

RANDY LEWIS SPENCE 's FCI  
FCI-27755  
06/14/2022 04:01 PM  
IOI (b)(6), Raleigh (IO) Satellite Office

**LICENSEE INFORMATION**

Applicant Name  
RANDY LEWIS SPENCE  
(Sole Proprietor)

RDS Key  
1-56-12504

License/Permit Number  
1-56-083-01-4A-12504

License Type  
01 - Dealer License

Business Type  
Sole Proprietorship

**Premises Address**

**Mailing Address**

Premises Ownership Type  
Owned

Same as Premises Address

Premises Location Type  
Single Family Dwelling

Address  
317 PINE DR  
Unit N/A  
LITTLETON, North Carolina 27850  
HALIFAX United States

Phone Type	Phone Number	Remarks
Business	+1 252-586-7587	

**RECOMMENDATIONS**

Final Decision  
Revocation  
Date  
04/27/2022

**Details**

Licensee revoked

All records forwarded to NTC by licesnee

**Out of Business Records and Inventory Management**

**Licensee Records**

**Licensee Inventory**

✔ Submitted to the Federal Licensing Center

✔ Inventory transferred to self

Deputy Assistant Director - Industry Operations Megan Bennett's Recommendation  
Revocation

**Details**

I concur with the recommendation of revocation.

Acting Special Agent in Charge (b)(6) recommendation

SAC concurs with recommendation of Revocation.

Division Counsel (b)(6) Review

**Details**

Concur with revocation

Director of Industry Operations Stephen Albro's Recommendation  
Revocation

**Details**

Warning letter already sent to FFL due to the prior guidance that transfer of a firearm using an invalid NICS exemption (out of state CCW) wasn't failure to run NICS. Case is being re-reviewed under current guidance. After consultation with counsel the recommendation is revocation.

Area Supervisor (b)(6) Recommendation  
Warning Letter

Details

Concur with IOI (b)(6) recommendation

FFL obtained a permit which was not from this state, purchaser was not prohibited

WL has already been sent and received by FFL

Industry Operations Investigator (b)(6) Recommendation  
Warning Letter

Details

Inspection Scope: 7/14/2020-7/14/2021

Closing Conference: 7/15/2021

An alternate recommendation of Warning Letter, in lieu of a Revocation, is recommended for the following reasons:

- This is the FFL's first compliance inspection. On 11/30/2017, RP Mr. Spence was given a review of the Federal Firearm Regulations by IOI (b)(6) during the application interview (see "Signed AFFR 2017" in attachments). The FFL was issued on 12/20/2017.
- The suggested administrative action recommendation of Revocation is based solely on 1 instance of 27 CFR 478.102(a): Failure to complete a NICS/POC background check.
- Willfulness was not present. The FFL obtained an out of state conceal carry assuming it would satisfy the background check requirement.
- Additionally, a Warning Letter was already sent on 7/27/2021 and received by RP Mr. Spence on 7/28/2021.

There were no prohibited transfers (b)(6) was cleared in NCIC/JWIN by IOI (b)(6) 7/15/2021. There were no illegal NICS violations and no public safety violations overall.

Inspection Findings

NICS

4. Failure to conduct a NICS check or obtain an alternate permit.

ELIGIBILITY VERIFICATION

Business Information Verification

Property Ownership Verification

Premises Ownership Type	Premises Location Type	Has the property ownership been verified?
Owned	Single Family Dwelling	Yes

Address  
317 PINE DR  
Unit N/A  
LITTLETON, North Carolina 27850  
HALIFAX United States

Additional Findings

The business property is owned by RP Mr. Randy Spence.

NCIC/JWIN, E-Trace, and N-Force queries were conducted for the FFL with no findings. CE (SA (b)(6)) was made aware of inspection with no issues.

Attachment(s):

Property Record.pdf

Zoning Information Verification

Is the proposed business activity in compliance with zoning?

Yes

Additional Findings

In 2017 the RP obtained (b)(6) as a Firearms Dealer from the home. The permit allows for the FFL business to take place as long as all federal, state, and local regulations are complied with.

