

NSSF[®]
The Firearm Industry
Trade Association

DoJ 'Zero Tolerance' and the White House's Efforts Targeting 'Rogue' Gun Dealers

2021 Firearms Retailer/Range Compliance Webinar Series

Complementary Education Courtesy NSSF[®]
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Data & Statistics

2019

- Discontinued/ Surrendered = 1,634
- No Violations = 6,911
- Report of Violations = 2,594
- Warning Letter = 1,482
- Warning Conference = 415 – 3.17%
- Revoked = 43 – 0.33%
- **TOTAL = 13,079**

2020

- Discontinued/ Surrendered = 96
- Other = 11
- No Violations = 3,277
- Report of Violations = 1,289
- Warning Letter = 804
- Warning Conference = 306 – 5.26%
- Revoked = 40 – 0.69%
- **TOTAL = 5,823**

Data & Statistics

October 2021

1st time ATF published Inspection statistics by Month

- TTL Inspections Completed* = 436
- TTL Warning Conferences = 11
 - 2.5% of TTL
- TTL Revocations = 4
 - 0.9% of TTL

*All totals reported are the number of closed inspections during the time period indicated

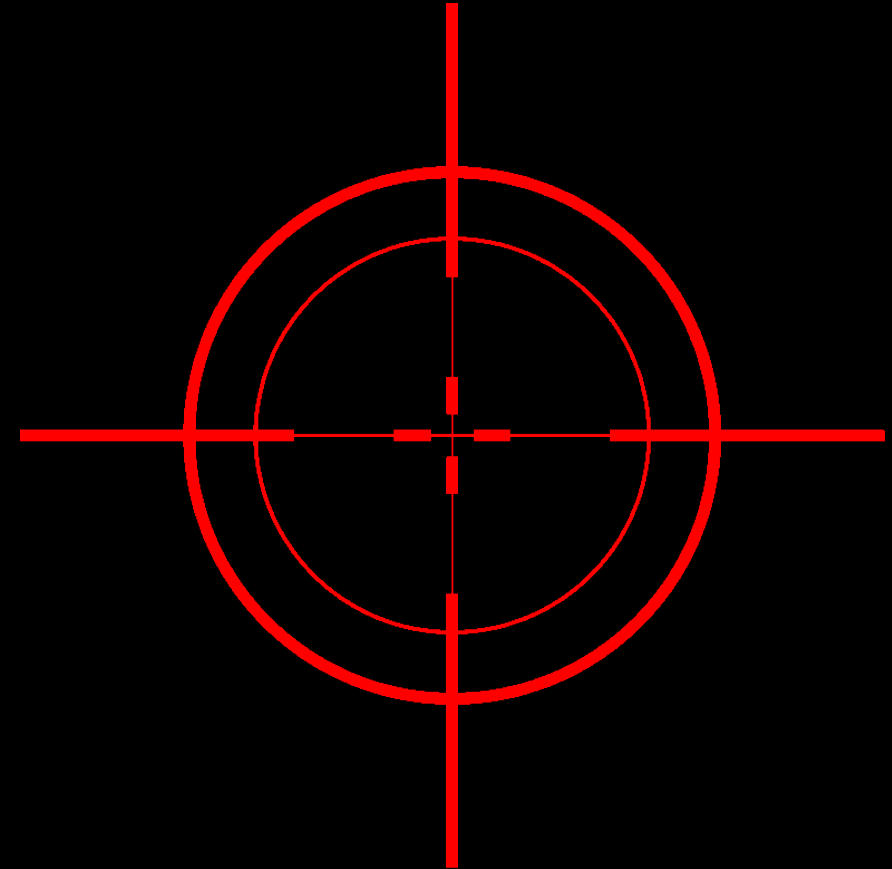
November 2021

- TTL Inspections Completed = 454
- TTL Warning Conferences = 11
 - 2.42% of TTL
- TTL Revocations = 6
 - 1.32% of TTL

'Zero Tolerance' Policy

– June 2021 –

Biden Administration issues a Comprehensive Strategy to Prevent and Respond to Gun Crime and Ensure Public Safety, directing the DoJ to initiate policy changes.



'Zero Tolerance' Highlights

- Three main points of the administration's strategy;
 - Establish zero tolerance for rogue gun dealers that willfully violate the law
 - Equip states that have their own gun dealer licensing systems with data from ATF inspections
 - Provide the public with additional data to promote transparency and accountability in enforcement of federally licensed firearms dealer policies

What's a "Rogue Gun Dealer"?

Defining the Strategy Targeting Federal Firearms Licensees



Defining a 'Rogue Dealer'

A 'Rogue Gun Dealer' is a Federal Firearms Licensee who commits a **single** Willful Violation

What Does Willful Mean Under the GCA?

- We believe that if an FFL has any violations deemed to be willful, their license is in jeopardy.
- Willfulness is not defined in the statute, but the courts have decided that willfulness has come to mean plain indifference to a legal requirement or the knowing failure to perform a legal duty.
- Here's a quote from a 6th Circuit Decision, *“a dealer violates the statute when, with knowledge of what the law requires, it intentionally or knowingly violates the GCA's requirements or acts with plain indifference to them (i.e., recklessly violates them).”*
- Negligence, failure to exercise the care that a reasonably prudent person would exercise in like circumstances, can be willfulness.

