



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.

firearm laws are stricter than federal law. For example, some states require permits to obtain firearms and impose a waiting period for firearm transfers. Other states are less restrictive, but state law cannot preempt federal law. In general, federal law serves as the minimum standard in the United States. For the most part, federal firearms laws are administered and enforced by the ATF.

National Firearms Act of 1934, As Amended. In 1934, Congress passed the NFA to limit the availability of machineguns, short-barreled rifles and shotguns, silencers, and a “catch-all” class of other “concealable” firearms identified as “any other weapon” (for a more detailed discussion of NFA firearms, see **Appendix B**).⁹ Many of these weapons were considered particularly lethal and often the 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 and their owners be registered at every point the firearms change ownership in the chain of commerce. The NFA required the Secretary of the Treasury to establish a registry of all NFA firearms in the United States that were not under the control of the United States. For the most part, the NFA is administered by ATF.

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).¹⁰ ATF was established as a separate bureau in the Department of the Treasury in 1972 by Treasury Department Order No. 120-1, at which point, ATF assumed responsibility for maintaining the NFRTR. While ATF traces its origins back to the first federal tax on distilled spirits in 1791, its firearm regulatory responsibilities can largely be traced back to the NFA, which was enacted in 1934. As the NFA is essentially a tax law, it was administered initially by the Department of the Treasury’s Bureau of Internal Revenue (BIR) and its Miscellaneous Tax Unit. In 1942, the firearm enforcement duties were transferred to BIR’s Alcohol Tax Unit (ATU).

In 1952, the BIR was reorganized and renamed the Internal Revenue Service (IRS) and the entire firearm and tobacco programs were transferred to ATU, which was also renamed, the Alcohol and Tax Division (ATTD). Following the Gun Control Act of 1968 (described below), the ATTD was given responsibility for explosives as well, and was renamed the Alcohol, Tobacco and Firearms Division (ATFD).

More recently, as part of the Homeland Security Act, Congress transferred ATF to the Department of Justice.¹¹ Among other things, the Attorney General was made responsible for administering the NFA and maintaining its registry, known as the National Firearms Registration and Transfer Record (NFRTR). In addition, Congress added “explosives” to ATF’s title — the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Gun Control Act (GCA) of 1968. Title II of the GCA revised and re-codified the NFA to (1) expand its scope of coverage to include destructive devices (bombs, incendiary

⁹ 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 include “gadget-guns” that are disguised as pens, walking canes, belt buckles, knives, and flashlights; as well as certain smooth-bore, short-barreled firearms under that definition.

¹⁰ See George Thomas Kurian, Editor in Chief, *A Historical Guide to the U.S. Government*, Vicki Herrmann, “Alcohol, Tobacco and Firearms, Bureau of,” (New York, 1998), pp. 39-41.

¹¹ P.L. 107-296, 116 Stat. 2135.

devices, and weapons with a bore of greater than one-half inch); (2) include a definition for “any other weapon” to more specifically include certain smooth bore, short-barreled handguns; and (3) redefine the term “firearm” to exclude antique firearms or any devices (except machineguns 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,” administratively removing them from the NFA. The GCA also increased penalties for violating the NFA.

1968 NFA Amnesty. In addition, the GCA included amnesty provisions¹² 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.¹³ The provision also included a limitation that prohibited the use of registration information to prosecute an individual for any related offense prior to or concurrent with his registration. In 1968, the one and only amnesty was conducted by the IRS’s ATFD. According to ATF data, 57,223 NFA firearms were registered during the 1968 amnesty. According to one DOJ official, however, the IRS-ATFD was ill prepared to handle the amnesty:¹⁴

The amnesty period spawned a massive volume of registrations, transfers and correspondence which the clerical staff was ill-equipped to handle. As a result, some weapons were registered, some were mistakenly registered by part number rather than serial number, and some documents were misfiled. The staff responsible for the systems was aware of these problems.

As described below, moreover, others have charged that the amnesty was improperly administered, because ATF allowed some individuals — particularly U.S. service personnel who had been stationed abroad during the amnesty — to continue to register firearms, without announcing such an amnesty period in the Federal Register as required by law. ATF reportedly no longer accepted applications to register NFA firearms following another Supreme Court ruling in 1971.¹⁵

Firearms Owners’ Protection Act (FOPA). In 1986, Congress passed the FOPA and amended the GCA to prohibit the possession of machineguns that were not legally

¹² P.L. 90-618; 82 Stat. 1235, §207(b) and (d).

¹³ *Haynes v. United States*, 88 S.Ct. 722, 390 U.S. 85, 19 L.Ed.2d 923 (1968). To overcome the constitutional defect, the Gun Control Act of 1968 (P.L. 90-618) authorized 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. According to ATF, this authority is no longer available for machineguns as Congress statutorily froze the number of machineguns available for civilians in 1986 in the Firearm Owners Protection Act (described below).

¹⁴ 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.

¹⁵ In the case, *United States v. Freed* (401 U.S. 601 (1971)), the Supreme Court ruled that the amended NFA no longer violated the 5th Amendment protection against self incrimination, or violated an individual’s right to due process, as Congress had provided a remedy for this situation by authorizing the 1968 NFA firearms amnesty.

possessed prior to enactment (May 19, 1986).¹⁶ 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 machineguns that were legally available to the general public in the United States. ATF has asserted that the FOPA machinegun ban effectively nullifies the NFA amnesty provision for machineguns.

NFA Procedures. To deal in NFA firearms, a person is required to be a federal firearms licensee (FFL) under the GCA and also be a special occupational taxpayer (SOT) under the NFA. Class I SOTs are importers of NFA firearms; Class II SOTs are manufacturers of NFA firearms; and Class III SOTs are dealers. NFA firearms are often referred to as Class III weapons, for Class III dealers. The NFA imposes a \$200 manufacturing tax and a \$200 transfer tax each time a firearm is transferred from an unlicensed individual.¹⁷ For non-tax exempt transfers, ATF places a tax stamp on the tax paid transfer document upon the transfer's approval. The transferee may not take possession of the firearm until he holds the approved transfer document.

