

## **PART XII:**

# **Recommendations**

Firearms are used for a variety of lawful purposes including hunting, target shooting, and self-defense. In the wrong hands, however, firearms can become deadly tools of violence. ATF regulates lawful firearms commerce through the enforcement of the federal firearms laws and regulations. ATF's efforts must be supported with sufficient resources and carefully crafted laws and regulations that enhance the effectiveness and efficiency of their efforts to protect the public from the criminal misuse of firearms and ensure lawful commerce by firearm industry members. The research examined to produce this report suggests several policy recommendations to improve ATF's regulatory and enforcement capabilities. These recommendations have been developed by the team of researchers independent of ATF.

Over the past three decades, ATF has not been funded and staffed commensurate with staffing increases received by other DOJ law enforcement agencies. In 1973, ATF had 3,829 employees, including 1,622 special agents and 826 industry operations investigators<sup>117</sup>. In 2022, ATF has 5,410 employees including 2,653 special agents and 760 industry operations investigators<sup>118</sup>. This represents a 41% increase in total employees. By contrast, in 1973 the Drug Enforcement Administration (DEA) had 2,775 employees of which 1,470 were special agents. In 2021, DEA employed 9,848 employees of which 4,649 were special agents<sup>119</sup>. This represents a 254% increase. Similarly, in 1973, the FBI had 20,527 employees<sup>120</sup>. In 2021, the FBI employed 35,842 employees<sup>121</sup>. This represents a 75% increase.

Implementation of the recommendations put forth by the research team would require additional resources and staffing added to ATF's appropriations budget.

### **AFMER Reporting**

AFMER reporting serves as an important source of data on firearm manufacturing and exporting in the regulated firearm industry. The AFMER data reviewed for this report indicated that approximately 24% of licensed firearm manufacturers failed to submit the required AFMER report between 2000 and 2020. The average proportion of manufacturers failing to submit AFMER reports increased to 30% between 2016 and 2020. However, the FFLs responsible for most firearms manufactured annually, as indicated by the parent entities throughout the report, have consistently submitted the required AFMER. The percentage of non-AFMER filers seems to represent a very small volume of firearms entering commerce. This review also found that the current AFMER report tracks the manufacture of firearm calibers in large groupings that no longer effectively capture the market image due to the evolution of firearms and calibers.

### ***Recommendations***

1. ATF should receive funding to develop a data system that will identify those FFLs who failed to file an annual AFMER form, auto-generate a letter to that FFL asking them to complete the AFMER form and will identify those FFLs that subsequently fail to file an AFMER form after receipt of an ATF reminder for any follow-up action deemed appropriate.
2. The AFMER form should receive a full review to create new and more succinct caliber

categories and determine if other modifications to the AFMER would be useful.

## **ATF Form 6A Reporting on Firearm Importations**

This review found that ATF lacked consistent firearm importation data and relied on the U.S. International Trade Commission (USITC) to provide firearm import information during the study period. The lack of reliable firearm import data exists despite the requirement that all FFLs who complete a firearm importation must file a Form 6A - *Release and Receipt of Imported Firearms, Ammunition and Implements of War* (ATF Form 5330.3C) to ATF within 15 days of the import being cleared by U.S. Customs and Border Patrol (CBP) in accordance with [27 CFR § 478.112](#). The ATF Form 6A collects important information on firearms imported into the U.S. Unfortunately, the data is not currently maintained in a way that allows for analysis. Improving data capture and enhancing ATF's staffing to process, review, and analyze imports data would also allow ATF to determine when ATF Form 6As are not submitted as required. Ensuring high ATF Form 6A submission rates will enhance traceability of recovered crime guns. Information technology enhancements could also facilitate verification of ATF Form 6A submissions.

### ***Recommendations***

1. ATF should receive funding to increase staffing to allow for enhanced outreach and education to licensed importers on the requirement to file ATF Form 6A within 15 days of clearing CBP.
2. ATF should receive funding to develop a data system in partnership with the USITC and/or the CBP National Targeting Center (CBP-NTC) to identify those FFLs who are known to have completed a firearm importation but failed to file a Form 6A with ATF. Once an FFL is identified as having completed a firearm importation but failed to file a Form 6A, ATF will send an auto-generated letter to that FFL directing them to complete the Form 6A. Should that FFL fail to file the Form 6A after being asked to do so, ATF will take any follow-up action deemed appropriate to gather this information and ensure the FFL has maintained both the Form 6 and Form 6A in their permanent records as required by [27 CFR § 478.129\(d\)](#).
3. ATF should receive funding to develop a data system to track most of the information reported on the Form 6A for use in analysis.

