

renewal date to the requested common expiration date and another to cover the period from the common expiration date to the expiration date of the following twelve-month period. Also, it is pointed out that although the first renewal license will be cancelled on and after the requested common expiration date, the regulations do not provide for refund of any part of the . . . license fee paid for such license.<sup>101</sup>

### **Firearms License Revocation, Suspension, or Imposition of Civil Fine**

The compliance inspection process that may lead to the revocation or suspension of a e is guided more my evolving practices and procedures than statues, regulations, and rules. In a March 2016 ATF “Fact Sheet - Federal Firearms Compliance Inspections and Revocation Process” the ATF provided the following helpful information:

ATF industry operations investigators (IOIs) conduct inspections of FFLs to ensure compliance with the law and regulations and to educate licensees on the specific requirements of those laws and regulations. Additionally, IOIs review required records of the FFLs to determine and identify individuals potentially associated with diverting firearms to illicit markets or involved in other criminal activity. During inspections, IOIs suggest voluntary measures that licensees can take to improve compliance with the GCA and help reduce violent crime and protect the public through partnership with ATF. If violations are discovered during the course of an FFL inspection, the tools that ATF has available to guide the FFL into correction of such violations and to ensure future compliance include issuing a report of violations, sending a warning letter, and holding a warning conference with the industry member. Despite these actions, on rare occasions ATF encounters a licensee who fails to comply with the laws and regulations and demonstrates a lack of commitment to improving his or her business practices. In such cases where willfulness is demonstrated, ATF’s obligation to protect public safety may require revocation of the FFL.

There were more than 139,000 FFLs in fiscal year 2015. This includes firearm licenses for dealers, manufacturers, importers, and collectors. During that time, ATF conducted 8,696 firearms compliance inspections.

Part of ATF’s core mission is to protect the public from violent crime involving the use of firearms. The FFLs who willfully violate the laws and regulations preventing ATF from accomplishing its mission to protect the public are few. Willfulness is not defined in the regulations, but is defined by case law to mean the intentional disregard of a known legal duty or plain indifference to a licensee’s legal obligations. In the case of an FFL who has

---

<sup>101</sup> ATF Ruling 73-9 (citing license requirements under 26 C.F.R. § 178.41, subsequently moved to § 478.41).

## Chapter 10

### *General Licensing Requirements*

willfully violated the law, has shown an intentional disregard for regulatory requirements, or has knowingly participated in criminal acts, revocation often becomes the only viable option. It should be noted, however, that ATF does not revoke for every violation it finds; and that revocation actions are seldom initiated until after an FFL has been educated on the requirements of the laws and regulations and given an opportunity to voluntarily comply with them but has failed to do so. Violations commonly cited in revocation cases include failure to account for firearms, failure to verify and document purchaser eligibility, failure to maintain records requisite for successful firearms tracing, and failure to report multiple sales of handguns.

The revocation process begins when an IOI recommends revocation following an inspection. The recommendation is subject to a rigorous, thorough internal review process. The authority to revoke rests with ATF's Directors of Industry Operations (DIO) located at one of ATF's 25 field divisions. If the DIO concurs with revocation of the license, the report is reviewed by ATF field division counsel for legal sufficiency.

To ensure consistency throughout the country, the DIO notifies the Deputy Assistant Director of Field Operations – Industry Operations (DAD IO) located at Bureau headquarters in Washington, D.C., of the decision to pursue a potential revocation and provides a synopsis of the case. The DAD (IO) will advise the DIO if the matter should proceed in the field division. If the matter is highly complex or sensitive, or if the licensee's operations and alleged violations are taking place in several field divisions, it will be resolved at the headquarters level.

If revocation is pursued, procedures are followed as specified under Title 27 Code of Federal Regulations Part 478. The licensee is provided with a notice of revocation that includes findings describing the reasons for pursuing revocation. The licensee has 15 days from receipt of the notice to request a hearing. The licensee may be represented by an attorney at the hearing and may bring employees and documentation to address the violations cited in the notice. ATF is generally represented at hearings by ATF Counsel and the IOIs who conducted the inspection(s) resulting in the revocation recommendation.

