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The Firearm Industry  
Trade Association

# Update on ATF's 'Final Rule,' and Biden/DOJ 'Zero Tolerance' Policy

2022 Firearm Industry  
Compliance Webinar Series



# ATF Update: Zero Tolerance Policy and the Revised Firearms Regulations

**NSSF**<sup>®</sup>  
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**What is Causing FFLs to be Revoked Now +**

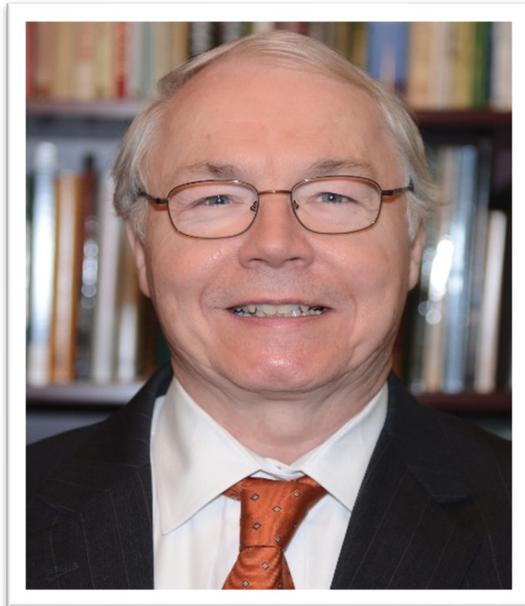
Definition of Frames and Receivers, PMF (aka “Ghost Gun”),  
Marking Requirements, and FFL Recordkeeping/Retention Changes

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# Introduction

- This session is aimed at retailer firearms dealers, as well as firearms manufacturers and importers.
- We are going to update you on the ATF Zero Tolerance Policy.
- We are going to cover some of the most significant and far-reaching policy and regulations changes made by ATF since the enactment of the Gun Control Act of 1968.
- Both the ZT policy and the regulatory changes will have a profound effect on how you operate your businesses going forward.
- There will be time for some questions and answers at the end of our presentation, but we almost certainly will not get to all of them.
- Please send either one of us your questions via email and we will respond to you as quickly as we can.

# Today's Objectives

- To define the ATF Zero Tolerance Policy, and what FFL actions have led to Revocation Notices being issued right now.
- To discuss additional actions that could lead to a Revocation Notice if found by ATF Industry Operations Investigators (IOIs) on inspections.
- To provide practical comments on the major ATF regulatory changes, effective August 24, 2022, including:
  - **Definition of “Frame or Receiver”**
  - **Silencers**
  - **Gunsmithing**
  - **Marking Requirements**
  - **Privately Made Firearms (the so-called Ghost Guns)**
  - **Recordkeeping and Record Retention Changes**

# What is the Zero Tolerance Policy?

- The Gun Control Act provides that ATF can only revoke an FFL for willful violations of the Act. However, ATF is not required by law to revoke a license when willful violations are cited on an inspection; and the agency has not always done so.
- The Zero Tolerance Policy means what it says.
- Under this policy ATF field offices have reviewed inspections closed out in 2021 with a warning letter or warning conference and are issuing revocation notices to many of those FFLs.
- A single instance of the following, if willful, will lead to revocation:
  - Transferring a firearm to a prohibited person
  - Failing to conduct a required background check
  - Falsifying records
  - Failing to respond to a trace request
  - Failing to allow an inspection

# Transferring a Firearm to a Prohibited Person

- The transferee answers yes to 21b – k on Form 4473 and the FFL goes ahead with NICS check and makes the transfer.
- Entering a ‘denied’ NICS response as a ‘proceed’ on Form 4473.
- Completing a sale in spite of a ‘denied’ response.
- Participation in straw sales -
  - Open participation in a straw sale, such as male denied and FFL immediately transfers the same firearm the denied person wanted to a companion.
  - This could include sale after a ‘delayed’ response when FFL knows firearm is going to the delayed person.
  - Willful blindness to an obvious straw sale.

