



Memorandum

October 19, 2005

SUBJECT: ATF Firearms Testing Procedures**FROM:** William J. Krouse
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This memorandum has been written in response to several congressional inquiries about firearms testing procedures employed by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and whether those procedures are outlined in a manual. Regarding this matter, ATF officials have informed the Congressional Research Service that there is no single "firearms testing procedures manual," given the wide variety of firearms available in both legal and illegal markets. Critics of ATF, who have requested congressional verification as to whether such a manual exists, have questioned the adequacy of ATF firearms testing procedures — particularly in regard to machine guns and other firearms regulated under the National Firearms Act.¹ To address issues raised by ATF critics, in part, Representative Phil Gingrey has introduced the Fairness in Firearm Testing Act (H.R. 1603) that would require ATF to make video recordings of all firearms and ammunition tests.

Background

ATF is the lead federal agency charged with administering and enforcing federal firearms laws. Two major statutes regulate the commerce in, and possession of, firearms: The National Firearms Act (NFA) of 1934² and the Gun Control Act of 1968,³ as amended. Congress passed the NFA to limit the availability of machine guns, short-barreled rifles and shotguns, silencers, and a "catch-all" class of other "concealable" firearms identified as "any other weapon."⁴ Many of these weapons were considered particularly lethal and often the

¹ Len Savage, "Why the ATF's Firearm Testing Procedures are Scientifically Invalid," (Summer 2005), 6 pp. Available at [<http://www.jpfo.org/savage2.htm>].

² 73rd Congress, P.L. 474, June 26, 1934, 48 Stat. 1236. The NFA is codified at 26 USC, Chapter 53, §5801 et seq.

³ P.L. 90-618; 82 Stat. 1213; codified at 18 USC, Chapter 44, §921 et seq.

⁴ The term "any other weapon" was derived from the NFA definition of firearm, which included firearms "capable of being concealed on the person" that were not pistols or revolvers. Such firearms
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weapons of choice of “gangsters” during the prohibition era (1919-1933). As part of the Internal Revenue Code, the NFA levies taxes on all aspects of the manufacture, importation, and distribution of such firearms, and requires that these firearms be registered by their importers, manufacturers, or makers and that transfers of registered firearms be approved in advance by the Attorney General. The NFA requires the Attorney General to maintain a registry of all NFA firearms in the United States that were not under the control of the United States.⁵

Title II of the Gun Control Act (GCA) of 1968 revised and re-codified the NFA to: (1) expand its scope of coverage to include destructive devices (bombs, incendiary devices, and weapons with a bore of greater than one-half inch); (2) include a definition for “any other weapon” to more precisely include certain smooth bore, short-barreled handguns; and (3) redefine the term “firearm” to exclude antique firearms or any device (except machine guns and destructive devices) that were determined to be “collectors’ items” by reason of their date of manufacture, value, design, and other characteristics and would not likely be used as a weapon. Under this provision, the Attorney General is authorized to reclassify certain firearms as “collectors items,” removing them from the NFA. The GCA also increased penalties for violating the NFA. In addition, the GCA included an amnesty provision that addressed a Supreme Court ruling regarding the registration of NFA weapons and the likelihood that individuals holding unregistered NFA firearms would incriminate themselves by registering such weapons.⁶

In 1986, Congress passed the Firearms Owners’ Protection Act (FOPA) and amended the GCA to prohibit the possession of machine guns that were not legally possessed or available for transfer prior to enactment (May 19, 1986).⁷ While FOPA included exceptions for any department or agency of the United States, a state, or political subdivision thereof, it effectively froze the number of machine guns that were legally available to the general public in the United States.

Under current law, it is a felony to receive, possess, or transfer an unregistered NFA firearm. Such offenses are punishable by a fine of up to \$250,000, imprisonment for up to 10 years, and forfeiture of the firearm and any vessel, vehicle, or aircraft used to conceal or

⁴ (...continued)

included gadget-guns that were disguised as pens, walking canes, belt buckles, knives, and flashlights. In 1968, Congress amended the NFA to more precisely define “any other weapon,” and to include certain smooth-bore, short-barreled firearms under that definition.

⁵ Effective Jan. 23, 2003, the responsibility for administering the NFA shifted to the Attorney General, as Congress transferred ATF from Treasury to Justice under the Homeland Security Act. See P.L. 107-296, 116 Stat. 2135.

⁶ *Haynes v. United States*, 88 S.Ct. 722, 390 U.S. 85, 19 L.Ed.2d 923 (1968). To overcome the constitutional defect, the amnesty provision (P.L. 90-618; 82 Stat. 1235, §207(b)) authorizes the Attorney General (previously, the Secretary of the Treasury) to conduct amnesties for no longer than 90 days to allow persons in possession of NFA weapons to register them without penalty. Such an amnesty was conducted officially from Nov. 2 through Dec. 1, 1968.

⁷ P.L. 99-308, §102(9); 100 Stat. 452; codified at 18 USC §922(o)(1).

