center at 1-877-444-6427 and ask that an enrollment package be sent to them. Licensees in States where a State agency is acting as a point of contact for NICS checks should contact the State for enrollment information.

(P10) Does the Brady law apply to the transfer of long guns as well as handguns?

Yes.

(P11) Does the Brady law apply to the transfer of antique firearms?

No. Licensees need not comply with the Brady law when transferring a weapon that meets the Gun Control Act's definition of an "antique firearm."

(P12) Does the Brady law apply to the transfer of firearms between two licensees?

No. The Brady law only applies when a licensed importer, manufacturer, or dealer is transferring a firearm to a nonlicensee.

(P13) Must licensed collectors comply with the Brady law prior to transferring a curio or relic firearm?

No. Transfers of curio or relic firearms by licensed collectors are not subject to the requirements of the Brady law.

(P14) Is the transfer of a firearm by a licensed dealer to a licensed collector subject to the Brady law?

The Brady law does not apply to the transfer of a curio or relic firearm to a licensed collector. However, a licensed collector who acquires a firearm other than a curio or relic from a licensee would be treated like a nonlicensee, and the transfer would be subject to Brady requirements.

(P15) Must a licensed importer, manufacturer or dealer comply with the Brady law when selling firearms from his or her own personal collection?

No, provided the licensee has maintained the firearm as part of his or her personal collection for at least 1 year from the date the firearm was transferred from the business inventory into the personal collection or otherwise acquired as a personal firearm and the licensee complies with the recordkeeping requirements in 27 CFR 178.125a.

(P16) Do the provisions of the Brady law apply to a licensee's loan or rental of a firearm to a nonlicensee?

If the firearm is loaned or rented for use on the licensee's premises, the transaction is not subject to the Brady law. However, if the firearm is loaned or rented for use off the premises, the licensee must comply with the Brady law.

(P17) Must licensees conduct NICS checks for sales of firearms to nonlicensees at gun shows?

Yes. A licensed importer, manufacturer, or dealer may not transfer a firearm to a nonlicensee at a gun show without first complying with the requirements of the Brady law.

(P18) Is the redemption of a pawned firearm subject to the Brady law?

Yes. Unlike the interim Brady law, the permanent Brady law that went into effect on November 30, 1998 does not contain an exemption for the return of a firearm to the individual from whom it was received. Accordingly, the redemption of a pawned firearm is considered a transfer subject to the permanent Brady law.

(P19) What should a licensed pawnbroker do with a firearm he or she has in pawn when the NICS check results in a "denied" transaction?

The licensee cannot transfer the firearm to the transferee without violating the law and placing the transferee in violation of the law. Licensees with additional questions should contact their local ATF office.

(P20) If an individual repeatedly pawns the same firearm, is the FFL required to do a NICS check each time the firearm is redeemed?

Yes. The fact that the transferee has redeemed the firearm before does not excuse the pawnbroker from complying with the Brady law.

(P21) Can licensed pawnbrokers conduct NICS checks prior to accepting a firearm in pawn?

Yes. The law provides that a NICS check may be done, on an optional basis, prior to accepting a firearm in pawn. If the check results in a "denied" response, the licensee is required to notify local law enforcement officials within 48 hours after receipt of the "denied" response.

(P22) If a pawnbroker conducts an optional NICS check prior to receiving a firearm in pawn, should the owner of the firearm complete a Form 4473?

ATF is developing a new form to cover these transactions. Until this form is distributed, ATF suggests that licensees have the owner complete Section A of the Form 4473, record the results of the NICS check on the form, and retain the form in their records for at least 5 years. These issues were addressed in greater detail in an open letter ATF sent to pawnbrokers.

(P23) What should a licensed pawnbroker do when he or she gets a "denied" response from an optional NICS check conducted prior to the receipt of a firearm in pawn?

The licensee is required to notify local law enforcement officials within 48 hours after receipt of the "denied" response. If the licensee has taken possession of the firearm, he or she may not return it to the individual who offered it for pawn.

(P24) If a licensed pawnbroker conducts a NICS check prior to accepting a firearm in pawn, and gets an "approved" response from NICS, must the pawnbroker conduct another NICS check if the firearm is redeemed from pawn? What if it is redeemed from pawn the same day?