# Failing to Conduct a Required Background Check

- Failure to complete a Form 4473 for an over-the-counter transfer.
- A NICS check is valid for 30 days. ATF is viewing any transfer over 30 days from the last NICS check as a willful violation. This is currently the most common reason FFLs are getting revoked, as far as we know.
- A state permit, qualified by ATF as an exemption to NICS, can only be used as a NICS exemption in the State of issuance. Using an out of state handgun permit to avoid a NICS check will lead to FFL revocation.
- An expired handgun permit cannot be used as a NICS exception.
- Manufacturer allowing employees or VIPs to remove firearm from FFL premises for other than a legitimate business purpose. This is a transfer and requires a Form 4473 and a NICS check.

# Falsifying Records

- Employee adding another firearm to a Form 4473 after a transfer has been completed.
- Entering a 'denied' NICS response as a 'proceed' on Form 4473.
- Manufacturer – Lack of feedback from s/n engravers back to recordkeepers on original serialization. Phantom guns.
- Logging in firearms before receipt.
- Logging out firearms from A&D record before shipment. – Credit hold ups at the last minute have caused guns not to be shipped after recordkeepers have logged them out. One Type 07 FFL faced revocation for a large shipment in such a situation – charged with false records.
- Destruction of Firearms - Logging out firearms as destroyed when they have not been. All firearms will be inventoried by ATF on inspection. False records.
- Employees must clearly understand that their employer will not tolerate any falsification of a record or report.

# Failing to Respond to a Trace Request

- 27 CFR 478.25a Responses to requests for information.
- FFLs must respond 'immediately to, and in no event later than 24 hours' after being contacted by an employee of the ATF National Tracing Center for information contained in its required records for determining the disposition of one or more firearms during a bona fide criminal investigation.
- Typically, the request is by telephone but can be by email or fax.
- FFLs must respond, even if research shows the FFL never received the gun being traced or if you cannot provide disposition information.
- FFLs that are temporarily closing for vacation or otherwise **MUST** have some way of accessing their records to respond to trace requests.

# Failing to Allow an Inspection

- 478.23 Right of entry and examination.
- ATF IOIs can enter the premises of an FFL without warrant once during a 12-month period to examine required records, reports and firearms and ammunition.
- This includes any place of remote storage of firearms or records.

# Other Willful Violations That May Result in the Issuance of a Notice of Revocation

- Failure to Account for firearms
  - Not logging firearms into or out of the A&D record
  - FFLs must take frequent inventories
- Failure to verify and document buyer eligibility
  - Expired DLs
  - Unsigned Forms 4473
- Failure to maintain records needed for successful firearms tracing
  - Failure to log out firearms transferred to other FFLs
- Failure to report multiple sales of handguns
  - Report must be filed on the date the sale requiring report occurs

# What Else is in the Zero Tolerance Policy?

- One little publicized aspect of the Zero Tolerance Policy, is the sharing of inspection findings by ATF IOIs with state agencies, where there is mandatory state licensing of firearms businesses.
- This is viewed 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 dealers referred and put them out of business.
- The 15 states that currently license firearms businesses are: Washington, Hawaii, California, Alabama, Illinois, Indiana, Pennsylvania, Delaware, New Jersey, Maryland, Rhode Island, Massachusetts, Connecticut, New York, and New Hampshire.

# ATF Final Rule 2021R-05F, Definition of “Frame or Receiver” and Identification of Firearms

- Effective 8/24/2022.
- Link to FR <https://www.federalregister.gov/documents/2022/04/26/2022-08026/definition-of-frame-or-receiver-and-identification-of-firearms>
- Most sweeping changes to the GCA regulations since 1968.
- Major areas of this change include:
  - Revised and much more detailed definition of ‘frame or receiver’
  - So-called 80% receiver kits are classified as receivers if readily completable.
  - Revises the term ‘gunsmith’
  - Establishes new firearms marking requirements
  - Imposes requirements on FFLs who possess personally manufactured firearms (PMFs)
  - Consolidates manufacturer and importer firearms acquisition and disposition records into a single record
  - Retention of required records is made permanent

