



# !ORCHID

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ATF's "Zero Tolerance" Enforcement  
and  
2021R-05F

**Special Thanks to:**

SILENCER  SHOP

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# Speaker



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# ORCHID

## FFL TECHNOLOGY, PAYMENTS & COMPLIANCE SOLUTIONS

## About Orchid



**35,000+**  
4473s Processed  
Monthly



**100 Million+**  
ATF Transactions  
Audited



**1 Million+**  
A&D Transactions  
Per Month



**3**  
Gun Friendly  
Merchant Banks

## About Our Partner Firm



*Active Client Representation  
Attorney / Client Privileged  
FFL / SOT Licensing  
ATF FFL Inspections and Revocation Defense*

# INTRODUCTION

## We will discuss:

- Biden Administration's "Zero Tolerance" Policy
  - What it says vs. What it means
  - Anecdotal examples
- Protecting Your FFL in the Current Environment (and always!)
  - Willful vs. Intentional
  - Recommended Practices
  - Online Sales and Application of Other States' Laws
  - Compliance Investment
- ATF Rulemaking 2021R-05
  - Summary
  - Frame / Receiver / "80%" / Solvent Traps
  - Markings
  - Recordkeeping
- Q&A (via chat function)

# Biden Administration's "Zero Tolerance" Policy

On June 23, 2021, the Biden Administration announced their "Comprehensive Strategy to Prevent and Respond to Gun Crime and Ensure Public Safety".

As part of their "Strategy", they established a policy of zero tolerance for certain listed actions.



# Zero Tolerance Policy, as Stated by the Administration

## **Establishing zero tolerance for rogue gun dealers that willfully violate the law.**

Gun dealers across the country are regulated by federal law that is enforced by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Dealers that fail to comply with their obligations under the law create risks for all of us. Today, the Justice Department is announcing a new policy to underscore zero tolerance for willful violations of the law by federally licensed firearms dealers that put public safety at risk. Absent extraordinary circumstances that would need to be justified to the Director, ATF will seek to revoke the licenses of dealers the first time that they violate federal law by willfully 1) transferring a firearm to a prohibited person, 2) failing to run a required background check, 3) falsifying records, such as a firearms transaction form, 4) failing to respond to an ATF tracing request, or 5) refusing to permit ATF to conduct an inspection in violation of the law.

In addition, ATF will notify every firearms dealer whose license is revoked about how to lawfully transfer any remaining inventory, as well as the potential criminal consequences of continuing to engage in the business of buying and selling guns without a license. The prior Administration stopped this important notification practice that helps deter future unlawful activity.

*Full text of the "Strategy" available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/23/fact-sheet-biden-harris-administration-announces-comprehensive-strategy-to-prevent-and-respond-to-gun-crime-and-ensure-public-safety/>*

# Revocation Basis #1: Transferring Firearm to Prohibited Person

Examples include:

- Transfer of a firearm after receipt of “Denied” response
- Transfer of a firearm to an individual who responded with a “Yes” to any of the prohibited persons inquiries on the Form 4473 (21b – 21l)
  - Excluding exemptions for certain business practice felonies and exemptions for nonimmigrant alien prohibition
- Transfer of a firearm to a person “visibly” or “clearly” under the influence of a controlled substance (includes marijuana in medicinal or recreational States)



# Revocation Basis #2: Failure to Run a Background Check

Examples include:

- NICS initially contacted more than 30 days prior to transfer date (even if received “Proceed” response after the initial contact date)
- Failing to perform a background check at all
- Use of CCW in a State where the permit does not qualify as NICS exemption (refer to Permanent Brady Permit Chart on ATF website)
- Use of CCW that was issued more than 5 years ago
- Confusing CCW reciprocity with CCW exemption laws
- Background check not conducted when GCA and NFA item appear on same 4473

# Revocation Basis #3: Falsifying Records

## Examples Include:

- Obvious and apparent record modification
- Improper corrections could be construed as “falsifying” a record (esp. Form 4473)
- “Proceed” marked after receipt of “Denied” response
- Firearms added to Form 4473 after customer has left store
- NICS information or exemption information added after customer has left store

# Revocation Basis #4: Failure to Respond to a Trace Inquiry

Examples Include:

- Failure to respond within 24 hour timeframe
- Failure to respond at all

Please note:

- Even if you never received firearm (e.g., Theft/Loss in Transit, or WGIB), you must still respond to ATF!
- If contact information provided to ATF is no longer valid, make sure to update the FFLC!