During a hearing, the licensee has the opportunity to challenge the violations and establish that the violations were not willful. Based on the evidence presented at the hearing by the licensee and ATF, the hearing officer submits a report of findings to the DIO. Based upon the hearing testimony, exhibits presented during the hearing, and the hearing officer's findings, the DIO decides whether to continue with the revocation. If the DIO's decision is to revoke following a hearing, or in cases where a hearing is not requested by the FFL, then a final notice of revocation is sent to the licensee with a summary of the findings and the legal conclusions that warrant revocation.

## Chapter 10

### *General Licensing Requirements*

A licensee who receives a final notice of revocation may, within 60 days of receipt of the Final Notice, file a petition for de novo review with the U.S. District Court.

If the licensee makes a request to the DIO to allow continuance of business operations, the DIO may allow the licensee to operate during the appeal process. If the DIO prohibits continuance of operations during judicial review because of the risk to public safety, the FFL can appeal to the court to continue operations during the review process.<sup>102</sup>

If errors are discovered at the end of an inspection, the industry operations investigator may make a recommendation that can result, in order of severity, a Report of Violations, a Warning Letter, a Warning Conference, or Revocation proceedings. Previous Warning Letters and Warning Conferences are used by the ATF in Revocation proceedings as evidence that the alleged violations were “willful” as required as a ground for revoking a license.

The statutes and regulations do not provide for warning letters or warning conferences. The ATF has limited options available to take against a licensee other than license suspension and fines for the failure to conduct NICS checks and, for all other violations, license suspension. The warning letters and conferences are an effort by the ATF to allow a licensee to correct violation before license revocation.

#### Grounds for Revocation of License

The ATF may “revoke any license . . . if the holder of such license has willfully violated any provision of [the Gun Control Act], or any rule or regulation prescribed by the Attorney General under [these laws] or fails to have secure gun storage or safety devices available at any place in which firearms are sold under the license to persons who are not licensees.”<sup>103</sup> The exceptions for situations where the storage or safety device is unavailable due to conditions “beyond the control of the licensee” continue to apply and cannot be used as a basis for finding a violation. These conditions include “a secure gun storage or safety device is temporarily unavailable because of theft, casualty loss, consumer sales, backorders from a manufacturer, or any other similar reason beyond the control of the licensee.”<sup>104</sup>

---

<sup>102</sup> [www.atf.gov/resource-center/fact-sheet/fact-sheet-federal-firearms-compliance-inspections-and-revocation-process](http://www.atf.gov/resource-center/fact-sheet/fact-sheet-federal-firearms-compliance-inspections-and-revocation-process).

<sup>103</sup> 18 U.S.C. § 923(e); 27 C.F.R. § 478.73(a) (“[A] notice of revocation, suspension, or imposition of a civil fine may be issued on ATF Form 4500 whenever the Director has reason to believe that . . . a licensee has violated 18 U.S.C. 922(z)(1) by selling, delivering, or transferring any handgun to any person other than a licensee, unless the transferee was provided with a secure gun storage or safety device for that handgun.”)

<sup>104</sup> 18 U.S.C. § 923(d)(1)(G).

Chapter 10  
*General Licensing Requirements*

The license of a dealer may also be revoked for “willfully” transferring “armor piercing ammunition.”<sup>105</sup> Regulations provide more specific grounds for which a firearms license may be revoked or suspended or civil fines imposed: when the ATF “has reason to believe” that a licensee has violated each of the following: 1) knowingly transferred a firearm to an unlicensed person; 2) knowingly failed to comply with the requirements of the national background check system for that transfer; 3) at the time that the transferee most recently proposed the transfer, the licensee made the transfer while the national instant criminal background check system was operating; and 4) information was available to the system demonstrating that the transfer would violate federal law because the transferee was a prohibited person or the transfer would violate state law.<sup>106</sup>

Courts have determined that a willful violation does not require “bad intent or evil motive before a license may be revoked,” but only that the licensee “knew of his legal obligation and purposely disregarded or was plainly indifferent to the recordkeeping requirements.”<sup>107</sup> Purpose disregard or plain indifference can be shown by evidence that the licensee had knowledge of the legal requirements based on a previous warning or warning conference and had subsequent violations.<sup>108</sup>

Challenges to Revocation of a License

The ATF’s decision to revoke a license “may be reviewed only as provided in [18 U.S.C. § 923(f)].”<sup>109</sup>

*Written Notice from ATF (Form 4500)*. The ATF is required to provide notice and an opportunity for a hearing prior to revocation,<sup>110</sup> using ATF Form 4500.<sup>111</sup> “The notice shall set forth the matters of fact constituting the violations specified, dates, places, and the sections of law and regulations violated.”<sup>112</sup> A “notice of a revocation of a license shall be given to the holder of such license before the effective date

---

<sup>105</sup> 18 U.S.C. § 923(e).