# ATF Information and Training Resources

- ATF has posted on its website, at “What’s New” on the main firearms page an overview of the new regulations and training presentation, with the links here if you want to write them down.
- <https://www.atf.gov/firearms/docs/guide/overview-final-rule-2021r-05f-definition-%E2%80%9Cframe-or-receiver%E2%80%9D-and-identification/download>
- <https://www.atf.gov/firearms/docs/guide/training-aid-final-rule-2021r-05f-definition-frame-or-receiver-and/download>
- We have reviewed these documents and we recommend that any FFL interested in better understanding the new regulations or in employee training please read them and use them.
- We are going to provide some practical comments on the regulations for the remainder of our presentation.

# Definition of Receiver

- Current Definition at 27 CFR 478.11:

*Firearm frame or receiver.* That part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.

ATF and the industry have known that this definition was inadequate and did not relate to many firearms, such as hammerless firearms, silencers, rockets, some machine guns, etc.

- Revised Definitions as of 8/24/2022, at 27 CFR 478.12, are much more detailed and specific:

Separate definitions for handgun frames and rifle receivers.

Variant defined.

Firearm muffler or silencer frame or receiver defined.

Partially complete, disassembled, or nonfunctional frame or receiver.

# Grandfathering of Frame or Receiver Classifications Determined Before April 26, 2022

- The terms “frame” and “receiver” in the revised regulations include the specific part of a complete weapon, including variants thereof, classified by ATF FATD as a firearm frame or receiver prior to April 26, 2022.
- The revised regulations also exempt from the new definitions and marking requirements existing split frame or receiver designs in which a part was previously classified by ATF as the firearm “frame or receiver”, and they may be marked as before this rule.
- Pictures of some grandfathered frames or receivers, such as AR-15/M-16 variant firearms are included in the regulation.
- The terms “variant” and “variants thereof” mean a weapon utilizing a similar frame or receiver design irrespective of new or different model designations or configurations, characteristics, features, components, accessories, or attachments.

# Frame or Receiver Classifications of Partially Complete, Disassembled, or Nonfunctional Frames or Receivers before April 26, 2022.

- Prior determinations by ATF FATD 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” under § 478.11, or “frame or receiver” under § 479.11, as those terms were defined prior to April 26, 2022, is no longer considered **valid or authoritative after that date**, by ATF.
- New regulation 27 CFR 478.12(c): “The terms “frame” and “receiver” includes partially complete, disassembled, or nonfunctional frame or receiver, including a frame or receiver parts kit, that is designed to or may **readily** be completed, assembled, restored, or otherwise converted to function as a frame or receiver.”
- The regulation, effective August 24, 2022, classifies as firearms incomplete frames or receivers, commonly called “80% receivers,” that contain all the necessary components (finished or unfinished), along with jigs, templates, or other tools that allow an individual to complete a functional weapon with minimal effort, expertise, or equipment within a short period of time.

# Manufacturers of Parts Kits

- Effective 8/24/2022 manufacturers of kits or partially completed frames or receivers, that are clearly identifiable as an unfinished component of a weapon and readily completable, will have to be licensed, mark and serialize the receivers and keeps records of acquisition and disposition.
- Manufacturers will still be able to submit such items to the ATF FATD with a letter request, asking for a determination that they are not readily completable. The elements of the ATF definition of 'readily' should be addressed in the letter request.
- Any forging, casting, printing, extrusion, unmachined body, or similar article that is clearly identifiable as an unfinished component part of a weapon will not fall under the definition of frame or receiver.

