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ALCOHOL, TOBACCO AND FIREARMS

Issues Related to Use of Force, Dealer Licensing, and Data Restrictions

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Alcohol, Tobacco and Firearms: Issues Related to Use of Force, Dealer Licensing, and Data Restrictions

At the Subcommittee's request, GAO reviewed issues relating to the Bureau of Alcohol, Tobacco and Firearms' (ATF) (1) use-of-force policies as compared to the Drug Enforcement Administration's (DEA) and the Federal Bureau of Investigation's (FBI), (2) licensing of firearms dealers, and (3) compliance with legal restrictions on maintaining firearms licensee data. Today, GAO is releasing reports and testifying on the first two issues. GAO's work on the third issue is ongoing, and its testimony today focuses on one data system—ATF's Out-of-Business Records System.

USE OF FORCE: On average, ATF arrested 8,000 suspects but was involved in fewer than 10 reported shooting or alleged excessive force incidents annually for fiscal years 1990 through 1995. In October 1995, the Department of the Treasury and the Department of Justice issued uniform policies governing the use of deadly force. ATF's prior policy was generally consistent with Treasury's 1995 policy and with DEA's and FBI's deadly force policies in effect immediately prior to Justice's 1995 policy. ATF conveys its deadly force policy to new agents through training. The types of training provided new ATF agents on use of force policies were consistent with the types of training provided new DEA and FBI agents. Moreover, ATF requires that agents be frequently reminded of the policy throughout their careers.

Dynamic entry—a tactic used to gain rapid entry to premises and which may involve forced entry—was a principal tactical procedure used by ATF, DEA, and FBI when serving high-risk warrants and entry to premises was required. ATF Special Response Teams were deployed 157 times during fiscal year 1995 to address high-risk situations, and dynamic entries were used in about half of these deployments. In none of these entries did team members fire their weapons.

ATF's procedures for reporting, investigating, and reviewing shooting and alleged excessive force incidents were generally comparable to DEA's and FBI's. Review of ATF's investigative files showed that ATF (1) generally complied with its investigative procedures, (2) found all intentional shootings justified, (3) found most excessive force allegations unsubstantiated, and (4) sanctioned agents found to have engaged in misconduct.

DECLINE IN DEALERS: From an April 1993 high point of about 260,700, the number of licensed firearms dealers had declined about 35 percent as of September 30, 1995. Contributing factors for the decline included increased ATF enforcement of existing laws and new legislative

requirements, including increased licensing fees. ATF recognized that its increased enforcement emphasis would likely lead to fewer licensees.

RESTRICTED FIREARMS LICENSEE DATA: GAO concurs with ATF's conclusion that its Out-of-Business Records System, as designed, complies with legislative restrictions. Also, on the basis of its review and observations, GAO basically confirmed that ATF operates the system consistent with its design. GAO found no evidence that ATF captures and stores firearms purchasers' names or other identifying information into an automated file. Rather, ATF microfilms out-of-business licensee records and indexes the microfilm records to facilitate locating them for firearms tracing purposes.

Alcohol, Tobacco and Firearms: Issues Related to Use of Force, Dealer Licensing, and Data Restrictions

Mr. Chairman and Members of the Subcommittee:

We welcome this opportunity to appear before you today to discuss three areas of concern raised by the Committee last summer in its fiscal year 1996 appropriations report on the Bureau of Alcohol, Tobacco and Firearms (ATF). Those concerns involved ATF's (1) use of force, (2) effect on the number of licensed firearms dealers, and (3) compliance with legislative restrictions on maintaining certain firearms licensee data. Today, we are releasing reports that address the first two concerns—use of force and licensing of firearms dealers.[1] With respect to the third concern, data restrictions, our work is ongoing. As agreed, therefore, we will summarize our findings related to one data system—ATF's system for maintaining records of firearms licensees who have gone out of business.

Use of Force

With regard to the use-of-force issue, you asked us to (1) identify and describe ATF's policies for the use of deadly force, (2) determine how ATF conveys its policies to agents, (3) determine the reasons for and the extent to which ATF uses dynamic entry and the equipment used to accomplish these entries, and (4) determine whether ATF has complied with its procedures for investigating shooting and alleged excessive force incidents. Moreover, you asked us to compare these issues with the way that the Department of Justice's Drug Enforcement Administration (DEA) and Federal Bureau of Investigation (FBI) address them.

To place ATF's use-of-force incidents in perspective, from fiscal years 1990 through 1995, ATF, on average, arrested about 8,000 suspects but was involved in fewer than 10 reported shooting or alleged excessive force incidents annually.

ATF's Deadly Force Policies Have Remained Generally Consistent in Recent Years and Are Generally Consistent With DEA's and FBI's Prior Policies

In October 1995, the Department of the Treasury and Justice adopted deadly force policies for their component agencies that are uniform except for certain agency mission-specific provisions. Both policies provide that officers may use deadly force only when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or another person.

The 1988 ATF deadly force policy, in effect prior to the issuance of the October 1995 Treasury policy, was, with two distinctions, consistent with

[1]Use of Force: ATF Policy, Training and Review Process Are Comparable to DEA's and FBI's (GAO/GGD-96-17, Mar. 29, 1996) and Federal Firearms Licensees: Various Factors Have Contributed to the Decline in the Number of Dealers (GAO/GGD-96-78, Mar. 29, 1996).

the new policy. The 1988 ATF and 1995 Treasury policies were consistent in that both policies generally authorized the use of such force only when the law enforcement officer reasonably believed or perceived that there was an imminent threat or danger of death or serious physical injury to the officer or another person. The two distinctions were that (1) the 1995 Treasury policy refers to the use of "deadly force," while the 1988 ATF policy referred more specifically only to the use of a "firearm" and (2) the 1995 Treasury policy allows for the use of deadly force only when the law enforcement officer has a "reasonable belief" that there is an imminent danger of death or serious physical injury, while the 1988 ATF policy allowed for the use of such force when the agent "perceives" such a threat. Additional discussion regarding these policies and distinctions, as well as those discussed below, is provided in chapter 2 (pp. 34 to 36) of our Use-of-Force report.

In addition, the prior ATF policy was, with three distinctions, consistent with prior DEA and FBI policies. The prior ATF policy was consistent with prior DEA and FBI policies in that they generally authorized the use of deadly force only when the agents reasonably believed or perceived that there was a threat or danger of death or serious bodily injury to the agent or another person. The three distinctions were that (1) only ATF's policy provided the additional restriction that the threat of death or serious bodily harm be "imminent"; (2) the ATF and DEA policies referred to the shooting of "firearms," while the FBI policy used the term "deadly force"; and (3) the ATF policy used the term "perceives," while the DEA and FBI used the terms "reasonably believes" and "reason to believe," respectively.

ATF, DEA, and FBI Convey Deadly Force Policies to Their Agents in Similar Ways

ATF conveys its deadly force policies to new agents through training. Our discussions with training officials, reviews of training materials and policies, and observations showed that the training provided new ATF agents to introduce them to the deadly force policies was consistent with the Treasury/ATF deadly force policies, and the types of training provided were consistent with the training provided to new DEA and FBI agents.

Each agency trains new agents in how to recognize the perceived level of threat they face and in how to respond to it with an appropriate level of force. Appendix I shows the Federal Law Enforcement Training Center's Use-of-Force Model. New ATF agents are to attend the Center's 9-week Criminal Investigator Training Program and are to receive training on this model. The model presents the five levels of threat agents may encounter. These levels range from one where a subject complies with a command

from a law enforcement officer to one where a subject assaults an officer with the potential for serious bodily harm or death. The model also presents five corresponding levels of force that would be appropriate to respond to the subject's level of threat. Those responses range from verbal commands when the threat is low to deadly force when the threat is high. Emphasis is placed on resolving situations with the proper level of force while recognizing that situations can escalate and de-escalate from one level to another.