## **Curio and Relics**

The data collection and analysis on Type 03 FFLs revealed a 146% increase between 2000 (24,143) and 2020 (59,457). Moreover, as a share of the total FFL population, Type 03s represented 20% of all FFLs in 2000 (120,546) and grew to 40% of all FFLs in 2020 (146,583). With respect to data on C&R firearms it was determined that while ATF has a comprehensive list of all firearms that have been approved as C&R since 1972, ATF does not currently have a data system that contains and tracks C&R applicant information, the C&R criteria that applied to allow the firearms to be designated as a C&R, or the museums that are advising certain firearms have museum value to become a C&R. The data analysis also suggested that the current "more than 50 years old" standard for a firearm to qualify as a C&R should be reviewed for current day accuracy in determining if a firearm is a C&R.



## ***Recommendations***

1. ATF should receive funding to develop a data system that tracks the history of each C&R firearm on the list to include: full description of the firearm, the date the firearm is added to the C&R list, identification of the criteria met to add the firearm to the C&R list, the person making the request, what museum stated the firearm was of historical interest, and who stated the firearm was rare, novel, or collectible. The three criteria for approving a firearm to be added to the C&R list are found in [27 C.F.R. §478<sup>122</sup>](#). As possible, this information should be catalogued for ATF's current list [C&R List - January 1972 through April 2018](#).
2. DOJ should review the C&R criteria in 27 C.F.R. §478 to determine if the "more than 50 years old" factor is still valid in determining that a firearm is truly a curio or relic. The C&R provisions were enacted in 1968 and firearms more than 50 years old at that time were manufactured prior to 1918. Today, firearms that are more than 50 years old were manufactured prior to 1972 and this now includes a wide variety of modern firearms to include some AR-15 type rifles, AK-47 type rifles, SKS rifles, and semi-automatic handguns. Importation, transfer, and background check regulations are different for firearms on the C&R list and holders of a Type 03 FFL.

## **Increased Hiring of Industry Operations Investigators (IOIs)**

The report analysis found that ATF employed only 655 field IOIs who were responsible for regulating 88,302 active FFLs<sup>123</sup> (a ratio of one IOI to every 135 FFLs) and 9,512 FEL/Ps (a ratio of one IOI to every 14 FEL/Ps) in 2019. In that same year, IOIs completed 22,527 FFL qualification and compliance inspections (a ratio of one IOI to every 34 completed inspections) and 4,460 FEL/P qualification and compliance inspections (a ratio of one IOI to every 7 completed inspections). IOI efficiency and effectiveness in regulating the firearm industry could be improved through increased staffing.

Between 2016 and 2020, FFLs reported 5,766 theft related incidents involving 39,147 firearms, and 6,052 loss incidents involving 45,346 firearms. ATF provides vital assistance to FFLs when they have become the victim of a crime. ATF also provides vital assistance to FFLs in detecting losses from their inventory that may indicate a need for improvement in inventory management procedures or enhanced employee oversight. Preventing firearm losses can save money for victimized FFLs and helps prevent the potential diversion of firearms to the criminal marketplace.

An adequately staffed IOI program can be highly effective on multiple levels. Increasing staffing will reduce the ratio of IOIs to FFLs, thus enabling ATF to inspect a larger proportion of FFLs annually. Through inspections, IOIs can assist FFLs in improving their firearm recordkeeping and proper firearm transfer procedures which will assist the traceability of firearms as well as preventing prohibited persons from obtaining firearms. Increased FFL inspections will assist ATF in providing FFLs with the information and support they need to comply with regulations efficiently and effectively allowing them more time to focus on the success of their business and service to their clients.

## ***Recommendation***

1. DOJ should support out-year budget requests for ATF to add funding directly to their base budget for the hiring of additional IOIs. In 2019, ATF's 655 field IOIs completed 12,789 compliance inspections, or nearly 20 compliance inspections per field IOI. To be able to conduct a compliance inspection of each FFL (excluding Type 03) once every three years, ATF would need to be able to conduct 29,434 compliance inspections annually. At a rate of

approximately 20 compliance inspections annually per IOI, ATF would need to have 1,509 total field IOIs to complete 29,434 compliance inspections annually. This requires the addition of 854 new field IOIs. It is recommended this hiring take place over 3 budget years to allow for training, equipping, and assimilation. Resourcing ATF to conduct regular FFL compliance inspections will result in more effective and efficient industry regulation.