# ATF Definition of Readily

**Readily.** A process, action, or physical state that is fairly or reasonably efficient, quick, and easy, but not necessarily the most efficient, speediest, or easiest process, action, or physical state. With respect to the classification of firearms, factors relevant in making this determination include the following:

- (1) Time, *i.e.*, how long it takes to finish the process;
- (2) Ease, *i.e.*, how difficult it is to do so;
- (3) Expertise, *i.e.*, what knowledge and skills are required;
- (4) Equipment, *i.e.*, what tools are required;
- (5) Parts availability, *i.e.*, whether additional parts are required, and how easily they can be obtained;
- (6) Expense, *i.e.*, how much it costs;
- (7) Scope, *i.e.*, the extent to which the subject of the process must be changed to finish it; and
- (8) Feasibility, *i.e.*, whether the process would damage or destroy the subject of the process, or cause it to malfunction.

# Rule 2021R-05F and Silencers

- Silencer receiver defined: An outer tube or modular piece, that provides housing or a structure for the primary internal component designed to reduce the sound of a projectile.
- For a modular silencer (more than one such part), the term receiver means the principal housing attached to the weapon that expels a projectile
- The modular subpart(s) identified in accordance with § 478.92 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 part of the frame or receiver of a weapon or device.
- Any firearm silencer part transferred separately to an individual that is not an SOT paying FFL must be marked and registered and transferred in accordance with the National Firearms Act (NFA).

# Silencers (Continued)

- Each part or modular subpart defined as a machinegun ( *i.e.*, frame or receiver or conversion part), or firearm silencer, that is not a component part of a complete weapon or complete firearm muffler or silencer device at the time it is sold, shipped, or otherwise disposed of shall be identified not later than close of the next business day following the date the entire manufacturing process has ended for the part, or prior to disposition, whichever is sooner.
- Licensed manufacturers qualified under 27 CFR Part 479 may transfer a part defined as a firearm silencer to another similarly qualified manufacturer without immediately identifying or registering such part, provided that it is for further manufacture ( *i.e.*, machining, coating, *etc.* ) or manufacturing a complete silencer. Once the new silencer with such part is completed, the manufacturer who completes it shall identify, record, and register it as required by Part 479.
- Licensed manufacturers qualified under Part 479 may transfer a replacement part defined as a firearm muffler or firearm silencer other than a frame or receiver to an SOT paying manufacturer or dealer without identifying or registering such part, provided that it is for repairing a complete muffler or silencer device that was previously identified, recorded, and registered under the NFA.

# Silencers (Continued)

- Type 07 or Type 10 FFLs who have paid SOT under the NFA may transfer a part defined as a firearm silencer to another similarly qualified manufacturer, without immediately identifying or registering such part, if it is for further manufacture or the manufacturing of a complete silencer. Once the new silencer with such part is completed, the manufacturer who completes it must identify, record, and register it on a Form 2.
- Type 07 or Type 10 FFLs who have paid SOT under the NFA may transfer a replacement part defined as a firearm silencer, other than a frame or receiver, to another SOT paying manufacturer or dealer without identifying or registering such part, if it is for repairing a complete silencer that was previously marked, entered in GCA records, and registered on a Form 2.

# Gunsmithing

- *Gunsmith*. A person who, as a service performed on existing firearms not for sale or distribution, devotes time, attention, and labor to repairing or customizing firearms, making or fitting special barrels, stocks, or trigger mechanisms to firearms, or placing marks of identification on privately made firearms in accordance with this part, as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who occasionally repairs or customizes firearms (including identification), or occasionally makes or fits special barrels, stocks, or trigger mechanisms to firearms. In the case of firearms for purposes of sale or distribution, such term shall include a person who performs repairs ( e.g., by replacing worn or broken parts) on complete weapons, or places marks of identification on privately made firearms, but shall not include a person who manufactures firearms ( i.e., frames or receivers or complete weapons) by completion, assembly, or applying coatings, or otherwise making them suitable for use, requiring a license as a manufacturer;
- The most important part of this new definition is “not for sale.” That is the distinction between gunsmithing and manufacturing.

# Gunsmithing, cont.

- As before the new rule, FFLs and licensed gunsmiths may do same-day, on-the-spot repairs, or marking, of firearms without entering them in the record of acquisitions and dispositions as long as they are returned to the person who brought them in.
- Under the final rule, gunsmiths are allowed to mark firearms for non-licensees. In fact, gunsmiths may now be licensed solely for the purpose of marking firearms for unlicensed persons.
- Under the final rule, gunsmiths, and even unlicensed persons, may mark PMFs for an FFL under the supervision of the FFL.