The law provides that another NICS check must be done at the time of redemption, regardless of how recently the pre-pawn NICS check was conducted. Even if the firearm is redeemed the same day, a separate NICS check must be conducted at the time of redemption.

(P25) A firearm is delivered to a licensee by an unlicensed individual for the purpose of repair. Is the return of the repaired firearm subject to the requirements of the Brady law? Would the transfer of a replacement firearm from the licensee to the owner of the damaged firearm be subject to the requirements of the Brady law?

Neither the transfer of a repaired firearm nor the transfer of a replacement firearm would be subject to the requirements of the Brady law. Furthermore, the regulations provide that a Form 4473 is not required to cover these transactions. However, the licensee's permanent acquisition and disposition records should reflect the return of the firearm or the transfer of a replacement firearm.

(P26) Is a licensee's return of a consigned firearm to an unlicensed individual subject to permanent Brady?

Yes.

(P27) Do the requirements of the Brady law apply to sales of firearms to law enforcement officials for official use?

Transfers of firearms to law enforcement officials for their official use are exempt from the provisions of the Brady law when the transaction complies with the conditions set forth in the regulations at 27 CFR 178.134. In general, the purchaser must provide a certification on agency letterhead, signed by a person in authority within the agency (other than the officer purchasing the firearm), stating that the officer will use the firearm in official duties, and that a records check reveals that the purchasing officer has no convictions for misdemeanor crimes of domestic violence. If these conditions are met, the purchasing officer is not required to complete a Form 4473 or undergo a NICS check. However, the licensee must record the transaction in his or her permanent records and retain a copy of the certification letter.

(P28) Do the requirements of the Brady law apply to the sale of a firearm to a law enforcement official for his or her personal use?

Yes. In such transactions, the law enforcement official is treated no differently from any other unlicensed transferee, and a NICS check must be conducted.

(P29) Are there exceptions to the Brady law's requirement for a NICS check prior to a licensee's transfer of a firearm to an unlicensed individual?

Firearm transfers are exempt from the requirement for a NICS check in 3 situations. These include transfers (a) to buyers having a State permit that has been recognized by ATF as an alternative to a NICS check; (b) of National Firearms Act weapons approved by ATF; and (c) certified by ATF as exempt because compliance with the NICS check requirement is impracticable.

(P30) What steps must be followed by an FFL prior to transferring a firearm subject to the requirements of the Brady law?

The following steps must be followed prior to transferring a firearm:

1. The licensee must have the transferee complete and sign ATF Form 4473, Firearms Transaction Record.

2. The licensee must verify the identity of the transferee through a government-issued photo identification.

3. The licensee must contact NICS (through either the FBI or a State point of contact). The licensee will get either a "proceed", "denied" or "delayed" response from the system. If the licensee gets a "delayed" response and there is no additional response from the system, the licensee may transfer the firearm after 3 business days have elapsed. Of course, the licensee must still comply with any waiting period requirements under State law.

(P31) What form of identification must a dealer obtain from a purchaser under the Brady law?

The identification document presented by the purchaser must have a photograph of the purchaser, as well as the purchaser's name, address, and date of birth. The identification document must also have been issued by a governmental entity for the purpose of identification of individuals. An example of an acceptable identification document is a driver's license.

(P32) Under the Brady law, may a licensee transfer a firearm to a nonlicensed individual who does not appear in person at the licensed premises?

In any transaction that is subject to the requirement for a NICS check, the firearm may only be sold over-the-counter. Unless the purchaser appears in person at the licensed premises, the licensee cannot comply with the requirement in the Brady law that the identity of the purchaser be verified by means of a government-issued photo identification document.

(P33) If no NICS check is required, may a licensee transfer a firearm to a nonlicensed individual who does not appear in person at the licensed premises?

Yes, assuming the transaction otherwise complies with Federal law. For example, a licensee may still ship firearms to out-of-state law enforcement officials for official use, as long as the transaction complies with the alternate procedure set forth in the regulations. Furthermore, licensees may ship firearms intrastate to State residents who have valid permits that have been recognized as alternatives to the NICS check requirements, in compliance with the procedures set forth in 27 CFR 178.96(b).

(P34) Do gun purchasers have to fill out a Brady Form under the permanent Brady law?

No. The Brady Form and ATF Form 4473 have been combined into one form, a revised Form 4473.

(P35) Can licensees continue to use old versions of ATF Form 4473 on or after November 30, 1998?

