



More Gun Dealers Than Gas Stations

**A Study of Federally Licensed Firearms
Dealers in America**

©Copyright 1992
Violence Policy Center
ISBN 0-927291-00-2

The Violence Policy Center (VPC) is a national educational foundation that conducts research on violence in America and works to develop violence-reduction policies and proposals. The Center works to examine the role of firearms in America, conduct research on firearms violence, and explore new ways to decrease it. The Violence Policy Center is a national tax-exempt educational foundation granted 501(c)(3) status by the Internal Revenue Service.

Primary researcher and writer for this study was Josh Sugarmann, executive director of the Violence Policy Center. Legal research and analysis for this study was provided by Kristen Rand, of counsel to the Violence Policy Center. The study was edited by Violence Policy Center Chairperson Paul Lavrakas. Funding for this study was provided by the Civil Justice Foundation of Washington, D.C.

TABLE OF CONTENTS

<u>Introduction</u>	1
The FFL: An Overview	1
Study Format and Contents	3
<u>Section One: Federal Firearms Licensing</u>	4
Making and Selling Guns: An Overview	4
<u>Types of Federal Firearms Licenses</u>	6
The FFL Application Process	12
<u>Section Two: Type 1 Dealers</u>	18
The Kitchen-Table Dealers	21
Stocking Dealers Versus the Basement Bandits	24
Engaged in the Business	27
<u>Section Three: Class III Dealers</u>	37
Machine Gun Dealers: An American Tribe	40
<u>Section Four: ATF Enforcement and Regulation of FFLs</u>	42
ATF: A Bureaucratic History	42
Inspection and Compliance	44
Revocation and Denial	53
When May ATF Revoke a License for Willful Violations?	61

<u>Section Five: Federal, State, and Local Dealer Regulation</u>	64
Three Tiers of Regulation	64
LA Story	66
The Alexandria Study	68
<u>Section Six: FFL Misuse</u>	70
Straw-Man Purchases	70
Unrecorded Sales	73
Buy and Dump	73
License Falsification	74
Gun Shows	76
Project Detroit	78
<u>Section Seven: Recommendations</u>	83
<u>Addenda</u>	89
Addendum One: Civil Liability of Firearms Dealers	89
Addendum Two: State Firearms Dealer Regulations	99
Addendum Three: Forward Trace	119
Addendum Four: ATF Inspection Report	121
<u>Endnotes</u>	137

Introduction

This study is an effort to answer a question central to understanding gun violence in America: what is the process by which firearms make their way from point of manufacture into the hands of the user? To answer this, it must be understood that no one may purchase firearms from a manufacturer and distribute them into the general population without first obtaining the permission of the federal government. This permission comes in the form of a Type 1 Federal Firearms License (FFL), issued by the Bureau of Alcohol, Tobacco and Firearms (ATF) of the U.S. Department of the Treasury. Without a clear understanding of how the FFL acts as the crucial link between the manufacturer and the consumer (whether a police officer or a criminal), it is unlikely that any proposal to curb gun violence will be of more than limited effect.

Recognizing this, the primary purpose of this study is to explore the role that FFL holders play in the flow of firearms and to offer proposals to help state and local governments, as well as ATF, better regulate firearms distribution in America. A second goal is to examine how ATF administers and enforces the laws regarding FFLs. Information utilized includes documents obtained from ATF under the Freedom of Information Act (FOIA) and through direct inquiries, as well as interviews with state and local governments and industry members.

The FFL: An Overview

There are more gun dealers in America than gas stations. According to ATF, as of February 1992, more than 245,000 Americans held Type 1 Federal Firearms Licenses.⁹ The FFL grants the licensee unique and broad privileges. FFL holders can ship and receive firearms and ammunition in interstate commerce via common carrier in quantity and at wholesale prices. Most FFL activity can be conducted free of local and state regulations that apply to individual purchasers (e.g. waiting periods for handgun purchases).

FFLs are inexpensive and easy to obtain from ATF. From 1975 to 1992, the number of

⁹According to Don Smith, editor of *National Petroleum News*, the total number of gasoline outlets in America totals approximately 210,000.

Type 1 FFLs jumped more than 67 percent—from 146,429 to 245,000. Yet it is likely that no more than 20 percent of all FFL holders are commercial enterprises operating storefront businesses. (In the industry such FFL holders are known as "stocking dealers.") The majority of licenses are held by dealers typically operating out of their homes usually without the knowledge of police, zoning authorities, or neighbors and often in violation of state and local law. (These non-commercial FFLs are commonly called "kitchen-table dealers.") Although well aware of this situation, ATF collects little information on those obtaining new licenses and inspections of current license holders are rare. In fact, ATF admits that it can only make an "educated guess" on as simple a question as the number of stocking dealers versus kitchen-table dealers.