Private persons, who are not otherwise prohibited by law, may acquire an NFA firearm in one of three ways: (1) a registered owner of an NFA firearm may apply for ATF approval to transfer the firearm to another person residing in the same state or to a FFL in another state; (2) an individual may apply to ATF for approval to make and register an NFA firearm (except machine-gun); or (3) an individual may inherit a lawfully registered NFA firearm.

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 convey the firearm.¹⁸ Regarding proper registration, the NFA Branch provides certifications to, and testifies in, courts in criminal cases as to whether NFA firearms are properly registered. NFA-covered firearms, for which there are no or incomplete records in the NFRTR database, are considered contraband and are subject to seizure and forfeiture.

Questions About NFRTR Accuracy

Some maintain that federally licensed dealers in NFA firearms have "suspected" for years that NFRTR records *were not* complete and reliable, as their firearm inventories were not always accurately reflected in the NFRTR-generated reports, and such discrepancies had come to light during ATF compliance inspections of their businesses.¹⁹ They have expressed

¹⁶ P.L. 99-308, §102(9); 100 Stat. 452; codified at 18 U.S.C §922(o)(1).

¹⁷ Transfers of NFA-covered firearms incur a tax of \$200 except for those classified as "any other weapon," which are taxed at a reduced \$5 rate. Certain NFA firearm transfers are tax-exempt. They include transfers to a lawful heir from an estate; transfers between FFLs, who are also SOTs; and transfers of "unserviceable firearms."

¹⁸ 26 U.S.C §§5861(d) and (j); 26 U.S.C §5872; 49 U.S.C §§781-788.

¹⁹ Introductory statement of Dan Shea, editor of *Small Arms Review*, leading an article on NFA registrations by Eric M. Larson. See Larson's article, "Voluntary Amnesty Registrations Under the National Firearms Act: Current Prospects and Some History From 1934 to 1968," *The Small Arms Review*, vol. 3, no. 8, May 2000, p. 41.

the fear that “some overzealous ATF agent will attempt to make a Registry error into a SWAT visit.”²⁰

On the other hand, other Class III dealers have cautioned that “opening the NFA door”²¹ may lead to unfavorable outcomes, such as stricter prohibitions on NFA firearms. Nevertheless, they concede that something should be done to correct and improve records in the NFRTR.²² As described below, NFRTR-related issues have arisen in federal criminal cases. In two landmark cases in the 1990s, the outcomes for the defendants in these cases were diametrically different.

Emerging Evidence of NFRTR Problems. Questions about the accuracy of the NFRTR were raised in several federal court cases in the early 1980’s, as defense attorneys requested during discovery internal ATF memoranda and reports that purportedly documented problems regarding the accuracy of the NFRTR.²³ One of those documents included an internal ATF memorandum dated April 3, 1975, in which a then NFA branch chief summed up the crux of the NFRTR accuracy problem:²⁴

Our response to inquiries on the existence or nonexistence of proper registration of an NFA firearm is the basis for seizures, arrests, prosecutions, fines, and imprisonments. Our testimony or certification of the nonexistence of such record is evidence subject to close examination in court. We continuously discover discrepancies and inaccuracies in the registration file which, if discovered during trial, would destroy the future credibility of such evidence. One resultant possibility is that a defendant who maintains he had properly registered his firearm but had lost his approved form could, subsequent to his arrest based on non-registration, locate his lost document. If the court should discover that our negligence caused an unwarranted arrest and trial, the resultant loss of public trust would be irreparable. Just as serious is the possibility that an innocent man might be convicted if he could not find his registration form and we certified that he had not registered the firearm when, in fact, we had failed to locate his registration in the Record [NFRTR].

By 1981, despite continuing shortcomings in the NFRTR, one ATF official maintained that many of the inadequacies in the NFRTR had been addressed and maintained that the records were accurate and reliable for “criminal purposes.”²⁵

U.S. v. John Daniel LeaSure. Despite ATF assurances, questions regarding the accuracy of the NFRTR emerged once again during the trial of a federally licensed Class II

²⁰ Ibid., p. 41.

²¹ Ibid., p. 40.

²² Ibid., p. 41.

²³ See *U.S. v. Seven Miscellaneous Firearms*, 503 F. Supp. 565 (D.D.C. 1980); and *U.S. v. Stout*, 667 F.2d 1347 (11th Cir. 1982).

²⁴ 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.

²⁵ Bureau of Alcohol, Tobacco and Firearms, *Status Report: National Firearms Registration and Transfer Record (NFRTR)*, by Deron A. Dobbs, July 1, 1981, p. 17. Available at [<http://www.cs.cmu.edu/afs/cs.cmu.edu/user/wbardwel/public/nfalist/rip/1979-81memos.txt>].

manufacturer and self-described “inventor of firearms silencers,” John D. LeaSure.²⁶ In early 1994, an ATF inspector conducted a compliance inspection of LeaSure’s business, and found some discrepancies in his inventory and NFRTR-generated reports. A few days later, an ATF special agent returned and seized about 60 items from LeaSure. In late 1995, ATF informed him that a federal grand jury “had returned a true bill” on him, and he was indicted for several counts of violating the NFA, including possessing unlicensed machineguns. LeaSure contended that these “machining guns” were replacement parts that he was licensed to possess as part of his ongoing work for the U.S. military. He was brought to trial on January 18 and 19, 1996, and was found guilty of four of six counts in February 1996.