Once training is completed, ATF requires that the use-of-force policies are to be reiterated to agents throughout their careers at quarterly firearms requalifications and during tactical operations briefings. DEA and FBI officials said that their deadly force policies also are to be reiterated at firearms requalifications.

ATF's Use of Dynamic Entry and Related Equipment Was Generally Comparable to DEA's and FBI's

Dynamic entry, which relies on speed and surprise and may involve forced entry, is one of several tactical procedures used by ATF to execute search and arrest warrants. Dynamic entry was a principal tactical procedure used by ATF, DEA, and FBI when serving high-risk warrants—those where ATF believes that suspects pose a threat of violence—and entry to premises was required. ATF statistics on suspects arrested from firearms investigations during fiscal years 1990 through 1995 showed that 46 percent had previous felony convictions, 24 percent had a history of violence, and 18 percent were armed at arrest.[2]

All ATF case agents, including those assigned to special weapons and tactics units, known as Special Response Teams (SRT), are to be trained in the dynamic entry technique. From fiscal years 1993 through 1995, ATF conducted 35,949 investigations and arrested 22,894 suspects. During this same period, SRTs were deployed 523 times, and SRT members were involved in 3 intentional shooting incidents, 1 of which—the Waco operation—resulted in fatalities. We reviewed the available documentation for all 157 SRT deployments for fiscal year 1995 and found that the dynamic entry technique was used almost half the time and was the predominant technique used when entry to a building was required. In none of the 1995 SRT dynamic entries did ATF agents fire their weapons at suspects.

The equipment available for use by all ATF agents during dynamic entries generally includes weaponry; breaching equipment, such as battering rams; and/or other tactical equipment designed for safety, such as ballistic

[2]ATF did not compile data for suspects armed at arrest for fiscal years 1990 and 1991.

vests. In addition to the standard equipment available, SRTs have access to additional firearms, such as bolt-action rifles, and specialized tactical equipment, such as diversionary devices. Equipment used by SRTs is generally comparable to that used by DEA and FBI agents during similar operations.

ATF Complied With Its Procedures for Investigating Shooting and Alleged Excessive Force Incidents

ATF's procedures for reporting, investigating, and reviewing shooting and excessive force incidents, as revised in October 1994, are consistent with guidelines and/or standards recommended by the International Association of Chiefs of Police, the President's Council on Integrity and Efficiency, and the Commission on Accreditation for Law Enforcement Agencies. For example, agents are required to immediately report shooting incidents to their supervisors, incidents are to be investigated by an independent unit, and certain reports are to be reviewed by a review board on the basis of the nature and seriousness of the incident.

Overall, DEA's and FBI's procedures for reporting, investigating, and reviewing shooting incidents are comparable to ATF's. Distinctions in the procedures include (1) DEA and FBI delegate some investigations to their field divisions but ATF does not and (2) DEA's and FBI's review boards include representatives from Justice—ATF's review board does not include representatives from Treasury.

Although ATF's excessive force procedures are comparable to DEA's, with one distinction relating again to delegation, they are distinct from those employed by FBI. ATF is to investigate allegations of excessive force first and—if warranted—refer them to Justice for possible criminal investigation. In contrast, FBI is to refer all allegations of excessive force to Justice for possible criminal investigation before investigating the allegations itself.

Our review of documents in ATF's investigative files for reported shooting and excessive force incidents in fiscal years 1990 through 1995 showed that ATF complied with its investigative procedures,[3] except that two investigative files did not include a required record that indicates the file

[3]Our conclusions are based on whether we found documentation required by ATF's procedures in the investigative files of shooting and alleged excessive force incidents and whether the documentation indicated that investigative procedures had been followed. Where documentation was not initially found, we obtained documents and/or explanations from ATF officials. Our conclusions apply only to the files we reviewed. Due to time and methodological constraints, we did not evaluate the events that resulted in the incidents or the quality or adequacy of the ATF investigation. In addition, we did not verify whether all shooting and alleged excessive force incidents were reported, or whether all reported allegations of excessive force were investigated.

had been reviewed by a designated headquarters unit. Our review also showed that ATF's investigations of 38 reported shootings involving ATF agents firing their weapons at suspects found each to be justified and within the scope of its use-of-force policy. In addition, ATF's investigations found that 18 of 25 reported excessive force allegations in three misconduct categories were unsubstantiated. Four investigations found evidence of some agent misconduct, two investigations were ongoing at the time of our review, and one was closed without action because ATF determined that there was no need for further review. Agents found to have engaged in misconduct received written reprimands and/or suspensions.

Declines in Firearms Dealers

Regarding recent declines in the number of firearms dealers, you asked us to (1) determine the extent and nature of the declines; (2) determine what factors contributed to the declines, including whether ATF had a policy to reduce the number of dealers; and (3) obtain the views of pertinent organizations on the advantages and disadvantages of reducing the number of dealers.

Extent and Nature of Declines

Since reaching a high point in April 1993, the number of firearms dealers[4] sharply declined by about 35 percent, from about 260,700 to about 168,400 dealers as of September 30, 1995—the lowest number since fiscal year 1980. This decline occurred nationwide and ranged from 23 percent in Montana to 45 percent in Hawaii. To provide a context for interpreting the recent decline, appendix II shows the number of firearms dealers in fiscal years 1975 through 1995.

Our analysis of ATF data for all categories[5] of licenses showed that the number of applications received by ATF for both new licenses and renewals of existing licenses decreased significantly from fiscal years 1993 to 1995. Similarly during this period, a relatively large number of applications was abandoned and withdrawn by former and prospective

[4]ATF issues various categories of federal firearms licenses, including those for manufacturers, importers, and dealers of firearms. Our testimony and related report focus on firearms dealer licenses. Such licenses are granted to dealers and pawnbrokers who sell firearms at wholesale or retail and gunsmiths who repair firearms. Federal firearms dealer licenses account for about 90 percent of all federal firearms licenses.

[5]Whenever possible, we use ATF data on firearms dealer licenses in our testimony and related report. However, in some cases, ATF data include all categories of licenses, including manufacturers and importers, as opposed to individual categories.

licensees when compared to previous years.[6] Also, a large number of licensees voluntarily surrendered their licenses.[7] Appendix III provides detailed data for fiscal years 1975 through 1995 on application and license activity for all categories of licensees.

Several Factors Contributed to the Decline

Our review showed that various factors collectively contributed to the decline in the number of dealers. First, in January 1993, ATF initiated a National Firearms Program, which consisted of several regulatory enforcement strategies, including a strategy to closely scrutinize applicants for federal firearms dealer licenses and the operations of licensees to ensure strict compliance with the Gun Control Act of 1968, as amended. Under this program, the number of ATF full field inspections of firearms dealers and licensees increased. According to ATF, several factors led to this increased enforcement strategy. These factors included rising violence associated with the illegal use and sale of firearms, national media attention on the ease of obtaining a firearms dealer license, and ATF data that indicated that many licensees may not have been engaged in a firearms business.[8]

As a result, the number of ATF full field inspections of all applicants for federal firearms licenses and the operations of all such licensees increased from about 19,900 in fiscal year 1992 to a high of about 27,000 in fiscal year 1993—the period during which the National Firearms Program was initiated. Furthermore, from 1993 to 1995, the number of ATF inspections generally averaged about 9 percent of the total licensees, compared to 7 percent and lower before fiscal year 1993.

As a result of its increased inspections, according to ATF, about 7,600 firearms dealer licensees voluntarily surrendered their licenses in fiscal years 1994 and 1995, the only 2 years for which ATF collected such data.