## **ATF Analytics Support and Staffing**

The need to produce useful information for law enforcement, firearms industry members, and policy members has grown exponentially. ATF is doing an admirable job of managing this data and developing the technology for proper analysis, particularly considering budget limitations. Nevertheless, ATF staff performing these assignments could do more to meet current demands if appropriately resourced. The production of the reports issued for this National Firearms Commerce and Trafficking Assessment (NFCTA) exemplifies the resource and staffing challenges. All ATF employees working on the NFCTA are doing so as a collateral assignment; ATF has not received funding to establish an office to produce and maintain the NFCTA.

### ***Recommendation***

1. It is recommended that ATF create an Analytics Division staffed with full-time intelligence analysts, program managers, data quality managers (to ensure the accuracy and reliability of ATF data collected from thousands of law enforcement agencies annually), and data scientists who will continue to advance the analytics technology. It is further recommended that ATF assign IOIs and special agents to the Analytics Division on a full-time basis to ensure that division provides direct investigative support to ATF criminal and industry enforcement programs and to local, state, federal, territorial, and tribal investigations involving firearms. Analysis generated by the Analytics Division should be incorporated into publications designed for distribution to firearm industry members, policymakers, and the general public.

## **Application of Demand Letter 3 to Type 07 Manufacturers**

Since 1972, Congress has authorized the collection of multiple sales information on all handguns; however, long guns were not included in the original provision. Beginning in June 2011, pursuant to [Title 18 U.S.C. § 923\(g\)\(5\)\(A\)](#), ATF initiated Demand Letter 3 (DL3). DL3 was instituted to assist ATF in its efforts to investigate and combat the illegal movement of firearms along and across the Southwest Border (SWB). ATF requires Type 01 licensed dealers and Type 02 licensed pawnbrokers along the Southwest Border (SWB) in Arizona, California, New Mexico, and Texas to submit record information on multiple sales of certain rifles defined as semi-automatic rifles capable of accepting a detachable magazine and with a caliber greater than .22 (including .223/5.56/.762 caliber). The required information is submitted on [ATF Form 3310.12, Report of Multiple Sale or Other Disposition of Certain Rifles](#). Currently, DL3 does not apply to Type 07 licensed manufacturers in the SWB states. Furthermore, reporting is not required when the rifles are returned to the same person from whom they are received.

From 2016 to 2020, ATF received 40,642 DL3 MSRs from FFLs in SWB states. These MSRs involved 95,175 firearms, representing approximately 2.3 firearms per MSR. Further analysis of the DL3 MSRs indicated the DL3 MSRs decreased significantly from 2016 to 2018 (-55%) and then increased modestly (4%) between 2019 and 2020. Ten rifle calibers represented over 93% of the rifles reported in DL3 MSRs. Three of the ten calibers, 5.56, 7.62 and .223 accounted for over 68% of the total rifles associated with DL3 MSRs. Ten manufacturers and their dominant calibers (5.56mm, 7.62mm and .223 cal.)



represented over 31% (29,888) of the 95,175 rifles reported in DL3 MSRs.

Type 01 and Type 02 licensees may conduct retail sales of firearms but may not manufacture firearms. Type 07 licensees may manufacture firearms and conduct retail sales of firearms. The analysis of DL3 data included in this report found that many Type 07 licensees along the SWB conduct retail sales. However, these Type 07 licensees are not included in the criteria for DL3 and not required to file ATF Form 3310.12, *Report of Multiple Sale or Other Disposition of Certain Rifles*.

### ***Recommendation***

1. ATF should amend the criteria for DL3 to include Type 01 retail licensees, Type 02 pawnbroker licensees, and Type 07 manufacturer licensees in the designated SWB States.

## **Privately Made Firearms (PMFs)**

This report suggests that technology advancements in PMF making are associated with a corresponding increase in their use in crimes. Between 2016 and 2020, 25,896 suspected PMFs were recovered in crimes and traced by law enforcement. Between 2020 and 2021 alone, 19,344 suspected PMFs were recovered and traced by law enforcement. To put these figures in perspective, approximately 5,150 suspected PMFs on average were traced annually between 2016 and 2020, however, in 2021 this number nearly quadrupled. The data analyses also suggested that PMF use in crime is underreported and that there are several avenues through which reporting can be improved.

