

DEATH, TAXES AND ATF INSPECTIONS

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THE FIREARMS INDUSTRY TRADE ASSOCIATION

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Benjamin Franklin once said

“Nothing in this world is as certain as death and taxes.”

For federal firearms licensees (FFLs), we can add “ATF inspections” to the list of things that are certain.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), whose mission is enforcement of federal firearms laws and regulations, has a goal of inspecting every FFL business at

least once every five years; 9,790 inspections were completed in 2016. If you haven’t been inspected recently, it’s likely your time is on the horizon. But there’s no need to be overly concerned by the thought of an inspection if you are prepared for it.

The March 2009 issue of SHOT Business contained an article

entitled “How to Pass an ATF Inspection with Flying Colors,” which I wrote as an update to a March 2005 article of the same title. Since almost nine years have elapsed since that second article, NSSF asked me to provide another update.

What ATF is Looking For?

During an ATF inspection of an FFL, ATF Industry Operations Investigators (IOIs) work to determine whether an FFL’s records and conduct of business is in compliance with the Gun Control Act (GCA) and regulations found at Chapter 27, Code of Federal Regulations Part 478. These are found in ATF Publication 5300.4, Federal Firearms Regulations Reference Guide—2014 (the White Book).

Much of the inspection will involve the examination of records. That means the IOIs are going to review:

- **The firearms Acquisition and Disposition Records (both electronic and physical bound books).**
- **ATF Forms 4473 files (Firearms Transaction Records).**
- **ATF Forms 3310.4, Report of Multiple Sale and Other Disposition of Pistols and Revolvers, which should be attached to the relevant Form 4473s. (In Texas, New Mexico, Arizona and California, ATF Forms 3310.12, Report of Multiple Sale or Other Disposition of Certain Rifles, will also be inspected.)**
- **ATF Forms 3310.11, Federal Firearms Licensee Inventory Theft/Loss Report.**

Before these records are examined and verified, the firearms inventory is also going to be inspected to determine that all firearms on hand are properly recorded in the required Acquisition and Disposition record and that all dispositions have been properly entered. It is ATF’s current policy that IOIs will conduct a 100-percent inventory verification on compliance inspections. If the FFL is not in compliance with regulations or cannot account for all of its firearms inventory, the ATF IOI will issue a Report of Violations, ATF Form 5030.5, which becomes part of the FFL’s record. ATF policy is for IOIs to cite all violations disclosed by the inspection.



What Are the Most Commonly Cited Violations?

ATF has posted (at www.atf.gov) information on the 10 most frequently cited violations in 2016, as follows:

- Transferee did not properly complete Section A, F 4473 - 27 CFR 124(c)(1)
- Failure to timely record entries in bound record (Acquisition and Disposition Book)—27 CFR 478.125e
- Failure to complete forms as indicated in instructions (this violation is often cited when the licensee failed to properly complete a form, but there is not a separate regulatory citation addressing the omitted or misdocumented item)—27 CFR 478.21 (a)-(b)
- Licensee did not record on F 4473 the date on which NICS was contacted—27 CFR 478.124 (c)(3)(iv)
- Licensee failed to obtain and/or document purchaser's Identification document—27 CFR 478.124(c)(3)(i)
- Licensee did not sign and date F 4473—27 CFR 478.124 (c)(5)
- Licensee failed to report multiple handgun sales—27 CFR 478.126a
- Licensee failed to properly identify firearm on F 4473—27 CFR 124(c)(4)
- Licensee failed to contact NICS and wait stipulated time prior to transfer of firearm—27 CFR 478.102(a)
- Licensee disposed of firearm to a person he had reasonable cause to believe was prohibited—27 CFR 478.99(c)

How Can NSSF Help Me Prepare for an ATF Inspection?

In 2007, I began conducting on-site ATF compliance consultations at retailers as a member of NSSF's Compliance Consultant Team. Since then I have conducted hundreds of onsite compliance consultations, with the goal of helping FFLs to be in compliance during their ATF inspection.