[6]An application is "abandoned" when an applicant submits an incomplete or improperly executed application and does not respond to ATF's notification to correct the application within 30 days of the notification. An application is "withdrawn" when an applicant submits an incomplete application and, when notified by ATF, voluntarily withdraws the application.

[7]A "voluntarily surrendered" license generally results from an ATF compliance inspection in which one or more violations are detected and ATF provides the licensee with the opportunity to surrender the license rather than have the license formally revoked. The term also includes licenses surrendered after the licensee is advised by ATF of noncompliance with state or local ordinances. Also, voluntary surrenders can occur when licensees give up their licenses on their own without ATF involvement.

[8]ATF's Operation Snapshot, an inspection project that was conducted in 1992 and 1993 to obtain information about federal firearms licensees and their business operations, reported that 46 percent of all licensees had sold no firearms in the previous 12 months and another 34 percent had sold 1 to 10 firearms. According to ATF, these survey results were invaluable in formulating the National Firearms Program.

Under ATF's National Firearms Program, when an inspection showed that a dealer was not "engaged in a firearms business" at the location shown on the license, ATF inspectors were to advise the dealer to voluntarily surrender the license before implementing a formal revocation action.

In addition, ATF used telephone interviews, called preliminary inspections, in fiscal years 1993 through 1995 as a means of scrutinizing federal firearms dealer applicants. According to ATF, a substantial portion of the approximately 2,500 applications abandoned and 7,200 applications withdrawn by applicants during fiscal year 1993 was directly attributable to ATF's preliminary inspections.

A second factor contributing to the declines was an August 1993 memorandum from the President directing Treasury and ATF to take actions to ensure compliance with federal firearms license requirements. The President pointed out that there were over 287,000 federal firearms licensees (all categories), many of which he stated probably should not have been licensed because they were not engaged in a legitimate firearms business.

A third contributing factor was the Federal Firearms License Reform Act of 1993,[9] passed by Congress in late November 1993. This act increased the licensing fees for obtaining and renewing a federal firearms dealer license.

A fourth contributing factor was ATF's revisions to the licensing application process that were done in late 1993 and early 1994 in response to the President's August 1993 memorandum. ATF significantly revised the application form by adding a number of questions and requirements for supporting information to help it determine whether applicants intended to engage in the firearms business. For example, ATF required applicants to (1) submit fingerprints and photographs of themselves, (2) furnish a diagram of the business premises where their firearms inventories were located, and (3) provide a description of their security system for safeguarding firearms inventories. In July 1995, ATF reduced the number of questions and amount of supporting documents required.

A fifth factor that contributed to the decline was the Violent Crime Control and Law Enforcement Act of 1994, which was passed by Congress in September 1994. This act added more licensing requirements, including

[9]The Federal Firearms License Reform Act of 1993, which is found in Title III of Public Law 103-159, increased the licensing fee for firearms dealers, effective November 30, 1993, from $10 per year to $200 for a new 3-year license and from $10 per year to $90 for a 3-year renewal license.

requiring applicants for licenses to certify that their firearms business would comply with state and local laws.

Finally, along with federal laws and administration actions contributing to the decline, the enforcement of state and local laws may have contributed to the reduction in the number of firearms dealers. These include licensing, taxing, and other business-related laws.

ATF Recognized That Declines Would Likely Occur

Although ATF intensified its enforcement efforts, we found no evidence from our review of ATF documents and interviews with numerous ATF officials that ATF had a policy or sought to reduce the number of licensed dealers by some targeted number. Instead, we found that ATF's strategy since 1993 had been to closely scrutinize firearms dealer applicants and licensees to ensure strict compliance with the Gun Control Act. While ATF had no policy to reduce the number of dealers to a targeted number, it recognized that its strategy of increased enforcement, along with the legislative actions, would likely result in a reduction in the number of dealers.

External Organizations' Views on Reducing the Number of Firearms Dealers

We contacted officials from seven organizations to obtain comments on the advantages and disadvantages of reducing the number of licensed firearms dealers. Appendix IV contains the names and descriptions of the organizations, which represented the firearms industry, firearms consumers, law enforcement, and gun control interests.

The officials from the seven organizations provided us with a variety of views on the advantages and disadvantages of reducing the number of firearms dealers. Their views generally concerned the effect that declines in the number of firearms dealers may have on crime, regulatory enforcement, and economics. Their views ranged from those who believed that by reducing the number of dealers there could be less crime and better monitoring of dealers to those who feared that dealer decreases would curb competition, raise prices, and limit the lawful availability of firearms. Along with these views, the officials from the seven organizations provided their views on the reasons for the declines in the number of firearms dealers, which confirmed the results of our analysis regarding factors contributing to the declines.

Restricted Firearms Licensee Data

Regarding restricted firearms licensee data, you asked us to review ATF's compliance with legislative restrictions on maintaining certain firearms

licensee data. For these hearings, we agreed to focus on ATF's Out-of-Business Records System and its role in the firearms tracing process. Specifically, our objectives were to (1) describe ATF's overall firearms tracing process and, specifically, the Out-of-Business Records System and its role in the process; (2) determine the number and results of ATF's firearms traces and the number of out-of-business records processed and used; and (3) determine whether the Out-of-Business Records System complies with legislative data restrictions. We also agreed to assess information on the Out-of-Business Records System that ATF supplied to one Subcommittee member. Detailed results and the scope and methodology of our review pertaining to ATF's Out-of-Business Records System are included in appendix V.

Firearms Tracing Operations

The Gun Control Act requires federal firearms licensees to maintain records of firearms transactions and make these records available to ATF under certain circumstances.[10] Through the use of these records, ATF provides criminal firearms tracing services to law enforcement agencies. To perform traces, ATF needs to know the manufacturer and serial number of the gun. ATF's National Tracing Center (NTC) traces the ownership of firearms by using documentation, such as out-of-business licensee records, which are maintained in ATF's data systems, and/or by contacting manufacturers, importers, wholesalers, and retailers (i.e., firearms dealers). NTC's objective is to identify the last known purchaser of the firearm. NTC considers a trace completed when it traces the firearm to a retail firearms licensee or purchaser or when it cannot identify the purchaser.

From fiscal years 1992 through 1995, ATF received a total of about 263,000 trace requests. During this period, the number of trace requests ATF completed more than doubled, from about 43,000 in fiscal year 1992 to about 86,200 in fiscal year 1995. ATF completed a total of about 243,600 trace requests during this 4-year period. In about 41 percent of the completed trace requests, ATF identified a retail firearms licensee or purchaser of the traced firearm.

Out-Of-Business Records System

When firearms licensees discontinue their businesses, ATF needs access to their records for tracing purposes. To ensure that it had access to these records, shortly after the passage of the Gun Control Act, ATF issued

[10]As originally enacted, the Gun Control Act required licensees to submit such reports and information as the Secretary of the Treasury prescribed by regulation, and authorized the Secretary to prescribe such rules and regulations as he deemed necessary to carry out the provisions of the act.

regulations requiring firearms licensees that permanently discontinued their businesses to forward their records to ATF within 30 days following the discontinuance. The Firearms Owners' Protection Act of 1986 codified this reporting requirement. Accordingly, since the enactment of the Gun Control Act, ATF has maintained the out-of-business records at a central location, which is currently at NTC in Falling Waters, West Virginia.

Before fiscal year 1991, ATF maintained these records in hard copy. Performing traces by manually searching these copies was very time consuming and labor intensive. ATF also had storage space problems. In 1991, ATF began a major project to microfilm these records and destroy the originals. This system still resulted in time-consuming traces. In fiscal year 1992, using a minicomputer ATF created a computerized index of the microfilm records. The index contained information, including the firearm's serial number and the firearms licensee number, to tell the tracing staff which microfilm cartridge to search and where on the cartridge the record was located. The indexed information that is captured by the minicomputer is then stored on a mainframe computer's database to allow searches of the indexed information. Information, such as the firearm purchaser's name or other identifying information, remains stored on the microfilm and is not computerized. ATF officials said all traces now begin with a query of the Out-of-Business Records System.