ATF knows little about how FFL holders operate and their possible contribution to criminal activity. The result is a largely unregulated firearms distribution network that offers wide opportunity for exploitation and abuse. (In fairness to ATF, it should be noted that in 1986 Congress further curtailed the agency's already limited compliance authority.)

The potential for criminal exploitation of the FFL is illustrated by the case of David Taylor, a resident of a South Bronx housing project. As reported by *New York Newsday* in 1988, Taylor had a long criminal record (including an indictment for murder at age 16) which precluded him from possessing or selling guns under New York City law. However, because he had no felony convictions, in August 1986 he was able to obtain a Type 1 FFL from ATF. In less than a year Taylor purchased more than 500 guns from wholesalers in Ohio, Georgia, and Wisconsin. The guns were delivered via UPS in batches of up to 100 at a time. Taylor's gun-buying clientele were drug dealers and other criminals.¹ The only thing remarkable about this case is that it managed to surface in the news media.

If state or federal laws are ever enacted making it significantly less easy to obtain specific categories of firearms, it is inevitable that criminals will seek out any available loophole. Considering the lax criteria for issuing FFLs and the general absence of regulation, it is likely that many seeking to avoid the strictures of new laws will simply apply for—and probably receive—an FFL. (During the 1991 congressional debate on a national waiting period for handgun purchases, ATF acknowledged this likelihood in an internal analysis.^b) The Violence Policy Center's research into federal policy granting the privilege of dealing in firearms raises a fundamental and disturbing

^bWhen asked for a copy of the memo, the ATF public affairs office informed the Violence Policy Center that it was unable to locate it.

question: How safe is the American public when almost anyone can buy and sell guns almost anywhere?

Study Format and Contents

The study is presented in eight sections.

Section One: Federal Firearms Licensing offers a brief introduction to America's firearms industry and its distribution network. The section outlines the privileges offered by the various types of Federal Firearms Licenses (FFLs).

Section Two: Type 1 Dealers focuses on the Type 1 Federal Firearms License, the standard federal license required to sell guns in America. A state-by-state breakout of FFLs is provided. The contentious relationship between kitchen-table and stocking gun dealers is explored.

Section Three: Class III Dealers examines the ability of Type 1 FFLs to become Class III machine-gun dealers by paying an annual \$500 "Special Occupancy Tax" (SOT) and details how the SOT is used to circumvent licensing and tax requirements for weapons regulated under the National Firearms Act of 1934 (NFA).

Section Four: ATF Enforcement and Regulation of FFLs focuses on the regulatory activities of the Bureau of Alcohol, Tobacco and Firearms, including standards for approval, denial, and revocation of FFLs as well as the agency's compliance activities. ATF's role in the politics of gun control is also addressed.

Section Five: Federal, State, and Local Dealer Regulation analyzes the three levels at which dealers can be regulated. The problems posed to cities and states by the easy availability of FFLs and the lack of communication between ATF and non-federal licensing authorities are explored.

Section Six: FFL Misuse describes the ways in which FFLs can be exploited by criminals to obtain weapons. An ATF gun-tracing study (Project Detroit) is analyzed.

Section Seven: Recommendations offers a series of legislative and policy proposals based on the findings of the study.

Section Eight: Addenda explores in greater detail issues not fully addressed in the body of the study or offers examples cited in the report. Addendum One looks at the civil liability of firearms dealers. Addendum Two lists the firearms regulations of the 50 states and the District of Columbia, the number of FFLs, and the number of firearms dealers known to state or District authorities. Addendum Three details ATF's Forward Trace program. Addendum Four is an example of an ATF FFL inspection report obtained under the Freedom of Information Act.

Section One: Federal Firearms Licensing

Making and Selling Guns: An Overview

According to ATF estimates, 73 million rifles, 62 million shotguns, and 67 million handguns have been manufactured for sale in America since 1899. The present-day firearms population cannot be determined from these figures since it is certain that a significant percentage of guns manufactured over the past century have been destroyed, confiscated by police, or rendered inoperable. Nonetheless, firearms are one of America's most common consumer products. In 1991 there were 1,035 firearms manufacturers in the United States and 912 firearms and ammunition importers—all licensed by the federal government. In 1990, the most recent year for which figures are available, the domestic industry produced 1.8 million handguns, 1.1 million rifles, and 533,000 shotguns.² U.S. importers brought in an additional one million firearms.³

The firearms manufacturing industry spectrum runs from old-line companies such as Smith & Wesson, with a focus on traditional weapons, to independent manufacturers with limited product lines targeting specific niche markets. Examples of the latter include Florida-based Intratec, which caters to the growing demand for assault pistols with its low-priced TEC-9 and TEC-22 Scorpion. The small, inexpensive 25 caliber Raven pistol, manufactured by California's Raven Arms, is a favorite of illegal gun traffickers. (In 1989 Raven produced nearly 163,000 pistols, placing it third in U.S. pistol production, behind such industry heavyweights as Smith & Wesson and Sturm, Ruger and Co., and ahead of such traditional names as Colt and Beretta USA.⁴) From points of manufacture ranging from modern plants on Maryland's eastern shore to quonset huts on the Texas plains, guns are shipped to the civilian market through a distribution network of wholesalers, stocking gun dealers operating storefront businesses, and freelancing kitchen-table dealers—all holding Federal Firearms Licenses.