<sup>106</sup> 27 C.F.R. § 478.73(a).

<sup>107</sup> *Stein’s, Inc. v. Blumenthal*, 649 F.2d 463, 467 (7th Cir. 1980)

<sup>108</sup> *Willingham Sports, Inc. v. BATFE*, 415 F.3d 1274, 1277-79 (11th Cir. 2005).

<sup>109</sup> 18 U.S.C. § 923(e).

<sup>110</sup> 18 U.S.C. § 923(e).

<sup>111</sup> 27 C.F.R. § 478.73(a).

<sup>112</sup> 27 U.S.C. § 478.73(b).

of the revocation.”<sup>113</sup> The procedure the ATF must follow to serve these notices on licensees is very specific:

All notices and other documents required to be served on an applicant . . . shall be served by certified mail or by personal delivery. Where service is by certified mail, a signed duplicate original copy of the formal document shall be mailed, with return receipt requested, to the applicant or licensee at the address stated in his application or license, or at his last known address. Where service is by personal delivery, a signed duplicate original copy of the formal document shall be delivered to the applicant or licensee, or, in the case of a corporation, partnership, or association, by delivering it to an officer, manager, or general agent thereof, or to its attorney of record.<sup>114</sup>

*Licensee Must File Request for Hearing.* The ATF “shall afford the licensee 15 days from the date of receipt of the notice in which to request a hearing prior to suspension or revocation of the license, or imposition of a civil fine.”<sup>115</sup> A licensee wanting a hearing “after receipt of a notice of suspension or revocation of a license, or imposition of a civil fine” is required to “file a request, in duplicate, with the Director within 15 days after receipt of the notice of suspension or revocation of a license, or imposition of a civil fine.”<sup>116</sup>

Congress has provided that in a request for a hearing, the licensee may request and the Attorney General “shall . . . stay the effective date of the revocation.”<sup>117</sup> There is no reason a licensee would not make such a request and, as the ATF is required to agree to it, the statute is nothing but a trap for the unwary licensee who fails to request the stay. The regulations make the stay automatic, providing that “where denial, suspension, or revocation proceedings are pending before the [ATF], or notice of denial, suspension, or revocation has been served on the licensee and he has filed timely request for a hearing, the license in the possession of the licensee shall remain in effect even though such license has expired, or the suspension or revocation date specified in the notice of revocation on Form 4500 served on the licensee has passed.”<sup>118</sup> However, where a license has expired, the licensee must have “timely filed an application for the renewal of his license.”<sup>119</sup> Accordingly, the licensee should be sure to *always file a license renewal*

---

<sup>113</sup> 18 U.S.C. §§ 923(f)(1).

<sup>114</sup> 27 C.F.R. § 478.75.

<sup>115</sup> 27 C.F.R. § 478.73(b).

<sup>116</sup> 27 C.F.R. § 478.74.

<sup>117</sup> 18 U.S.C. § 923(f)(2).

<sup>118</sup> 27 C.F.R. § 478.78.

<sup>119</sup> 27 C.F.R. § 478.78.

Chapter 10  
*General Licensing Requirements*

*application prior to its expiration* and, in requesting a hearing prior to the suspension or revocation of a license, *request a stay of the effective date of the revocation*.

