



Legally Brief-FACT SHEET

Firearms: the Biden Administration “Takes Aim” at Gun Sale Loopholes

On April 11, 2024, the Biden Harris administration announced new administrative rules to enforce **The Bipartisan Safer Communities Act**, a 2022 law designed to stem the flow of illegally acquired firearms and hold accountable those who supply the firearms.

Background

- In 2022 President Biden signed into law the Bipartisan Safer Communities Act (“BSCA”). This law broadened the category of gun sellers required to become licensed dealers and run background checks.
- **On April 10, 2024**, The Attorney General signed the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) final rule, Definition of “Engaged in the Business” as a Dealer in Firearms, amending ATF’s regulations in title 27, Code of Federal Regulations (“CFR”), part 478. The final rule implements the provisions of the BSCA.

Why This Rule Matters:

¹The Department of Justice’s (DOJ) final rule clarifies the type of conduct that requires a person to get a license to sell guns and to conduct background checks. The rule also clarifies what it means for a person to be “engaged in the business” of dealing in firearms and to have the intent to “predominantly earn a profit” from the sale or disposition of firearms².

In short, if you make money selling guns, you will likely have to be a “federal firearms dealer”, and be licensed and conduct background checks under federal law.

Details:

- The rule lists the types of commercial activity indicating that a person must become a licensed dealer and run background checks, absent evidence showing they are in fact not engaged in the business of firearms dealing.

For example, if a person is repetitively selling guns of the same or similar make and model within one year of their purchase, they are supposed to become a licensed dealer. If a person repetitively sells firearms within thirty days of purchasing those

¹ [FACT SHEET: Biden-Harris Administration Announces New Action to Implement Bipartisan Safer Communities Act, Expanding Firearm Background Checks to Fight Gun Crime | The White House](#)

² [Final Rule: Definition of “Engaged in the Business” as a Dealer in Firearms | Bureau of Alcohol, Tobacco, Firearms and Explosives \(atf.gov\)](#)

firearms, or selling firearms and tells potential buyers that they can acquire additional firearms for that buyer to purchase, the seller is supposed to become a licensed dealer.

- **Gun show or online sale loopholes no longer exist.** If you are conducting business that in a brick-and-mortar store would require you to become a licensed dealer, you now must become a licensed dealer and run background checks. It does not matter whether you are dealing firearms at a gun show, online, in your home, in the trunk of a car, at a flea market, or anywhere else—you must obtain a license and run background checks results. Evidence that a person placed ads online or reserved a table at a gun show shows that the person is intending to profit from the sale.
- Prevents people from evading the licensing and background check requirements by claiming that they are just selling a few guns. The final rule clarifies that **even a single firearm transaction may be sufficient to require a license, if there is other behavior to suggest commercial activity.** For example, a person selling just one gun and then saying to others they are willing and able to purchase more firearms for resale may be required to obtain a license and run background checks.
- **Prevents people from falsely claiming that guns are part of a personal collection in an attempt to evade the law.** While making occasional sales of a firearm from a personal collection does not require a federal firearms license or background checks, people have evaded the background check requirement by falsely claiming they are selling their personal collection. The final rule makes clear that a personal collection of firearms is limited to collections acquired for specific reasons like study; comparison; exhibition; or for a hobby, like hunting or sport shooting. A bona fide personal collection is not the same as business inventory.
- **Closes the so-called fire sale loophole.** Gun dealers who have had their licenses revoked have sometimes then sold their former business inventory without running background checks. The final rule makes clear that a business inventory may not be transferred to a person's personal collection after a license is revoked. Instead, a business could dispose of this inventory through another licensed seller who runs background checks.

The rule will become effective 30 days after it is published in the federal register.

For more information or with questions, please contact ICADV Legal Counsel Kerry Hyatt Bennett at kbennett@icadvinc.org