# Marking Requirements

- **IMPORTANT:** These new marking requirements apply to licensed importers and manufacturers only for new firearm designs imported or manufactured after the effective date of Final Rule 2021R-05F.
- The new rule allows licensed manufacturers to adopt the serial number and other identifying markings previously placed on a firearm, without a variance from ATF, provided the firearm has not been sold, shipped, or otherwise disposed of to a person who is not a licensed manufacturer.
- The new rule also permits licensed manufacturers to perform gunsmithing services on existing, marked firearms without marking or obtaining a marking variance.

# Marking Requirements, cont.

- Under the new rule, firearms imported or manufactured must be legibly marked with a serial number, by engraving, casting, stamping (impressing), (or other approved method) that information on the frame or receiver of the firearm.
- This required serial number must not be readily susceptible to obliteration, alteration, or removal.
- The serial number must not duplicate any serial number placed by the licensee on any other firearm.

# Marking Requirements, cont.

- In addition to the serial number, the importer or manufacturer must mark the frame or receiver with their name (or recognized abbreviation, *e.g.*, BACO, S&W, etc.) and the city and State where they maintain their business. (Currently can be on barrel or slide)
- Alternatively, the frame or receiver may be marked with their name (or recognized abbreviation) and the serial number, beginning with their abbreviated FFL number (first 3 and last 5 numbers) followed by a hyphen and the unique identification (serial) number.
- That marking would look like: W&H Firearms, 12345678-abc654321, for example.

# Marking Requirements, cont.

- In addition to the serial number and other FFL identifying markings, every firearm must also be marked, on the frame or receiver, or barrel or pistol slide, the following information:
  - The model (if any)
  - The caliber or gauge
  - If manufactured outside the U.S., the name of the foreign manufacturer
  - For imported firearms, the name of the foreign country in which it was manufactured.

# Marking Requirements, cont.

- In the case of a multi-piece frame or receiver, the part that must be marked is “the outermost housing or structure designed to house, hold, or contain either the primary energized component of a handgun, breech blocking or sealing component of a projectile weapon other than a handgun, or internal sound reduction component of a firearm muffler or silencer....”
- In the case of a left and a right half of a receiver that are similarly designed, both pieces must be marked with the same information.
- PMFs must be marked with a unique serial number that begins with the FFL’s abbreviated license number (1<sup>st</sup> 3 and last 5) followed by a hyphen and the unique identification number for that firearm.

# Marking Requirements, cont.

- Non-NFA firearms must be marked not later than the seventh day following the date of the end of the complete manufacturing process, or prior to disposition, whichever is sooner.
- NFA firearms must be marked not later than the close of the next business day following the date the entire manufacturing process is complete, or prior to disposition, whichever is sooner.
- Required information must be no smaller than 1/16 inch and engraved at a depth of not less than .003 inch.
- An acceptable way of marking a PMF is by placing the serial number on a metal plate that is permanently embedded into a polymer frame or receiver, or other method approved by the Director of ATF.

# Privately Made Firearms (PMFs)

- A PMF is a firearm, including a frame or receiver, completed, assembled, or otherwise produced by a person other than a licensed manufacturer, and without a serial number placed by a licensed manufacturer at the time the firearm was produced.
- Under the new rule, an unlicensed individual may still manufacture a firearm (PMF) for his or her personal use only.
- Effective with this new rule, every FFL who takes a PMF into inventory must mark it and record it into their A&D record within seven days, or before it is disposed, whichever comes first.

# PMFs, cont.

- If an FFL already has PMFs in their inventory on August 24, 2022, they have 60 days from that date to mark them or have them marked by another FFL, or to have them marked by an unlicensed person in the business of engraving items, under the direct supervision of the FFL.
- If you choose not to have them marked, you may surrender them to ATF for disposal or destroy them in accordance with the longstanding guidelines available from ATF.
- **IMPORTANT:** No FFL is required to accept a PMF into their inventory; however, if you do, you must follow the steps previously discussed, as appropriate.