“If the licensee does not file a timely request for a hearing, the Director shall issue a final notice of suspension or revocation and/or imposition of a civil fine on ATF Form 5300.13.”<sup>120</sup>

*Hearing.* Once the ATF receives a request for a hearing, it is required to “promptly hold a hearing” to review the licensee’s revocation.<sup>121</sup> “On receipt of such request, the Director shall, as expeditiously as possible, make necessary arrangements for the hearing and advise the licensee of the date, time, location and the name of the officer before whom the hearing will be held.”<sup>122</sup> This “notification shall be made no less than 10 days in advance of the date set for the hearing.”<sup>123</sup> The location of these hearings shall be “at a location convenient to the aggrieved party.”<sup>124</sup>

“During the hearing the licensee will have the opportunity to submit facts and arguments for review and consideration; offers of settlement will not be entertained at the hearing but may be made before or after the hearing.”<sup>125</sup> In addition, the “licensee may be represented by an attorney, certified public accountant, or other person recognized to practice before the [ATF].”<sup>126</sup> However, “[h]earing procedures in firearms licensing matters are informal in nature; the regulations found in the Administrative Procedure Act (APA) (5 U.S.C. 554) do not apply to hearings held under 18 U.S.C. 923(f)(2) because a federal firearms licensing hearing is subject to de novo judicial review in district court under 18 U.S.C. 923(f)(3).”<sup>127</sup> Because these hearings are not subject to the federal Administrative Procedures Act,<sup>128</sup> the licensee does not have the

---

<sup>120</sup> 27 C.F.R. § 478.73(b).

<sup>121</sup> 18 U.S.C. § 923(f)(2).

<sup>122</sup> 27 C.F.R. § 478.74.

<sup>123</sup> 27 C.F.R. § 478.74.

<sup>124</sup> 18 U.S.C. § 923(f)(2); 27 C.F.R. § 478.77.

<sup>125</sup> 27 C.F.R. § 478.74; see also 27 C.F.R. § 478.72. (The provisions under both sections are identical except that § 478.72 refers to the “applicant” and § 478.74 refers to the “licensee.”)

<sup>126</sup> 27 C.F.R. § 478.76. The representative must be “recognized to practice before [ATF] as provided in 31 C.F.R. Part 8 (Practice Before the Bureau of Alcohol, Tobacco and Firearms)” and have “otherwise complied with the applicable requirements of 26 C.F.R. 601.521 through 601.527 (conference and practice requirements for alcohol, tobacco, and firearms activities).”

<sup>127</sup> 75 Fed. Reg. 48363 (August 10, 2010).

<sup>128</sup> *Arwady Hand Truck Sales, Inc. V. Vander Werf*, 507 F.Supp.2d 754, 758-761 (S.D. Tex. 2007).

Chapter 10  
*General Licensing Requirements*

ability to conduct discovery before the hearing or to compel the attendance of a witnesses during the hearing.

The hearing is conducted before a hearing officer selected and hired by the ATF and who is often an employee of the ATF. The ATF has explained:

The Chief, FES Division will select hearing officers from a list of contractors and volunteers furnished by the Office of Field Operations. While there are no formal selection requirements, at a minimum, candidates for hearing officer should possess the following:

- Comprehensive knowledge of firearms laws and regulations.
- Excellent oral and written communication skills.
- Ability to condense complex information into a clear and concise report.
- Ability to maintain order and decorum in an adversarial proceeding.
- Not have been the subject of adverse action as the result of an investigation by the Office of Professional Responsibility and Security Operations (OPRSO) within 5 years preceding selection to serve as a hearing officer.
- If, subsequent to being selected as a hearing officer, the subject is the recipient of adverse action as the result of an investigation by the OPRSO, the hearing officer will be removed from performing those duties.

Prior to conducting a firearms hearing, hearing officers will complete the appropriate training on hearing procedures conducted by the Office of Training and Professional Development (TPD) or by an experienced hearing officer. If an experienced hearing officer, who has received training on hearing procedures conducted by the Office of Training and Professional Development (TPD), provides training on hearing procedures to a newly selected hearing officer who has not had the opportunity to attend hearing officer training provided by TPD, such training will be deemed adequate.

Hearing officers are appointed by and serve at the discretion of the Chief, FES Division with the concurrence of the hearing officer's DIO or other appropriate field division management official. Expenses for hearing officer travel and equipment needs will be funded by the FES Division.<sup>129</sup>

---

<sup>129</sup> 75 Fed. Reg. 48363 (August 10, 2010).