# Revocation Basis #5: Failure to Allow ATF to Perform Compliance Inspection

## Examples Include:

- Outright refusal to enter premises
- Refusal to provide records required under the GCA/NFA to permit inspection
- Refusal to provide access to areas in which firearms physically present

## Please Note:

- ATF permitted to perform one compliance inspection per year and access records and inventory
- Some anecdotes exist of overreach and requests of information or documents to which they are not entitled; consult with an expert or attorney if this occurs

# Anecdotal Examples

- #1 – Transferring firearm to prohibited person
  - FFL erred in transfer process (husband /wife situation) and prohibited person ended up with firearm. ***FFL contacted local ATF office to discuss situation and how to rectify.*** Firearm was received back. ATF revoked the license.
- #1 – Transferring firearm to prohibited person
  - Transferee indicated “Yes” to prohibited person question. FFL’s employee didn’t notice the “Yes” indication. Background check performed and “Proceed” response received. ATF revoked the license.

# Anecdotal Examples

- #2 – Failing to run background check
  - FFL misconstrued NICS exemption and CCW reciprocity. ATF told FFL they ran background check on all individuals to whom firearms were transferred and none came back as a prohibited person and all retained valid CCW (i.e., no actual impact to public safety). ATF revoked the license.
- #2 – Failing to run background check
  - FFL inadvertently shipped receivers directly to a non-FFL; receivers were shipped back by the individual who mistakenly received them (i.e., no actual impact to public safety). ATF revoked the license.





# What Can FFLs Do to Protect Their Business and Livelihood In Light Of "Zero Tolerance"?

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Commonsense Suggestions for FFLs  
to Consider

# IMPORTANT NOTE

“Willful” as it applies to ATF’s justification to issue a revocation notice does not mean “intentional”. If a purposeful act or series of acts brings about a proscribed result without the intention of violating any laws, regulations, rulings, etc., the violation itself may be argued “willful violation”.

As such, it is important to create an atmosphere conducive to compliance utilizing all tools available; to include education, processes, technology, and monitoring.



# Recommended Practices

- Technology is (mostly) your friend
  - Nearly every revocation we have seen that were based upon a Form 4473 would have been prevented by technology
  - Manner of implementation and conversion is critical as improper methods may *create* violations
- Establish a **documented** compliance program
- Create simple, and easy to follow SOPs for your employees
- Implement redundancies (individual tasks (e.g., 4473) and for employee function)
- Monitor and audit your environment on a repeated basis (internally or externally)



# Interstate Commerce

It is important to note that the laws of other States are largely applicable to you. Sales of goods over the internet will likely subject you to the laws of the other jurisdiction. Over the counter sales of goods to residents of other States subject you to that State's laws on firearm and accessory legality, as well as licensing and waiting period requirements. FFLs must be knowledgeable about all other States' laws or consult with an expert when selling to nonresidents (whether online or in person).

Of particular note are the "PLCAA-targeting" laws currently being passed by multiple States which in many cases contain ambiguous language designed to subject FFLs to litigation.

Still other States are passing laws that require FFLs to monitor the activities of downstream FFLs to ensure they are acting in a manner that the authorities of that State ultimately deem "responsible".

# Compliance Investment and Its Application to “Willfulness” Standard

- Investment into Compliance function not a zero-return investment
- Can broaden sales channels if FFL is enabled to competently operate in prohibited jurisdictions (e.g., California, New York, Connecticut, etc.)
- Technology investments with regulatory controls often reduce cost (and can save your license)
- Labor investments (internal resource or outside advisor/counsel) demonstrates a purpose and intent to go above and beyond to *avoid willful violations*
- Time investments (internal auditing) can uncover errors made to date and allow for correction in advance of ATF arrival



A man and a woman are looking at a firearm in a store. The man is on the left, wearing a dark jacket with an American flag patch on the sleeve. The woman is on the right, wearing a dark jacket. They are both looking down at the firearm on the counter. The background is a store with shelves of various items.