During fiscal years 1992 through 1995, ATF received records from about 68,700 firearms licensees that went out of business. During this time, the number of licensees that went out of business more than doubled, from about 34,700 in 1992 to about 75,600 in 1995, and the percent of licensees that sent in their records increased by about three-fourths, from about 25 percent to about 43 percent. Also, during this period, ATF officials estimated that ATF microfilmed about 47 million documents contained in about 20,000 boxes. In addition, the officials estimated that ATF used the out-of-business licensees' records to help complete about 42 percent of all completed trace requests during this period.

Out-Of-Business Records System Complies With Legislative Data Restrictions

Since the passage of the Gun Control Act, Congress has enacted two provisions restricting the information ATF can maintain from firearms licensee records. Since fiscal year 1979, the annual Treasury appropriations act generally has prohibited ATF from consolidating or centralizing the records, or any portions thereof, of the acquisition or disposition of firearms maintained by federal firearms licensees. In addition, a provision of the Firearms Owners' Protection Act, codified at

18 U.S.C. 926(a), prohibits ATF from issuing any rule or regulation, after the date of that act, requiring that (1) firearms licensee records (or any portion thereof) be recorded at or transferred to a federal, state, or local government facility or (2) any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established.

In a March 1995 letter to one Subcommittee member following hearings on Treasury's fiscal year 1996 budget request, ATF described its maintenance and use of the out-of-business dealers' records and explained that it believes these records are handled in compliance with the law.[11] Specifically, ATF concluded that the storage and retrieval systems used for these records had been designed to comply with the statutory restriction relating to the establishment of a registration system for firearms, firearms owners, or firearms transactions or dispositions. We concur with this conclusion. Our detailed legal analysis is contained in appendix V.

Furthermore, with regard to the operation of the Out-of-Business Records System, our review of ATF's system documentation and discussions with ATF officials, along with our observation of the out-of-business records process at NTC, basically confirmed that ATF was operating the system in a manner consistent with the way it was designed by ATF and described in Treasury's March 1995 letter. We found no evidence that ATF captures and stores the firearms purchasers' names or other identifying information from the out-of-business records in an automated file.

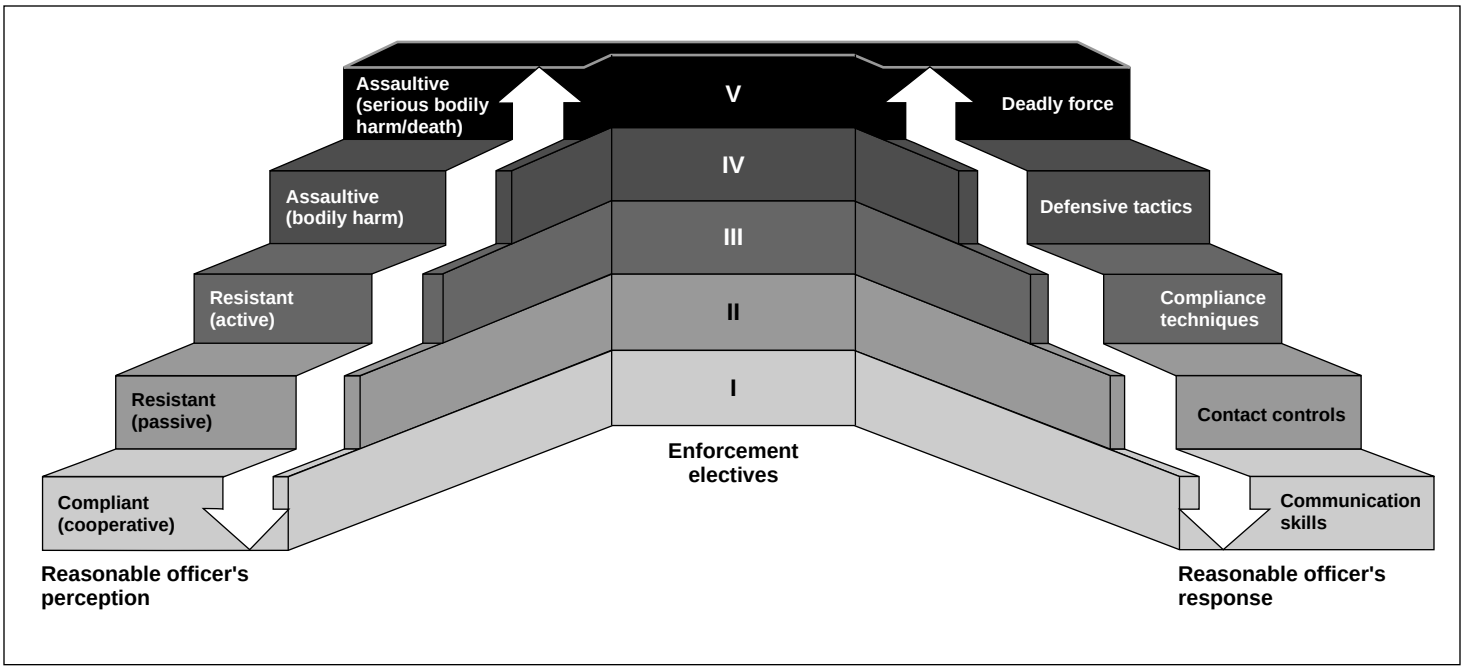
Agency Comments

ATF provided oral comments on a draft of our testimony at a meeting with the ATF Director and other top-level officials on April 16, 1996. With regard to the use-of-force and firearms dealer licensee issues, the officials reiterated their previous comments on the respective reports, i.e., our presentation of the facts was accurate, thorough, and balanced. They also agreed with our findings and conclusions regarding the Out-of Business Records System and provided some technical comments, which we incorporated where appropriate.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions you or the other Subcommittee members might have.

[11]See letter from Ronald K. Noble, Under Secretary of the Department of the Treasury, to Congressman Ernest J. Istook, Jr., in March 1995.

Federal Law Enforcement Training Center's Use-Of-Force Model



Source: Federal Law Enforcement Training Center.

Number of Federally Licensed Firearms Dealers, Fiscal Years 1975 Through 1995

Fiscal year ending	Type 01[a]	Type 02[b]	Total
1975	146,429	2,813	149,242
1976	150,767	2,882	153,649
1977	157,463	2,943	160,406
1978	152,681	3,113	155,794
1979	153,861	3,388	157,249
1980	155,690	3,608	159,298
1981	168,301	4,308	172,609
1982	184,840	5,002	189,842
1983	200,342	5,388	205,730
1984	195,847	5,140	200,987
1985	219,366	6,207	225,573
1986	235,393	6,998	242,391
1987	230,888	7,316	238,204
1988	239,637	8,261	247,898
1989	231,442	8,626	240,068
1990	235,684	9,029	244,713
1991	241,706	9,625	251,331
1992	248,155	10,452	258,607
1993	246,984	10,958	257,942[c]
1994	213,734	10,872	224,606
1995	158,240	10,155	168,395

[a]This type of license is issued to dealers and gunsmiths.

[b]This type of license is issued to pawnbrokers.

[c]The number of firearms dealers peaked in April 1993 at 260,703.

Source: ATF.