Chapter 10  
*General Licensing Requirements*

*Notice After Hearing.* “On conclusion of the hearing and consideration of all the relevant presentations made by the licensee or the licensee's representative, the Director shall render a decision and shall prepare a brief summary of the findings and conclusions on which the decision is based.”<sup>130</sup>

If the ATF does not “reverse his decision to . . . revoke a license” after a hearing, it “shall give notice of his decision to the aggrieved party.”<sup>131</sup> Any “holder of a license which is revoked shall receive a written notice from the Attorney General stating specifically the grounds . . . upon which the license was revoked.”<sup>132</sup> Regulations provide: “If the decision is that the license should be revoked, or, in actions under 18 U.S.C. 922(t)(5) [for failing to follow the law for background checks] or 924(p) [for selling, transferring, etc., plastic guns], that the license should be revoked or suspended, or that a civil fine should be imposed, a certified copy of the summary shall be furnished to the licensee with the final notice of revocation, suspension, or imposition of a civil fine on ATF Form 5300.13.”<sup>133</sup>

If, however, “the decision is that the license should not be revoked, or in actions under 18 U.S.C. 922(t)(5) or 924(p), that the license should not be revoked or suspended, and a civil fine should not be imposed, the licensee shall be notified in writing.”<sup>134</sup>

*Court Review of Denial.* “The aggrieved party may at any time within sixty days after the date notice was given [by the Attorney General] file a petition with the United States district court for the district in which he resides or has his principal place of business for a de novo judicial review of such denial or revocation.”<sup>135</sup> In such case, “when the [ATF] Director finds that justice so requires, he may postpone the effective date of suspension or revocation of a license or authorize continued operations under the expired license, as applicable, pending judicial review.”<sup>136</sup> The licensee or the licensee’s counsel should make a written request for postponement to the Director of Industry Operations as they are generally granted.

---

<sup>130</sup> 27 C.F.R. § 478.74.

<sup>131</sup> 18 U.S.C. § 923(f)(3).

<sup>132</sup> 18 U.S.C. § 923(f)(1).

<sup>133</sup> 27 C.F.R. § 478.74.

<sup>134</sup> 27 C.F.R. § 478.74.

<sup>135</sup> 18 U.S.C. § 923(f)(3); 27 C.F.R. § 478.78. Under de novo judicial review, the district court acts as if it were considering the question of the denial for the first time, affording no deference to the decision of the Attorney General.

<sup>136</sup> 27 C.F.R. § 478.78.

Chapter 10  
*General Licensing Requirements*

The district court “may consider any evidence submitted by the parties to the proceeding whether or not such evidence was considered at the [previous] hearing.”<sup>137</sup> The statutes provide that “If the court decides that the Attorney General was not authorized to . . . revoke the license, the court shall order the Attorney General to take such action as may be necessary to comply with the judgment of the court.”<sup>138</sup>

In practice, the district court is not required to hold a trial de novo, but may use the administrative record in reaching its decision and give that record whatsoever weight it decides is appropriate. As explained above, that administrative hearing will not include any records or testimony not provided voluntarily by other persons or entities because there is no discovery or compelling witnesses to testify. Because the district court can rely exclusively on this record, it may do so based on the government’s filing of a motion for summary judgment. In most cases, these are granted. Thus, if a licensee gets to the point of a revocation hearing, they will likely feel as though they are being railroaded from that point forward. This is the reason it cannot be stressed enough to take any ATF warnings very seriously and fix them immediately, even if it mean firing your nephew who keep making sloppy mistakes on the Form 4473.

*License Revocations Based on Criminal Charges.* If criminal proceedings are instituted against a licensee alleging any violation of [the federal firearms laws] or of rules or regulations prescribed under this chapter, and the licensee is acquitted of such charges, or such proceedings are terminated, . . . the Attorney General shall be absolutely barred from . . . revoking any license . . . where such denial or revocation is based in whole or in part on the facts which form the basis of such criminal charges.<sup>139</sup> Furthermore, the Attorney General is required to pursue “proceedings for the revocation of a license” within “one year after the filing of the indictment or information or he cannot do so.”<sup>140</sup>

---

<sup>137</sup> 18 U.S.C. § 923(f)(3).

<sup>138</sup> 18 U.S.C. § 923(f)(3).

<sup>139</sup> 18 U.S.C. § 923(f)(4). (The termination of the proceedings based “upon motion of the Government before trial upon such charges” will not bar the Attorney General from denying or revoking any license.)

<sup>140</sup> 18 U.S.C. § 923(f)(4).