2021R-05F

# Definition of “Frame or Receiver” and Identification of Firearms

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Brief Summary of the Recent Rulemaking



# 2021R-05 – What Does it Do?

It does a lot more than simply define “frame or receiver” and specify marking requirements. Among the new and modified definitions and other amended regulations there is a lot of nuance. At the highest level, the rulemaking addressed:

- Created new Frame / Receiver definitions, examples, exclusions, and rescinded prior determinations and classifications
- Created new marking requirements for all FFLs
- Clarified marking obligations of WIP among manufacturers (firearms and silencer parts)
- Clarified marking requirements for silencers (tubed and modular)
- Clarified or formalized destruction requirements
- Formalized marking time periods for firearms manufactured
- Requires record consolidation for importers and manufacturers
- Requires permanent record retention for dealers

# Frames and Receivers

- 478.11

- Complete muffler or silencer device
- Complete Weapon
- Gunsmith (revised) (portion of Engaged in the business)
- Firearm (revised)
- Frame or receiver (points to 478.12)
- Importer's or manufacturer's serial number
- Privately made firearm (PMF)
- Readily

- 478.12

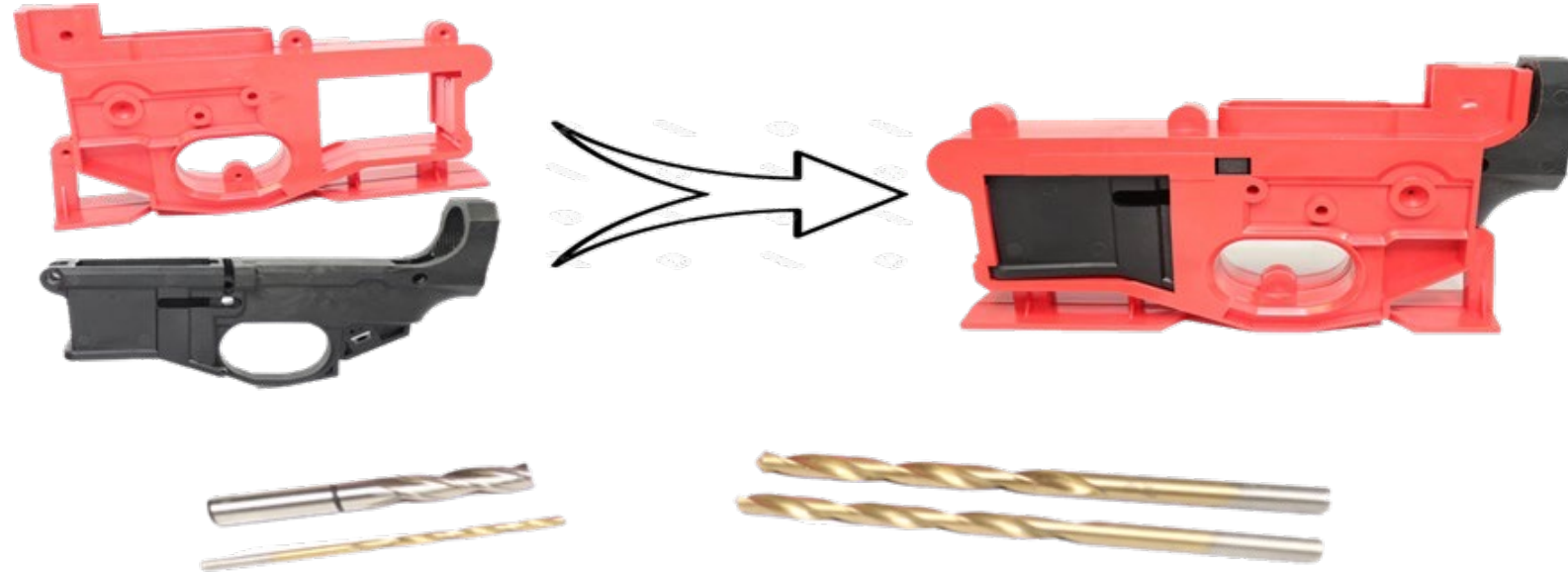
- Frame or Receiver
  - Frame
  - Receiver
  - Variant / Variants Thereof
  - Dozens of examples to illustrate
- Firearm Muffler or silencer frame or receiver
- Partially complete, disassembled, or nonfunctional frame or receiver
  - Provides 5 examples
- Multi-piece frame or receiver (NOT split frame like AR upper/lower)
- Destroyed frame or receiver
- Addresses grandfathering of certain models
- Addresses rescission of prior classifications / determinations