Members of the American firearms industry have the unique advantage of plying their trade in an industry that is for all intents and purposes unregulated. Almost all products made in America come under the regulatory power of a specific federal agency; guns are one of the notable exceptions. Firearms and ammunition (along with alcohol and tobacco) are specifically exempted from the purview of the Consumer Product Safety Commission (CPSC). CPSC's mission is to protect the public from unreasonable risk of injury associated with consumer products. (Firearms were originally included in the Senate version of the legislation creating the commission in 1972

but were removed before final passage). Regulation of these products has been vested solely with ATF, a division of the Treasury Department. The incongruity of gun regulation falling under the aegis of Treasury is the result of a 1919 federal revenue law that placed an excise tax on the sale of firearms and ammunition, thus granting the department jurisdiction. Yet ATF lacks the common regulatory powers—e.g. standard-setting and recall—granted other government agencies such as the CPSC, the Food and Drug Administration, and the Environmental Protection Agency.

ATF's powers are limited to issuing manufacturer and dealer licenses and monitoring compliance with the limited federal firearm controls that do exist. Although the agency is granted minimal control over imported firearms as the result of a "sporting purposes" test originally designed to weed out Saturday Night Special handguns and surplus military rifles and shotguns, it has virtually no control over domestic firearm design, production, and distribution. Unlike other inherently dangerous consumer products such as drugs, medical devices, and pesticides, there is no pre-market approval process for firearms and ammunition. Increased regulatory powers can only come from congressional legislation.

On the few occasions that ATF has even suggested a need for increased regulatory powers over firearms manufacture, it has come under immediate attack from the National Rifle Association (NRA) and its many supporters on Capitol Hill. Recent concern over the burgeoning market in assault weapons (semi-automatic, high-capacity, military-style handguns, rifles, and shotguns) has prompted some limited discussion of increasing the regulation of gun manufacturers and importers. Yet neither Congress nor the news media has paid virtually any attention to the industry's distribution network or the potential for criminal abuse of the Federal Firearms License.

Membership in the gun industry is cheap and easy. Becoming a manufacturer requires only \$150 for a three-year licensing fee and a willingness on the part of applicant to undergo a name background check to ensure that he is neither a convicted felon nor falls into any other restricted category. There are no minimum requirements as to the number of weapons that must be manufactured annually. To become a firearms dealer, the FFL applicant pays a \$30 three-year licensing fee and undergoes a similar background check. The low cost of both the manufacturer's and dealer's license reflects the federal government's original intent not to restrict the number of licenses, but merely to keep track of those who had them. During the 1934 congressional hearings which set the initial standards for manufacturer licensing, National Rifle Association President Karl Frederick urged that the price of a license be "fifteen or 10 cents, or anything that will not prevent compliance with it because of its burdensome nature."⁶ Congress has happily obliged.

Types of Federal Firearms Licenses

There are nine types of Federal Firearms Licenses for manufacturers, dealers, and importers.

Type 01—Dealer in Firearms Other Than Destructive Devices. License Fee: \$30 for three years. The Type 1 FFL allows the licensee to buy, sell, and ship in interstate commerce rifles, shotguns, pistols, and revolvers. The licensee may also conduct gunsmithing activities. With the payment of an annual \$500 Special Occupancy Tax (SOT), the licensee may also deal in Class III weapons regulated under the National Firearms Act of 1934 (NFA). NFA weapons include fully automatic weapons, silencers, sawed-off rifles and shotguns, smooth-bore weapons and "specialty weapons" such as pen guns, belt-buckle guns, etc.

Type 02—Pawnbroker Dealing in Firearms Other Than Destructive Devices. License Fee: \$75 for three years. The license grants all of the privileges of the Type 1 FFL, but is required for selling firearms from a pawn shop.

Type 03—Collector of Curios and Relics. License Fee: \$30 for three years. The license allows the holder to collect and purchase firearms defined as "curios and relics" by ATF as well as ship and receive interstate firearms defined as curios and relics, except for handguns.

Type 06—Manufacturer of Ammunition for Firearms Other Than Ammunition for Destructive Devices or Armor-Piercing Ammunition. License Fee: \$30 for three years. Licensee can manufacture, ship, and receive in interstate commerce standard ammunition.

Type 07—Manufacturer of Firearms Other than Destructive Devices. License Fee: \$150 for three years. Licensee can manufacture, remanufacture, modify, and ship firearms in interstate commerce.

Type 08—Importer of Firearms Other than Destructive Devices or Ammunition for Firearms Other than Destructive Devices, or Ammunition Other than Armor-Piercing Ammunition. License Fee: \$150 for three years. Licensee can import and ship in interstate commerce firearms under the import criteria outlined by ATF.

