

Statement of

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Before the

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Subcommittee on National Security,
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concerning

"Homeland Security: Surveillance and
Monitoring of Explosive Storage Facilities"

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Mr. Chairman, Congressman Lantos, and Members of the Subcommittee on National Security, Emerging Threats and International Relations:

I. INTRODUCTION

On behalf of the Inspector General, Glenn A. Fine, we appreciate the opportunity to testify before the Subcommittee as it examines issues related to safeguarding of stored explosives. We were invited today because we recently completed a review of the ATF's Federal Firearms Licensees inspection program. Our testimony today is based on that report. The inspectors that are responsible for the ATF's inspections of firearms dealers also conduct the ATF's inspections of explosives licensees. We believe that a number of the issues we raised, as well as recommendations we made for improving the ATF's inspections of firearms dealers, could be helpful to the Subcommittee as it considers ways to improve the safeguards over stored explosives.

In addition, we are presently reviewing the ATF's implementation of the Safe Explosives Act. As that review is on-going, we do not have final data on the ATF's inspections of explosives licensees, but I can discuss some issues regarding explosives licensing we intend to examine in that project.

II. ATF INSPECTIONS OF FIREARMS DEALERS

On July 16, we issued our report on the ATF's program for inspecting Federal Firearms Licensees (FFLs). These inspections are conducted to ensure that the firearms dealers are complying with the requirements of the Gun Control Act of 1968 and other federal firearms laws.¹ We found that the ATF's inspection program is not fully effective for ensuring that FFLs comply with federal firearms laws because inspections are infrequent and of inconsistent quality, and follow-up inspections and adverse actions have been sporadic. The ATF concurred with most of our recommendations and has begun to implement changes to improve the consistency with which it conducts follow-up inspections and takes adverse actions. The following summarizes the significant findings and recommendations in our report that are most pertinent to the topic being examined by the Subcommittee today, as well as the ATF's response:

The ATF did not conduct in-person application inspections on all new firearms dealers. Application inspections are conducted to ensure that applicants are familiar with the Gun Control Act and other federal firearms laws, and also provide the new dealers an opportunity to discuss issues related to firearms laws with ATF Inspectors. Further, if an FFL violates federal firearms laws after having received an application inspection, it is easier for the ATF to meet the legal standard of demonstrating that the violation was "willful."² Although the ATF inspection database did not identify how each inspection was conducted, our interviews and survey of ATF Headquarters and Field Division personnel found that many of the 8,123 application inspections that the ATF conducted in fiscal year (FY) 2002 consisted only of a telephone call. ATF Headquarters and Field Division staff told us that telephonic application inspections were not as comprehensive as in-person inspections, but said that they did not have enough resources to conduct all inspections in person.

The impact of the staffing shortages on application inspections was evident in our review of inspector staffing data. The number of Inspectors in each of the ATF's 23 Field Division ranged from 9 to 35,

¹ The Gun Control Act of 1968, Public Law 90-618. Title 18 U.S.C. Chapter 44; The National Firearms Act, Title 26 U.S.C. Chapter 53; The Arms Export Control Act of 1976, Title 22 U.S.C. § 2778.

² In the context of the Gun Control Act, willfulness is the intentional disregard of, or indifference to, legal obligations. Repeat violations (especially where there was notification of prior violations) or large numbers of violations can demonstrate willfulness. Sometimes one egregious violation, such as selling a firearm to a non-prohibited person when the FFL knows that it is actually for a prohibited person ("straw purchase"), can demonstrate willfulness.

and the number of firearms dealers ranged from 1,172 to 8,194. However, the ATF had not distributed its Inspectors among the Field Divisions to match the distribution of dealers, resulting in significant workload imbalances. The imbalance in staff was clearly correlated to the time that each Field Division spent conducting application inspections. The Field Divisions ranged from 25.5 hours per inspection to as little as 6.2 hours per inspection in FY 2002, with those Field Divisions that had fewer Inspectors relative to the number of dealers spending less time on each application inspection.