Through the Freedom of Information Act (FOIA), however, another attorney, James H. Jeffries, III,²⁷ had obtained in March 1996 an incomplete transcript of an October 1995 ATF “roll call” training session, in which Tom Busey — ATF’s then NFA branch chief — made some observations about the NFRTR. Among other things, Busey stated the following:²⁸

Let me say that when we testify in court, we testify that the database [NFRTR] is 100% accurate. That’s what we testify to, and we will always testify to that. As you probably well know, that may not be 100% true.

After LeaSure’s attorney petitioned the court with this new evidence, the presiding judge, the Honorable John A. MacKenzie, dismissed all but one count against LeaSure based in part on an incomplete copy of the Busey transcript (the last seven pages were missing), and the fact that exculpatory evidence had been withheld by the prosecution.

In testimony before Congress, LeaSure’s attorney suggested that the Busey transcript casts doubt on all NFA cases antedating Busey’s tenure as NFA branch chief. He also noted that when he and another attorney compared materials provided to them by the prosecuting attorneys, the letters and attachments were identical, indicating a possibly packaged response by the U.S. Attorney’s Office to NFA cases affected by the Busey transcripts. He suggested further that this lent an appearance of “government misconduct at fairly high levels involving

²⁶ See *U.S. v. John Daniel LeaSure* (Crim. No. 4:95cr54, Newport News, Virginia, May 21, 1996). In addition, see Mr. LeaSure’s written statement, see 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 1999, Part 5, Statements of Member of Congress and Other Interested Individuals and Organizations*, 105th Cong., 2nd sess. (Washington, GPO, 1998), pp. 147-157.

²⁷ James H. Jeffries, III, “Institutional Perjury,” *Voice for the Defense*, vol. 25, no. 8, Oct. 1996, pp. 28-30.

²⁸ 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 1999, Part 5, Statements of Member of Congress and Other Interested Individuals and Organizations*, 105th Cong., 2nd sess. (Washington, GPO, 1998), p. 181. It is notable that the Busey ATF roll call training transcript was previously provided to Congress by Eric Larson. See 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, Statements of Member of Congress and Other Interested Individuals and Organizations*, 104th Cong., 2nd sess. (Washington, GPO, 1996), pp. 184-205.

obvious violations of the Brady rule, coverups by the police (ATF), and tampering with evidence by the Department of Justice.”²⁹

U.S. v. Rith. In another court case, the NFRTR was deemed sufficiently reliable to withstand a Confrontation Clause challenge in *United States v. Rith*.³⁰ In *Rith*, the defendant had been convicted of unlawful possession of a sawed-off shotgun, based in part on the introduction into evidence of a document from the ATF certifying that a search of the NFRTR produced no evidence that the firearm was registered to, or had been otherwise lawfully acquired by, the defendant.³¹

On appeal, the defendant argued that the ATF certificate was “not endowed with particularized guarantees of trustworthiness” sufficient to satisfy the Confrontation Clause of the Sixth Amendment.³² In support of this claim, the defendant introduced documents obtained from the government, including statements made by Tom Busey during the October 1995 training session mentioned above. In these documents, Busey is quoted as stating that sometimes information is missed “because there’s only so many minutes in an hour and so many hours in a day,” and because of error in inputting serial numbers and in the conduct of searches of a suspect’s name or the registration number of a firearm in question. Busey is further quoted as stating that “when I came in a year ago, our error rate was between 49 and 50%.”³³

The court rejected the argument that this information rendered the ATF certificate inadmissible pursuant to the Confrontation Clause, declaring that the “record establishes that the NFRTR database has sufficient guarantees of trustworthiness to satisfy the Sixth Amendment.”³⁴ In reaching this conclusion the court was persuaded by information indicating that a quality review team instituted in 1994 had reduced the critical error rate to below 3%, and that a 1996 [1998] audit by the Department of the Treasury found a critical error rate of less than 1.5%.³⁵ The court’s determination was further influenced by the government’s assertion that “the accuracy of the registration check is buttressed by a second-level review by a branch chief.”³⁶ Based upon these factors, the court held that “the

²⁹ See Mr. David N. Montague’s letter to Michael E. Shaheen, Jr., Director of the DOJ Office of Professional Responsibility, date June 4, 1996, submitted for the record in 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 1999, Part 5, Statements of Member of Congress and Other Interested Individuals and Organizations*, 105th Cong., 2nd sess. (Washington, GPO, 1998), p. 163-165.

³⁰ *U.S. v. Rith*, 164 F.3d 1323 (10th Cir. 1999).

³¹ *Ibid.*, p. 1333.

³² *Ibid.*, p. 1333.

³³ *Ibid.*, p. 1335.

³⁴ *Ibid.*, p. 1336.

³⁵ *Ibid.*, p. 1336.

³⁶ *Ibid.*, p. 1336.

admission of the ATF certificate into evidence did not constitute a violation of Rith's Sixth Amendment right of confrontation."³⁷

How Accurate is the NFRTR? Notwithstanding the court's reference to an NFRTR critical error rate of less than 1.5% in *U.S. v. Rith*, the accuracy and completeness of the NFRTR remains an open question. In 1998, the Department of the Treasury Office of Inspector General (OIG) conducted an audit of the NFRTR (discussed below). As part of this audit, the OIG drew random discovery samples of three NFA transactions (Form 4467, letter, and other correspondences).³⁸ In the sampled records for all three transactions, the OIG discovered discrepancies, which as a percentage of the sampled populations were greater than 1.5% cited in *U.S. v. Rith*.³⁹ While the critical error rates were not given in the text of the audit report, based upon its findings and ATF efforts to improve the NFRTR, the Treasury OIG chose not to perform a full statistical sampling and audit of any NFA transaction.⁴⁰ Moreover, the OIG emphasized that as only low volume, relatively infrequent transactions were sampled, no inferences could be made about higher volume, more common transactions (e.g., registrations and transfers).⁴¹

