

## Final Notice of Denial of Application, Revocation Suspension and/or Fine of Firearms License

In the matter of:

- The application for license as a/an \_\_\_\_\_, filed by:  
or \_\_\_\_\_
- License Number 5-85-013-01-3H-01573 as a/an \_\_\_\_\_  
Dealer in Firearms Other than Destructive Devices, issued to: \_\_\_\_\_

Name and Address of Applicant or Licensee (Show number, street, city, state and ZIP Code)

Dona Ana Munitions Ammo Reloading and Supplies, LLC  
6210 West Picacho Avenue  
Las Cruces, New Mexico 88007

### Notice is Hereby Given That:

- A request for hearing pursuant to 18 U.S.C. § 923(f)(2) and/or 922(t)(5) was not timely filed. Based on the findings set forth in the attached document, your
- license described above is revoked pursuant to 18 U.S.C. 923(e), 922(t)(5) or 924(p), effective:
    - 15 calendar days after receipt of this notice, or  \_\_\_\_\_
  - license is suspended for \_\_\_\_\_ calendar days, effective \_\_\_\_\_, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).
  - licensee is fined \$ \_\_\_\_\_, payment due: \_\_\_\_\_ pursuant to 18 U.S.C. § 922(t)(5) or 924(p).
- After due consideration following a hearing held pursuant to 18 U.S.C. § 923(f)(2) and/or 922(t)(5), and on the basis of findings set out in the attached copy of the findings and conclusions, the Director or his/her designee concludes that your
- application for license described above is denied, pursuant to 18 U.S.C. 923(d)
  - application for renewal of license described above is denied pursuant to 18 U.S.C. 923(d), effective:
    - 15 calendar days after receipt of this notice, or  \_\_\_\_\_
  - license described above is revoked pursuant to 18 U.S.C. 923(e), 922(t)(5) or 924(p), effective:
    - 15 calendar days after receipt of this notice, or  \_\_\_\_\_
  - license is suspended for \_\_\_\_\_ calendar days, effective \_\_\_\_\_, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).
  - licensee is fined \$ \_\_\_\_\_, payment due: \_\_\_\_\_ pursuant to 18 U.S.C. § 922(t)(5) or 924(p).

If, after the hearing and receipt of these findings, you are dissatisfied with this action you may, within 60 days after receipt of this notice, file a petition pursuant 18 U.S.C. § 923(f)(3), for judicial review with the U.S. District Court for the district in which you reside or have your principal place of business. If you intend to continue operations after the effective date of this action while you pursue filing for judicial review or otherwise, you must request a stay of the action from the Director of Industry Operations (DIO), Bureau of Alcohol, Tobacco, Firearms and Explosives, at 2501 S. State Highway 121 Suite 300A Convergence Building Lewisville Texas 75067 prior to the effective date of the action set forth above. You may not continue licensed operations unless and until a stay is granted by the DIO.

Records prescribed under 27 CFR Part 478 for the license described above shall either be delivered to ATF within 30 days of the date the business is required to be discontinued or shall be documented to reflect delivery to a successor. See 18 U.S.C. 923(g)(4) and 27 CFR § 478.127.

After the effective date of a license denial of renewal, revocation, or suspension, you may not lawfully engage in the business of dealing in firearms. Any disposition of your firearms business inventory must comply with all applicable laws and regulations. Your local ATF office is able to assist you in understanding and implementing the options available to lawfully dispose of your firearms business inventory.

Date 6/28/2022	Name and Title of Bureau of Alcohol, Tobacco, Firearms and Explosives Official Kristina Babcock, Director, Industry Operations	Signature KRISTINA BABCOCK	Digitally signed by KRISTINA BABCOCK Date: 2022.06.28 08:17:15 -07'00'
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I certify that, on the date below, I served the above notice on the person identified below by:

Certified mail to the address shown below  
Tracking Number: 7019 2970 0001<sup>Pr</sup> 7136 4384

Delivering a copy of the notice to the address shown below.

Date Notice Served 6/28/22	Title of Person Serving Notice Investigative Analyst	Signature of Person Served (b)(6)
Print Name and Title of Person Served Paul McClarin, Licensee Responsible Person		

Address Where Notice Served  
Dona Ana Munitions Ammo Reloading & Supplies, LLC  
6210 West Picacho Avenue, Las Cruces, New Mexico 88007

Note: Previous Edition is Obsolete

## Background

Dona Ana Munitions Ammo Reloading and Supplies, LLC ("Licensee") holds Federal firearms license 5-85-013-01-3H-01573 as a dealer in firearms other than destructive devices issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) pursuant to the Gun Control Act of 1968 (GCA), as amended, 18 U.S.C. Chapter 44, and the regulations issued thereunder, 27 C.F.R. Part 478.