Based on the very favorable reception by the early participants, NSSF has expanded these consultations into a highly successful, national compliance consultation program for its member firearms retailers. To accomplish this, NSSF has retained an expanded staff of independent consultants consisting of retired ATF personnel with hundreds of years of combined experience, as well as other experienced industry personnel.

In working with our member FFLs, our compliance consultation entails a full day's visit at the FFL premises by the consultant. During their day there, the consultant will review inventory practices, records, recordkeeping practices and all related procedures for the firearms business. A confidential report is prepared for the FFL after the consultation. The cost for this one-time consultation is much lower than what a store would spend when hiring an independent consultant for such

work as the NSSF generously picks up a majority of the tab for these visits. For those who are accepted into the Premium Retail Membership program this consultation is a complimentary service for the initial visit with heavily discounted future visits. (More on Premium Retailer benefits at the end of this article.)

While these on-site visits are available to all NSSF members, those who do not choose to take advantage of an onsite compliance consultation are strongly urged to prepare for and eventual ATF inspection. To be truly ready, owners and managers must be assured that the business is in compliance with GCA regulations, they must possess thorough knowledge and understanding of record keeping, form preparation and other GCA requirements, and with that knowledge they must properly train their employees.

I recommend that FFLs have standard operating procedures (SOPs) that document the business practices the store uses for its day-to-day operations. These can also be used for employee training and internal management reviews. While not an absolute requirement, having SOPs available in writing and ensuring they are being followed will go a long way to preparing an FFL for a successful inspection.

What Specific Actions Can I Employ to Help Reduce Violations?

- 1. Bound Book Errors:** ATF regulation 27 CFR 478.125 (e) requires dealers to maintain accurate and timely entered firearms acquisition and disposition records. The second most common problem cited by ATF IOIs in 2016 was failure to maintain timely entries in the Acquisition and Disposition record (the bound book). This means that a dealer is either failing to enter in a timely manner (or to failing to enter at all) firearms received into the bound book or, more commonly, failing to record disposition information in a timely manner. Recommended practices to minimize and detect bound book errors:
 - a. Specific personnel, to include a primary and a backup, should be assigned to log firearms into and out of the A&D record. FFLs that have firearms receipts and records maintained “by committee” are more likely to have record and inventory issues on inspections. FFLs need to make sure that information on all firearms received—new, used, consigned and repairs—gets to the record keeper promptly.
 - b. Create standard procedures for the central collection of firearms dispositions (Forms 4473, shipments to other FFLs, repair returns, and consignment returns) for the record keeper, to ensure all dispositions are logged out.
 - c. Take inventory. Essential to A&D book accuracy, and therefore no ATF violation citations, is the taking of a 100-percent serial number-based firearms inventory as often as possible. Many retailers take them quarterly. Some with barcode-scanning technology are able to take them weekly. ATF regards unreported missing firearms from inventory as a particularly serious violation and a public safety problem. Dealers that take regular inventories have no or very few missing firearms, especially during ATF inspections.
 - d. FFLs with computer-based records must have employees who know how to print out an on-hand report and the required A&D record. ATF will ask for these records. FFLs that cannot produce them must get assistance from their software provider.
- 2. Forms 4473 Errors:** The most commonly cited ATF violations relate to the failure to properly complete ATF Form 4473, which is required by ATF regulation 27 CFR 478.124. Recommended practices for the completion of Form 4473:
 - a. Have the customer carefully review Section A before signing to catch errors and omissions.
 - b. Have the salesperson do the same before the customer leaves the store.
 - c. If possible, and before the customer leaves the store, have a coworker or management review the Form 4473. A second set of eyes should also review Sections B, C and D for completeness and accuracy.
 - d. Recording the NICS information at the time the call is made must be done as a matter of course. FFLs using NICS e-Check should print out the short receipt and file it with the Form 4473 as proof of the check.
 - e. When it initial NICS response is “delayed” FFLs should always record the provided Missing Disposition Information (MDI) date and make sure all employees understand that the firearm cannot be transferred prior to that date unless NICS provides a “proceed” response prior to that date.
 - f. Make sure “zero” is entered in block 29 on Forms 4473 where NICS is contacted but no firearm is transferred. Many FFLs miss this.
 - g. Make sure “denied” Forms 4473 are signed by the person who completed Section B.
 - h. The person posting the disposition in the A&D record should also review the Forms 4473 before filing. Instructions on how to correct errors and omissions after the firearm has been transferred are on the Form 4473 and should be followed.
 - i. Use the NSSF ATF Form 4473 Overlay Guide. It is a review template that indicates what items need to be completed and what the correct responses should be. This template is available free to NSSF members. The proper and consistent use of this overlay guide should prevent or eliminate most Form 4473 completion errors.

