



Memorandum

November 28, 2005

TO: Honorable Jim Gibbons
Attention: Tray Abney

FROM: William J. Krouse
Specialist in Domestic Security
Domestic Social Policy Division

SUBJECT: ATF's National Firearms Registration and Transfer Record:
Issues Regarding Data Accuracy, Completeness, and Reliability

Per your request, this memorandum addresses questions you have raised concerning the accuracy, completeness, and reliability of registration and transfer records on machineguns, destructive devices, and other firearms regulated under the National Firearms Act (NFA). These records are maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in the National Firearms Registration and Transfer Record (NFRTR). As CRS has received several requests for similar information about NFRTR accuracy and completeness, the material in this memorandum may be included in future memoranda or a report.

Summary

As described below, since at least the late-1970s, questions regarding the accuracy, completeness, and reliability of NFA records maintained by the ATF have come up in the course of NFA-related criminal cases.¹ In the mid-1990s, NFA-related issues — including the problems with ATF recordkeeping — were brought to the attention of the House Committee on Government Reform and Oversight,² as well as the House and Senate Treasury, Postal Service, and General Government Appropriations Subcommittees.³

¹ U.S. Department of Justice, Criminal Division, *Memorandum: Response to letter from Senator McClure*, by Philip B. Heymann and Lawrence Lippe, Nov. 29, 1979, pp. 2-3.

² U.S. Department of the Treasury, Office of Inspector General, *Special Report on Allegations Concerning the Bureau of Alcohol, Tobacco and Firearm's Registration and Recordkeeping of the National Firearms Registration and Transfer Records*, OIG-99-009, (Washington: Oct. 26, 1998), p. 1.

³ U.S. Congress, House Committee on Appropriations, Subcommittee on the Treasury, Postal Service, and General Government Appropriations, *Treasury Postal Service, and General Government Appropriations for Fiscal Year 1997, Part 5, Testimony of Member of Congress and* (continued...)

Regarding NFA recordkeeping, the Department of the Treasury's Inspector General (IG) issued two audit reports in late 1998 that found significant problems in ATF's administration of NFA records and related databases.⁴

Among other things, the Treasury IG found that (1) ATF contract employees had improperly destroyed some NFA records, (2) there were significant inaccuracies in the NFRTR, and (3) ATF employees had not always followed proper procedures while processing NFA registration forms and other related documents.⁵ The Treasury IG, however, did not examine the legal issues regarding whether ATF searches of the NFRTR to determine whether NFA weapons were legally registered were accurate enough to support certifications in court during criminal prosecutions.⁶

While Congress has provided ATF with additional funding to improve NFA recordkeeping, critics point out that nothing can be done about lost, missing, or destroyed NFA records. As one ATF official concluded, problems related to ATF's NFA recordkeeping could result in the improper arrest, prosecution, and conviction of an innocent person, who had simply lost his paperwork, and for whom the agency had no records.⁷ If the person produced his paper work during trial, it would undermine the credibility of ATF. In any case, if such paperwork were produced prior to trial, ATF could quietly drop the charges and amend its records.

One leading firearms law attorney has advised defendants in federal criminal cases to file discovery motions for U.S. government documents that he suggests may cast a *reasonable doubt* as to whether an NFA firearm is unregistered due to findings in these documents that the NFRTR *is not* accurate, complete, and reliable.⁸ In light of outstanding questions about the reliability of NFRTR data, an issue for Congress could be whether to shift a greater share of the burden of proof to ATF in matters regarding the proper/legal registration of NFA firearms.

Statutory and Administrative Background

Two major federal statutes regulate the commerce in, and possession of, firearms: the National Firearms Act of 1934 (26 U.S.C. §5801 *et seq.*) and the Gun Control Act of 1968, as amended (18 U.S.C. Chapter 44, §921 *et seq.*). Supplementing federal law, many state

³ (...continued)

Other Interested Individuals and Organizations, 104th Cong., 2nd sess, (Washington, GPO, 1996), pp. 37-274.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ U.S. Department of the Treasury, Office of Inspector General, *Audit Report on Allegations Concerning the Bureau of Alcohol, Tobacco, and Firearms' Administration of the National Firearms Registration and Transfer Record*, OIG-99-018, (Washington: Dec. 18, 1998), p. i.

⁷ NFA Branch Chief memorandum to ATF Assistant Director for Technical and Scientific Services, "Purification and verification of National Firearms Registration and Transfer Record," Apr. 3, 1975, reproduced in *Oversight Hearings on Bureau of Alcohol, Tobacco and Firearms*, FY1980, Hearing Before the Senate Committee on Appropriations, 96th Cong., 1st sess, (1979), p. 42.

⁸ Stephen P. Halbrook, "Prohibited Acts Under NFA," *Firearms Law Deskbook: Federal and State Criminal Procedure*, (West Publishing, 2004), p. 463.