On January 20, 2022, ATF issued a Notice to Revoke or Suspend License and/or Impose a Civil Fine, ATF Form 4500 (5300.4) (Notice to Revoke) to Licensee. By letter dated January 31, 2022, Licensee timely requested a hearing to review that Notice.

The hearing occurred on March 31, 2022, at ATF's El Paso Field Office. ATF Director, Industry Operations (DIO), Phoenix Field Division, Kristina Babcock conducted the hearing. ATF was represented by Dallas Division Counsel (b)(6) ATF Industry Operations Investigators (IOs) (b)(6) and (b)(6) appeared as witnesses for ATF. Licensee Responsible Person (RP) Paul McClarin was present at the hearing and represented Licensee. Court reporter (b)(6) was also present virtually and transcribed the hearing. Both the Government and Licensee offered testimony and the Government offered exhibits. The testimony and exhibits introduced at the hearing constitute the record in this proceeding.

## Findings of Fact

Having reviewed the record in this proceeding, I make the following findings:

1. ATF first issued a Federal firearms license to Licensee in 2011. Subsequently, ATF conducted compliance inspections of Licensee in 2013, 2015, 2017 and 2019. ATF issued a Report of Violations to Licensee following each of these compliance inspections. The laws and regulations issued under the GCA were reviewed with Licensee RP Paul McClarin as part of the compliance inspections as evidenced by his signature on Acknowledgment of Federal Firearms Regulations forms dated January 2014, April 2015, August 2017 and February 2019.
2. As a result of the 2013 and 2017 inspections, Licensee RP Paul McClarin attended warning conferences with ATF Area Supervisor (b)(6). The Warning Conferences occurred on February 27, 2014, and October 11, 2017. At each warning conference, the violations cited from the related inspection and proposed corrective actions were reviewed. Following each warning conference, ATF sent a letter to Licensee stating, "any future violations, either repeat or otherwise, could be viewed as willful and may result in renovation of your license."
3. Following both the 2015 and 2019 inspections, Licensee received a warning letter from ATF. Each letter stated in part that, "any future violations, either repeat or otherwise, could be viewed as willful and may result in renovation of your license."

4. On August 2, 2021, ATF initiated a compliance inspection of Licensee. The violations uncovered during that inspection formed the basis of the Notice to Revoke in this case. Specifically, the Notice to Revoke alleged the Licensee willfully:
- Transferred (b)(3) - 112 Public Law 55 handguns on (b)(3) - 112 occasions to an unlicensed person who Licensee knew or had reasonable cause to believe did not reside in the state in which Licensee's place of business or activity was located in violation of 18 U.S.C. § 922(b)(3) and 27 C.F.R. § 478.99(a).
  - Failed to record the acquisition and disposition of (b)(3) - 112 Public firearms in violation of 18 U.S.C. § 923(a)(1)(A) and C.F.R. § 478.125(e);
  - Transferred firearms to an unlicensed person on two occasions involving (b)(3) - 112 Public Law 55 125 firearms without first contacting the National Instant Criminal Background Check System (NICS) in violation of 18 U.S.C. § 922(t) and 27 C.F.R. § 478.102(a);
  - Transferred a firearm to an unlicensed person after receiving a delayed response when conducting a NICS and failed to wait three business days before allowing the transfer in violation of 18 U.S.C. § 922(t)(5) and 27 C.F.R. § 478.102(a)(2)(ii);
  - Failed to timely and accurately report the sale or other disposition of two or more pistols and/or revolvers to an unlicensed person on (b)(3) - 112 occasions in violation of 18 U.S.C. § 923(g)(3)(A) and 27 C.F.R. § 478.126a;
  - Failed to timely and accurately report the sale or other disposition of two or more semiautomatic rifles in violation of 18 U.S.C. § 923(g)(5)(A) and 27 C.F.R. § 478.126;
  - Transferred a firearm to an unlicensed person on (b)(3) - 112 occasions without recording the transaction on a Firearms Transaction Record, ATF Form 4473, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(a);
  - Transferred a firearm to an unlicensed person on (b)(3) - 112 occasions without verifying the identity of the transferee by examining the identification document presented and noting the type on a Form 4473 in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(3)(i);
  - Transferred a firearm on (b)(3) - 112 Public Law occasions to an unlicensed person without recording the date the Licensee contacted NICS, any response provided by the system and/or any identification number provided by the NICS system on the Form 4473 in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(3)(iv);