In response to our recommendation that the ATF inspection process include in-person inspections of all applicants, the ATF agreed that in-person application inspections are critical for ensuring that licensees understand and obey federal firearms laws. The ATF stated that in-person application inspections are now required in 14 metropolitan areas, and that the ATF also is working to increase the number of in-person application inspections conducted nationwide. Under a new (June 2004) policy, all applicants who do not receive an in-person application inspection must be scheduled for an in-person compliance inspection during the first year after they are issued a federal firearms license.

In response to our recommendation that it develop alternatives for better aligning Inspector resources, the ATF stated that it recently began consolidating its field manager positions so that it is better able to address its firearms dealer and explosives licensee workload. Also, the ATF is developing a new workload model for Inspector staffing, and will evaluate the need to reassign Inspectors to better align resources with the distribution of FFLs and explosives licensees once that is complete. We believe that the ATF is taking steps in the right direction, but it still cannot comprehensively inspect all new applicants in person.

The ATF did not regularly inspect firearms dealers and the ATF Field Divisions implemented inspections inconsistently. We found that most firearms dealers are inspected infrequently or not at all. According to the former ATF Director, the agency's goal is to inspect each dealer at least once every three years to ensure that they are complying with federal firearms laws. However, due in part to resource shortfalls, the ATF is currently unable to achieve that goal. ATF workload data showed that the ATF conducted 4,581 compliance inspections in FY 2002, or about 4.5 percent of the approximately 104,000 federal firearms licensees. Our review of inspection records on 100 randomly selected dealers found that 23 had never been inspected; 22 had received only an application inspection; 29 had received at least one compliance inspection; and 26 FFLs had received only a license renewal inspection. Many of the inspections that were conducted occurred years ago. For

example, we found one FFL cited in 1985 for selling a rifle to a minor and for numerous record-keeping violations had never been re-inspected.

Recent data indicates that inspections of firearms dealers have decreased further as the ATF has worked to conduct the required inspections of explosives licensees. In November 2002, the Safe Explosives Act imposed new licensing requirements that increased the number of explosives licensees and mandated that the ATF conduct on-site inspections of explosives licensees and permit holders at least once every three years. To meet that requirement, the ATF diverted Inspector resources to explosives work. Preliminary data indicates that through the first five months of FY 2004, the ATF completed 1,113 compliance inspections on firearms dealers. At that pace, the agency will complete less than 2,700 compliance inspections of firearms dealers during FY 2004, less than half the number that it completed in FY 2003.

We also found that the inspections varied greatly among the ATF Field Divisions. The average time spent to conduct each compliance inspection ranged from 24.5 hours to as much as 90 hours per inspection. ATF Headquarters officials stated that the variance in average inspection times occurred because of the discretion that Inspectors have in conducting compliance inspections. For example, to determine whether a firearms dealer's record-keeping system is accurate, ATF Inspectors may conduct a full inventory or examine a sample of the dealer's stock.

Our interviews with Inspectors in different Field Divisions confirmed that they used different approaches to conducting their inspections. We examined several performance indicators to see if the inspection variations had an impact on outcomes, but we found little correlation between the amount of time that Field Divisions spent inspecting and the number of adverse actions that the Field Divisions took (such as holding a warning conference or revoking a dealer's license) or the number of times the Field Divisions identified and referred suspected criminal activity for investigation. We also found significant variances in productivity among the ATF Field Divisions' inspections. For example, our analysis of the ATF's FY 2002 workload and performance data for each Field Division found that:

- The number of inspections conducted per Inspector ranged from under 13 to almost 47.
- The percentage of the inspections that identified violations varied from under 5 percent to over 40 percent.

- On inspections in which violations were discovered, the average number of violations ranged from 16 to 178.
- The average time taken to find each violation ranged from 47 minutes to over 7 hours per violation.

We identified that the ATF could benefit from improving the firearms dealer inspection process, including standardizing procedures for reviews of firearms inventories and sales records; better automation of the inspection process; directing limited resources toward noncompliant dealers; and establishing guidance to ensure that Inspectors consistently identify and report indications of firearms trafficking for investigation. In addition, in an April 2003 report and in testimony before the House Committee on Appropriations on March 24, 2004, the ATF stated that to fully implement its mission to enforce federal firearms and explosives laws, it would need 1,775 Inspectors, 1,235 to inspect firearms dealers and 540 to inspect explosives licensees. Improving the efficiency of the inspection process also could reduce the ATF's need for additional staff.

