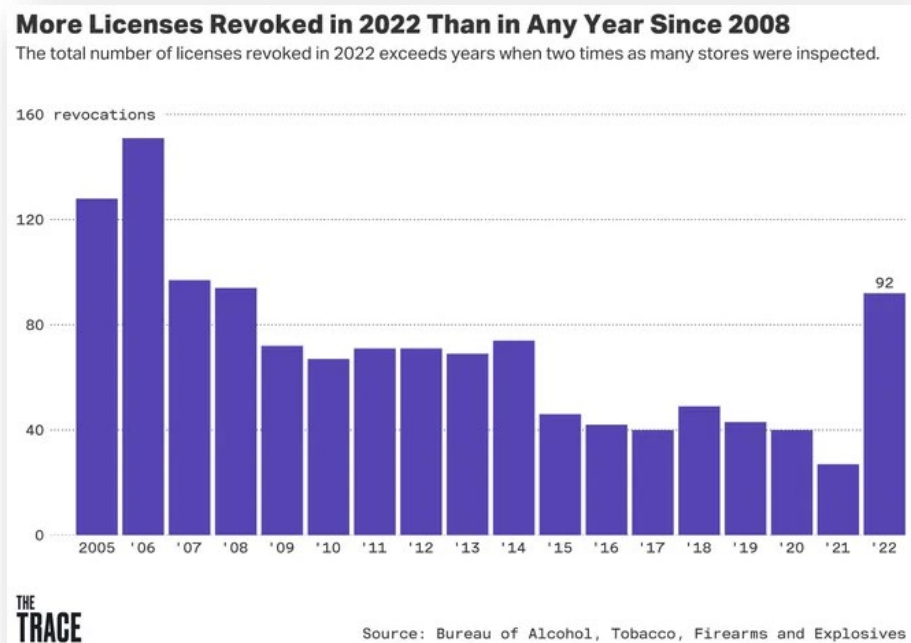


## The Biden Administration’s Zero Tolerance Policy is Crushing Gun Sellers

In 2021, the Biden Administration announced a new “Zero Tolerance” policy for revoking the licenses of firearm sellers, known as Federal Firearms Licensees (“FFLs”).<sup>i</sup> As part of this new policy, the ATF recently updated its “*Federal Firearms Administrative Action Policy and Procedures*” (ATF Order 5370.1E).

Gun Owners of America obtained copies of this updated ATF order, revised under the Biden Administration in January of 2022, along with the prior version (ATF Order 5370.1D) that existed under the Trump Administration. GOA is releasing both versions alongside this report. Based on a review of changes in ATF’s policy, it is clear that the Biden Administration is seeking to weaponize ATF’s bureaucracy against the entire Second Amendment industry. According to data published by ATF as analyzed by the Trace:<sup>ii</sup>

- “New data shows ATF gun store revocations at highest rate in 16 years.”
- “ATF revoked 92 licenses in 2022, the most since 2008.”
- “The total more than triples the number of licenses revoked in 2021, when a similar number of dealers were inspected.”
- “The total number of licenses revoked in 2022 exceeds years when two times as many stores were inspected.”
- “Another 136 dealers received warning conferences, the steepest penalty inspectors can recommend without revocation.”



The Biden Administration’s new Zero Tolerance policy is overly harsh—seemingly intentionally so—on honest gun stores. In fact, between January and September of 2022, ATF field offices in Charlotte, Columbus, Houston, Louisville, New Orleans, and St. Paul revoked licenses more frequently than they issued “warning conferences”<sup>iii</sup>—a much less severe penalty that ATF’s own manual deems is necessary to “assess the FFL’s potential to achieve compliance and determine any potential risks to public safety and firearm traceability.”<sup>iv</sup>

In other words, under the Biden Administration, ATF has changed its focus from regulating the gun industry to destroying it by whatever means possible—eliminating access to firearms by putting as many gun dealers as possible out of business.