# New Recordkeeping Requirements

- Final Rule 2021R-05F makes some substantial changes to the recordkeeping requirements for FFLs, especially the records of manufacture, acquisition and disposition of licensed manufacturers and importers.
- For licensed manufacturers and importers, those records are now required to be consolidated into one single record.
- The required record templates are shown on the next few slides.

# Importer or Manufacturer A&D Record

Description of firearm						Import/manufacture/acquisition		Disposition		
Importer, manufacturer, and/or "privately made firearm" (PMF) (if privately made in the U.S.)	Type	Model	Caliber or gauge	Country or countries of manufacture (if imported)	Serial No.	Date of import, manufacture, or acquisition	Name and address of nonlicensee; or if licensee, name and license No. (if acquired)	Date of disposition	Name	Address of nonlicensee; license No. of licensee; or Form 4473 transaction No. if such forms filed numerically

# Firearms Dealer A&D Record

Description of firearm					Receipt			Disposition	
Manufacturer, importer (if any), or "privately made firearm" (PMF)	Model	Serial No.	Type	Caliber or gauge	Date	Name and address of nonlicensee; or if licensee, name and license No.	Date	Name	Address of nonlicensee; license No. of licensee; or Form 4473 transaction No. if such forms filed numerically

# New Record Retention Requirements

- All ATF Forms 4473 must now be retained permanently, *i.e.*, until you discontinue your business.
- Forms 4473 may be retained on paper, or in an approved (by the Director of ATF) electronic format.
- The new retention requirements also apply to denied and to “did-not-transfer” forms. These forms must be retained in a separate file either alphabetically by the transferee’s last name or chronologically by the transferee’s date of certification.
- The A&D records of licensed dealers and licensed collectors shall also be maintained until business under the license is discontinued.

# Record Retention, cont.

- Manufacturers and importers must maintain all records of the importation, manufacture, or other acquisition of firearms, including Forms 6 and 6A until business under the license is discontinued.
- Licensed importers' records and licensed manufacturers' records of the disposition of firearms after December 15, 1968, must also be retained until such time as you discontinue operations under your FFL.

# Record Retention, cont.

- Both Forms 4473 and A&D records may be retained on paper or in an approved electronic format, and those more than 20 years old may be stored in a separate warehouse that will be considered part of the licensed premises subject to ATF inspection.
- As of now, the National Tracing Center is accepting records more than 20 years old (from the date of the last disposition) from licensees who are continuing operations. Contact the NTC or your local ATF office if you have qualifying records you wish to surrender.

# We Want to Help You!

- For retailers, NSSF offers a Premium Retail Membership that includes a one-day on premises compliance consultation.
- For manufacturers, NSSF offers a one-day compliance consultation focusing on manufacturing activities, as well as any retail operations.
- Interested? Please contact us:
- Harry McCabe at 931-505-3638 or [harry@mccabeconsultingllc.com](mailto:harry@mccabeconsultingllc.com)
- Wally Nelson at 703 505-2617 or [nels4947@outlook.com](mailto:nels4947@outlook.com).

# ATF Virtual Training Sessions

- Tuesday, June 14<sup>th</sup> 10AM ET – Noon ET
- Tuesday, June 14<sup>th</sup> 2PM ET – 4PM ET
- Thursday, June 16<sup>th</sup> 10AM ET – Noon ET
- Thursday, June 16<sup>th</sup> 2PM ET – 4PM ET

## ATF Attending NSSF Range-Retailer EXPO

[NSSF.ORG/EXPO](https://www.nssf.org/expo)