Beginning November 30, 1998, licensees should use the forms dated 10/98. The old forms are obsolete. Licensees who have not yet received their new forms should contact their local ATF office to get copies of the form faxed to them. In addition, licensees may order copies of ATF Form 4473 from the ATF Distribution Center.

(P36) Is the transferee required to provide his or her social security number on the ATF Form 4473?

No. This information is solicited on an optional basis. However, providing this information will help ensure the lawfulness of the sale and avoid the possibility that the transferee will be incorrectly identified as a felon or other prohibited person.

(P37) Will NICS provide an instant response?

NICS will not always provide an instant response. Licensees will receive either a "proceed", "denied" or "delayed" response from NICS. If a "proceed" response is received, the transfer may proceed. If a "denied" response is received, then the transfer may not proceed. If a "delayed" response is received, then the transfer must be delayed until a final response is received from NICS or until after the lapse of 3 business days.

(P38) For purposes of the Brady law, what is meant by a "business day"?

A business day is defined as any day on which State offices are open.

(P39) If a licensee contacts NICS on Thursday, December 3, 1998, and gets a "delayed" response, when may the licensee transfer the firearm if no further response is received from NICS?

The firearm may be transferred on Wednesday, December 9, 1998. Assuming State offices are open on Friday, Monday, and Tuesday, and closed on Saturday and Sunday, 3 business days would have elapsed at the end of Tuesday, December 8, 1998. Therefore, the licensee may transfer the firearm at the start of business on Wednesday, December 9, 1998. (The 3 business days do not include the day the NICS check is initiated.)

(P40) What should a licensee do if he or she gets a "denied" response from NICS or a State point of contact after 3 business days have elapsed, but prior to the transfer of the firearm?

If the licensee receives a "denied" response at any time prior to the transfer of the firearm, he or she may not transfer the firearm.

(P41) What should an FFL tell a transferee who is denied by NICS?

The FFL should inform the transferee that the NICS check indicates that the transfer of the firearm should not be made, but that it does not provide a reason for the denial. The FFL should provide the transferee with the NICS or State transaction number and an appeals brochure. The FBI will provide FFLs with brochures that outline the transferee's appeal rights and responsibilities.

(P42) If a transferee receives a "denied" response from NICS, can the transferee find out why he or she was denied?

Yes. Although the FFL will not know the reason for the denial, the transferee may contact the FBI or the State point of contact in writing to request the reason for denial.

(P43) What information do FFLs have to record on ATF Form 4473 once they hear back from NICS or the State point of contact?

FFLs must record any "proceed", "delayed", or "denied" response received, as well as any transaction number provided.

(P44) What should licensees do if no transaction number is provided?

The FBI's NICS Operations Center will always provide a transaction number at the time of the initial inquiry. Some State points of contact (POC) may not provide a transaction number for denied transactions. If a State POC does not provide a transaction number for a denied transaction, then the licensee should just record the response without a transaction number. Licensees should note, however, that a transaction number is required if the firearm is being transferred within 3 business days of the initiation of a NICS check.

(P45) Do FFLs have to keep a copy of ATF Form 4473 if the transaction is denied or for some other reason is not completed?

FFLs must keep a copy of each ATF Form 4473 for which a NICS check has been initiated, regardless of whether the transfer of the firearm was made. If the transfer is not made, the FFL must keep the Form 4473 for 5 years after the date of the NICS inquiry. If the transfer is made, the FFL must keep the Form 4473 for 20 years after the date of the sale or disposition. Forms 4473

with respect to a transfer that did not take place must be separately maintained.

(P46) When should FFLs contact NICS?

FFLs should contact NICS after the transferee has completed Section A of the ATF Form 4473.

(P47) For what period of time is a NICS check valid?

A NICS check is valid for 30 calendar days, as long as it applies to a single transaction. An FFL may not rely on a NICS check that was conducted more than 30 calendar days prior to the transfer of the firearm.

Example: A NICS check is initiated on December 15, 1998. The FFL receives a "proceed" from NICS. The purchaser does not return to pick up the firearm until January 22, 1999. The FFL must conduct another NICS check before transferring the firearm to the purchaser, and must record the results of the check on the Form 4473.

(P48) Is a NICS check valid for 30 days from when the check was initiated, or from when a "proceed" is issued?

The NICS check is valid for 30 days from when the check was initiated.