### ATF’s Zero Tolerance Policy Explained

**Default Revocation of Licenses Absent “Appropriate Circumstances”:** There was at least a 200% increase in FFL revocations since enactment of ATF’s Zero Tolerance policy. Of course, license revocations are a lengthy

process, and this number almost certainly will continue to increase. Compare Biden’s Zero Tolerance policy to ATF’s prior policy:

*Zero Tolerance: “ATF will revoke a federal firearms license, absent extraordinary circumstances on initial violations.”<sup>v</sup>*

*Prior Guidance: “ATF may revoke a federal firearms license under appropriate circumstances based on an initial set of violations.”<sup>vi</sup>*

Whereas ATF previously revoked licenses in “appropriate circumstances,” ATF now will revoke a license on “initial violations” unless there “extraordinary circumstances” showing that revocation is not appropriate. Under this new regime, the fact that there has been “[o]ne instance of a violation ... does not constitute extraordinary circumstances and will not be an acceptable reason for an alternate recommendation [to Zero Tolerance revocation].”<sup>vii</sup>

**Retroactive License Revocations:** GOA has recently learned that ATF is *reopening old cases* dating back to at least July 1<sup>st</sup>, 2021,<sup>viii</sup> and *revoking* the licenses of gun stores to whom ATF previously issued a Warning Letter or held a Warning Conference and who subsequently returned to compliance with the law and rectified their mistakes.<sup>ix</sup>

In other words, even a single honest mistake *in the past* can now cost an FFL its license. These abusive ATF actions to *reopen* and *repunish* old cases is in direct contravention of a DOJ Inspector General report that recommended that ATF *not* engage in such retroactive sanctions.<sup>x</sup>

**Compliance History Made Irrelevant:** Previously, a history of an FFL’s noncompliance could serve as proof that an FFL committed a willful violation of the law.<sup>xi</sup> Under Biden’s Zero Tolerance, now even a history of *compliance*, followed by a single unintentional mistake, may be used as proof of a so-called “willful” violation.<sup>xii</sup> So if you have a history of noncompliance, you are in trouble. On the other hand, if you have a history of compliance, you are still in trouble because you should have known better and your violations are now suspect of being willful.

**Statutory “Willfulness” Standard Diminished Beyond Recognition:** Congress has made clear that, when revoking a license, ATF is required to prove that an FFL “**willfully**” violated the law before the statutory punishments can be levied.<sup>xiii</sup>

This deliberate addition to the law by Congress presented a problem for ATF, as virtually all gun dealers are well-intentioned, law-abiding people who always attempt to comply with the law. Thus, in order to claim “willfulness” to *violate* the law by people who almost uniformly try to *follow* the law, ATF had to get creative. Now, ATF claims that a single manual, potentially given to an FFL decades ago, proves that the FFL knew the law and thus “willfully” decided to violate it.

**Here is just one example:** When ATF initially grants a person’s Federal Firearms License application, an ATF inspector is instructed to provide the new FFL with a *copy of* (or merely a link to) ATF’s 300+ page Federal Firearms Regulations Reference Guide.<sup>xiv</sup> The FFL is then instructed to *sign* a form entitled “Acknowledgement of Federal Firearms Regulations.”<sup>xv</sup> This document is nothing more than ATF manufacturing evidence designed to later be used against the FFL to revoke his or her license.