Type 09—Dealer in Destructive Devices. License Fee: \$3,000 for three years.

Type 10—Manufacturer of Destructive Devices, Ammunition for Destructive Devices, or Armor-Piercing Ammunition. License Fee: \$3,000 for three years.

Type 11—Importer of Destructive Devices, Ammunition for Destructive Devices, or Armor-Piercing Ammunition. License Fee: \$3,000 for three years.

There are nearly 270,000 FFLs (Type 1-11) in America. The vast majority—nearly 90 percent—are Type 1 dealers. These are the principal subjects of this study. Figures 1-1 through 1-5 list a regional and state breakout by type of FFL license.

Figure 1-1

FEDERAL FIREARMS LICENSES:
BROKEN OUT BY REGION, STATE, TYPE OF LICENSE (1-11)
AS OF SEPTEMBER 1990

Midwest

State	Total Number of Licensees	License Type	1	2	3	6	7	8	9	10	11
IL	9,650	8,376	58	921	240	23	24	0	5	3	
IN	6,084	5,517	36	296	210	14	9	0	1	1	
KY	5,170	4,649	310	126	68	10	5	1	0	1	
MI	12,715	11,638	74	638	304	20	34	1	1	5	
MN	5,924	5,470	83	213	127	15	10	0	4	2	
ND	1,724	1,604	28	34	54	4	0	0	0	0	
OH	9,322	8,306	115	478	358	39	21	0	4	1	
SD	1,584	1,453	54	24	50	3	0	0	0	0	
WV	3,249	2,980	125	67	68	4	4	0	1	0	
WI	6,081	5,627	19	221	200	7	6	0	1	0	
Total	61,503	55,620	902	3,018	1,679	139	113	2	17	13	

Figure 1-2

North Atlantic

State	Total Number of Licensees	License Type	1	2	3	6	7	8	9	10	11
CT	3,549	3,035	13	352	69	40	35	1	3	1	
DE	564	481	6	52	17	1	4	0	1	2	
DC	51	40	0	9	1	0	1	0	0	0	
ME	2,280	2,101	23	64	76	9	5	0	1	1	
MD	3,412	2,894	33	367	78	16	20	0	2	2	
MA	4,371	3,477	2	662	169	36	23	0	1	1	
NH	1,594	1,389	3	104	78	11	8	0	1	0	
NJ	2,208	1,612	1	451	107	10	24	0	3	0	
NY	11,026	9,421	15	1,131	363	25	68	0	3	0	
PA	12,478	10,903	22	887	552	57	45	1	9	2	
RI	602	487	3	89	19	4	0	0	0	0	
VT	1,560	1,450	2	39	52	8	6	0	1	2	
Total	43,695	37,290	123	4,207	1,581	217	239	2	25	11	

Figure 1-3

Southeast

State	Total Number of Licensees	License Type	1	2	3	6	7	8	9	10	11
AL	4,108	3,547	363	165	98	7	13	1	3	1	
FL	12,353	10,089	959	748	426	52	60	2	10	7	
GA	7,049	5,706	832	275	176	39	20	1	0	0	
MS	3,670	3,116	425	60	64	1	4	0	0	0	
NC	7,176	6,228	390	327	195	19	14	0	2	1	
PR/VI	196	145	0	16	28	0	7	0	0	0	
SC	2,890	2,476	194	123	83	4	9	0	0	1	
TN	5,573	4,872	312	212	128	27	12	0	8	2	
VA	7,527	6,775	111	387	176	18	46	0	1	13	
Total	50,542	42,864	3,586	2,313	1,374	167	185	4	24	25	

Figure 1-4

Southwest

State	Total Number of Licensees	License Type	1	2	3	6	7	8	9	10	11
AR	3,816	3,185	452	74	85	9	7	0	4	0	
CO	4,818	4,318	172	145	143	26	14	0	0	0	
IA	4,043	3,748	62	100	126	2	3	0	2	0	
KA	3,928	3,584	106	108	114	7	6	0	2	1	
LA	5,799	5,188	311	169	113	8	9	0	0	1	
MO	8,373	7,364	249	516	206	16	13	3	4	2	
NE	2,846	2,622	45	71	98	5	5	0	0	0	
NM	2,383	2,062	169	68	70	7	5	0	2	0	
OK	4,447	3,758	414	108	142	18	6	0	1	0	
TX	19,915	17,367	1,184	601	586	90	73	4	6	4	
WY	1,913	1,741	70	28	64	9	1	0	0	0	
RT	62,281	54,937	3,234	1,988	1,747	197	142	7	21	8	