Attachment(s):

(b)(6)

APPOINTMENT DETAILS

Interview Date

07/15/2021

Address

317 PINE DR, Unit N/A, LITTLETON, North Carolina 27850

Responsible Attendee(s)

RANDY LEWIS SPENCE

Non-Responsible Person(s)

No Items

RESPONSIBLE PERSON(S)

RANDY LEWIS SPENCE

Name	Gender	Race	Ethnicity
RANDY LEWIS SPENCE	Male	White	Not Hispanic or Not Latino
Date of Birth	SSN	Job Title	

(b)(6)

(b)(6)

OWNER

## Physical Identifiers

Height

(b)(6)

Weight

(b)(6)

Hair Color

(b)(6)

Eye Color

(b)(6)

## Place of Birth

Country

United States Of America

State

(b)(6)

City

(b)(6)

## Home Address

(b)(6)

## Additional Names

## Citizenship

United States

ID Type	Country	State	ID Number
Driver's License	United States	North Carolina	(b)(6)

Phone Type	Phone Number	Remarks
Mobile	(b)(6)	

Email Address	Email Remarks
(b)(6)	

## Criminal History Check

Date Criminal History Check Conducted  
07/12/2021

## Criminal History Check Comments

NCIC/JWIN

IOI (b)(6)

No findings

## INTERVIEW QUESTIONNAIRE

What is the proposed business activity?

SPENCE, RANDY LEWIS is a Type 01 dealer of firearms issued on 12/20/2017. Mr. Spence operates a low volume firearms business solely conducting transfers for his customers. He will gunsmith on occasion but only for himself and his brother. The licensee allows transfers of new and used long guns, handguns and receivers. Primary customer base is friends, family, and the Littleton community.

## A&amp;D (Inventory) -

The licensee maintains a manual Acquisition and Disposition Record as his primary record keeping book. The A&D record was in the proper format and all entries were timely made. A 100% inventory was taken of 7 firearms. There were no inventory discrepancies.

## ATF F 4473s -

The FFL files ATF F 4473's in chronological order by date of sale. There were [redacted] ATF F 4473s reviewed by IOI (b)(6) for the inspection scope. There were [redacted] ATF F 4473's identified by IOI (b)(6) with errors/omissions during the record review.

- 1 instance of 27 CFR 478.102(a): Failure to complete a NICS/POC background check.

a. Mr. Spence obtained a Virginia Conceal Carry Permit in order to conduct a transfer of a long gun without running a NIC background check for Ms. [redacted] IOI (b)(6) and the purchaser in NCIC with no prohibitions identified. Mr. Spence stated that he assumed he could take a Virginia Conceal Carry in the same manner as a North Carolina Conceal Carry. IOI (b)(6) explained to Mr. Spence that as a NC FFL he cannot obtain out of state permits in lieu of running a NIC background check.

- [redacted] instance of 27 CFR 478.124(c)(1): Failure to obtain a completed ATF F 4473.

a. On the same ATF F 4473 as mentioned above the FFL failed to identify that (b)(6) had skipped county for Section B #10. IOI (b)(6) reminded the FFL of his need to check over the form prior to the transfer taking place.

- [redacted] instances of 27 CFR 478.21(a): Failure to complete forms as prescribed.

a. On [redacted] separate ATF F 4473's the FFL failed to place Transferor/Seller information in Section E- #33. Mr. Spence stated that he "didn't know" all the information was needed. He also stated that he assumed if the FFL number or Name was present then the rest of the information wasn't needed. It was explained to him that even partial information is not proper and he needs to consider making a stamp for #33. IOI (b)(6) explained to him that not knowing is not an excuse as the ATF F 4473 states exactly what is needed for that section.

## Trace Activity, NICS, Multiple Sale-

The Violent Crime Analysis Branch provided an FFL history query resulting in no results.

A 60 day NICS FFL Audit Log query revealed 1 transaction for this licensee with 0 denials on file. RP Mr. Spence is properly registered with NICS and utilizes the call in method for all checks needed.

No trace related suspicious activity found during the inspection.

No multiple sales identified. Mr. Spence does not allow more than 2 handgun transfers in 5 consecutive business days and will likely never have multiple sales on file.