According to ATF, one signature by an FFL, acknowledging that he has *received a copy* of the laws and extensive regulations, demonstrates that the FFL knows, understands, and remembers all of the multitude of obligations under the law. If an FFL later accidentally violates one of those rules, that’s too bad. According to ATF, by signing the form the FFL “indicated that he understood all of the information provided by signing and dating the Acknowledgement of the Federal Firearms Rules and Regulations.”<sup>xvi</sup>

In other words, “publications and information provided to the FFL” are designed from the beginning of the licensing process to be used as evidence of “willfulness” sufficient to revoke licenses, on the theory that a person

being handed an ATF rulebook—possibly decades ago—“establish[es] the knowledge element of willfulness” in the commission of a paperwork crime.<sup>xvii</sup> **The end result, then, is that every single violation of any statute or ATF regulation is deemed to be “willful”—potentially leading to the loss of a license.**

According to the agency, “ATF does not have to establish a history of prior violations to demonstrate willfulness”<sup>xviii</sup> because there is Zero Tolerance for even a single violation. Moreover, ATF has added to the list of ways it “can establish the knowledge element of willfulness” to now include both “[c]ompli[ance] with the specific regulation on other occasions” and a gun store’s “substantial experience as an FFL” to prove the law was willfully violated.<sup>xix</sup> In other words, the longer and more faithfully an FFL has followed the rules, the more severely he or she is punished for making a mistake later. Under this new Zero Tolerance regime, everything can and will be used against a FFL to yank a license if they make a mistake, even a history of good behavior!

**No More Warnings:** According to ATF, all so-called Zero Tolerance offenses<sup>xx</sup> now skip the traditional “Warning Letter”<sup>xxi</sup> and “Warning Conference”<sup>xxii</sup> phases of ATF’s supposedly “fair and consistent guidelines for administrative remedies for violations.”<sup>xxiii</sup> Instead, ATF proceeds straight to revocation—“do not pass ‘Go’, do not collect \$200.”



**Revocation First, Warning Later:** According to ATF’s internal guidance, a Warning Letter will be issued if an inspection reveals mistakes on “5 percent or more [records] with a minimum of 10 instances.”<sup>xxiv</sup> But, under Zero Tolerance, it is unlikely that ATF bureaucrats will ever issue such Warning Letter or Warning Conferences. Well before warnings can be issued after a tenth instance, the Zero Tolerance policy demands the revocation of a gun store’s license at the first instance of inaccurate recordkeeping, as if one mistake constituted a “willful” and “false or fictitious written statement.”

**Punishing Repeat Mistakes:** Consistent with ATF’s new policy that every rule violation by a dealer is “willful,” ATF’s new Zero Tolerance policy also removes the following prior guidance:

*Not every repeat violation is per se a willful violation. A single, or even a few inadvertent errors in failing to complete forms may not amount to ‘willful’ failures, even when the FFL knew of the legal requirement to complete the forms.*<sup>xxv</sup>

Apparently, this is no longer the case. When the Gun Control Act was enacted, Congress no doubt intended to punish FFLs that make intentional errors or falsify their records. However, ATF’s guidelines now encourage (and indeed require) the punishment of FFLs for honest and innocent mistakes, while using a gun store’s prior experience, good behavior, and their reception of a pamphlet (perhaps years prior to the cited “offense”) as “evidence” to prove a violation was willfully committed. **The Biden Administration’s intent to destroy the Second Amendment by putting gun dealers out of business could not be more clear.**

## FFL Revocations Increase the Size of ATF's Illegal Gun Registry

Of course, there is another nefarious purpose behind the Biden Administration's Zero Tolerance agenda to eliminate gun stores. When an FFL goes out of business, it is required to send every Firearm Transaction Form (Form 4473) to the ATF, along with its "bound book" and other records. As of November 2021, ATF has turned 920,664,765 of these records into an illegal national gun registry.<sup>xxvi</sup> According to ATF, 865,787,086 records already are in an electronic format, which Gun Owners of America proved to be *digital, searchable, and centralized*—in violation of federal law.<sup>xxvii</sup> Of course, because ATF cannot enter a dealer's records into its registry until the FFL goes out of business, the Biden Administration's mass license revocation strategy allows ATF to expand its national gun registry at an unprecedented rate.