# Additional NSSF Compliance Resources

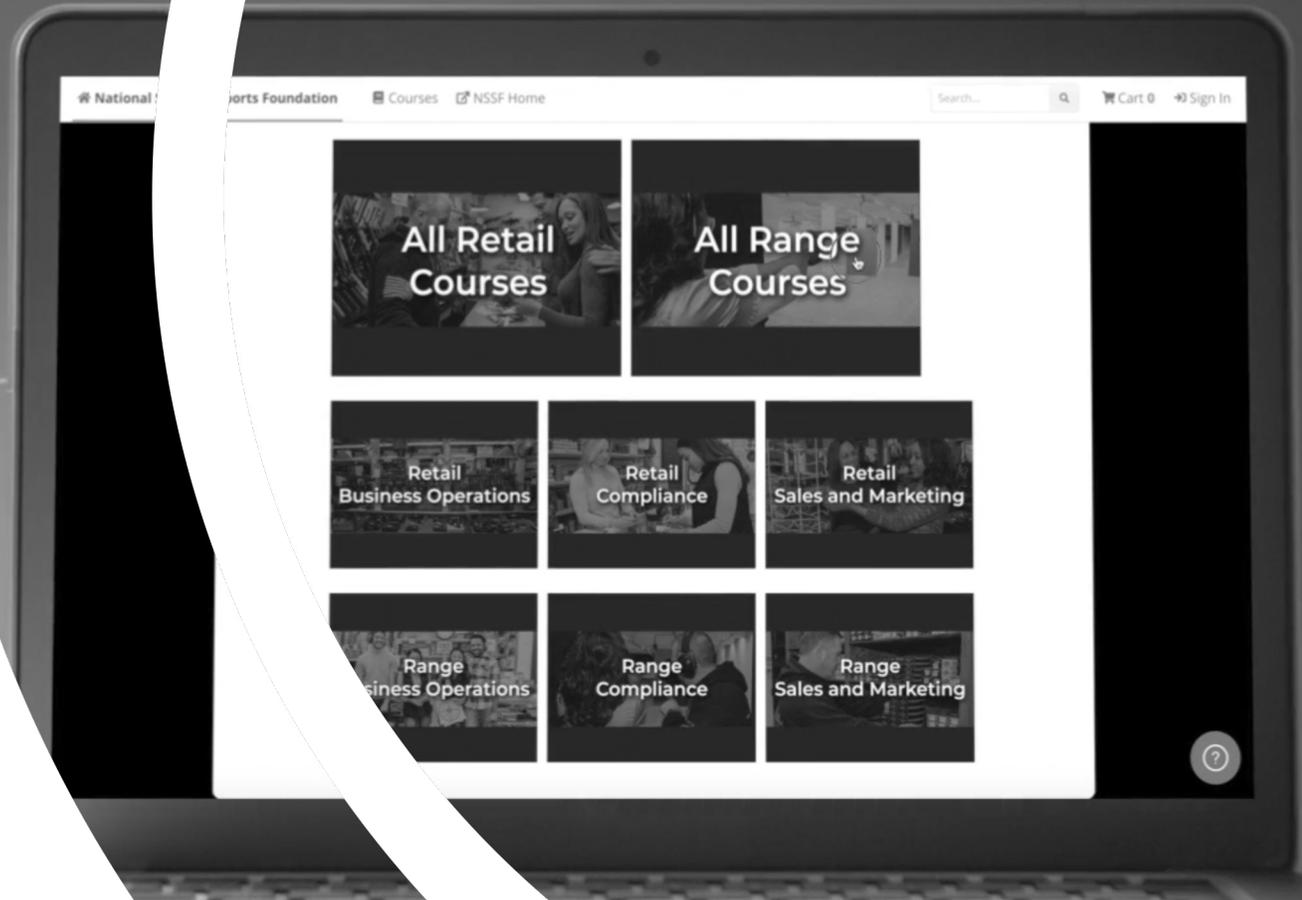
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Industry Compliance courses:

- “Zero Tolerance” Policy
- Winning at ATF Inspections
- Completing the Form 4473
- Multiple Sales Report
- and more

[NSSF.org/Education](https://www.nssf.org/education)



# Additional Questions?

Email NSSF at:  
[membership@nssf.org](mailto:membership@nssf.org)

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