Data on All Categories of Federal Firearmslicenses and Applications, Fiscal Years 1975 Through 1995

Fiscal year ending	Licenses			
	Issued			
	Original	Renewal	Revoked	Voluntarily surrendered
1975	29,183	138,719	7	N/A
1976	29,511	138,050	6	N/A
1977	32,560	136,629	10	N/A
1978	29,531	139,383	0	N/A
1979	32,678	143,021	12	N/A
1980	36,052	143,527	10	N/A
1981	41,798	152,153	7	N/A
1982	44,745	161,390	4	N/A
1983	49,669	163,386	6	N/A
1984	39,321	163,950	9	N/A
1985	37,385	52,768[a]	18	N/A
1986	42,842	47,648	27	N/A
1987	36,835	61,596	14	N/A
1988	32,724	52,738	4	N/A
1989	34,318	54,892	12	N/A
1990	34,336	61,536	9	N/A
1991	34,567	57,327	17	N/A
1992	37,085	58,873	24	N/A
1993	41,545	66,811	26	N/A
1994	25,393	37,079	44	4,936
1995	7,777	19,541	35	2,657

Applications					
Denied		Withdrawn		Abandoned	
Original	Renewal	Original	Renewal	Original	Renewal
150	273	1,651	334	N/A	N/A
209	261	2,077	436	N/A	N/A
216	207	1,645	409	N/A	N/A
151	168	1,015	141	414	449
124	93	432	240	433	942
96	31	601	336	661	800
85	16	742	385	329	495
52	12	580	332	370	350
151	48	916	514	649	700
98	23	706	449	833	825
103	9	666	226	598	307
299	14	698	135	452	181
121	38	874	428	458	225
30	19	506	422	315	182
34	14	561	1,456[b]	360	215
46	29	893	48	404	63
37	15	1,059	82	685	106
57	4	1,337	26	611	88
343	53	6,030	1,187	1,844	683
136	191	4,480	1,128	3,917	969
49	65	1,046	1,077	1,180	1,254

N/A = ATF did not maintain data.

[a]ATF switched from 1-year to 3-year renewals in 1985.

[b]According to ATF, this number is due to a cleanup of three regional offices' firearms files that were transferred to the Firearms and Explosives Licensing Center in 1989. Also, 1989 was the renewal year for the 3-year ammunition-only licenses issued in 1986, prior to a change in the law eliminating the need for a license to deal in ammunition only. These licensees were advised to withdraw their renewal applications.

Source: ATF.

Description of Organizations Contacted by GAO

American Shooting Sports Council, Inc.

The American Shooting Sports Council represents the firearms industry and interested individuals. The Council promotes the sport of shooting and lobbies on firearms issues. The Council has about 350 members and is headquartered in Atlanta, GA.

Handgun Control, Inc.

Handgun Control, Inc., is a public citizens lobby organization working for legislative controls and governmental regulation on the manufacture, importation, sale, transfer, and civilian possession of guns. The organization has about 400,000 members and is headquartered in Washington, D.C.

The Center to Prevent Handgun Violence is a nonprofit education, research, and legal advocacy organization established in 1983 to reduce handgun violence. The Center is an affiliate of Handgun Control, Inc. They work closely with one another to disseminate information on handgun violence.

International Association of Chiefs of Police

The International Association of Chiefs of Police is an organization of police executives who are commissioners, superintendents, chiefs, and directors of national, state, provincial, and municipal departments. The organization provides leadership, support, and research services in all phases of law enforcement activity. This nonprofit organization has about 14,500 members from 81 countries and is headquartered in Alexandria, VA.

National Alliance of Stocking Gun Dealers, Inc.

The National Alliance of Stocking Gun Dealers is a trade organization representing independent, storefront shooting sports dealers, distributors, and manufacturers. The alliance has about 16,300 members and is headquartered in Havelock, NC.

National Association of Federally Licensed Firearms Dealers

The National Association of Federally Licensed Firearms Dealers is a trade association representing individuals licensed by the federal government to sell firearms. The association provides firearms retailers with low-cost liability insurance, current information on new products for the industry, and retail business guidance. It has about 10,000 members and is headquartered in Fort Lauderdale, FL.

National Rifle Association

The National Rifle Association of America is a nonprofit sports organization representing target shooters, hunters, gun collectors,

gunsmiths, police officers, and others interested in firearms. The Association promotes the rights of individuals to possess and use firearms, promotes shooting sports and firearms safety, and encourages civilian marksmanship. It has about 3.2 million members and is headquartered in Fairfax, VA.

Violence Policy Center

The Violence Policy Center is a national, nonprofit educational foundation that conducts research on violence in America and works to develop violence-reduction policies and proposals. The Center examines the role of firearms in America, conducts research on firearms violence, and explores new ways to decrease it. The Center is headquartered in Washington, D.C.

Results of GAO'S Review of ATF's Out-Of-Business Records System

The Subcommittee on Treasury, Postal Service, and General Government, House Committee on Appropriations, asked us to review ATF's compliance with legislative restrictions on maintaining certain firearms licensee data.[12] Since the passage of the Gun Control Act of 1968, Congress has enacted two provisions that place restrictions on ATF's handling of firearms licensee records. Since fiscal year 1979, the annual Treasury appropriations act generally has prohibited ATF from consolidating or centralizing firearms licensee records.[13] In addition, the Firearms Owners' Protection Act of 1986 prohibits ATF from issuing any rule or regulation requiring that (1) firearms licensee records (or any portion thereof) be recorded at or transferred to a federal, state, or local government facility or (2) any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established.[14] Our audit work addressing this issue is ongoing and should be completed this summer.

On the basis of discussions with Subcommittee staff, for these hearings we agreed to focus on issues raised in this Subcommittee's hearings on Treasury's fiscal year 1996 budget request relating to ATF's Out-of-Business Records System and its role in the firearms tracing process. Specifically, our objectives were to (1) describe ATF's overall firearms tracing process and, specifically, ATF's Out-of-Business Records System and its role in the process; (2) determine the number and results of ATF's firearms traces and the number of out-of-business records processed and used; and (3) determine whether the Out-of-Business Records System complies with legislative data restrictions. We also agreed to assess information on ATF's Out-of-Business Records System that ATF previously provided to one Subcommittee member. The scope and methodology of our review are included at the end of this appendix.

ATF's Firearms Tracing Operation

The Gun Control Act requires federal firearms licensees to record firearms transactions, maintain that information at their business premises, and

[12]ATF issues various categories of federal firearms licenses, including those for manufacturers, importers, and dealers of firearms. Firearms dealer licenses are granted to dealers and pawnbrokers who sell firearms at wholesale or retail and gunsmiths who repair firearms. Federal firearms dealer licensees account for about 90 percent of all federal firearms licensees.

[13]Since fiscal year 1979, the annual Treasury, Postal Service, and General Government Appropriations Acts have provided that no appropriated funds shall be available for salaries or administrative expenses in connection with consolidating or centralizing any portion of the firearms acquisition and disposition records maintained by federal firearms licensees.