Possible Legal Implications. Some continue to conjecture whether and with what frequency individuals have been improperly prosecuted and perhaps convicted based on inaccurate or incomplete ATF recordkeeping and other problems related to the NFRTR. Stephen Halbrook — an attorney who specializes in firearms law — has advised that in NFA-related criminal proceedings the defense should file discovery motions for U.S. government documents (including the Treasury OIG audit reports and working papers) that he maintains cast a *reasonable doubt* as to whether the NFRTR database is accurate, complete, and reliable.⁴²

Mr. Halbrook also maintains that in many cases it may be impossible to establish a "legally valid NFA transfer history" for a firearm, if the person legally entitled to possess the firearm loses his or her copy of the transfer approval, or is deceased and unavailable to verify the firearms legal registration.⁴³ In fact, in most cases, ATF is prohibited by law from giving NFRTR information to anyone other than the owner of record (as reflected in the NFRTR), as that information is considered tax return information and confidential.⁴⁴ Nonetheless, if NFRTR data is not complete and accurate, the owner of record may not be the last legal owner of the firearm in question.

³⁷ *Ibid.*, p. 1337.

³⁸ In general, discovery samples are used to make preliminary determinations about the extent of errors critical to an audit to determine whether a full statistical sampling may be necessary for an effective audit.

³⁹ 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. 12.

⁴⁰ *Ibid.*, p. 23.

⁴¹ *Ibid.*, p. 22.

⁴² Stephen P. Halbrook, "Prohibited Acts Under NFA," *Firearms Law Deskbook: Federal and State Criminal Procedure*, (West Publishing, 2004), pp. 437-447.

⁴³ *Ibid.*, p. 444.

⁴⁴ 26 U.S.C. §6103.

Critics charge that ATF has made attempts to seize NFA firearms as contraband that were otherwise legally possessed, except that the agency had lost the paperwork on those weapons.⁴⁵ In cases where a person suspected of possessing an illegal firearm produces the requisite documentation, ATF can simply replace that documentation and drop the investigation. 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.

Deactivated War Trophies. Anecdotal evidence suggests that the incompleteness of transfer records is particularly problematic for a subset of NFA weapons known as **deactivated war trophies (DEWATs)**.⁴⁶ DEWATs are deactivated implements of war, including grenades, mortar rounds, bazookas, and machineguns. For a time (1955-1968), deactivated machineguns were not subject to the NFA, because they had been deactivated. Congress, however, later changed the definition of “machinegun” to include the intact receiver of such weapons in 1968. At that point, many of the deactivated machineguns once again became subject to the NFA, as their receivers were still intact. An unknown number of deactivated machinegun owners may not have registered such firearms.

As the WWII generation passes, these weapons are appearing with some frequency in estates of deceased veterans and collectors. In some cases, many survivors (next-of-kin) would like to have these machineguns transferred to themselves legally. In other cases, the survivors would like to sell these machineguns (transfer them to others legally). Even in a deactivated state, these machineguns are highly sought after by collectors. Under the NFA, these deactivated machineguns are subject to seizure by the ATF as contraband, if their registration records are incomplete, missing, or absent — a source of concern for many survivors, collectors, and dealers.⁴⁷

Congressional Oversight. From 1996 through 2001, the House Committee on Appropriations Treasury-Postal Subcommittee heard testimony annually from Dr. Eric M. Larson about incomplete and inaccurate records in the NFRTR (see **Appendix A**).⁴⁸ Larson

⁴⁵ Eric Larson, “Time to Protect War Trophies,” *Shotgun News*, vol. 68, issue 21, Aug. 2, 2004, pp. 52-53.

⁴⁶ Stephen P. Halbrook, “Prohibited Acts Under NFA,” *Firearms Law Deskbook: Federal and State Criminal Practice*, (West Publishing, 2004), p. 445.

⁴⁷ Representative Jim Gibbons has introduced the Veterans’ Heritage Act of 2005 (H.R. 2088), a bill that would provide a 90-day amnesty period, during which veterans and their family members could register firearms, provided those firearms were acquired abroad and before Oct. 31, 1968. This bill includes provisions that would allow veterans to surrender unregistered firearms without criminal penalty, as long if they did so within 30 days, and would provide for the transfer of unregistered firearms to museums in some cases. Similar legislation was introduced in the 107th and 108th Congresses (H.R. 5176, H.R. 3807). In addition, Representative John Boozman has requested that the Department of Justice OIG investigate the World War II war trophy program and the 1950’s era DEWAT program to determine whether the policies of these programs were effectively and fairly implemented by the Department of the Treasury.

See [<http://www.nfaaa.org/documents/RepBoozmanDOJ-IG.pdf>].

⁴⁸ Dr. Eric M. Larson is a journalist and demographer. His articles have been published in *The Gun Report*, *CADA Gun Journal*, *Small Arms Review*, *Gun News Digest*, *Guns Illustrated*, *Machine Gun News*, and *The Gun Journal*. He is author of *Variations of the Smooth Bore H&R Handy-Gun: A*

(continued...)

presented analysis of ATF-published NFRTR statistics that suggested that ATF had possibly mismanaged the NFRTR.⁴⁹ Larson also alleged that ATF may have broken the law regarding the post-1968 NFA amnesty registrations, and that ATF personnel had not been truthful (committed perjury) about certain things regarding the NFRTR.⁵⁰

In addition, in 1997, the then Chairman of the House Committee on Government Reform and Oversight, Representative Dan Burton, requested the Department of the Treasury's Office of Inspector General (OIG) to conduct an audit of the NFRTR and address the allegations made by Larson, which included the following:⁵¹

- ATF employees had improperly destroyed NFA documents in 1988, and added firearms to the NFRTR after losing the original registration records;
- ATF may have illegally registered NFA firearms following an NFA amnesty in 1968;
- ATF had made registrations classified as "other" that were contrary to the law;
- a significant number of firearms were registered to persons who were deceased, and
- ATF employees had perjured themselves in correspondences with him regarding his petition to have certain firearms (H&R Handy Guns) exempted from the NFRTR as collector items.