We directed several of our recommendations at achieving the needed improvements in the inspection process. We recommended that the ATF:

- Develop a standard, streamlined inspection process that includes more efficient inventory and records reviews; automated inspection reporting; and consistent examination of indicators of firearms trafficking.
- Conduct a pilot project to test the streamlined inspection procedures and establish appropriate time standards for conducting these inspections.
- Revise its staffing requirements using the time standards to reflect the number of Inspectors needed to conduct compliance inspections on a triennial basis.

The ATF substantially concurred with our recommendations and stated that it is taking a series of steps to implement them, including:

- Developing streamlined, standardized inspection procedures, which it plans to test in several divisions in a pilot project during FY 2005.
- The ATF issued a memorandum titled "Guidelines for Conducting Federal Firearms Licensee Compliance Inspections"

in June 2004 to clarify a number of inspection process issues, such as the methods for verifying inventories and reviewing sales records.

- The ATF is reevaluating all work plans and workpapers to eliminate tasks that are not critical to a final inspection report, and is also updating the Inspector Handbook to provide better guidance to Inspectors on conducting inspections.
- The ATF stated that it created a working group to develop a workload model. A completion date for the effort has not yet been established, but a status report from the working group was due by late June 2004.
- The ATF created the position of Assistant Director (Field Operations) to better manage the ATF's efforts in the field, including implementing a quarterly reporting system on inspection productivity and results by each Field Division.

The ATF acted infrequently to revoke Federal Firearms Licenses, and the process was not timely. The ATF discovered violations on 1,934 of the inspections it conducted in FY 2002, and on 1,812 of its FY 2003 inspections. The ATF issued only 30 Notices of Revocation in FY 2002 and 54 Notices of Revocation in FY 2003.³ In May 2003, the ATF issued new guidance to ensure that Field Divisions follow up and take action when violations are found. The guidance directed the Field Divisions to conduct follow-up inspections on firearms dealers that were issued warning letters or that were directed to attend warning conferences, and to escalate adverse actions for repeat offenses. Under the May 2003 Guidelines, the number of adverse actions has increased. The ATF denied FFL requests to renew their licenses or issued Notices of Revocation 59 times during just the first quarter of FY 2004. The ATF also stated that its June 2004 policy reminds Inspectors to initiate referrals to ATF Special Agents when inspections reveal potential trafficking indicators.

We also found that the process for adjudicating proposed revocations was lengthy. The ATF provided us with data for 50 closed denial and revocation cases completed in FY 2001 and FY 2002. That data showed those 50 cases averaged 379 days from the date that the Inspector recommended revocation to the date that the case was closed. According to ATF officials, the lengthy duration of revocation proceedings

³ Notices of Revocation are not final. Of the 30 Notices in FY 2002, 25 of the subjects requested a hearing and 3 of those avoided revocation. (FY 2003 data was unavailable.) The ATF also can effectively revoke a license by denying a request for license renewal, and in FY 2001, the ATF denied 28 requests for renewal.

was due to the number of ATF officials involved in the eight-step process (e.g., Area Supervisors, Directors of Industry Operations, Division Counsels, and Hearing Officers) and delayed support from ATF lawyers. The ATF's case tracking data did not include internal tracking dates, but Assistant Chief Counsels and Division Counsels we interviewed acknowledged delays in denial and revocation proceedings. They stated that the delays were due, in part, to their heavy caseloads and a need for better documentation of violations from ATF Inspectors. In some cases, delays occurred due to a lack of legal staff within the Field Division. In those cases, the Field Division had to obtain legal support from their regional Assistant Chief Counsel's Office.⁴ It is likely that any legal action related to explosives licensees would face the same competition for resources.