NFA/Importer/Manufacturer/Collector-N/A

Past 5 year Inspection History-  
11/30/2017- 763050-2017-0463: APPL, IO: (b)(6) Approved

Do they need an additional license or permit?  
No

Who are their primary suppliers?  
(b)(4)

#### Other State or Local Permits

Type	Number	Expiration
(b)(6)		

#### Business Activities

Internet Sales/Transfers  
Gunsmith

#### Selected Operational Security Measures

Controlled Access to ATF Recordkeeping  
Controlled Access to Keys

#### Internet Sales/Transfers Website

Incoming Transfers Only

#### PREMISES INFORMATION

Inspection Area Description
(b)(6)

RP Mr. Randy Spence was advised of ATF's right of entry to the business location and that the records, inventory and premises are subject to inspection. IO: (b)(6) located the premises via iPhone GPS. No safety or security concerns. Off-site storage is not conducted.

Primary Activity  
Retail

#### Selected Physical Security Measures

#### GPS Coordinates

Latitude  
36.48949

Longitude  
-77.82558

Deadbolts  
Safe(s)/Vault(s)  
Floodlights  
Fenced Area  
Security Cameras  
Motion Sensors  
Alarm Monitoring (with Cellular Back-Up)

#### INTERVIEW NOTES

IO: (b)(6) obtained a signed Consent to Inspect Outside Business Hours (see attachments) from the RP in order to inspect during non business hours as Mr. Spence only has evening hours listed.

#### ONSITE SUMMARY

Total Number of ATF Form 4473s for Inspection Review Period

Total Number of ATF F 4473 Reviewed

Total Number of Open Dispositions in A & D Record

Total Number of Firearms in Inventory  
7

Actual Number of Firearms Verified

Number of Firearms Missing Before Reconciliation

Total Number of Firearms Missing After Reconciliation  
0

Total Number of Acquisitions in the Last 12 Months  
(b)(4)

Total Number of Dispositions in the Last 12 Months  
(b)(4)

Onsite Start Date

Onsite End Date

Number of Reported Lost/Stolen Firearms During Inspection Period

Total Number of Traces During Inspection Review Period

Total Number of Those Traces That Were Unresolved

Additional Comments

Inspection Scope 7/14/2020-7/14/2021

Attachment(s)

Report of Violations.pdf

Report of Violations.pdf

Licensee Response to Violations Report.pdf

**REPORT OF VIOLATIONS**

Regulation	Corrective Actions	Instance Details
1 27 CFR 478.102(a): Failure to complete a NICS/POC background check  ATF Forms 4473: 1 Number of Instances: 1	Do not accept any out-of-state permits for the use of a background check for all future firearm transactions. Execute a required NICS/POC background check for all future over-the-counter firearm transactions. Retrieve and accurately record (on an ATF Form 4473) a required final NICS/POC background check response prior to all future over-the-counter firearm transactions.	NICS Violation: (b)(6)
2 27 CFR 478.124(c)(1): Failure to obtain a completed ATF F 4473  ATF Forms 4473: 1 Number of Instances: 1	Ensure that all required ATF Form 4473 Section B items are completed/provided by the transferee/buyer on all future transactions. Execute and retain a complete and accurate ATF Form 4473 on all future firearm transactions.	(b)(3) (112 Public Law 55 125 Stat 552),(b)(6)
3 27 CFR 478.21(a): Failure to complete forms as prescribed  ATF Forms 4473: 1 Number of Instances: 1	Ensure that the transoror/seller records all FFL information for Section E for all future firearms transactions. Complete all forms as prescribed. Ensure that all ATF Form 4473 items, as required by form headings and instructions, are accurately completed on all future transactions. Execute and retain a complete and accurate ATF Form 4473 on all future firearm transactions.	(b)(3) (112 Public Law 55 125 Stat 552),(b)(6)