Example: A NICS check is initiated on December 15, 1998. The FFL receives a "proceed" response from NICS on December 17, 1998. The purchaser does not return to pick up the firearm until January 16, 1999. The FFL must conduct another NICS check before transferring the firearm to the purchaser.

Example: A NICS check is initiated on December 15, 1998. The FFL receives a "delayed" response from NICS; no further response is received. The purchaser does not return to pick up the firearm until January 16, 1999. The FFL must conduct another NICS check before transferring the firearm to the purchaser.

(P49) A purchaser places an order for a custom-made firearm, which will not be ready for at least 60 days. Should the NICS check be initiated on the date the order is placed or the day the firearm is ready for delivery?

If the licensee knows that it will be more than 30 days before the firearm is ready, the licensee may choose to wait until the firearm is ready for delivery to have the purchaser complete Section A of the Form 4473 and contact NICS for a background check. If the purchaser completes Section A of the Form 4473 on the date the order is placed, and a NICS check is initiated on that day, the licensee will have to conduct a second NICS check prior to transferring the firearm.

(P50) Can one NICS check cover two or more separate firearms transactions?

No. An FFL must initiate separate NICS checks for separate transactions. However, an individual may purchase several firearms in one transaction.

Example: A purchaser completes an ATF Form 4473 for a single firearm on February 15, 1999. The FFL receives a "proceed" from NICS that day. The FFL signs the form, and the firearm is transferred. On February 20, 1999, the purchaser returns to the FFL's premises and wishes to purchase a second firearm. The purchase of the second firearm is a separate transaction. Therefore, a new NICS check must be initiated by the FFL.

Example: A purchaser completes ATF Form 4473 for a single firearm on

February 15, 1999. The FFL receives a "proceed" from NICS that day. The purchaser does not return to pick up the firearm until February 20, 1999. Before the FFL signs the Form 4473 for the first firearm, the purchaser decides to purchase an additional firearm. The second firearm may be recorded on the same Form 4473, in which case the purchase of the 2 firearms is considered a single transaction. Therefore, the licensee is not required to conduct a new NICS check prior to transferring the second firearm.

Example: A purchaser wishes to purchase 1 rifle and 1 handgun. State law requires that a background check be conducted on the sales of all handguns. The State is acting as a point of contact (POC) for NICS checks for handgun sales, while the FBI is conducting NICS checks for longgun transactions in that State. To comply with State law, the dealer initiates a background check through the State POC. There is no need to initiate a separate background check through the FBI for the sale of the rifle, since the 2 firearms are being transferred in one transaction.

(P51) If no exceptions to the NICS check apply, must an FFL always wait 3 business days before transferring a firearm to a transferee?

No. An FFL may transfer a firearm to a transferee as soon as he or she receives a "proceed" from NICS (assuming that the transaction would be in compliance with State law). However, if the FFL does not receive a final "proceed" or "denied" response from NICS, he or she must wait until 3 business days have elapsed prior to transferring the firearm.

(P52) Will a State "instant check" or "point of sale check" system qualify as an alternative to a NICS check?

No. However, it should be noted that many States with their own background check requirements are also acting as points of contact for NICS checks.

(P53) What happens if the transferee successfully appeals the NICS denial but more than 30 calendar days have elapsed since the initial background check was initiated?

The FFL must initiate another NICS check before the firearm may be transferred.

(P54) Are permits to carry concealed firearms included under the permit exception to the NICS check (assuming they meet the other requirements of the exception)?

Yes. The exception includes permits to carry concealed firearms and permits specifically authorizing the purchase of a firearm.

(P55) How does a licensee know whether a permit may be accepted as an alternative to a NICS check?

Prior to November 30, 1998, ATF sent an open letter to licensees in each State, advising them of what permits in that State qualified as alternatives to a NICS check at the time of transfer. Licensees having questions whether particular State permits are acceptable alternatives to NICS checks should contact their local ATF office.

(P56) Does a permit qualify as an alternative to a NICS check if the purchaser is using it to purchase a type of firearm that is not covered by the permit?

Yes, assuming the transaction complies with State law.

Example: ATF recognizes the permit to purchase a handgun and the concealed weapons permit as alternatives to a NICS check in State A. Any purchaser who displays a permit to purchase a handgun or a concealed weapons permit is not required to undergo a NICS check prior to purchasing a rifle, assuming the transaction complies with State law.