In response to our recommendation that the ATF National Licensing Center develop a tracking system to monitor the progress and timeliness of adverse actions, the ATF tasked the Division Chief, Firearms and Explosives Services, with developing and monitoring an improved adverse action tracking system for denials and revocations of licenses. The ATF intends to route an electronic version of monthly tracking reports to all Division Counsels and Directors of Industry Operations to better advise them of how many adverse actions are pending in their divisions and how long each case is taking to resolve.

The ATF did not consistently report inspection performance. During our examination of the performance and productivity of the ATF's inspections program, we identified significant discrepancies in the data contained in the electronic databases. For example, while preparing responses to our data requests, several hundred inspections entered as compliance inspections were found by ATF officials to actually be application inspections. Moreover, the productivity data we were provided differed from published reports. ATF officials cited the complexity of the tracking system and inconsistently written queries as reasons for the inconsistent data.

To improve the tracking of inspection data, in October 2003 the ATF implemented a new version of its system that requires Field Division staff to use pull-down menus that are inspection-specific (e.g., "Application Inspection"). Implementing an accurate and robust workload tracking system is essential to enable the ATF to account for the variability among its divisions, ensure that that all its activities are conducted efficiently, develop an accurate workload model for aligning

⁴ The ATF has five Assistant Chief Counsel Offices, located in San Francisco, Chicago, Dallas, Atlanta, and New York/Philadelphia. The northeast regional office is currently operating in Philadelphia due to the September 11, 2001, destruction of the ATF's New York offices, which were located at the World Trade Center.

Inspector resources, and to establish appropriate performance goals and accurately report its productivity. The ATF must also adopt a standard approach for querying the electronic database to ensure that it consistently reports accurate performance data.

III. ATF'S IMPLEMENTATION OF THE SAFE EXPLOSIVES ACT

The Office of the Inspector General is currently conducting a review of the ATF's implementation of the Safe Explosives Act (SEA). Specifically, we are focusing on whether the ATF has timely and effectively implemented (1) a licensing and permitting procedure, and (2) an inspections process in keeping with the provisions of the Act.

Provisions of the SEA. The SEA was enacted in November 2002 as part of the Homeland Security Act and its provisions became effective in two phases. The first phase became effective January 24, 2003, and added three new prohibited persons categories: Aliens (with limited exceptions); those dishonorably discharged from the military; and U.S. citizens who renounce their citizenship. The second phase became effective May 23, 2003, and required all persons who receive explosives to hold a Federal explosives license or permit. Licenses and permits were previously required only for those who engaged in interstate use of explosives; intrastate purchase and use of explosives were regulated by the individual states

The SEA established two new categories of individuals who have access to or control over explosive materials:

- Responsible person – an individual who has the power to direct the management and policies of the applicant pertaining to explosives materials; and
- Employee possessor – an employee who is authorized by the employer to possess explosive materials in the course of employment.

The permittee category continued unchanged except for the addition of a new limited permit.⁵ A permittee is defined in the SEA as any user of explosives for a lawful purpose, who has obtained either a user permit or a limited permit under the provisions of the SEA.

⁵ The new limited permit is designed for individuals who have a legitimate, but infrequent, need to use explosives. A limited permit is issued to a person authorizing him to receive for his use explosive materials from a licensee or permittee in his state of residence no more than 6 occasions during the 12-month period in which the permit is valid. A limited permit does not authorize the receipt or transportation of explosive materials in interstate or foreign commerce.

The licensing process under the SEA. To receive a license or permit, a completed application including photos and fingerprints are required from responsible persons and permittees. The ATF conducts background checks via the NICS and submits fingerprints to the FBI for comparison with prints in their Integrated Automated Fingerprint Identification System (IAFIS) database. For companies applying for a license, all employee possessors must complete background questionnaires asking for personal information and certification that they are not a prohibited person. The questionnaires are submitted as part of the license application package and the ATF conducts background checks via the NICS on employee possessors to determine if they are in one of the prohibited person categories. As new employees possessors are hired, licensees must see that they complete and submit a questionnaire within 30 days.