**LICENSEE RESPONSE REPORT**

Regulation	Corrective Actions	Licensee Response	Status Details
1 27 CFR 478.102(a): Failure to complete a NICS/POC background check  ATF Forms 4473: 1 Number of Instances: 1	Do not accept any out-of-state permits for the use of a background check for all future firearm transactions. Execute a required NICS/POC background check for all future over-the-counter firearm transactions. Retrieve and accurately record (on an ATF Form 4473) a required final NICS/POC background check response prior to all future over-the-counter firearm transactions.	FFL stated that he assumed the Virginia Conceal Carry was the same as the North Carolina Conceal Carry and he could accept it as a form of a background check. To his knowledge, on a state level Virginia honors the North Carolina Conceal Carry it was allowed.	Status Licensee Notified  Verified Method In Person  Date Licensee Notified 07/15/2021
2 27 CFR 478.124(c)(1): Failure to obtain a completed ATF F 4473  ATF Forms 4473: 1 Number of Instances: 1	Ensure that all required ATF Form 4473 Section B items are completed/provided by the transferee/buyer on all future transactions. Execute and retain a complete and accurate ATF Form 4473 on all future firearm transactions.	FFL stated that it was an oversight on his part.	Status Licensee Notified  Verified Method In Person  Date Licensee Notified 07/15/2021
27 CFR 478.21(a): Failure to		FFL stated that his assumption was that	Status



<div>complete forms as prescribed</div> <div>ATF Forms 4473</div> <div>Number of Instances</div> <div>3</div>	<div>Ensure that the transoror/seller records all FFL information for Section E for all future firearms transactions.</div> <div>Complete all forms as prescribed.</div> <div>Ensure that all ATF Form 4473 items, as required by form headings and instructions, are accurately completed on all future transactions.</div> <div>Execute and retain a complete and accurate ATF Form 4473 on all future firearm transactions.</div>	<div>with the FFL number we (ATF) had all the information we needed. For all future ATF F 4473s he stated the information will be recorded.</div>	<div>Correction Verified</div> <div>Verified Method In Person</div> <div>Date Correction Verified 07/15/2021</div>
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## CLOSING CONFERENCE

( 7/15/2021 )

07/15/2021

Attachment(s)

### Attendee(s)

RANDY LEWIS SPENCE

## EXHIBITS

### Inspection

Category	Attachment Name
Correspondence	Spartan Notification RE: 1-56-12504 Inspection Results
Correspondence	Spartan Notification RE: 1-56-12504 Monitored Case
Correspondence	Spartan Notification RE: 1-56-12504 Monitored Case
Correspondence	Spartan Notification RE: 1-56-12504 Monitored Case
Correspondence	Spartan Notification RE: 1-56-12504 Monitored Case
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Correspondence	Spartan Notification RE: 1-56-12504 Monitored Case
Correspondence	Spartan Notification RE: 1-56-12504 Monitored Case
Correspondence	DIO Stephen Albro Returned Inspection FCI-27755
Correspondence	Spartan Notification RE: 1-56-12504 Monitored Case
Correspondence	Spartan Notification RE: 1-56-12504 Monitored Case
Correspondence	Spartan Notification RE: 1-56-12504 Monitored Case
Correspondence	Spartan Notification RE: 1-56-12504 Monitored Case
Correspondence	Spartan Notification RE: 1-56-12504 Inspection Results
WarningLetterReturnEmail	Warning Letter Received and Reviewed (Randy Spence).pdf
Correspondence	Action required concerning your Federal Firearms License
Correspondence	
WarningLetter	Warning Letter.pdf
Correspondence	Information Concerning Your Federal License/Permit
ClosingConferenceSummary	Acknowledgment of Regulations.pdf
LicenseeResponseToViolationsPDF	Licensee Response to Violations Report.pdf
Correspondence	
Correspondence	Information Concerning Your Federal License/Permit
ViolationsPDF	Report of Violations.pdf
Correspondence	Information Concerning Your Federal License/Permit
Correspondence	
ViolationsPDF	Report of Violations.pdf
ZoningVerification	(b)(6)
PropertyOwnershipVerification	Property Record.pdf

## Notice to Revoke or Suspend License and/or Impose a Civil Fine

In the matter of License Number 1-56-12504, as a/an

Dealer in Firearms Other Than Destructive Devices issued to:

Name and Address of Licensee (Show number, street, city, State and ZIP Code)

Randy Lewis Spence  
317 Pine Drive  
Littleton, North Carolina 27850

### Notice Is Hereby Given That:

Pursuant to the statutory provisions and reasons stated in the attached page(s), the Director or his/her designee, Bureau of Alcohol, Tobacco, Firearms and Explosives, intends to take action on the license described above.