Figure 1-5

Western

State	Total Number of Licensees	License Type	1	2	3	6	7	8	9	10	11
AK	3,268	3,001	76	88	93	4	6	0	0	0	0
AZ	4,635	4,062	105	163	232	43	23	0	3	4	
CA	22,812	19,643	364	1,845	614	132	177	4	22	11	
GU	95	66	0	3	18	0	8	0	0	0	
HA	776	701	3	48	22	0	2	0	0	0	
ID	2,211	1,951	155	41	54	7	3	0	0	0	
MT	3,075	2,776	121	66	94	12	5	1	0	0	
NV	1,885	1,651	56	105	48	13	10	0	1	1	
OR	4,736	4,428	20	118	151	11	7	0	1	0	
UT	2,030	1,803	117	37	50	14	8	0	1	0	
WA	5,535	4,891	167	247	188	22	18	0	2	0	
Total	51,058	44,973	1,184	2,761	1,564	258	267	5	30	16	
Grand Total	269,079	235,684	9,029	14,287	7,945	978	946	20	117	73	

Source: ATF Public Affairs Office

The FFL Application Process

To receive an FFL, an applicant must first fill out an ATF Form 7 (see Figure 1-6), which is then sent to the agency with the appropriate fee for the chosen license category. Upon receiving the application, ATF begins an investigation which, in theory, weeds out those ineligible to hold an FFL. In reality, nine times out of 10, this investigation is nothing more than a name background check for felony convictions. This check is conducted at ATF's Firearms and Explosives Licensing Center in Atlanta, which oversees on average 277,000 licenses (Types 1-11). Each year it issues 30,000 new licenses, renews 60,000 expiring licenses, and amends 60,000 current licenses. (The center even has a toll free number for licensees: 1-800-366-5423.) At the center, four data processors compare applicants' names to the Treasury Enforcement Communications System (TECS) data base of convicted felons maintained by the U.S. Customs Service and/or the FBI's National Crime Information Center (NCIC) criminal data base. However, ATF acknowledged to the *Washington Post* in May 1991 that the data base check is largely incomplete as arrests and dispositions from many states are not included.⁶

ATF's incomplete record keeping is exacerbated by the fact that it has trouble determining in some states who under federal law actually is a convicted felon as regards the ability to possess an FFL. In 1986 the National Rifle Association won passage of its flagship bill, the Firearms Owners' Protection Act, sponsored by Senator James McClure (R-ID) retired, and Harold Volkmer (D-MO). Popularly known as "McClure-Volkmer," the measure consisted of a series of amendments to the Gun Control Act of 1968. One amendment modified federal law so that restoration of civil liberties by states to felons who had served their time automatically restored the privilege of firearms possession—unless the state law or individual pardon expressly excluded it.⁶ As of April 1992, ATF admitted to being unsure which states fell under this provision of McClure-Volkmer.

The ATF background check on FFL applicants is, in fact, less comprehensive than that conducted by some states on individuals merely seeking to purchase a handgun. For example, before being able to buy a firearm, Hawaii residents must fill out a permit form that includes the applicant's "name, address, sex, height, weight, date of birth, place of birth, social security number, and information regarding the applicant's mental health history and shall require the fingerprinting and photographing of the applicant by the police department of the county of

⁶For more information on this aspect of the McClure-Volkmer bill see the May 1992 Violence Policy Center study, *Putting Guns Back Into Criminals' Hands: 100 Case Studies of Felons Granted Relief From Disability Under Federal Firearms Laws*.