Treasury OIG Reports on the NFRTR

In late 1998, the Treasury OIG published two audit reports. The first report addressed Larson's allegations.⁵² The second report addressed the ATF's administration of the NFRTR

⁴⁸ (...continued)

Pocket Guide to Their Identification.

⁴⁹ 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 Other Interested Individuals and Organizations*, 104th Cong., 2nd sess, (Washington, GPO, 1996), pp. 44-53.

⁵⁰ 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 1998, Part 5, Testimony of Member of Congress and Other Interested Individuals and Organizations*, 105th Cong., 1st sess, (Washington, GPO, 1997), pp. 25-32.

⁵¹ See letter from Dr. Larson to the Department of the Treasury Office of Inspector General dated May 10, 1997, in 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 1999, Part 5, Statements of Member of Congress and Other Interested Individuals and Organizations*, 105th Cong., 2nd sess, (Washington, GPO, 1998), pp. 98-101.

⁵² 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), 28 pp.

in greater detail.⁵³ While there is much overlap between the two reports, in summary, the OIG reported that:

- ATF contract employees had destroyed some NFA records in 1988,
- there were significant inaccuracies in the NFRTR,
- ATF employees had not always followed proper procedures while processing NFA registration forms and other related documents,
- ATF had registered a number of firearms following a 1968 amnesty without announcing a new amnesty — arguably in contravention to the law, and
- a significant number of NFA firearms were likely to be registered to deceased persons.

Among other things, the OIG recommended that ATF strengthen control over access to NFA records, be more timely in response to NFA requests from the public, and maintain documentation pertaining to examinations and classifications of NFA firearms.⁵⁴

ATF responded that it had nearly completed a program to upgrade the NFRTR database, and that it planned to reconcile discrepancies in the database by reviewing the 2.5 million records and a larger number of imaged documents.⁵⁵ Upon the request of the U.S. Attorney, ATF had also reviewed 130 certifications, by querying its old and new databases, and found the new database complete and the certifications accurate.⁵⁶

To the disappointment of Larson and others, the IG did not determine whether ATF had registered firearms for which the agency had no documentation, but the owners did.⁵⁷ Nor did the OIG did examine the related issue as to whether ATF employees had failed to process NFA documents submitted by individuals or entities.⁵⁸ Nor did the OIG examine the legal issues regarding the accuracy of ATF searches of the NFRTR to determine whether NFA weapons were properly and legally registered, as such searches are the basis for ATF certifications in criminal prosecutions.⁵⁹

First OIG Report Regarding Eric Larson's Allegations. In October 1998, the Treasury OIG issued a special report directly addressing Eric Larson's allegations.⁶⁰ The

⁵³ 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), 50 pp.

⁵⁴ *Ibid.*, pp. 5-21.

⁵⁵ *Ibid.*, p. 10.

⁵⁶ *Ibid.*, p. 13.

⁵⁷ James Bardwell and Basil St. Clair, "Treasury Department Inspector General Reports on NFA Registry Released," *Small Arms Review*, vol. 2, no. 7, Apr. 1999, pp. 15-19.

⁵⁸ 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. 22.

⁵⁹ *Ibid.*, p. i.

⁶⁰ U.S. Department of the Treasury, Office of the Inspector General, "Special Report on Allegations Concerning the Bureau of Alcohol, Tobacco and Firearm's Registration and Recordkeeping of the
(continued...)

OIG found that an unknown number of NFA documents had been improperly destroyed by ATF contractors.⁶¹ ATF agreed that some of the records had been inadvertently destroyed, but contended that most of these destroyed records were Form 2s (Notices of Firearms Manufactured or Imported) and Form 9s (Applications and Permits for Exportation of Firearms). According to ATF, these documents could be replaced by the manufacturer or exporter upon discovery that they were missing.⁶²

The OIG also found that on a limited basis, ATF had registered firearms until 1976, even though the amnesty period officially ended on December 1, 1968.⁶³ In addition, the OIG sampled registration activities and found data entry problems and other discrepancies in the "other" firearms classification, but efforts were underway in FY1998 to alleviate these problems.⁶⁴

In regard to deceased persons, the OIG found that it was very likely that many NFA firearms were registered to deceased persons, as ATF had not conducted routine checks of the names of persons in the registry, because officials considered it the responsibility of the executor or administrator of decedents' estate to properly transfer such firearms to their rightful heirs.⁶⁵ Finally, the Treasury OIG *did not* substantiate all of Larson's allegations, as the OIG reviewed the perjury allegations and found them to be without merit.⁶⁶

Second OIG Report on ATF's Administration of The NFRTR. In December 1998, a follow-up report was issued that more closely examined ATF's administration of the NFRTR in light of performance issues that had arisen during the previous audit.⁶⁷ In addition to the earlier findings concerning destroyed records and firearms registered to deceased persons, the OIG reported that:⁶⁸

- ATF employees had not always followed proper procedures when processing checks, forms and other documents related to transferring ownership of NFA weapons; and
- in many instances, there were a significant number of inaccuracies in the NFA registration records, as many records were improperly indexed, mistakenly referenced, or simply misplaced, and could not be located.

⁶⁰ (...continued)

National Firearms Registration and Transfer Records," OIG-99-009, Oct. 26, 1998, 28 pp.

⁶¹ Ibid., p. 7.

⁶² Ibid., p. 8.

⁶³ Ibid., p. 11.

⁶⁴ Ibid., p. 18-20.

⁶⁵ Ibid., pp. 21-22.

⁶⁶ Ibid., p. 16.

⁶⁷ 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), 50 pp.

⁶⁸ Ibid., p. ii.