[14]Public Law 99-308 (1986); see 18 U.S.C. 926(a).

make such records available to ATF for inspection and search under certain prescribed circumstances.[15]

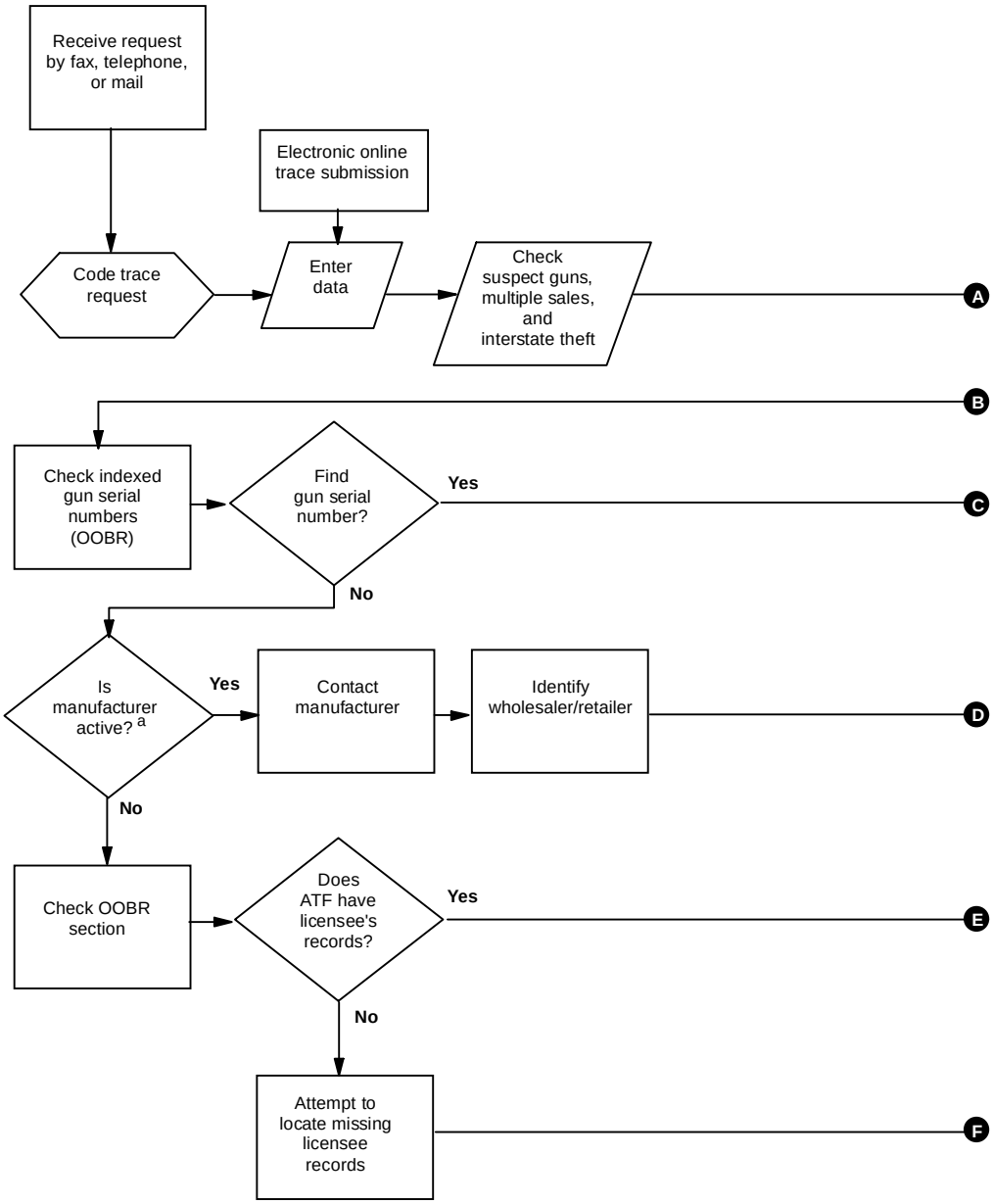
Through the use of these records,[16] ATF provides firearms tracing services to federal, state, local, and foreign law enforcement agencies. ATF uses the records, which are maintained by firearms licensees, for firearms tracing and other law enforcement purposes. To carry out its firearms tracing responsibilities, ATF maintains a firearms tracing operation, located at the National Tracing Center (NTC) in Falling Waters, West Virginia. With a staff of 41 as of April 1996, NTC systematically tracks firearms suspected of being involved in crimes from manufacturer to purchaser to assist law enforcement in identifying suspects.

NTC receives trace requests by facsimile, telephone, and mail. To do a trace, the manufacturer and the serial number of the gun must be known. NTC tracks the ownership of firearms by using documentation, such as out-of-business licensee records, which are maintained in ATF's data systems, and/or by contacting manufacturers, importers, wholesalers, and retailers (i.e., firearms dealers). The objective of the trace is to identify the last known purchaser of the firearm. ATF documents each trace request and its results, records information on the chain of firearm ownership from original manufacturer to retail purchaser, and provides that information to the requester. ATF considers a request completed when it traces the firearm to a retail firearms licensee or a purchaser or when it cannot identify the purchaser for various reasons. For example, the description of the firearm as submitted by the requester may not have contained sufficient information. Figure V.1 provides an overview illustration of the firearms tracing process.

[15]As originally enacted, the Gun Control Act required licensees to submit such reports and information as the Secretary of the Treasury prescribed by regulation, and authorized the Secretary to prescribe such rules and regulations as he deemed necessary to carry out the provisions of the act.

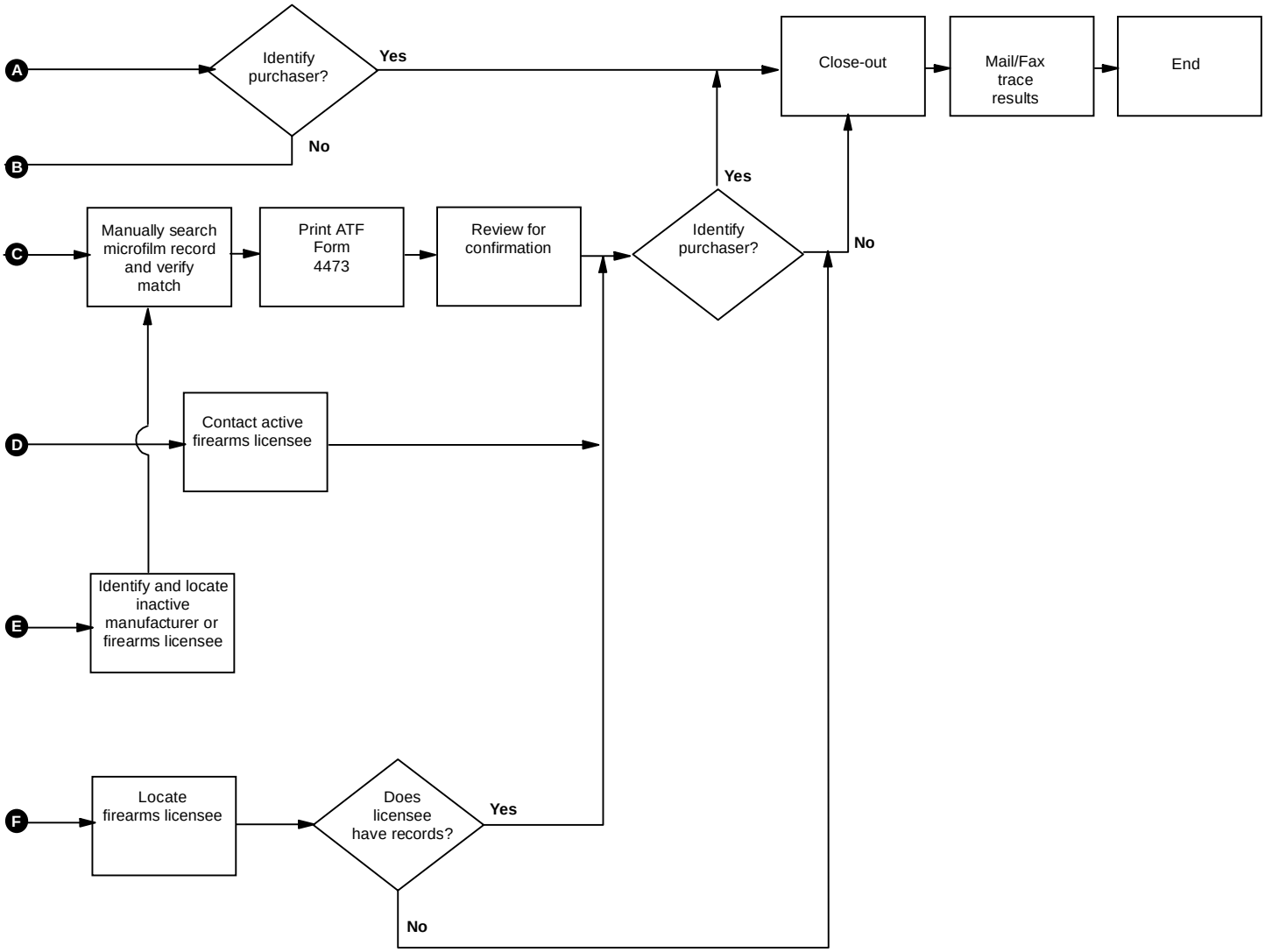
[16]These records include an acquisition and disposition logbook and Firearms Transaction Records (ATF Form 4473), which include, among other things, the name of the purchaser, the kind of firearm purchased, and the firearm model and serial number.

