

26 CFR 178.11: MEANING OF TERMS
(Also 178.23, 178.44)

Because of the nature of operations conducted by a gunsmith, he shall not be required to have business premises open to the general public or to have regular business hours.

ATF Rul. 73-13

[Status of ruling: Active; Amplified by ATF Rul. 77-1]

Advice has been requested whether a gunsmith must establish business premises open to the general public and regular business hours in the same manner as dealers engaged in the business of selling firearms or ammunition at wholesale or retail in order to be eligible for a license under the provisions of Chapter 44, Title 18, United States Code and regulations issued pursuant thereof.

It has been pointed out that generally, the clientele of a gunsmith who is not engaged in the business of selling firearms or ammunition at wholesale or retail are only those persons seeking to have firearms repaired or altered as opposed to those seeking to purchase firearms or ammunition. Furthermore, a gunsmith often does not have regular business hours but conducts business during hours which are best suited to himself or his clientele. Thus, the number of hours which such a gunsmith is open to serve his clientele may be fewer than those of a dealer engaged in the business of buying and selling firearms or ammunition.

The term “dealer” is defined in 18 U.S.C. 921(a)(11) to include “any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms.”

One of the requirements under 18 U.S.C. 923(d)(1) for approval of a dealer’s license is that the applicant has in a State premises from which he conducts business subject to a license or from which he intends to conduct such business within a reasonable period of time. The term “business premises” is defined in 26 CFR 178.11 to mean: “The property on which firearms or ammunition importing, manufacturing or dealing business is or will be conducted. A private dwelling, no part of which is open to the public, shall not be recognized as coming within the meaning of the term.” The type of business premises, as well as the business hours, is required by 26 CFR 178.44 to be included on the application for a firearms dealer’s license.

It is also provided in 18 U.S.C. 923(g) that the premises of a licensee may be entered during business hours for the purpose of inspecting or examining records or documents required to be kept as well as any firearms or ammunition kept or stored at such premises.

Held, because of the nature of operations conducted by a gunsmith, any applicant for a license who intends to engage solely in this type of business and so specifies on his application will not be required to maintain regular business hours. Further, if the business is conducted from a private dwelling, a separate portion should be designated as the business premises, which need not be open to all segments of the public but only accessible to the clientele that the

business is set up to serve. However, the licensed premises of the gunsmith are subject to the inspection requirements of 18 U.S.C. 923(g) and 26 CFR 178.23 and the gunsmith must maintain the required records as specified in 26 CFR 178.121 et seq.

It is further held that, since under the law a gunsmith is a licensed firearms dealer, if he engages in the business of buying and selling firearms, he must record his transactions on Form 4473 (Firearms Transaction Record) for each sale, and maintain the firearms acquisition and disposition records required of all licensed dealers. However, if a gunsmith engages in the business of buying and selling firearms during the term of his current license, he may be required to submit a new Form 7 (Firearms) at the time of renewal in accordance with 26 CFR 178.45 and meet the requirements of an applicant engaging in the business of buying and selling firearms, such as having business premises open to the general public and having regular business hours.