Figure 1-6: ATF Form 7 FFL Application

DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS APPLICATION FOR LICENSE UNDER 18 U.S.C. CHAPTER 44, FIREARMS		FOR ATF USE ONLY	
1. NAME OF OWNER OR CORPORATION (If partnership, include name of each partner)			
2. TRADE OR BUSINESS NAME, IF ANY		3. EMPLOYER IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER	
4. NAME OF COUNTY IN WHICH BUSINESS IS LOCATED		6. BUSINESS LOCATION (If no street address in item 5, show directions and distance from nearest P.O. or city limits)	
5. BUSINESS ADDRESS (RFD or street no., city, State, ZIP Code)			
8. APPLICANT'S BUSINESS IS <input type="checkbox"/> INDIVIDUALLY OWNED <input type="checkbox"/> A CORPORATION <input type="checkbox"/> A PARTNERSHIP <input type="checkbox"/> OTHER (Specify) _____		7. TELEPHONE NUMBER (Include Area Code.) BUSINESS _____ RESIDENCE _____	
		9. IS ANY BUSINESS OTHER THAN THAT FOR WHICH THE LICENSE APPLICATION IS BEING MADE CONDUCTED ON THE BUSINESS PREMISES? (If "Yes," give the general nature of that business) <input type="checkbox"/> YES <input type="checkbox"/> NO	
10. APPLICATION IS MADE FOR A LICENSE UNDER 18 U.S.C. CHAPTER 44 AS A: (Place an "X" in column (b) of the appropriate line. Submit the fee shown in column (c) with the application.)			
TYPE*	DESCRIPTION OF LICENSE TYPE (a)	"X" (b)	FEE (c)
01	DEALER IN FIREARMS OTHER THAN DESTRUCTIVE DEVICES (INCLUDES: Rifles, Shotguns, Pistols, Revolvers, Gunsmith activities and National Firearms Act (NFA) Weapons)		\$30
02	PAWNBROKER DEALING IN FIREARMS OTHER THAN DESTRUCTIVE DEVICES		\$75
03	COLLECTOR OF CURIOS AND RELICS (Note: Omit items 11 and 12 if checked here and no other licenses are applied for.)		\$30
06	MANUFACTURER OF AMMUNITION FOR FIREARMS OTHER THAN AMMUNITION FOR DESTRUCTIVE DEVICES OR ARMOR PIERCING AMMUNITION		\$30
07	MANUFACTURER OF FIREARMS OTHER THAN DESTRUCTIVE DEVICES		\$150
08	IMPORTER OF FIREARMS OTHER THAN DESTRUCTIVE DEVICES OR AMMUNITION FOR FIREARMS OTHER THAN DESTRUCTIVE DEVICES, OR AMMUNITION OTHER THAN ARMOR PIERCING AMMUNITION (NOTE: Importer of handguns and rifles, see item 10 of instruction sheet)		\$150
09	DEALER IN DESTRUCTIVE DEVICES		\$3000
10	MANUFACTURER OF DESTRUCTIVE DEVICES, AMMUNITION FOR DESTRUCTIVE DEVICES OR ARMOR PIERCING AMMUNITION		\$3000
11	IMPORTER OF DESTRUCTIVE DEVICES, AMMUNITION FOR DESTRUCTIVE DEVICES OR ARMOR PIERCING AMMUNITION		\$3000
MAKE CHECK OR MONEY ORDER PAYABLE TO THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS			TOTAL FEES \$
*NOTE: Applicants intending to engage in business relating to NFA weapons (including destructive devices and ammunition for destructive devices) are required to pay a special (occupational) tax before commencing business (26 U.S.C. 5801). For information, contact the NFA Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.			
11. HOURS OF OPERATION OF APPLICANT'S BUSINESS		12. ARE THE APPLICANT'S BUSINESS PREMISES OPEN TO THE GENERAL PUBLIC DURING THESE HOURS?	
Time	Sunday Monday Tuesday Wednesday Thursday Friday Saturday	<input type="checkbox"/> YES <input type="checkbox"/> NO (If "No," give explanation on separate sheet.)	
Open			
Close			
13. IS APPLICANT PRESENTLY ENGAGED IN A BUSINESS REQUIRING A FEDERAL FIREARMS LICENSE? (If "Yes," answer 14.) <input type="checkbox"/> YES <input type="checkbox"/> NO		14. PRESENT LICENSE NUMBER	
15. DESCRIBE SPECIFIC ACTIVITY APPLICANT IS ENGAGED IN, OR INTENDS TO ENGAGE IN, WHICH WILL REQUIRE A FEDERAL FIREARMS LICENSE (e.g., dealer in rifles, shotguns, revolvers, gunsmith, dealer in machine guns, etc.)			
IF BUSINESS OBTAINED FROM SOMEONE ELSE GIVE			
16. NAME		17. LICENSE NUMBER	