# “80%” and “Solvent Traps”

- “Prior determinations by the Director that a partially complete, disassembled, or nonfunctional frame or receiver, including a parts kit, was not, or did not include, a “firearm frame or receiver” ...shall **not continue to be valid or authoritative** after [April 26, 2022]. Such determinations shall **include those in which the Director determined that the item or parts kit had not yet reached a stage of manufacture to be, or include, a “firearm frame or receiver”**... (27 CFR 478.12(f)(2))
  - FFLs (presumably the manufacturers) must obtain new determinations from ATF on products they seek to distribute as non-regulated.
  - New definition of “Readily” in 478.11 is an attempt to “aid” the industry in designing products.

# “Partially Complete, Disassembled, or Non-Functional Frame or Receiver

Example 1: *Frame or receiver*: A frame or receiver parts kit containing a partially complete or disassembled billet or blank of a frame or receiver that is sold, distributed, or possessed with a compatible jig or template is a frame or receiver, as a person with online instructions and common hand tools may readily complete or assemble the frame or receiver parts to function as a frame or receiver.





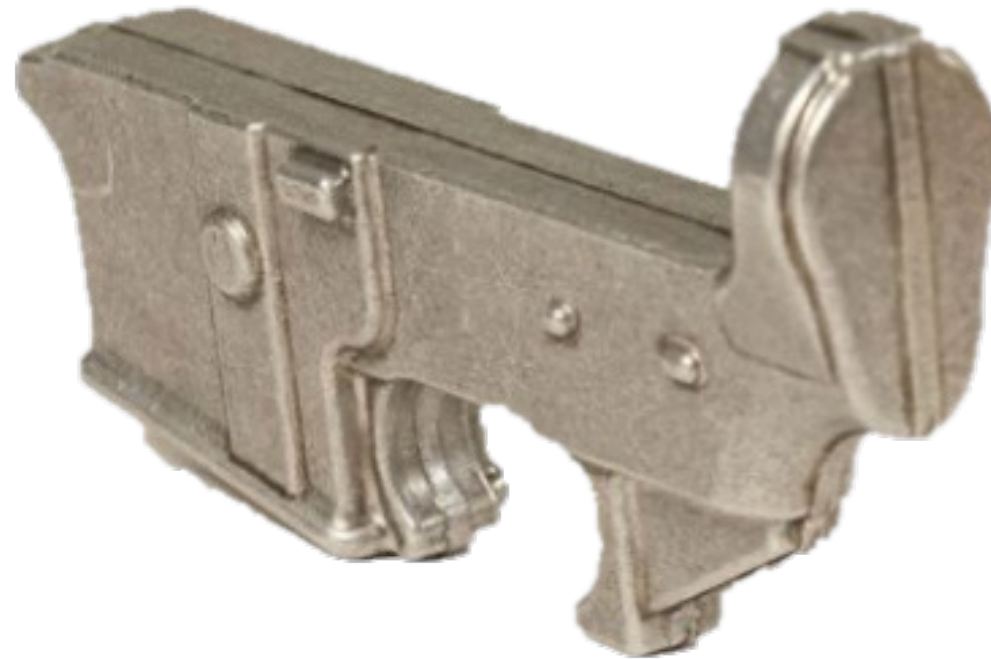
# “Partially Complete, Disassembled, or Non-Functional Frame or Receiver

*Example 2 —Frame or receiver:* A partially complete billet or blank of a frame or receiver with one or more template holes drilled or indexed in the correct location is a frame or receiver, as a person with common hand tools may readily complete the billet or blank to function as a frame or receiver. *(No image provided in regulations or guidance documents by ATF)*

*Example 3 —Frame or receiver:* A complete frame or receiver of a weapon that has been disassembled, damaged, split, or cut into pieces, but not destroyed in accordance with paragraph (e), is a frame or receiver. *(No image provided in regulations or guidance documents by ATF)*

# “Partially Complete, Disassembled, or Non-Functional Frame or Receiver

*Example 4 —Not a receiver:* A billet or blank of an AR-15 variant receiver without critical interior areas having been indexed, machined, or formed that is not sold, distributed, or possessed with instructions, jigs, templates, equipment, or tools such that it may readily be completed is not a receiver.