Figure V.1: Flowchart of the ATF's Firearms Tracing Process



Legend:

OOBR - Out-of-business records

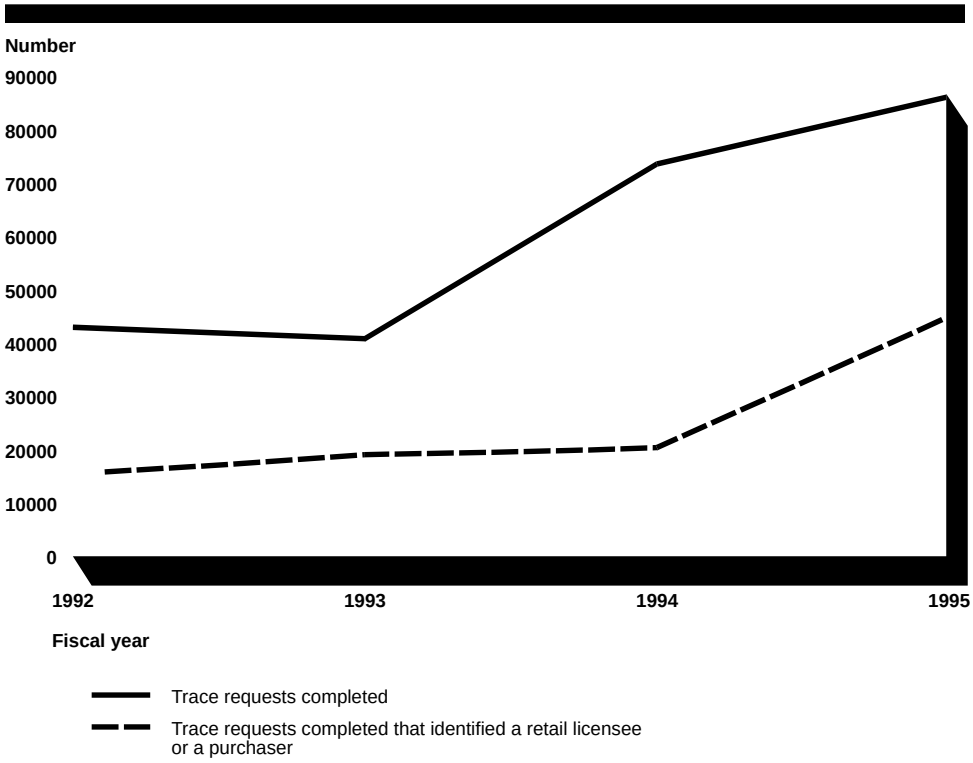

A
B
C
D
E
F
Identify purchaser?
Yes
No
Close-out
Mail/Fax trace results
End
Manually search microfilm record and verify match
Print ATF Form 4473
Review for confirmation
Identify purchaser?
Yes
No
Contact active firearms licensee
Identify and locate inactive manufacturer or firearms licensee
Locate firearms licensee
Does licensee have records?
Yes
No

[a]From this point in the tracing process, an active and/or inactive manufacturer, importer, or licensee may be involved. It should also be noted that not all traces are successfully completed. Some are closed due to age, completed/inaccurate information, or loss of licensee records or inability to locate licensee.

Source: ATF.

For fiscal years 1992 through 1995, ATF received a total of 262,984 trace requests. The number of trace requests received by ATF increased about 56 percent, from 51,210 in fiscal year 1992 to 80,042 in fiscal year 1995. During this period, ATF completed a total of 243,584 traces. As shown in figure V.2, the number of traces completed more than doubled, from 42,980 in fiscal year 1992 to 86,215 in fiscal year 1995. During this 4-year period, ATF identified a retail firearms licensee or a purchaser of the traced firearm in about 41 percent of the completed trace requests. In fiscal year 1995, ATF completed about 52 percent of the trace requests.

Figure V.2: Number of Traces ATF Completed and Those Completed by Tracing Firearm to a Retail Licensee or Purchaser, FYs 1992-1995



Source: ATF.

Out-Of-Business Records System Has Evolved

When firearms licensees discontinue their businesses, ATF needs access to their records for tracing purposes. To ensure that it had access to these records, shortly after the passage of the Gun Control Act, ATF issued regulations requiring firearms licensees that permanently discontinued their businesses to forward their records to ATF within 30 days following the discontinuance. The Firearms Owners' Protection Act codified this reporting requirement. Accordingly, since the enactment of the Gun Control Act, ATF has maintained the out-of-business records at a central location, which is currently at NTC.[17]

Before fiscal year 1991, ATF stored the out-of-business records in boxes with an NTC file number assigned to each firearms licensee. If during a trace ATF determined that the firearms licensee that sold the firearm was out of business and had sent in its records, a tracer would locate the boxes containing the records and manually search them for the appropriate serial number. This was a time-consuming and labor-intensive process for ATF, which also involved storage problems.

In 1991, ATF began a major project to microfilm the out-of-business records and destroy the originals. Instead of boxes, the out-of-business records were stored on microfilm cartridges, with the firearms licensee numbers assigned to them. Although this system occupied much less space than the hard copies of the records, it was still time consuming to conduct firearm traces because the researcher had to examine up to 3,000 images on each microfilm cartridge to locate a record.

In fiscal year 1992, ATF began using a minicomputer to create an index of the out-of-business microfilm records containing the information necessary to identify whether ATF had a record relating to a firearm being traced. The index contains the following key information: (1) the cartridge number of the microfilm; (2) an index number; (3) the serial number of the firearm; (4) the federal firearms licensee number; (5) and the type of document on microfilm, i.e., a Firearms Transaction Record (ATF Form 4473) or bound logbook pages. The indexed information that is captured by the minicomputer is then stored on a mainframe computer's database to allow searches of the indexed information by a tracer. The other information on the microfilm frames, including the firearms purchaser's name, remains on the microfilm cassette and must be viewed with a microfilm reader.

[17]An ATF regulation allows firearms licensees who discontinue their businesses to deliver their records to any ATF office in the region in which the business was located. The local office is to forward them to NTC.

Since the establishment of the out-of-business records computerized index, firearm traces are to begin with a query of the Out-of-Business Records System, rather than a query of the manufacturer or importer. To perform a query of the Out-of-Business Records System, a tracer is to enter the serial number of the firearm in question into the mainframe computer's database to determine if NTC has a record from an out-of-business licensee containing the serial number. If the firearm serial number is matched with a particular out-of-business licensee record, the appropriate cartridge of microfilm can be located. After locating the appropriate microfilm, the tracer is to use the location information in the index to search the microfilm to locate the record containing the serial number. After locating the record, the tracer is to examine the record to identify the purchaser of the firearm. If the identified purchaser is not another licensee, the trace is considered complete. If the purchaser is another licensee, NTC is to contact the licensee. If the serial number is not located in the out-of-business records, NTC is then to contact the manufacturer or importer to determine who purchased the firearm.