- Failed to completely and/or accurately identify a firearm to be transferred on a Form 4473 in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(4);
  - Failed to sign and/or date the Form 4473 on (b)(3) - 112 Public Law 85 125 Stat 5 occasions certifying Licensee does not know or have reason to believe the transferee is disqualified by law from receiving the firearm described on the Form 4473 in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(5);
  - Failed to obtain/execute a completed Form 4473, as indicated by the headings on the form and the instructions on or pertaining to the form in violation of 18 U.S.C. § 922(m) and 27 C.F.R. § 478.21(a).
5. During the hearing, Licensee RP Paul McClarin admitted that all of the violations detailed in the Notice to Revoke occurred but argued that such violations were not committed willfully.
6. After review of the record in this matter, I find that the facts as set forth in the Notice of Revocation occurred.
7. Evidence entered into the record at the administrative hearing also revealed that ATF previously cited Licensee with violating a number of these same regulations during previous inspections. In this regard, ATF cited Licensee with the following violations in prior inspections:
- (a) 27 C.F.R. § 478.99(a) – 2015 inspection
  - (b) 27 C.F.R. § 478.125(e) – 2013, 2015 and 2019 inspections
  - (c) 27 C.F.R. § 478.102(a) – 2013 inspection
  - (d) 27 C.F.R. § 478.126a – 2017 and 2019 inspections
  - (e) 27 C.F.R. § 478.124(c)(3)(i) – 2013, 2015 and 2017 inspections
  - (f) 27 C.F.R. § 478.124(c)(3)(iv) – 2013, 2015, 2017 and 2019 inspections
  - (g) 27 C.F.R. § 478.124(c)(4) – 2013 and 2017 inspections
  - (h) 27 C.F.R. § 478.124(c)(5) – 2013, 2015, 2017 and 2019 inspections
  - (i) 27 C.F.R. § 478.21(a) – 2013, 2015, 2017 and 2019 inspections

#### Conclusions of Law

1. Pursuant to the GCA, ATF may, after notice and opportunity for hearing, revoke a Federal firearms license if the licensee has willfully violated any provision of the GCA or the regulations issued thereunder. 18 U.S.C. § 923(e); 27 C.F.R. § 478.73.
2. For purposes of the regulatory provisions of the GCA, a “willful” violation is committed when a licensee knows of its legal obligations and purposefully disregarded or was plainly indifferent to those requirements. *CEW Props. v. United States DOJ*, 979 F.3d

1271, 1273 (10<sup>th</sup> Cir. 2020); *Borchardt Rifle Corp. v. Cook*, 684 F.3d 1037 (10th Cir. 2012).

3. Having established that Licensee violated the GCA and the regulations issued thereunder, it must be determined whether such violations were willfully committed. For the reasons stated below, I conclude that Licensee's conduct constitutes willful violations.
4. The evidence and testimony presented at the hearing reveals that the Licensee understood the requirements concerning transfers of handguns to out-of-state residents, conducting background check prior to the transfer of a firearm to an unlicensed person, reporting multiple handgun sales, recording the transfer of a firearm to an unlicensed person on properly executed ATF Form 4473, and proper completion of acquisition and disposition records. In this regard, ATF cited Licensee with similar violations, discussed those violations and reviewed the applicable laws and regulations with Licensee RP Paul McClarin during the 2013, 2015, 2017 and 2019 compliance inspections. Licensee also received warning letters from ATF following the 2015 and 2019 inspections and Mr. McClarin attended warning conferences with ATF following the 2013 and 2017 inspections which addressed the violations uncovered and proposed corrective actions. Significantly, ATF advised Mr. McClarin on multiple occasions that future violations, repeat or otherwise, could result in revocation.
5. Despite the fact that Licensee understood its responsibilities under the GCA, the evidence reveals that Licensee was plainly indifferent to, or purposefully disregarded the firearms laws and regulations in eleven of the twelve violations cited in the Notice to Revoke. However, while I find that Licensee failed to report the sale or other disposition of two or more semiautomatic rifles (Notice to Revoke, Violation 6), I conclude that this violation did not rise to the level of willfulness required for revocation. By contrast, I conclude that the remaining eleven violations listed in the Notice to Revoke rise to the level of willfulness required for revocation.
6. As such, I conclude that Licensee willfully violated the provisions of the GCA and the regulations issued thereunder. Accordingly, as provided by 18 U.S.C. § 923(e) and 27 C.F.R. § 478.73, the Federal firearms license held by Dona Ana Munitions Ammo Reloading and Supplies, LLC is hereby REVOKED.

Dated this 23rd day of June, 2022.



Kristina Babcock  
Director, Industry Operations  
Phoenix Field Division  
Bureau of Alcohol, Tobacco, Firearms and Explosives  
United States Department of Justice