To address the problems cited above, the Treasury OIG made the following recommendations related to (1) monitoring pending caseloads and database access, (2) database accuracy, (3) supporting documentation and determinations, and (4) measures to make the database records more current.⁶⁹

First, in regard to monitoring pending caseloads and database access, at the time of the 1998 audit, the ATF had partially completed a program to convert the NFRTR database from a "mainframe-type computer application" to a "client/server-type application."⁷⁰ ATF indicated that, in the "FY1999 phase II of the NFA database program," upgrades to the new NFRTR database would include improved system reporting and monitoring capabilities.⁷¹

Second, concerning database accuracy, ATF responded that the agency planned to compare the index of imaged documents to the registry database of firearms and owners to identify discrepancies, but this project would involve reviewing 2.5 million database records and a larger number of documents.⁷² For its part, the OIG drew random discovery samples of three NFA transactions (Form 4467, letter, and other correspondences).⁷³ While the OIG found discrepancies in the sampled records for all three transactions, the critical error rates were not given in the text of the audit report. Nevertheless, based on its own findings and ATF efforts to improve the NFRTR, the Treasury OIG chose not to perform a full statistical sampling and audit of the NFRTR.⁷⁴ Moreover, the OIG underscored that as only low volume, relatively infrequent transactions were sampled, inferences about higher volume, more common transactions (e.g., registrations and transfers) could not be made.⁷⁵

Also, concerning database accuracy, ATF reported that, upon the request of the U.S. Attorney, 130 certifications of registration or non-registration made between September 2, 1997 and June 8, 1998 had been reviewed.⁷⁶ For these 130 certifications, ATF queried both the old and new NFRTR databases and it was found that the new database was complete and that the certifications were accurate.⁷⁷

Third, in regard to the recommendation that the NFRTR database should contain references to documentation on research and examinations supporting determinations made

⁶⁹ Ibid., p. iii.

⁷⁰ Ibid., p. 30.

⁷¹ Ibid., pp. 5-9. *N.B.* While ATF points to improved reporting capabilities, it is notable that the last for which ATF reported NFA firearms ownership by year and weapon-type was 1996. This was the data analyzed by Dr. Larson to show discrepancies in the NFRTR records. Moreover, the last year for which ATF has reported any NFA statistics was 2000.

⁷² Ibid., p. 10.

⁷³ In general, discovery samples are used to make preliminary determinations about the extent of errors critical to an audit to determine whether a full statistical sampling may be necessary for an effective audit.

⁷⁴ U.S. Department of the Treasury, Office of the 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. 23.

⁷⁵ Ibid., p. 22.

⁷⁶ Ibid., p. 13.

⁷⁷ Ibid., p. 13.

by the Firearms Technology Branch (FTB) on public requests to classify or remove a firearm from the NFRTR, ATF noted that the FTB processed about 1,500 to 2,000 requests annually to either reclassify or remove NFA firearms from the NFRTR registry, and that much of this documentation resided in the FTB's firearms library.⁷⁸ The OIG noted that often the reports referenced by ATF firearm enforcement officers in classification (determination) letters may not have actually been prepared, so there would not be additional reference or examination documents to index in the NFRTR database to support such determinations.⁷⁹

Fourth, the Treasury OIG recommended that ATF should develop a course of action to discern whether it would be feasible to obtain the data necessary to update the registry to reflect the persons currently in possession of the weapons.⁸⁰ As stated above, while ATF conceded that the records were likely not current, the agency maintained that the law imposed no obligation on ATF to update the information on firearms for which no transaction had been reported.⁸¹

Furthermore, ATF stated that the NFRTR database is reliable and effective for law enforcement purposes if it accurately reflects the identity of the persons (dead or alive) legally entitled to possess the firearms in question.⁸² The Treasury OIG countered that:⁸³

Unless the registry reflects the names of persons currently in possession of these weapons [NFA firearms], the registry is less accurate and the intent of Congress to control these weapons is not fully realized.

The OIG also noted that unless this problem was addressed immediately, it would only worsen over time and reflect negatively upon the ATF's ability to administer the NFRTR.⁸⁴ ATF agreed that it could be beneficial to sample older registrations periodically to determine whether the weapons were still in possession of registrants.⁸⁵ ATF planned to complete a cost/benefit study on such improvements by June 30, 1999.⁸⁶

OIG Follow-Up Audit. According to a *Treasury Office of the Inspector General Annual Plan, Fiscal Year 2003*, another audit of NFRTR recordkeeping had been initiated and was in progress.⁸⁷ The objective of this audit was to determine whether "ATF had taken appropriate steps to improve the completeness, accuracy, and processing times of the

⁷⁸ Ibid., p. 17.

⁷⁹ Ibid., p. 16.

⁸⁰ Ibid., p. 18.

⁸¹ Ibid., p. 19.

⁸² Ibid., p. 20.

⁸³ Ibid., p. ii.

⁸⁴ Ibid., p. 21.

⁸⁵ Ibid., p. 27.

⁸⁶ Ibid., p. 27. *N.B.* Whether this study was conducted is unknown.

⁸⁷ Department of the Treasury, Office of Inspector General, *Annual Plan Fiscal Year 2003*, (Washington, 2002), p. 74. Available at [<http://www.treas.gov/inspector-general/ap2003.pdf>].

NFRTR.”⁸⁸ While the Department of Justice (DOJ) OIG initially had no plans to initiate a similar audit,⁸⁹ a recent letter to Senator Jon Kyl from the DOJ OIG indicated that a review of ATF’s management of the NFRTR would be conducted in late 2005, and it would include examinations of ATF processes for registering, transferring, and updating records on NFA firearms in the NFRTR.⁹⁰

Congressionally Earmarked Appropriations for NFRTR. The House Committee on Appropriations expressed concern about the accuracy and completeness of the NFRTR in report language accompanying ATF’s FY2001 appropriation.⁹¹ To address the NFRTR accuracy issue in part, Congress appropriated \$500,000 to improve ATF’s “operations, electronic filing systems, and database accuracy for the National Licensing Center, Imports Branch, and the NFA Branch” for each fiscal year, 2001 and 2002.⁹² FY2003 appropriations report language indicated that such funding would be continued for that fiscal year.⁹³

Despite increased funding, which included money for ATF to automate, image, and correct the NFRTR, some critics maintain that no amount of funding could fix the NFRTR — due to lost and destroyed records. Consequently, some support proposals that would require the Attorney General to conduct an amnesty for certain NFA firearms,⁹⁴ while others have suggested that a “voluntary reconciliation process” could be a viable alternative.⁹⁵

Future NFA Amnesty?