### ***Recommendations***

1. ATF should receive additional funding to increase staffing to continue conducting training for federal, state, local, and tribal law enforcement on the identification, use of standardized terminology and definitions, and tracing of PMFs.
2. ATF should monitor the continued evolution of PMFs and PMF making as they are used criminally and as they impact the licensed firearm industry and provide updated intelligence and training as appropriate to law enforcement, firearm industry members, and policymakers.
3. ATF should review all case and data management systems to ensure data fields are added to properly track the various types of PMFs recovered, various types of investigations of PMF unlicensed making and dealing, as well as illegal possession.
4. ATF should review all applicable forms that may document the presence of a PMF in commerce or a crime to ensure that those forms are updated with new data fields to properly track PMFs. The forms for review should include, but are not limited to;
  - a. ATF Form 3312.1, *National Tracing Center Trace Request*
  - b. ATF Form 3310.12, *Report of Multiple Sale or Other Disposition of Certain Rifle*
  - c. ATF Form 5300.9, *4473 Firearms Transaction Record*
  - d. ATF Form 3310.11, *FFL Theft/Loss Report*

## **NICS Data Codes**

The analyses completed for this report found that the FBI utilized both federal and state license numbers associated with the FFL. In instances in which only the state license number was captured, ATF had to contact the state to obtain the federal license numbers associated with the state number.

### ***Recommendation***

1. Recommend DOJ/FBI purpose a rule allowing and requiring the NICS to utilize the Federal license number on all NICS transactions involving FFLs. This would allow ATF to conduct a more efficient analysis of NICS transactions.

## **Prevention of FFL Thefts/Losses**

Between 2016 and 2020, FFLs reported 5,766 theft related incidents involving 39,147 firearms, and 6,052 loss incidents involving 45,346 firearms. ATF is already engaged in providing training to FFLs on best practices related to inventory management and loss prevention. Every stolen or lost firearm is a loss in revenue for the FFL and a potential crime gun on the street. There are also other preventive methods that could help reduce thefts and losses from interstate commerce.

### ***Recommendations***

1. DOJ, in partnership with the firearm industry, should explore the feasibility of requirements to prohibit the appearance of firearm manufacturer names and logos on the exterior of boxes being shipped in commerce. These markings clearly indicate a firearm(s) is contained in the cardboard box and make it more susceptible to deliberate pilferage and diversion. A requirement that no markings appear on the outside of a firearm box in shipment could be accomplished by;
  - a. No manufacturer markings being placed on current packaging.
  - b. Current packaging could retain manufacturer markings however, if wrapped in plain material, such as paper or heat activated shrink wrap, then signs of tampering would be visible.
2. DOJ, in partnership with the firearm industry, should explore the feasibility of requirements to allow for the firearm industry to only ship using common carrier that have end-to-end tracking capability and can determine where a package is at all times in transit.
3. DOJ, in partnership with the firearm industry, should explore the potential use of small, inexpensive "Bluetooth-type" tracking devices in certain high-risk shipments to help law enforcement locate packages in the event they are lost or stolen.

## **ATF Classification Letters**

Firearm industry members often seek guidance from ATF as to the classification of a particular firearm, magazine, or firearm part, or whether a particular activity or recordkeeping method is compliant with the regulations. Through a classification request, industry members can request specific guidance or

clarification as to whether a particular item is a firearm subject to regulation under the GCA or NFA. This process involves the requestor submitting the item or product to ATF for evaluation. After completing its review, ATF will issue a classification letter to the requestor stating whether the item is a firearm subject to GCA or NFA regulation. The letter is issued privately to the requestor to protect privacy and any confidential or proprietary information. The letter is still subject to the Freedom of Information Act (FOIA); any material released in response to a FOIA, however, must have privacy and confidential or proprietary information redacted.

### ***Recommendation***

1. It is recommended ATF develop a process to publicly post all future classification letters as they are issued, and that DOJ support a funding request for ATF to establish and maintain this practice. Posted classification letters should be redacted for privacy and confidential or proprietary information. Posting classification letters would provide for more transparency as well as prove useful to other industry members who are exploring the development of similar products that could be impacted by a classification letter. Making classification letters public could help prevent misunderstandings in the applicability of any provisions of the GCA or NFA to certain items being manufactured or considered for manufacture by industry members.

## **Data Sharing with U.S. Department of State**

The analyses suggested that, in general, persons holding a manufacturer's FFL (Types 06, 07, and 10) should register as a manufacturer with the U.S. Department of State (DOS), Office of Defense Trade Controls (DDTC) and pay a fee unless specifically exempted by an International Traffic in Arms Regulation (ITAR).

### ***Recommendation***

1. ATF should assist DOS in identifying those potential Type 06, 07, and 10 licenses that may need to register under ITAR by providing DOS with access to view all active Type 06, 07, and 10 licensees.