What are 'Willful Violations'?

- Transferring a firearm to a Prohibited Person
- Failure to conduct a background check when required
- Falsification of records
- Failing to respond to a trace request
- Refusal to permit ATF to conduct an inspection

Other 'Willful Violations'

- Not accounting for firearms
- Not verifying and documenting buyer eligibility
- Not maintaining records needed for firearms tracing
- Not reporting multiple sales of handguns and/or rifles

FFL Revocation Background

- We believe that, beyond the previously stated situations, ATF will be revoking licenses for any willful violation
- Under the GCA at 18 U.S.C. § 923 (e) an FFL can only be revoked for a willful violation of the act
- The key word in the law is “May”
- With the new policy this has changed.
 - Internally it seems as though “may” has been changed to “shall”

The Truth and What to Expect...

- Such violations are rare, the truth is that almost all FFLs labor to comply with ATF regulations
- Such willful violations have almost always led to revocation action
- Unfortunately, per the policy, such an FFL will face license revocation

The Keyword is 'May'...

- ATF is not required by law to revoke an FFL
- In fact, over the years the ATF has not always revoked FFLs who had committed a willful violation
- With the new policy this has changed
- We believe that ATF will be revoking FFLs for any willful violation and not just the five previously mentioned circumstances
- Internally “may” has been changed to “shall”

Who's Most at Risk?

What FFLs are in Focus?

Who's most at Risk?

- FFLs who had a warning conference after their last inspection are most at risk
- FFLs who received a warning letter after their last inspection
- **Other factors...**

What can I do?

- If you fall into any of these categories...
 - Take immediate steps to ensure that whatever violations caused you to get a letter or to attend a warning conference, they're no longer occurring
- If the problem was incorrect acquisition and disposition records and unaccounted for firearms...
 - Begin monthly inventories until your next inspection
 - You must reduce your risk and based on the policy, unaccounted for firearms would very will be seen as a willful act
- **If you identify a violation don't wait to act!**

Inspection Priorities

- Beyond FFLs who had warning conferences or received warning letters after their last inspection, who else does ATF plan to target?
- Per the internal memo, these factors will be considered priority;
 - The time between firearm sale and its use in crime
 - The number of firearm recoveries associated with firearm related crimes
 - Additional information developed from local law enforcement

ATF Inspection Targeting

- The more firearms traces you have, the more likely you'll be inspected
 - If you have traces within a short period (<3 yrs) from sale to trace, you're more likely to be inspected
- The new criteria includes firearm recovery at shootings, incidents of domestic violence and other violent crimes
- In the past ATF has not necessarily assumed that FFLs with such traces are willful violators but rather will be looking to ensure good recordkeeping is being maintained

ATF Inspection Targeting

- FFLs with reported thefts and losses should also anticipate and prepare for compliance inspections
- FFLs with high number of denials may also be in focus
- ATF is also conducting more inspections of firearms manufacturers
 - Inaccurate manufacturer records have been listed as one of the top 10 most cited ATF violations
 - Manufacturer marking issues have also been identified



Preparation

Before anything else, preparation is the key to success...

Prepare Yourself

- Take frequent “steel” firearms inventories – at least quarterly
- Periodic reviews of records and reports
- Implement Straw Purchase Prevention training – **Empower Staff to recognize and shut down straw purchase attempts**
- Quarantine firearms associated with a NICS/POCS Denial
- Be diligent in conducting multiple reviews of Form 4473
 - **BEFORE the firearm is transferred**
 - Corrections made before transfer should not be cited by ATF IOIs

Don't Wait...

- Post-transfer corrections – customer must return to correct a copy of the original 4473
 - FFLs may still be cited, even though corrections have been made.
 - Corrections should still be attempted
- Do not log in firearms, such as special orders, until the firearm is on premise
- Out-of-State Resident Sales – If you're not certain of the laws of that state, DON'T MAKE THE SALE!
- Ensure reporting of multiple handgun transfers and certain multiple rifle transfers in the SW border states
- Don't be an 'absentee' owner! Be actively involved in **YOUR** business

Common Errors & Violations

An error does not become a mistake, until you refuse to correct it...

Awareness – Common Errors & Violations

- Not entering both foreign manufacturer and importer
- Recording manufacturers catalog number rather than model engraved on the firearm
- Recording type of action rather than type of firearm
- Middle name issues
- Not submitting 3310.4 and/or 3310.12 at the end of the business day
- Failure to record acquisition and disposition in a timely manner

Awareness – Common Errors & Violations

- Using E-form 4473 program that does not meet ATF requirements
- Using E-Form 4473 program that does not allow transferee to see that the firearms to be transferred are on the form
- Using E-Form 4473 program and not printing out a file copy of a form when a transferee is delayed and never returns to the shop
- NICS check good for only 30 days
- Failure to complete blocks 34 & 35, when the NICS or state response is “denied”

4473 Changes

- Ensure the firearm(s) being transferred are always first
- Transferee/Buyer Address
- Non-Binary Gender Questions
- Verifying Full Name when ID only has a middle initial
- Military PCS information and effective dates in separate area
 - Ensure the orders state **PERMANENT**
- UCMJ charges and convictions

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