Electronically generated Forms 4473 are now commonplace. Here are some compliance tips for FFLs that use them.

- a. Ink corrections of errors and omissions detected after the form has been printed can be made on the form.
- b. Print out and file forms where the NICS initial response was “delayed” and a transfer never occurred.
- c. Make sure “zero” is entered in block 29 where NICS is contacted and no firearm is transferred. Some programs default to “one.”

3. Failure to File Multiple Handgun (and Rifle) Reports: ATF regards this as a serious violation. These violations often are cited at larger stores with numerous staff, especially those who do not recognize a customer another associate served earlier in the week. As with other common violations, this can be overcome by standard procedures. It can be as simple as asking a customer when they last purchased a handgun or maintaining a handgun log that is checked on each sale back five business days, or as sophisticated as a computer-based customer sales history check. Some computerized firearms records programs have the ability to alert the FFL when a report is required. Some even print out the ATF form. No matter how it is done, dealers need to have consistent procedures in place to identify multiple handgun (and rifle where required) purchases that need to be reported.

What Else Can I Do to Get Ready?

In addition to the services the NSSF compliance consulting team provides on an individual basis the NSSF and ATF offer various group training opportunities throughout the year. A prime example of this is SHOT Show University (SSU). In addition to several other critical topics for today’s firearms retailer, SSU offers a full day of courses dedicated to compliance. SSU takes place the day before SHOT Show kicks off and provides the opportunity to not only learn from, but to interact with the experts on compliance topics. The ATF also offers regional ATF Compliance seminars throughout the year which NSSF staff and consultants attend, support, and speak. These events offer an opportunity for retailers and their staff to attend trainings without traveling far or being away from the store for too long.

I also want to mention that the NSSF offers a consultation and site program focused around store security, which also plays a big role in compliance. Protecting your store and team with a comprehensive security plan will dramatically reduce your risk of burglaries and robberies, leaving your inventory intact and ready for the customer!

Over those past nine years, NSSF made available new compliance programs to its firearms retail members to assist them in minimizing commonly cited violations

and to continue to pass their ATF inspections without difficulty. I have found it particularly satisfying to get feedback from FFLs with whom I have consulted and hear that they in fact did “pass with flying colors” after my consultation.

NSSF stands ready to assist any of its member dealers in their efforts to get into and stay in compliance with ATF regulations. The NSSF Retail Program staff and the team of Compliance Consultants are here to help you, and our onsite consultations are available to all our Retail Members. Our Premium Retail Members enjoy a number of additional benefits, including access to a legal defense fund to protect their business against administrative actions proposed by ATF. Premium Retail Members may also contact their personal consultant with questions as they occur throughout the year, without additional charge. The cost of NSSF’s Premium Retail Membership is \$750 per year.

NSSF also maintains a Retail Member hot line, which allows FFLs to call or email in their compliance questions. Responses will be handled by NSSF staff or by an NSSF Compliance Consultant. For more information on any of NSSF’s retailer memberships and programs, **contact John McNamara, Senior Director, Retail Services, at jmcnamara@nssf.org.**