☒ The above identified license may be revoked pursuant to 18 U.S.C. 923(e), 922(t)(5) or 924(p).

☐ The above identified license may be suspended pursuant to 18 U.S.C. 922(t)(5) or 924(p).

☐ The above identified licensee may be fined pursuant to 18 U.S.C. 922(t)(5) or 924(p).

Pursuant to U.S.C. 923(f)(2) and/or 922(t)(5), you may file a request with the Director of Industry Operations, Bureau of Alcohol, Tobacco, Firearms and Explosives, at ATF-Charlotte Field Division, Attention DIO Albro, 3600 Arco Corporate Drive, Suite 500, Charlotte, NC 28273, in duplicate, for a hearing to review the revocation, suspension and/or fine of your license. The request must be received at the above address within 15 days of your receipt of this notice. Where a timely request for a hearing is made, the license shall remain in effect pending the outcome of the hearing; and if the license is due to expire, the license will remain in effect provided a timely application for renewal is also filed. The hearing will be held as provided in 27 CFR Part 478.

If you do not request a hearing, or your request for a hearing is not received by ATF on time, a final notice of revocation, suspension, and/or imposition of civil fine (ATF Form 5300.13) shall be issued.

☒ Please see included brochure

Date 12/14/2021	Name and Title of Bureau of Alcohol, Tobacco, Firearms and Explosives Official Stephen B. Albro, Director of Industry Operations	(b)(6)
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I certify that on the date shown below I served the above notice on the person identified below by:

☒ Certified mail to the address shown below.

Tracking Number: 70190160000019551904

Or

☐ Delivering a copy of the notice to  
the address shown below.

Date Notice Served 12/14/2021	Title of Person Serving Notice IA	(b)(6)
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Print Name and Title of Person Served

Randy Lewis Spence

Signature of Person Served (if applicable)

Address Where Notice Served

317 Pine Drive, Littleton, North Carolina 28950

Under the provisions of 18 U.S.C. § 923(e) and 27 C.F.R. § 478.73, notice is hereby given of the revocation of the Federal firearms license specified above, in that the Director, Industry Operations, United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”), Charlotte Field Division, has reason to believe that Randy Lewis Spence (hereinafter Licensee), 317 Pine Drive, Littleton, North Carolina 27850, willfully violated the provisions of the Gun Control Act of 1968, as amended, 18 U.S.C. Chapter 44, and the regulations issued thereunder, 27 C.F.R. Part 478.

#### History

On or about November 30, 2017, ATF conducted an application inspection with Licensee. At the conclusion of the inspection, Randy Lewis Spence reviewed and signed an Acknowledgment of Federal Firearms Regulations. ATF issued a Type 01 Dealer’s License shortly thereafter on or about December 20, 2017.

#### Current Inspection

On July 15, 2021, ATF Industry Operations Investigator (b)(6) a compliance inspection of the licensee’s premises. The inspection revealed the following:

1. Licensee willfully failed on one (1) occasion to conduct a NICS background check or obtain a valid NICS alternative permit in violation of 18 U.S.C. § 922(t) and 27 C.F.R. § 478.102(a). Licensee accepted a Concealed Carry Permit issued by the Commonwealth of Virginia instead of conducting a NICS background check.

<u>Date</u>	<u>Transferee</u>	<u>Error</u>
04/09/21	(b)(6)	Failed to conduct NICS check

2. Licensee willfully failed in instance to ensure that the transferee correctly recorded the required information in Section A of the ATF Form 4473 in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(1).

<u>Date</u>	<u>Transferee</u>	<u>Error</u>
(b)(3) (112 Public Law 55 125 Stat 552),(b)(6)		

3. Licensee willfully failed on occasions to ensure that the ATF Form 4473 was complete and accurate as required prior to transferring a firearm violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.21a.