Example: In that same State, a person with a concealed weapons permit wants to purchase a handgun. State law prohibits the sale of any handgun to a person unless he or she has a permit to purchase. Accordingly, the licensee cannot lawfully sell the handgun unless the purchaser has a permit to purchase a handgun.

(P57) ATF has recognized the concealed weapons permits in State A and State B as valid alternatives to a NICS check. Can a resident of State A use a concealed weapons permit issued by State A to purchase a longgun in State B without undergoing a NICS check?

No. A permit qualifies as a NICS alternative only if it was issued by the State in which the transfer is to take place.

(P58) ATF's open letter to licensees in State C states that while concealed weapons permits issued by State C were recognized as alternatives to the background check required by the interim Brady law, concealed weapons permits issued by State C on or after November 30, 1998, will not be recognized as alternatives to the NICS check required by the permanent Brady law. Why will these permits no longer be recognized as Brady alternatives?

The change in the status of the permits is probably due to one of the following circumstances: (1) the State does not conduct NICS checks prior to issuing permits; or (2) the State does not disqualify all permit applicants prohibited from possessing firearms under Federal law.

(P59) On December 1, 1998, can a licensee accept as a NICS alternative a "grandfathered" concealed weapons permit that was issued by State C on January 1, 1993?

No. The permit must have been issued within the past 5 years.

(P60) If State law provides that permits are only valid for 2 years, can a licensee accept as a NICS alternative a permit that was issued 4 years ago?

No. The permit must be still valid under State law in order to qualify as an alternative to a NICS check.

(P61) If the State has its own instant check system, must the licensee comply with State requirements for a background check as well as the Brady law?

Yes. If the State is not acting as a point of contact for NICS checks, the licensee may have to initiate 2 background checks by contacting (1) the FBI's NICS Operations Center, and (2) the State system.

(P62) If a licensee gets a "proceed" response from NICS, does he or she still have to wait until the expiration of the State waiting period before transferring the firearm?

Yes. Compliance with the Brady law does not excuse a licensee from compliance with State law.

(P63) If a State is acting as a NICS point of contact (POC), and State law has separate requirements regarding the amount of time that a licensee must wait before transferring a firearm after contacting the State, should the licensee comply with the State requirements, the Federal requirements, or

both?

The licensee must comply with both State and Federal requirements.

Example: State D is acting as a POC for NICS checks. State law requires a background check prior to the transfer of any firearm. State law also requires the licensee to wait 10 days to get a response from the State. The licensee must contact the State POC for a NICS check and a State background check. The licensee must comply with both Federal and State law by waiting 10 days for a response prior to transferring the firearm. If the licensee has not received a response from the State after 10 days, he or she may transfer the firearm.

Example: State E is acting as a POC for NICS checks. State law requires a background check prior to the transfer of any firearm. Under State law, the licensee may transfer the firearm if he or she gets no final response from the State by the next day. The licensee contacts the State POC for a NICS check, and gets a "delayed" response. Assuming that the licensee gets no further response from the State POC, the licensee must comply with both Federal and State law by waiting until 3 business days have elapsed prior to transferring the firearm.

(P64) Does an individual licensee have to conduct a NICS check on himself or herself prior to transferring a firearm to his or her own personal collection?

No. The regulations do not require a licensee to complete a Form 4473 prior to transferring a firearm to his or her own personal collection; accordingly, a NICS check is not required either. Such transfers must be recorded in the manner prescribed by the regulations at 27 CFR 178.125a.

(P65) Is a NICS check required for the sale of firearms registered under the National Firearms Act (NFA)?

No, assuming all NFA requirements have been satisfied.

(P66) An organization without a firearms license wishes to acquire a firearm from a licensee for the purpose of raffling the firearm at an event. How does the licensee comply with the Brady law?

The licensee must comply with the Brady law by conducting a NICS check on the transferee. If the licensee wishes to transfer the firearm to the organization, a representative of the organization must complete a Form 4473, and a NICS check must be conducted on that representative prior to the transfer of the firearm. Alternatively, if the licensee transfers the firearm directly to the winner of the raffle, the winner must complete a Form 4473, and a NICS check must be conducted on the raffle winner prior to the transfer.