### Why this Matters

Because a Federal Firearms License can now be revoked for first offenses, many well intentioned gun stores (and their employees) are now guaranteed to lose their livelihoods if ATF decides to construe an innocent mistake as a "willful" violation. This hurts not only the FFL and its employees, but also the firearms community by reducing access to lawful self-defense tools and expanding ATF's illegal out-of-business gun registration records for the communities formerly served by the store.

The more FFLs the Biden Administration shuts down, the less access Americans will have to their Second Amendment rights and the more data the federal government will control about the identities of law-abiding gun owners in a given community. In addition to license revocations, ATF's Zero Tolerance policy further demonstrates a disinterest in helping FFLs become compliant, by removing notices and using what information ATF does provide as proof of intent to violate the agency's numerous, complex, and Kafkaesque rules.

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<sup>i</sup> [Fact Sheet: Biden-Harris Administration Announces Comprehensive Strategy to Prevent and Respond to Gun Crime and Ensure Public Safety](#). *White House*. June 23<sup>rd</sup>, 2021.

<sup>ii</sup> Barton. "New data shows ATF gun store revocations at highest rate in 16 years". *USA Today*. 2022.

<sup>iii</sup> [Firearms Compliance Inspection Results Monthly Data](#). Bureau of Alcohol, Tobacco, Firearms, and Explosives.

<sup>iv</sup> ATF Order 5370.1E. 7.d.

<sup>v</sup> ATF Order 5370.1E. 7.e.(2). 2022. Emphasis added by GOA.

<sup>vi</sup> ATF Order 5370.1E. 7.e.(2). 2019. Emphasis added by GOA.

<sup>vii</sup> ATF Order 5370.1E. 7.h.(1).

<sup>viii</sup> Rep. Andy Biggs and 24 House Representatives Letter to Acting ATF Director Restaino. "[Congressman Biggs Demands Answers from ATF Regarding Unprecedented Increase in Federal Firearm License Revocations](#)". June 29<sup>th</sup>, 2022. 1.

<sup>ix</sup> Curtis Gilbert. Presentation, 2022 Firearms Industry Conference, April 25<sup>th</sup>-27<sup>th</sup>.

<sup>x</sup> Office of Inspector General, Evaluation and Inspections Division. [Review of ATF's Actions in Revoking the Federal Firearms License of Guns & Ammo](#). Department of Justice. September 2013.

<sup>xi</sup> ATF Order 5370.1D. 7.e.(3)(a). 2019.

<sup>xii</sup> ATF Order 5370.1E. 7.e.(4)(e).

<sup>xiii</sup> ATF Order 5370.1E. 7.e.(2) and (4)(d)-(f).

<sup>xiv</sup> ATF Publication 5300.4. 2022.

<sup>xv</sup> ATF Industry Operations Manual Chapter B. Firearms Application Inspections (FAI) 34.d.(8)(b). October 2019 Edition.

<sup>xvi</sup> Charlotte Field Division Area Supervisor. [Warning Letter to Damien Ristaino](#). Bureau of Alcohol, Tobacco, Firearms, and Explosives. 142.; And [Firearm Inspection Report for Damien Ristaino, LLC](#). Bureau of Alcohol, Tobacco, Firearms, and Explosives. 3.

<sup>xvii</sup> *Ibid*.

<sup>xviii</sup> ATF Order 5370.1E. 7.e.(2).

<sup>xix</sup> ATF Order 5370.1E. 7.e.(4).

<sup>xx</sup> ATF Order 5370.1E 7.a.(4).

<sup>xxi</sup> ATF Order 5370.1E 7.c..

<sup>xxii</sup> ATF Order 5370.1E 7.d..

<sup>xxiii</sup> ATF Order 5370.1E 1..

<sup>xxiv</sup> ATF Order 5370.1E. 7.c.(1).

<sup>xxv</sup> ATF Order 5370.1D. 7.e.(1). 2019.

<sup>xxvi</sup> Johnston. "[ATF's Illegal Gun Owner Registry](#)". *Gun Owners of America*. 2022.

<sup>xxvii</sup> *Ibid*.