<u>Date</u>	<u>Transferee</u>	<u>Error</u>
(b)(3) (112 Public Law 55 125 Stat 552),(b)(6)		



## Final Notice of Denial of Application, Revocation Suspension and/or Fine of Firearms License

In the matter of:

- ☐ The application for license as a/an \_\_\_\_\_, filed by:  
or  
☒ License Number 1-56-12504 as a/an  
Dealer of Firearms Other Than Destructive Devices, issued to:

Name and Address of Applicant or Licensee (Show number, street, city, state and ZIP Code)

Randy Lewis Spence  
317 Pine Drive  
Littleton, North Carolina 27850


### Notice is Hereby Given That:

- ☐ A request for hearing pursuant to 18 U.S.C. § 923(f)(2) and/or 922(t)(5) was not timely filed. Based on the findings set forth in the attached document, your
- ☐ license described above is revoked pursuant to 18 U.S.C. 923(e), 922(t)(5) or 924(p), effective:
- ☐ 15 calendar days after receipt of this notice, or ☐ \_\_\_\_\_,
- ☐ license is suspended for \_\_\_\_\_ calendar days, effective \_\_\_\_\_, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).
- ☐ licensee is fined \$ \_\_\_\_\_, payment due: \_\_\_\_\_, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).
- ☒ After due consideration following a hearing held pursuant to 18 U.S.C. § 923(f)(2) and/or 922(t)(5), and on the basis of findings set out in the attached copy of the findings and conclusions, the Director or his/her designee concludes that your
- ☐ application for license described above is denied, pursuant to 18 U.S.C. 923(d).
- ☐ application for renewal of license described above is denied pursuant to 18 U.S.C. 923(d), effective:
- ☐ 15 calendar days after receipt of this notice, or ☐ \_\_\_\_\_,
- ☒ license described above is revoked pursuant to 18 U.S.C. 923(e), 922(t)(5) or 924(p), effective:
- ☐ 15 calendar days after receipt of this notice, or ☒ April 15, 2022
- ☐ license is suspended for \_\_\_\_\_ calendar days, effective \_\_\_\_\_, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).
- ☐ licensee is fined \$ \_\_\_\_\_, payment due: \_\_\_\_\_, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).

If, after the hearing and receipt of these findings, you are dissatisfied with this action you may, within 60 days after receipt of this notice, file a petition pursuant 18 U.S.C. § 923(f)(3), for judicial review with the U.S. District Court for the district in which you reside or have your principal place of business. If you intend to continue operations after the effective date of this action while you pursue filing for judicial review or otherwise, you must request a stay of the action from the Director of Industry Operations (DIO), Bureau of Alcohol, Tobacco, Firearms and Explosives, at 3600 Arco Corp. Dr. Suite 500, Charlotte, NC \_\_\_\_\_, prior to the effective date of the action set forth above. You may not continue licensed operations unless and until a stay is granted by the DIO.

Records prescribed under 27 CFR Part 478 for the license described above shall either be delivered to ATF within 30 days of the date the business is required to be discontinued or shall be documented to reflect delivery to a successor. See 18 U.S.C. 923(g)(4) and 27 CFR § 478.127.

After the effective date of a license denial of renewal, revocation, or suspension, you may not lawfully engage in the business of dealing in firearms. Any disposition of your firearms business inventory must comply with all applicable laws and regulations. Your local ATF office is able to assist you in understanding and implementing the options available to lawfully dispose of your firearms business inventory.

Date	Name and Title of Bureau of Alcohol, Tobacco, Firearms and Explosives Official	Signature
03/17/2021	Director of Industry Operations	

I certify that, on the date below, I served the above notice on the person identified below by:

☒ Certified mail to the address shown below.

Tracking Number: 7019 0160 0000 1955 1959

Or

☐ Delivering a copy of the notice to the address shown below.