Example: A licensee transfers a firearm to the organization sponsoring the raffle. The licensee must comply with the Brady law by requiring a representative of the organization to complete the Form 4473 and undergo a NICS check. Once the firearm has been transferred to the organization, the organization can subsequently transfer the firearm to the raffle winner without a Form 4473 being completed or a NICS check being conducted. This is because the organization is not an FFL; therefore, its transfer of a firearm is not subject to the Brady law.

Example: The licensee or his or her representative brings a firearm to the raffle, so that the firearm can be displayed. After the raffle, the firearm is returned to the licensee's premises. The licensee must comply with the Brady law prior to transferring the firearm directly to the winner of the raffle by requiring the winner to complete the Form 4473 and undergo a NICS check at the licensee's premises prior to the transfer of the firearm.

Example: The raffle meets the definition of an "event" at which a licensee is allowed to conduct business under 27 CFR 178.100(b). The licensee attends the event and transfers the firearm at the event to the winner. The licensee must comply with the Brady law prior to transferring the firearm to the winner by requiring the winner to complete a Form 4473 and undergo a NICS check.

Q. MISDEMEANOR CRIME OF DOMESTIC VIOLENCE

(Q1) What is a "misdemeanor crime of domestic violence"?

A "misdemeanor crime of domestic violence" means an offense that:

- (1) is a misdemeanor under Federal or State law;
- (2) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon; and
- (3) was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

However, a person is not considered to have been convicted of a misdemeanor crime of domestic violence unless:

- (1) the person was represented by counsel in the case, or knowingly and intelligently waived the right of counsel in the case; and
- (2) in the case of a prosecution for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either -
 - (a) the case was tried by a jury, or
 - (b) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

In addition, a conviction would not be disabling if it has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the jurisdiction in which the proceedings were held provides for the loss of civil rights upon conviction for such an offense) unless the pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, and the person is not otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing firearms.

[18 U.S.C. 921(a)(33), 27 CFR 178.11]

(Q2) What is the effective date of this disability?

The law was effective September 30, 1996. However, the prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the law's effective date.

[18 U.S.C. 922(g)(9), 27 CFR 178.32(a)(9)]

(Q3) Does application of the law to persons convicted prior to the law's effective date violate constitutional rights?

No. This provision is not being applied retroactively or in violation of the ex post facto clause of the Constitution. This is because the law does not impose additional punishment upon persons convicted prior to the effective date, but merely regulates the future possession of firearms on or after the effective date. The provision is not retroactive merely because the person's conviction occurred prior to the effective date.

[18 U.S.C. 922(g)(9), 27 CFR 178.32(a)(9)]

(Q4) X was convicted of misdemeanor assault on October 10, 1996 for beating his wife. The crime of assault does not make specific mention of domestic violence. May X still lawfully possess firearms or ammunition?

No. X may no longer legally possess firearms or ammunition.

[18 U.S.C. 922(g)(9), 27 CFR 178.32(a)(9)]

(Q5) X was convicted of a misdemeanor crime of domestic violence on September 20, 1996, 10 days before the effective date of the new statute. He possesses a firearm on October 10, 1996. Does X lawfully possess the firearm?

No. If a person was convicted of a misdemeanor crime of domestic violence at any time, he or she may not lawfully possess firearms or ammunition on or after September 30, 1996.

[18 U.S.C. 922(g)(9), 27 CFR 178.32(a)(9)]

(Q6) In determining whether a conviction in a State court is a "conviction" of a misdemeanor crime of domestic violence, does Federal or State law apply?

State law applies. If a conviction of a disqualifying misdemeanor does not occur under State law, the person has not been "convicted" of a misdemeanor crime of domestic violence. Therefore, if the State does not consider the person to be convicted, the person would not have the disability.

[18 U.S.C. 921(a)(33), 27 CFR 178.11]

(Q7) What State and local offenses are "misdemeanors" for purposes of 18 U.S.C. 922(d)(9) and (g)(9)?

The definition of misdemeanor crime of domestic violence in the GCA includes any offense classified as a "misdemeanor" under Federal or State law. In States that do not classify offenses as misdemeanors, the definition includes any State or local offense punishable by imprisonment for a term of 1 year or less. For example, if State A has an offense classified as a "domestic violence misdemeanor" that is punishable by up to 5 years imprisonment, it would be a misdemeanor crime of domestic violence as defined. If State B does not characterize offenses as misdemeanors, but has a domestic violence offense that is punishable by no more than 1 year imprisonment, this offense would be a misdemeanor crime of domestic violence as defined.