Figure 1-6: ATF Form 7 FFL Application

18. LIST BELOW THE INFORMATION REQUIRED FOR EACH INDIVIDUAL OWNER, (those owners must include themselves), PARTNER, & OTHER RESPONSIBLE PERSONS <small>(see instruction 7) IN THE APPLICANT BUSINESS INCLUDING ALL NAMES KNOWN BY, ALIASES, NICK NAMES & PREVIOUS MARRIED NAMES. IF A FEMALE, LIST GIVEN NAMES & MAIDEN, IF MARRIED, e.g., "MARY ALICE (SMITH) JONES," NOT "MRS. JOHN JONES." (If additional space is needed, use a separate sheet.)</small>						
FULL NAME	POSITION AND SOCIAL SECURITY NO.	HOME ADDRESS (include ZIP Code)	PLACE OF BIRTH	DATE OF BIRTH		
19. HAS APPLICANT OR ANY PERSON LISTED ABOVE: <small>(If "Yes," place an "X" by the name and show name on license, city and state at the right)</small>			<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">YES</td> <td style="width: 50%; text-align: center;">NO</td> </tr> </table>	YES	NO	NAME ON LICENSE CITY STATE
YES	NO					
A. HELD A FEDERAL FIREARMS LICENSE			<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">YES</td> <td style="width: 50%; text-align: center;">NO</td> </tr> </table>	YES	NO	
YES	NO					
B. BEEN DENIED A FEDERAL FIREARMS LICENSE			<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">YES</td> <td style="width: 50%; text-align: center;">NO</td> </tr> </table>	YES	NO	
YES	NO					
C. BEEN AN OFFICER IN A CORPORATION HOLDING A FEDERAL FIREARMS LICENSE			<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">YES</td> <td style="width: 50%; text-align: center;">NO</td> </tr> </table>	YES	NO	
YES	NO					
D. BEEN AN EMPLOYEE RESPONSIBLE FOR FIREARMS ACTIVITIES OF A FEDERAL FIREARMS LICENSEE			<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">YES</td> <td style="width: 50%; text-align: center;">NO</td> </tr> </table>	YES	NO	
YES	NO					
GIVE FULL DETAILS ON SEPARATE SHEET FOR ALL "Yes" ANSWERS IN ITEMS 20 & 21.						
			<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">YES</td> <td style="width: 50%; text-align: center;">NO</td> </tr> </table>	YES	NO	
YES	NO					
20. APPLICANT OR ANY PERSON NAMED IN ITEM 18 ABOVE:	A. CHARGED BY INFORMATION OR UNDER INDICTMENT IN ANY COURT FOR A CRIME PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR			<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">YES</td> <td style="width: 50%; text-align: center;">NO</td> </tr> </table>	YES	NO
	YES	NO				
	B. A FUGITIVE FROM JUSTICE			<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">YES</td> <td style="width: 50%; text-align: center;">NO</td> </tr> </table>	YES	NO
	YES	NO				
	C. AN ALIEN WHO IS ILLEGALLY OR UNLAWFULLY IN THE UNITED STATES			<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">YES</td> <td style="width: 50%; text-align: center;">NO</td> </tr> </table>	YES	NO
YES	NO					
D. UNDER 21 YEARS OF AGE			<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">YES</td> <td style="width: 50%; text-align: center;">NO</td> </tr> </table>	YES	NO	
YES	NO					
E. AN UNLAWFUL USER OF OR ADDICTED TO MARIJUANA OR ANY DEPRESSANT, STIMULANT OR NARCOTIC DRUG, OR ANY CONTROLLED SUBSTANCE			<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">YES</td> <td style="width: 50%; text-align: center;">NO</td> </tr> </table>	YES	NO	
YES	NO					
21. HAS APPLICANT OR ANY PERSON NAMED IN ITEM 18 EVER:	A. BEEN CONVICTED IN ANY COURT OF A CRIME PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR			<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">YES</td> <td style="width: 50%; text-align: center;">NO</td> </tr> </table>	YES	NO
	YES	NO				
	B. BEEN DISCHARGED FROM THE ARMED FORCES UNDER DISHONORABLE CONDITIONS			<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">YES</td> <td style="width: 50%; text-align: center;">NO</td> </tr> </table>	YES	NO
	YES	NO				
C. BEEN ADJUDICATED AS A MENTAL DEFECTIVE OR BEEN COMMITTED TO ANY MENTAL INSTITUTION			<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">YES</td> <td style="width: 50%; text-align: center;">NO</td> </tr> </table>	YES	NO	
YES	NO					
D. RENOUNCED HIS CITIZENSHIP HAVING BEEN A CITIZEN OF THE UNITED STATES			<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">YES</td> <td style="width: 50%; text-align: center;">NO</td> </tr> </table>	YES	NO	
YES	NO					
22. CERTIFICATION: Under the penalties imposed by 18 U.S.C. 924, I declare that I have examined this application and the documents submitted in support thereof, and to the best of my knowledge and belief, they are true, correct and complete.						
SIGN HERE		TITLE		DATE		
FOR ATF USE						
23. APPLICATION IS <input type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED* <input type="checkbox"/> TERMINATED*		REASONS FOR TERMINATED OR DISAPPROVED APPLICATION				
<small>*LICENSE FEE WILL BE REFUNDED BY THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS</small>						
SIGNATURE OF LICENSING OFFICIAL				DATE		
<small>*Information - A formal accusation of crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury. *A YES answer is required if the judge could have given a sentence of more than one year. You may answer NO if (a) you have been pardoned for the crime or (b) the conviction has been expunged or set aside or (c) your civil rights have been restored AND you are not prohibited from possessing or receiving any firearms under the law where the conviction occurred</small>						

Figure 1-6: ATF Form 7 FFL Application

Form Approved: OMB No. 1512-0042 (8/31/92)

DEPARTMENT OF THE TREASURY – BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
APPLICATION FOR LICENSE
UNDER 18 U.S.C. CHAPTER 44, FIREARMS

INSTRUCTION SHEET FOR ATF FORM 7

(Detach this instruction sheet before submitting your application.)
ALL APPLICATIONS ARE TO BE SUBMITTED WITH FEES TO:
THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
P.O. BOX 845219
DALLAS, TEXAS 75284-5219