As a result of the SEA, the application process became more paper and process intensive. Some licensees have hundreds of employee possessors, as many as 600 in the case of one famous theme park operator. Each employee possessor is required to have a NICS check. Individuals who have “hits” as a result of the NICS check are notified that they are immediately prohibited from handling explosives. However, they are allowed to present exculpatory or explanatory information to show they are not a prohibited person or to seek relief of disability. In addition, every application requires an on-site inspection.

New and renewal explosives license applications. After the new application requirements went into effect in May 2003, the ATF received 6,045 new explosives applications in FY 2003. That was a 400 percent increase from the previous fiscal year. The data we have reviewed indicates that the applications that the ATF will receive in FY 2004 will be closer to the historic levels. The ATF also received a total of 2,082 explosives renewal applications in FY 2003, a 15 percent increase over the previous fiscal year. Our review is examining the ATF’s timeliness and effectiveness in processing the new and renewal applications.

Denied applications and revoked licenses. The ATF can take adverse actions against those who violate federal explosives laws or regulations or are unable to comply. They may revoke a license or permit or deny a renewal application if one is in process. Unlike violations of firearms laws, the ATF does not have to show that violations of the SEA were “willful.” The ATF does not have the authority to impose fines or to suspend explosives licenses. As a part of our review, we are examining the trends in revocations and denials before and after the implementation of the SEA.

National Explosives Licensing Center (NELC). The SEA called for the NELC to be established in West Virginia. The Chief was hired in November 2003. The applications from several states with small licensee populations have recently begun to be transferred to the NELC from the National Licensing Center in Atlanta, Georgia. The ATF's original staffing plan for the NELC called for eight Legal Instrument Examiners. The staff currently consists of the Chief and two legal instrument examiners. As a part of our review, we will examine the implementation and planned staffing of the NELC.

The ATF's inspections of explosives licensees. We expect that many of the actions that the ATF proposed to implement in response to our review of the Federal Firearms Licensee inspection program – such as its plan for reallocating Inspector resources among Field Divisions – will extend to its explosives licensee inspection program. We are considering the actions that the ATF has already committed to as we examine the ATF's management of explosives inspections.

Other aspects of the ATF's oversight of explosives. Finally, in our review we are examining several other areas of the ATF's oversight of explosives. For example, the SEA gave authority to the ATF's National Laboratory to collect and analyze samples of explosives. We are examining the ATF's planning for and implementation of this provision of the SEA. We are also examining the ATF's working relationship with the Mine Safety and Health Administration, which is responsible for overseeing the storage of explosives underground.

IV. CONCLUSION

Although we recognize that the ATF's resources are limited, we concluded that the ATF's lack of standardized inspection procedures resulted in inconsistent inspections of Federal Firearms Licensees and significant variation in the implementation of the inspection program by Field Divisions. Moreover, the lack of consistency prevented the ATF from ensuring that its current resources are being used as efficiently as possible, and reduced the accuracy and reliability of the ATF's projections of its staffing needs.

Because the ATF does not conduct regular inspections of all firearms dealers, it cannot effectively monitor the overall level of compliance with federal firearms laws. In December 2003, the ATF directed Field Divisions to conduct Random Sample Compliance Inspections. Using data from those inspections, the ATF planned to "be able to project the overall level of compliance by" firearms dealers, pawnbrokers, and collectors. The project to estimate the overall level of compliance with laws is needed to assess the challenge facing the ATF,

but it cannot take the place of regular compliance inspections for deterring and identifying noncompliance with firearms laws. The mandating of triennial inspections for explosives licensees in the SEA will better ensure that the ATF can closely monitor and promote a high level of industry compliance with the SEA.

We made several recommendations, which the ATF is implementing, to improve the efficiency and consistency of inspections and to ensure that violations are processed in a uniform and appropriate manner. Establishing a consistent process is essential to accurately measure productivity and project the staffing that the agency needs in order to conduct inspections on a regular basis. Achieving its goal of regular compliance inspections is essential for the ATF to identify and address scofflaw dealers and reduce the availability of illegal firearms to criminals.

This concludes my prepared statement. I would be pleased to answer any questions.