[18 U.S.C. 921(a)(33), 27 CFR 178.11]

(Q8) Are local criminal ordinances "misdemeanors under State law" for purposes of sections 922(d)(9) and (g)(9)?

Yes, assuming a violation of the ordinance meets the definition of "misdemeanor crime of domestic violence" in all other respects.

[18 U.S.C. 921(a)(33), 27 CFR 178.11]

(Q9) Does the definition of "misdemeanor crime of domestic violence" include offenses that are punishable only by a fine?

Yes, assuming the offense meets the definition of "misdemeanor crime of domestic violence" in all other respects. Nothing in the language of the definition limits the term to offenses punishable by imprisonment. The legislative history of the definition illustrates that the prohibition on firearm possession by persons convicted of such offenses was to be as broad as possible, for example, covering individuals who plead guilty to minor offenses.

[18 U.S.C. 921(a)(33), 27 CFR 178.11]

(Q10) What is meant by the "similarly situated to a spouse" provision in the definition of a misdemeanor crime of domestic violence?

The phrase means 2 persons who share the same domicile in an intimate relationship, with "domicile" being one's fixed place of dwelling where one intends to reside more or less permanently. Such persons do not have to be married or in a "common law" marriage relationship. However, they must be in more than a "dating" relationship. Furthermore, the "similarly situated to a spouse" provision applies to anyone who was domiciled in an intimate relationship with the victim of the offense either at the time of, or at any time prior to, the offense.

[18 U.S.C. 921(a)(33), 27 CFR 178.11]

(Q11) In order for an offense to qualify as a "misdemeanor crime of domestic violence", does it have to have as an element the relationship part of the definition (e.g., committed by a spouse, parent, or guardian)?

No. The "as an element" language in the definition of "misdemeanor crime of domestic violence" only applies to the use of force provision of the statute and not the relationship provision. However, to be disabling, the offense must have been committed by one of the defined parties.

[18 U.S.C. 921(a)(33), 27 CFR 178.11]

(Q12) Is a person who received "probation before judgment" or some other type of deferred adjudication subject to the disability?

What is a conviction is determined by the law of the jurisdiction in which the proceedings were held. If the State law where the proceedings were held does not consider probation before judgment or deferred adjudication to be a conviction, the person would not be subject to the disability.

[18 U.S.C. 921(a)(33), 27 CFR 178.11]

(Q13) What should a licensee do if he or she has been convicted of a misdemeanor crime of domestic violence?

Federal firearms licensees should verify that they are disabled under the prohibition. A licensee convicted of a disqualifying misdemeanor may not lawfully possess firearms or ammunition. In addition, a licensee who incurs firearms disabilities during the term of a license by reason of such a misdemeanor conviction may not continue operations under the license for more than 30 days after incurring the disability unless the licensee applies for relief from Federal firearms disabilities.

[18 U.S.C. 922(g)(9) and 925(c), 27 CFR 178.144(c)(8) and (i)]

(Q14) What should an individual do if he or she has been convicted of a

misdemeanor crime of domestic violence?

Individuals subject to this disability should immediately dispose of their firearms and ammunition. ATF recommends that such persons transfer their firearms and ammunition to a third party who may lawfully receive and possess them, such as their attorney, a local police agency, or a Federal firearms dealer. The continued possession of firearms and ammunition by persons under this disability is a violation of law and may subject the possessor to criminal penalties. In addition, such firearms and ammunition are subject to seizure and forfeiture.

[18 U.S.C. 922(g)(9) and 924(d)(1), 27 CFR 178.152]

(Q15) Does the disability apply to law enforcement officers?

Yes. The Gun Control Act was amended so that employees of government agencies convicted of misdemeanor crimes of domestic violence would **not** be exempt from disabilities with respect to their receipt or possession of firearms or ammunition. Thus, law enforcement officers and other government officials who have been convicted of a disqualifying misdemeanor may not lawfully possess or receive firearms or ammunition for any purpose, including performance of their official duties. The disability applies to firearms and ammunition issued by government agencies, purchased by government employees for use in performing their official duties, and personal firearms and ammunition possessed by such employees.

[18 U.S.C. 922(g)(9) and 925(a)(1), 27 CFR 178.32(a)(9) and 178.141(a)]