Date Notice Served	Title of Person Serving Notice	Signature of Person Serving Notice
03/18/2021	IA	

Print Name and Title of Person Served	Signature of Person Served
Randy Lewis Spence	

Address Where Notice Served  
317 Pine Drive  
Littleton, North Carolina 27850

Note: Previous Edition is Obsolete

Randy Lewis Spence, 317 Pine Drive, Littleton, North Carolina, a Dealer in Other Than Destructive Devices, ("Licensee"), holds Federal firearms license #1-56-12504 issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) pursuant to the Gun Control Act of 1968 (GCA), as amended, 18 U.S.C. Chapter 44, and the regulations issued thereunder, 27 C.F.R. Part 478.

On December 14, 2021, ATF issued a Notice of Revocation and/or Fines of License, ATF Form 4500, to the Licensee via certified mail. The Licensee timely requested a hearing to review that Notice.

Due to the Covid-19 Pandemic, ATF offered licensee the opportunity to have either a (1) telephonic hearing; (2) a virtual/video hearing; or (3) a hearing using written submission. Licensee requested a telephonic hearing that was held on February 16, 2021. The hearing was conducted by ATF Director of Industry Operations (DIO) Stephen B. Albro. ATF was represented by Charlotte Division Counsel (b)(6) ATF Industry Operations Investigator (b)(6) appeared as witnesses on behalf of the Government and ATF Area Supervisor (b)(6) observed remotely. The Licensee, Randy Lewis Spence, participated in the hearing. The hearing was recorded and transcribed by the Government through a court reporter service. The Government offered testimony and exhibits and the licensee offered testimony and exhibits. All sides had the opportunity to make legal and factual arguments and to examine and cross examine witnesses.

### **Findings of Fact**

Having reviewed the record in this proceeding, I make the following findings:

1. At the hearing, ATF introduced evidence of a qualification inspection conducted at the licensed premises of Randy Lewis Spence in 2017. The document was a signed Acknowledgement of Federal Firearms Regulations dated November 30, 2017 demonstrating that ATF reviewed the legal requirements applicable to Licensee. *See* Government Exhibit 8.
2. At the hearing, ATF introduced a slide from a PowerPoint presentation used at a Federal Firearms Seminar on May 3, 2018 and an attendance log indicating that Randy Spence attended the seminar. *See* Government Exhibits 9 and 10.
2. Following a July 15, 2021 compliance inspection, Investigator (b)(6) identified three (3) regulatory violations all of which were included in the Notice of Revocation of License issued to Randy Lewis Spence. *See* Government Exhibit 1.
3. As set forth in paragraph 1 of the Notice of Revocation, Licensee willfully failed on one (1) occasion to conduct a NICS background check or obtain a valid NICS alternative permit in willful violation of 18 U.S.C. § 922(t) and 27 CFR § 478.102(a). The Government produced testimony and a Firearms Transaction Record, ATF Form 4473 showing that the licensee transferred a FED-ARM, AM-15, .223 caliber rifle to an individual who presented a concealed carry permit issued by the Commonwealth of



Virginia. The Licensee did not conduct a NICS background check. During the hearing, Licensee stated that he believed that the Virginia permit authorized him to transfer the firearm without conducting a NICS background check. See Government Exhibit 6.

4. As set forth in paragraph 2 of the Notice of Revocation, Licensee willfully failed in (b)(3) - 112 instance to ensure that the transferee correctly recorded the required information on the ATF Form 4473 in willful violation of 18 U.S.C. § 923(g)(1)(A) and 27 CFR § 478.124(c). During the hearing, the Government introduced testimony and an ATF Form 4473 demonstrating that the transferee failed to indicate her county of residence on the form. The Licensee stated that it was an oversight and not willful.
5. As set forth in paragraph 3 of the Notice of Revocation, Licensee failed on (b)(3) - 112 Public Law occasions to ensure that the ATF Form 4473 was complete and accurate as required prior to transferring a firearm in willful violation of 18 U.S.C. § 923(g)(1)(A) and 27 CFR § 478.21a. The Government produced testimony and (b)(3) - 112 Public Law ATF Forms 4473 indicating that Licensee failed to list his trade name, address, and federal firearms license number in item #33 of the form. See Government Exhibits 7A and 7B. The Licensee stated that it was an oversight, and he purchased a stamp with the correct information following the inspection.