According to ATF officials, the indexed Out-of-Business Records System has (1) greatly reduced the need to contact manufacturers, importers, and other licensees and (2) reduced the time and cost, including storage costs, necessary to conduct firearm traces.

As shown in table V.1, during fiscal years 1992 through 1995, ATF received out-of-business records from 68,660 firearms licensees. ATF officials estimated that during this period, ATF had spent about $9.6 million, including the cost of contract employees (65 as of April 1996), to process and maintain out-of-business records. According to ATF officials, ATF is receiving an increased number of records primarily because the number of licensees going out of business has increased, and more of these licensees have sent in their records. The number of licensees that have gone out of business more than doubled, from 34,663 in fiscal year 1992 to 75,569 in fiscal year 1995. About 43 percent of the licensees that went out of business in fiscal year 1995 sent in their records, compared to about 25 percent in fiscal year 1992—an increase of about three-fourths. ATF officials estimated that during fiscal years 1992 through 1995, ATF microfilmed about 47 million documents contained in about 20,000 boxes. Although ATF does not systematically collect data on the number of traces involving out-of-business records, ATF officials estimated that ATF used the out-of-business licensees records to help complete about 42 percent of all completed trace requests during this period.

Table V.1: Disposition of Records of Federal Firearms Licensees That Went Out of Business, FYs 1992-1995

	Out-of-business federal firearms licensees				
	Sent records to ATF		Did not send records to ATF		Total
Fiscal year	Number	Percent	Number	Percent	Number
1992	8,692	25	25,971	75	34,663
1993	7,189	17	34,195	83	41,384
1994	20,504	32	42,699	68	63,203
1995	32,275	43	43,294	57	75,569
Total	**68,660**	**32**	**146,159**	**68**	**214,819**

Source: ATF.

ATF's Out-Of-Business Records System Complies With Legislative Data Restrictions

As stated previously, Congress has enacted legislation restricting the information ATF can maintain from firearms licensee records. In a March 1995 letter to one of the Subcommittee's members following hearings on Treasury's fiscal year 1996 budget request, ATF described its maintenance and use of the out-of-business dealers' records and explained why it believes these records are handled in compliance with the law.[18] ATF concluded that

"the storage and retrieval systems utilized for these records have been carefully designed to comply with a separate statutory restriction relating to the establishment of a system of registration of firearms, firearms owners, or firearms transactions or dispositions."

We concur with this conclusion.

We believe that ATF has the requisite authority to maintain firearms licensees' out-of-business records at a central government facility to conduct firearms traces, notwithstanding the data restriction provisions. As part of the Firearms Owners' Protection Act, Congress codified in 18 U.S.C. 923(g)(4) the regulatory requirement that ATF collect out-of-business records.[19] At the same time, Congress passed the data restriction contained in 18 U.S.C. 926(a), which prohibits any rule or regulation

[18]See letter from Ronald K. Noble, Under Secretary of the Department of the Treasury, to Congressman Ernest J. Istook, Jr., in March 1995.

[19]Specifically, 18 U.S.C. 923(g)(4) provides "Where a firearms or ammunition business is discontinued and succeeded by a new licensee, the records required to be kept by this chapter shall appropriately reflect such facts and shall be delivered to the successor. Where discontinuance of the business is absolute, such records shall be delivered within thirty days after the business discontinuance to the Secretary. However, where State law or local ordinance requires the delivery of records to other responsible authority, the Secretary may arrange for the delivery of such records to such other responsible authority."

prescribed after the enactment of the Firearms Owners' Protection Act (May 19, 1986), from requiring "that records required to be maintained under this chapter [of title 18] or any portion of the contents of such records, be recorded at or transferred to a [Federal, state, or local government] facility" or "that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established."

ATF's collection of the out-of-business records at a central location in accordance with section 923(g)(4) does not violate section 926(a) because Congress specifically authorized ATF to collect these records at the same time it added the section 926(a) restriction. Similarly, in our view, the collection of out-of-business licensees records does not violate the appropriations rider prohibition against consolidating or centralizing licensee records because of ATF's specific authority contained in section 923(g)(4) to collect these records.[20] The requirement to collect these records has been in existence either in regulation or statute since the appropriations rider was passed for fiscal year 1979.

The next issue raised by ATF's current retrieval practice is whether the microfilming or the computerized indexing of the records (as opposed to the mere collection of the records) violates section 926(a), since these are changes to ATF's records collection process instituted after May 19, 1986. The specific language of section 926(a) only covers post-Firearms Owners' Protection Act rules or regulations. ATF has not issued any rules or regulations regarding the current out-of-business storage and retrieval system and, therefore, as maintained by ATF, has not violated section 926(a). Even applying the substantive section 926(a) prohibition against creating a firearms registration system to these changes, we have found no basis to disagree with ATF's conclusion that the storage and retrieval system has been designed to comply with the restriction. For example, the computerized index does not include the firearms purchaser's name or the type or model of firearm. Lastly, we would note that section 926(a) specifically provides that ATF's authority to inquire into the disposition of a firearm during a criminal investigation is not restricted or expanded by this section. In this instance, the storage and retrieval system designed by ATF apparently solved legitimate storage and trace timing problems, thereby enhancing ATF's tracing capabilities, while also balancing the data

[20]In 1978, ATF proposed additional reporting requirements that would have required firearms licensees to report virtually all of their firearms transactions to ATF on a quarterly basis (43 Fed. Reg. 11,800 (Mar. 21, 1978)). To prevent the final issuance of these regulations, Congress passed an appropriation restriction that prevented ATF from "consolidating or centralizing within the Department of the Treasury the records of receipt and disposition of firearms maintained by Federal firearms licensees or for issuing or carrying out any provisions" or from issuing the subject proposed regulations (P.L. 95-429 (1978)).

restriction provisions. In conclusion, we believe that the current storage and retrieval system for out-of-business records does not violate either data restriction provision.

Furthermore, with regard to the operation of the Out-of-Business Records System, our review of system documentation provided by ATF, our discussions with ATF officials, and our observation of the out-of-business records process basically confirmed that ATF was operating the system in a manner consistent with the way it was designed by ATF and described in Treasury's March 1995 letter. During a visit to NTC, we observed that the Out-of-Business Records System does not permit the operator to enter the name or other identifying information of any firearm purchaser, or the type or model of any firearm. Thus, we found no evidence that ATF captures and stores the firearms purchasers' names or other identifying information from the out-of-business records in an automated file.

Scope and Methodology

To obtain information on ATF's firearms tracing process and the Out-of-Business Records System, we interviewed ATF headquarters officials and reviewed system documentation. We also observed the firearms tracing operation and the out-of-business records processing operation and discussed these operations with officials at NTC.

To determine the number of and results of firearms traces ATF performs, we obtained statistical data from ATF on all trace requests for fiscal years 1992 through 1995. With regard to out-of-business records, we obtained statistical data from ATF on the number of (1) firearms licensees that had gone out of business and sent in their records and (2) out-of-business records ATF processed for fiscal years 1992 through 1995. We also obtained data on the cost of processing and maintaining the out-of-business records from fiscal years 1992 through 1995. As agreed, because of time constraints, we did not verify the data provided by ATF.

To determine whether the Out-of-Business Records System complies with the legislative data restrictions, we reviewed relevant laws, ATF regulations, and a March 1995 letter to one of the Subcommittee's members containing ATF's opinion on whether the out-of-business records are handled in compliance with the data restriction provisions. We also discussed ATF's opinion with ATF's Associate Chief Counsel (Firearms and Explosives) and other headquarters officials. Furthermore, to determine whether ATF's actual handling of the records is in accord with the system's design, we observed the processing and maintenance of the

out-of-business records at NTC and discussed this operation with NTC officials.

We performed our work from December 1995 to March 1996 in accordance with generally accepted government auditing standards.

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