Given the problems with NFRTR recordkeeping found by the Department of the Treasury OIG, Eric Larson and others have advocated that Congress explore authorizing a new NFA amnesty similar to the one held in 1968. The ATF, however, steadfastly maintains that another NFA amnesty would be disruptive for several reasons.⁹⁶ Larson and other

⁸⁸ Ibid., p. 74.

⁸⁹ Phone conversation with Christine Smith at ATF Office of Legislative Affairs, Apr. 7, 2005.

⁹⁰ A copy of the letter from the DOJ OIG to Senator Jon Kyl dated Oct. 21, 2005 is available at [<http://www.nfaoa.org/documents/DoJ-NFRTR-Kyl.pdf>].

⁹¹ H.Rept. 106-765 (H.R. 4871), pp. 23-24.

⁹² H.Rept. 107-152 (H.R. 2590), p. 20.

⁹³ H.Rept. 107-575 (H.R. 5120), p. 19.

⁹⁴ 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 1998, Part 5, Testimony of Member of Congress and Other Interested Individuals and Organizations*, 105th Cong., 1st sess. (Washington, GPO, 1997), p. 41.

⁹⁵ A firearms attorney, Mark Barnes, suggested this to the author in a phone conversation on Oct. 11, 2005.

⁹⁶ U.S. Congress, U.S. House of Representatives, Committee on Appropriations, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 2003, Hearings Before A Subcommittee of the Committee on Appropriations*, 107th Cong., 2nd sess., (Washington, 2002), p. 323.

proponents of amnesty argue that a carefully crafted amnesty provision could be constructed to address ATF's concerns.⁹⁷ ATF's concerns and proponent responses follow.⁹⁸

Pending Investigations. ATF states that all pending investigations of NFA violations and all pending prosecutions would have to be terminated if an amnesty were instituted.

Proponent Response. An amnesty provision could be limited so that it would not be used as a defense in pending criminal cases involving "willful" violations of the NFA. Further, an amnesty could be constructed to provide recourse to persons whose firearms may be technically subject to seizure, but where there was reasonable evidence that they had made good faith attempts to comply with the NFA and that missing or incomplete records were not due to them attempting to evade the law.

Criminally Inclined. ATF states that any person, including those criminally inclined, could register their weapons.

Proponent Response. Any person could register his weapon(s) during an amnesty, but continued possession would likely be limited by current law, which prohibits convicted felons and others from possessing firearms. As to the "criminally inclined," there is no way to determine such a condition under current law or otherwise.⁹⁹

Increased Demand for Unregistered Firearms. ATF anticipates that prospects of additional amnesty periods may encourage people to acquire (stockpile) unregistered firearms in the expectation of such periods.

Proponent Response. The amnesty provision(s) could be crafted to limit its scope to firearms that were commercially manufactured in original configurations that made them subject to the NFA, or for firearms that met some other specifications, so that it would not include sawed-off shotguns or converted full-auto MAC-10 pistols. An increased registration or transfer tax could be levied that would inhibit most criminals from attempting to register illegal firearms, but would allow interested parties to register firearms that are highly collectible and/or of historical value.

⁹⁷ Eric Larson, "Voluntary Amnesty Registrations Under the National Firearms Act: Current Prospects and Some History From 1934-1968," *The Small Arms Review*, vol. 3, no. 8, May 2000, p. 41.

⁹⁸ The ATF concerns are found in the FY2003 appropriations hearing cited above. They are provided verbatim. The proponent responses reflect Eric Larson's views in the article cited above. These rebuttals have been elaborated upon and restated by the author. *Nonetheless, these possible rebuttals in no way reflect the views of the author or CRS, nor does the author or CRS take any position with respect to such concerns.*

⁹⁹ See, e.g., *Bryan v. United States*, 542 U.S. 184, 191-192 (1998) (explaining that while "the term 'knowingly' does not necessarily have any reference to a culpable state of mind or to knowledge of the law," a "willful" violation is committed when an individual acts with knowledge that his conduct is unlawful).

Previous Convictions Overturned. ATF is concerned that persons previously convicted of NFA violations could challenge their convictions on the basis that they were not given the opportunity to register their weapons during an amnesty period.

Proponent Response. A future amnesty — in lieu of some other administrative/discretionary measure — would have to be bounded. If it were open ended and available to anyone, it would be self-defeating: unless specified by Congress, the repeal of a criminal statute does not repeal prior convictions based on violations of that statute when such statute was in effect.¹⁰⁰ It is also likely that such challenges could be overcome — perhaps easily, if the amnesty were well advertised and administered.

Alternative Considerations for Congress Regarding the NFRTR

If Congress chose to act on this issue, other options might be explored besides authorizing an NFA amnesty.¹⁰¹ For example, Congress could provide ATF greater statutory discretion regarding the administration of the NFA in selected types of cases, in which reasonable evidence could be offered by the defense that the firearm owner had not engaged in a willful violation of federal law.

Along these lines, Congress could consider authorizing a “voluntary reconciliation process,” by which NFA firearms dealers and owners and ATF could cross-reference their records in an attempt to establish legally valid transfer histories for NFA firearms.¹⁰² Congress could also provide DOJ and ATF with instructions as to how they might proceed in light of current and future evidence of mitigating circumstances associated with missing or incomplete data in the NFRTR, which may emerge in the future court cases. Or Congress may choose to regulate NFA firearms more strictly.