## Conclusions of Law

Pursuant to the GCA, ATF may, after notice and opportunity for hearing, revoke a Federal firearms license if the licensee has willfully violated any provision of the GCA or the regulations issued thereunder. 18 U.S.C. § 923(e); 27 C.F.R. § 478.73. For purposes of 18 U.S.C. § 923, a “willful” violation occurs when the Licensee had knowledge of the GCA and either purposefully disregards the requirements or is plainly indifferent to them. See *Borchardt Rifle Corp. v. Cook*, 684 F.3d 1037, 1043 (10<sup>th</sup> Cir. 2012); *American Arms, Int’l v. Herbert*, 563 F.3d 78, 85 (4<sup>th</sup> Cir. 2009); *The General Store v. Van Loan*, 560 F.3d 920, 924 (9<sup>th</sup> Cir. 2009); *Armalite, Inc. v. Lambert*, 544 F.3d 644, 648 (6<sup>th</sup> Cir. 2008); *On Target Sporting Goods, Inc. v. Attorney General*, 472 F.3d 572 (8<sup>th</sup> Cir. 2007); *Article II Gun Shop, Inc. v. Gonzales*, 441 F.3d 492 (7<sup>th</sup> Cir. 2006); *Willingham Sports, Inc. v. BATF*, 415 F.3d 1274 (11<sup>th</sup> Cir. 2005). See also, *Bryan v. United States*, 524 U.S. 184, 197-198 (1998). In several instances, the courts have held that adverse action based on a single action is valid. See, *DiMartino v. Buckles, Dir. ATF*, 129 F. Supp. 2d 824, 827 (D. Md. 2001); *Benjamin v. Bureau of Alcohol, Tobacco and Firearms*, 771 F. Supp. 307, 311 (D. Or. 1991). It is not necessary that a licensee act with “bad purpose or evil motive.” *Article II Gun Shop, Inc. v. Gonzales*, 441 F.3d 492, 497-98 (7<sup>th</sup> Cir. 2006); *Prino v. Simon*, 606 F.2d 449, 451 (4<sup>th</sup> Cir. 1979) (“no showing of malicious intent is necessary” to show willfulness).

For the reasons stated below, I conclude that the Licensee willfully violated law and regulations set forth in the Notice of Revocation of License.

The Licensee, Randy Lewis Spence, testified that he generally had a misunderstanding of the law but that he has a desire to follow the law. In his written request for a hearing, Mr. Spence stated, that Investigator (b)(6) “was extremely thorough and gave me instruction on how to properly



conduct my affairs more through [sic] than the original issuing agent or the information I received at a seminar that held in Winterville a couple of year ago.” See Government Exhibit 3.

The Government verified that Mr. Spence attended a Federal Firearms Seminar on May 3, 2018 in Winterville, NC during which ATF discussed NICS requirements. Specifically, ATF addressed permits issued outside the State of North Carolina and advised licensees that only permits issued in North Carolina are valid NICS alternatives. See Government Exhibits 9 and 10.

A federal firearms licensee has a duty to be cognizant of the rules and regulations issued by ATF and to follow those mandates. Licensee participated in a qualification inspection 2017 and acknowledged that he was aware of his responsibilities as a Licensee. Additionally, Licensee attended a Federal Firearms Seminar in 2018 where firearms laws and regulations were again addressed. It was apparent that the Licensee understood the responsibilities was plainly indifferent and purposefully disregarded the firearms laws and regulations.

I find that Licensee willfully violated 18 U.S.C. § 922(t) and 27 CFR § 478.102(a) when he failed to conduct a NICS background check or obtain a valid NICS alternative permit.

I do not find that Licensee willfully violated 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(1) when he failed to ensure that the transferee correctly recorded the required information on the ATF Form 4473.

I find that Licensee willfully violated 18 U.S.C. § 922(g)(1)(A) and 27 C.F.R. §§ 478.21a when he failed to ensure that the ATF Form 4473 was complete and accurate as required prior to transferring a firearm.

As such, I conclude that the Licensee willfully violated the provisions of the GCA and the regulations issued thereunder. Accordingly, as provided by 18 U.S.C. § 923(e) and 27 C.F.R. § 478.73, the Federal firearms license held by Randy Lewis Spence is hereby REVOKED.