

ATFs Zero Tolerance Policy

Mandatory Revocations and State Violation Referrals

Background

Since the 1986 amendments to the Gun Control Act (GCA), known as the Firearm Owners Protection Act, Federal Firearms Licenses (FFLs) can only be revoked for willful violations of the Act. The word 'willful' is not defined in the GCA, but through court decisions has come to mean a knowing violation of a legal duty or plain indifference to or disregard of a known legal duty on the part of an FFL conducting its firearm business.

Since 1986, although ATF can only revoke an FFL for willful violations, it has used its discretion to not always do so, although FFLs have been revoked for a single violation. In 2021, at the direction of the Biden Administration, ATF published a list of five violations, that if cited on an inspection and willfully committed, will require the mandatory issuance of a Notice of Revocation. ATF has stated that these five violations each constitute a risk to public safety. This is known as the Zero Tolerance Policy.

Another, less publicized, aspect of the Zero Tolerance Policy is the referral of state firearm law violations found on ATF inspections to state authorities in states that issue licenses to firearm retailers. The goal is to allow state agencies to revoke state licenses if they deem it appropriate.

A. The Five Violations

1. Transferring a firearm to a prohibited person

The GCA established categories of persons prohibited from receiving or possessing firearms, which are listed on Form 4473 at question 21. b – 1. It is a crime for any person to transfer a firearm to whom they have reasonable cause to believe is a prohibited person. (There is a hunting license exception for 21. 1.)

If a firearm transferee/buyer answers 'yes' to any of those questions on his/her Form 4473 and the FFL goes ahead with the transfer, the FFL has transferred a firearm to a person they had reasonable cause to believe was a prohibited person, because they stated to the FFL that they were. This violation is not removed by a "proceed" response from NICS; NICS does not have access to all criminal records.

To prevent this from happening, it is essential that an FFL conduct a thorough review of Form 4473 PRIOR to conducting the NICS check or continuing with the sale.

Also, if a person's NICS response is "denied," it means they are a prohibited person who cannot receive or possess a firearm. If the FFL then transfers the same firearm the denied person wanted to an accomplice of the NICS-denied person, the FFL has made a straw sale and has reasonable cause to believe the firearm is going to the denied person. A straw sale also occurs if the same firearm is transferred to a person of the same last name or address as the denied person.

To prevent this from happening, FFLs must train themselves and their staff to recognize and stop straw sales before they happen.

2. Failing to conduct a required background check

ATF regulation 27 CFR 478.102 a. requires a NICS check is required for every transfer of a firearm to a non-FFL. There are some exceptions to this requirement. Per the requirements of 27 CFR 478.102 c, a NICS check is for a single transaction and is valid for a period not to exceed 30 calendar days from the date that NICS was initially contacted. If the transaction is not completed within the 30-day period, the FFL must initiate a new NICS check prior to the completion of the transfer.

FFLs who make even a single sale to a person whose NICS check occurred over 30 days prior, are receiving Notices of Revocation because they failed to conduct the required new NICS check. This is so, even if the initial response were a "proceed" but the person could not pay for the firearm and did not return for over 30 days. This failure is currently among the leading causes of FFL revocation.

Manufacturers, importers, and retailers should be aware that allowing employees or VIPS to take a firearm off-premises, even temporarily, for a sporting purpose is a transfer that requires the completion of Form 4473 and a NICS check.

To prevent this from happening FFLs must develop a system to identify the 30-day period of validity of the NICS check when a "delayed" NICS response is received, or a transfer does not immediately happen. Whether this is by a sticky note or other means, the FFL and employees must be aware of it and adhere to it. FFLs cannot afford a single error.

One of the exceptions to the NICS check requirement is found at 27 CFR 478.102 (d). This is the state firearm permit exception. If ATF has determined that a state's firearm permit is valid as an exception to a NICS check, the FFLs in that State are notified in writing. However, the permit is valid as an exception only for transfers in the State it was issued in and only for 5 years from the date of issuance.

FFLs are being revoked if they make even a single sale of a long gun to a resident of another state, where the transferee/buyer presents a firearm permit from that state and the FFL does not conduct a NICS check. A NICS check is required. Similarly, FFLs can be revoked if the permit presented in the state of issuance is no longer valid or if it was issued over 5 years prior to the date of transfer.

To prevent this from happening FFLs must be aware of if their state's firearm permit is qualified by ATF as an exception to a NICS check and that they cannot use a permit issued by any other state as a NICS exception. Also, FFLs must ensure that the permits presented have not expired and are not more than 5 years old.

3. Falsifying records, such as a firearm transaction form

It should be clear to all FFLs that falsifying records will lead to license revocation, if not criminal prosecution. **FFLs must make it clear to all employees that falsification of records is not acceptable and will lead to termination of employment and referral to law enforcement.**

One of the more common falsification schemes involves the addition of another firearm to a Form 4473 that the transferee did not buy. FFLs can instruct employees to mark through unused lines in Section A.

Another, not common, is to record "proceed" in block 27 when 'denied' is received. FFLs should know that ATF Industry Operations Investigators will have the denied NTN with them on inspections.

4. Failing to respond to a trace request

ATF Regulation 26 CFR 478.25a Responses to requests for information, requires each FFL to respond immediately but not later than 24 hours after a trace request is received from the ATF National Tracing Center. There is no excuse for not responding. It can happen that the FFL being contacted has no record of receiving the firearm. That is not a reason not to respond; the FFL must report this back to the NTC who will conduct further research.

To prevent this from happening, FFLs must respond to an NTC trace request as soon as they can, and they must establish means for trace responses to continue to be made in the event the shop is closed for vacations, remodeling, or relocation.

5. Refusing to permit ATF to conduct an inspection

Under ATF regulation 27 CFR 478.23, ATF officers have the right, without an inspection warrant, to enter the premises of an FFL not more than once during any 12-month period to examine records and documents required to be kept and the inventory of firearms and ammunition. This must occur within the hours of operation of the FFL as stated on its application for a license, or at other times with the consent of the FFL.

Also, ATF officers have the right of entry at any time with respect to records relating to a firearm involved in a criminal investigation that is traced to the licensee, or when such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation.

FFLs should be ready for inspection at any time. Responsible persons must be available to be present for the inspection.

B. ATF State Law Violation Referral Program

FFLs located in the 15 states that license firearm retailers must take care to always comply with all state firearm laws.

15 states currently require firearm retailers to obtain a state license to conduct business. While some of these states do conduct inspections of FFLs for state compliance many do not. Under the Zero Tolerance Policy, ATF will share inspection findings with these states as a "force multiplier." The goal is to let the states determine if the ATF-shared information would allow the revocation of the state license of the retailers referred and put them out of business.

The 15 states are: Washington, Hawaii, California, Alabama, Illinois, Indiana, Pennsylvania, Delaware, New Jersey, Maryland, Rhode Island, Massachusetts, Connecticut, New York, and New Hampshire.