# “Partially Complete, Disassembled, or Non-Functional Frame or Receiver

Example 5—Not a receiver: A flat blank of an AK variant receiver without laser cuts or indexing that is not sold, distributed, or possessed with instructions, jigs, templates, equipment, or tools is not a receiver, as a person cannot readily fold the flat to provide housing or a structure for the primary component designed to block or seal the breech prior to initiation of the firing sequence. *(No image provided in regulations or guidance documents by ATF)*

# Grandfathering of Frame / Receiver

The terms “frame” and “receiver” shall include the specific part of a complete weapon, including variants thereof, determined (classified) by the Director to be defined as a firearm frame or receiver prior to [date of publication in Federal Register]. Any such part that is identified with an importer’s or manufacturer’s serial number shall be presumed, absent an official determination by the Director or other reliable evidence to the contrary, to be the frame or receiver of the weapon. The following is a nonexclusive list of such weapons and the specific part determined by the Director to be the firearm frame or receiver as they existed on that date:

AR15/M16 variants

Ruger Mark IV

Benelli 121 M1

Vickers/Maxim, Browning 1919, M2, and box-type machineguns and semiauto variants

*Under the new rules these would not have been the “frame” or “receiver”, absent the grandfathering.*



# New and Clarified Marking Requirements

- Manufacturers and Importers must now mark their Name and City/State on the Frame/Receiver for all “new models”
  - Ambiguity with respect to what is a “new model”
  - Ambiguity w/ respect to Name and City/State on polymer firearms
- If a multi piece receiver, the subpart that is the outermost visible portion must be marked. If more than one subpart similarly designed (e.g., left/right halves), each of those subparts must be marked.
- Any part defined as a “machine gun” or “silencer” that is not a component part of a complete firearm or silencer must be marked, registered, and transferred in accordance with NFA.
  - Exemption for silencer parts shipped to FFL/SOT for repair of consumer’s silencer remains.
  - Clarified exemption for FFL/SOTs making silencer parts for a silencer manufacturer
- Manufacturers performing manufacturing processes for other manufacturers no longer have to file 2009-5 notification.
- If Importer receives a duplicate SN from foreign vendor, they may modify so it is no longer a duplicate SN.

# New and Clarified Marking Requirements

- If *any FFL* takes a privately made firearm (PMF) into inventory – i.e. has to Acquire it on the A&D Book – it **MUST** mark the firearm with a serial number.
  - First 3 Last 5 of FFL number, followed by dash and identifier number (e.g., 98376389-ABC001)
  - If the PMF has a SN placed by a nonlicensee, still have to add first 3 last 5 followed by hyphen and Acquire on Book
  - If it is a polymer firearm, must be placed on piece of metal permanently embedded into the polymer
  - Mark within 7 days or prior to Disposition
  - Anything currently in inventory must be marked within 60 days of effective date of the rule

# New and Clarified Marking Requirements

- Silencers utilizing tubed design must be marked on the tube
- Silencers utilizing modular design must be marked on the part that attaches to the firearm, excluding any accessory that has to be used (if more than one such part, both have to be serialized)



# New and Clarified Marking Requirements

- GCA items must be marked within seven days *following the date the entire manufacturing process has ended* or prior to Disposition. Clarified that WIP does NOT have to be serialized and marked (unless plan on selling as its own receiver or frame, then it must be so-marked).
- NFA items must be marked by the close of the next business day *following the date the entire manufacturing process has ended* or prior to Disposition. (unless plan on selling as its own receiver or frame, or machine gun part or silencer part, then it must be so-marked)

“For purposes of these subparagraphs, firearms awaiting materials, parts, or equipment repair to be completed are presumed, absent reliable evidence to the contrary, *to be in the manufacturing process*”

# New Recordkeeping Requirements

- Manufacturers and Importers are now required to consolidate their Acquisition and Disposition Records (superseding Rulings 2011-1 and 2016-3)
- Dealers are now required to keep their A&D Book and Form 4473 records until they go out of business (no more 20 year rule, or 5 year vs. 20 year for 4473).
  - Advisable that *all* records related to A&D Book retained indefinitely (Theft/Loss, NFA outgoing forms, multiple sales forms, etc.)

# Questions / Contact?



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