¹⁰⁰ See *Rubio v. Estelle*, 689 F.2d 533, 536 (5th Cir. 1982); *United States v. Stephens*, 449 F.2d 103 (9th Cir. 1971). See also 1 U.S.C. § 109 (“[t]he repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide ...”).

¹⁰¹ *Neither the author nor CRS takes any position for or against such options.*

¹⁰² A firearms attorney, Mark Barnes, suggested this to the author in a phone conversation on Oct. 11, 2005.

Appendix A. Congressional Testimony on NFA-related Matters

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

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 1998, Part 5, Testimony of Member of Congress and Other Interested Individuals and Organizations*, 105th Cong., 1st sess, (Washington, GPO, 1997), pp. 19-139.

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 1999, Part 5, Statements of Member of Congress and Other Interested Individuals and Organizations*, 105th Cong., 2nd sess, (Washington, GPO, 1998), pp. 32-276.

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 2000, Part 5, Statements of Member of Congress and Other Interested Individuals and Organizations*, 106th Cong., 1st sess, (Washington, GPO, 1999), pp. 64-86.

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 2001, Part 5, Statements of Member of Congress and Other Interested Individuals and Organizations*, 106th Cong., 2nd sess, (Washington, GPO, 2000), pp. 6-31.

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 2002, Part 3, Statements of Member of Congress and Other Interested Individuals and Organizations*, 107th Cong., 1st sess, (Washington, GPO, 2001), pp. 7-26.

Appendix B. NFA Firearms

NFA firearms are often referred to as Class III¹⁰³ or Title II weapons.¹⁰⁴ Under current law, weapons covered under the NFA generally include machineguns, short barreled rifles and shotguns, silencers, destructive devices, and certain other firearms.

- *Machineguns* — The term “machinegun” means any weapon which shoots, is designed to shoot, or can be *readily restored* to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term also includes the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.¹⁰⁵
- *Short-barreled shotguns* include any shotgun having a barrel or barrels of less than 18 inches in length, or any weapon made from a shotgun if the overall length is less than 26 inches and the barrel length is less than 18 inches.¹⁰⁶
- *Short-barreled rifles* include any rifle having a barrel or barrels of less than 16 inches in length, or any weapon made from a rifle if the overall length is 26 inches or the barrel length of less than 16 inches.¹⁰⁷
- *Firearm muffler or silencer* include any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination or parts designed or intended for use in assembling or fabricating such a device. Such devices are usually mounted on the end of a firearm’s barrel.¹⁰⁸
- *Any other weapon* includes weapons designed to discharge a shot through the energy of an explosive,¹⁰⁹ including a pistol or revolver having a barrel

¹⁰³ NFA weapons are often referred to as “Class III,” because firearms dealers licensed to deal in such weapons are required to obtain a Class III license.

¹⁰⁴ Title II of the Gun Control Act of 1968 (P.L. 90-618; 82 Stat. 1227) revised 26 U.S.C., Chapter 53. Hence NFA weapons are also referred to as “Title II weapons.”

¹⁰⁵ 16 U.S.C. §5845(b).

¹⁰⁶ See 26 U.S.C. §5845(a)(1) and (2). For pictorial examples, see See Bureau of Alcohol, Tobacco, Firearms, and Explosives, *ATF Guidebook: Importation & Verification of Firearms, Ammunition & Implements of War*, ATF Publication 5300.19, (Washington, Nov. 2003), p. 54. Available at [<http://www.atf.gov/firearms/feib/guidebook/FEIB-GB.pdf>].

¹⁰⁷ See 26 U.S.C. §5845(a)(3) and (4). For pictorial examples, see *ATF Guidebook: Importation & Verification of Firearms, Ammunition & Implements of War*, p. 55.

¹⁰⁸ See 26 U.S.C. §5845(a)(7). For pictorial examples, see *ATF Guidebook: Importation & Verification of Firearms, Ammunition & Implements of War*, p. 56.

¹⁰⁹ ATF includes “gadget guns” under the “any other weapon” designation. Gadget guns include cane guns, pen guns, knife guns, and wallet guns. For pictorial examples, see *ATF Guidebook:*

with a smooth bore that are designed or having been redesigned to fire a fixed shotgun shell,¹¹⁰ or weapons with combination rifle and shotgun barrels of 12 inches in length and 18 inches in total length that can be fired from either barrel without reloading.¹¹¹

- *Destructive devices* come in three varieties. The first variety includes any explosive, incendiary, or poison gas (1) bomb, (2) grenade, (3) rocket having a propellant charge of more than 4 ounces, (4) missile having an explosive or incendiary charge of more than one-quarter ounce, (5) mine, or (6) similar device. The second variety include any weapon capable of expelling a projectile by the action of an explosive or propellant through a barrel or barrels of greater than one-half inch in diameter (with exceptions for certain shotgun shells based on findings by the ATF Director that such shells are suitable for sporting purposes). The third variety includes any combination of parts either designed or intended to be used to convert any device into a destructive device.¹¹²

¹⁰⁹ (...continued)

Importation & Verification of Firearms, Ammunition & Implements of War, p. 59.

¹¹⁰ Such firearms include H&R Handy Guns. For pictorial examples, see *ATF Guidebook: Importation & Verification of Firearms, Ammunition & Implements of War*, p. 58.

¹¹¹ See 26 U.S.C. §5845(e). Such firearms include Ithaca Auto-Burglar Guns and Marble Game Getters. For pictorial examples, see *ATF Guidebook: Importation & Verification of Firearms, Ammunition & Implements of War*, p. 58.

¹¹² See 16 U.S.C. §5845(f). For pictorial examples, see *ATF Guidebook: Importation & Verification of Firearms, Ammunition & Implements of War*, p. 60.