1. Issuance of your license under 18 U.S.C. Chapter 44 will be delayed if the fee is omitted or incorrect, or if the form submitted is incomplete or otherwise improperly prepared. This application should be submitted at least 45 days prior to the date that the license is required.
2. Submit the original of ATF Form 7 and total fees to the Bureau of Alcohol, Tobacco and Firearms post office box listed above. (CAUTION: Submission of this application does NOT authorize you to engage in any of the activities covered by the requested license. A license must be received before operations are commenced.)
3. PRINT with ball-point pen or typewriter (except for signature at end). If separate sheets are needed, they must be:
 - a. Identified with your name and address at the top of the page, and
 - b. Referenced by the question number being expanded.
4. A license will not be issued to an applicant who intends to conduct his firearms business from a private residence unless his firearms business premises is accessible to the public; that is, the clientele that the business is set up to serve. If a license is issued, ATF officers will have access to the firearms business premises during business hours and this access includes entry into the non-public portion of the residence, if necessary. Thus, business hours must be supplied.
5. A license under 18 U.S.C. Chapter 44:
 - a. Will NOT be issued to an applicant who intends to engage in a firearms activity not covered by the license applied for. (Describe your intended activity in Item 15.);
 - b. Is NOT a license to carry, use, or possess a firearm; and
 - c. Confers NO right or privilege to conduct business or activity contrary to State or other law;
 - d. Is NOT required to sell ammunition only.
6. Make your check or money order payable to the Bureau of Alcohol, Tobacco and Firearms. Include your employer identification number or social security number on the check or money order. See Item 10 of ATF Form 7 for the correct fees. Postdated checks are not acceptable. Licenses are issued for a period of THREE YEARS. No refund of any part of a license fee shall be made where the operations of the license are, for any reason, discontinued during the period.
 - a. MULTIPLE LICENSES—You can apply for more than one license by checking more than one Type in Item 10, provided that the fee for each Type is paid and the business is to be conducted at the same location.
 - b. MULTIPLE LOCATIONS—A separate application and license fee is required for the business at each location.
7. RESPONSIBLE PERSONS—As used at Item 18, means:
 - a. In the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management, policies, and buying and selling practices of the corporation, partnership, or association, insofar as such management, policies and buying and selling practices pertain to firearms; and
 - b. In the case of a corporation, association, or similar organization, any person owning ten percent or more of the outstanding shares of stock issued by the applicant business; and
 - c. In the case of a corporation, association, or similar organization, the officers and directors thereof.
8. The certification in Item 22 must be executed (signed) by the owner, a partner, or in the case of a corporation, association, etc., by an officer duly authorized to sign for the applicant.
9. Applicants intending to engage in business involving National Firearms Act (NFA) weapons must also pay special (occupational) tax prior to beginning business involving these weapons (26 U.S.C. 5801). For information, contact the NFA Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.
10. Applicants intending to import handguns and rifles must register with ATF under the provisions of the Arms Export Control Act of 1976. Application for registration is made on ATF Form 4587 (5330.4).
11. ATF will:
 - a. Issue a license if your application is approved; or
 - b. Advise you in writing of the reasons for denial of application and return the fee.
12. IF YOU HAVE ANY QUESTIONS relating to this application, please contact the ATF Licensing Center, PO Box 2994, Atlanta, GA 30331-2994. Toll free 1-800-368-5423.

Figure 1-6: ATF Form 7 FFL Application

PRIVACY ACT INFORMATION
<p>The following information is provided pursuant to Section 3 of the Privacy Act of 1974 (5 U.S.C. § 552a(e)(3)):</p> <ol style="list-style-type: none">1. AUTHORITY: Solicitation of this information is authorized pursuant to 18 U.S.C. § 923(a) of the Gun Control Act of 1968. Disclosure of this information is mandatory, if the applicant wishes to obtain a Federal firearms license.2. PURPOSE: To determine the eligibility of the applicant to obtain a firearms license, to determine the ownership of the business, the type of firearms or ammunition to be dealt in, the business hours, the business history and the identity of the responsible person in the business.3. ROUTINE USES: The information will be used by ATF to make determinations set forth in paragraph 2. In addition, information may be disclosed to other Federal, State, foreign and local law enforcement and regulatory agency personnel to verify information on the application and to aid in the performance of their duties with respect to the enforcement and regulation of firearms and/or ammunition where such disclosure is not prohibited by law. The information may further be disclosed to the Justice Department if it appears that the furnishing of false information may constitute a violation of Federal law. Finally, the information may be disclosed to members of the public in order to verify the information on the application when such disclosure is not prohibited by law.4. EFFECTS OF NOT SUPPLYING INFORMATION REQUESTED: Failure to supply complete information will delay processing and may result in denial of the application. <p>The following information is provided pursuant to Section 7(b) of the Privacy Act of 1974:</p> <p>Disclosure of the individual's social security number is voluntary. Under 18 U.S.C. § 923(a), ATF has the authority to solicit this information. The number may be used to verify the individual's identity.</p>
PAPERWORK REDUCTION ACT NOTICE
<p>This request is in accordance with the Paperwork Reduction Act of 1980. The information collection is used to determine the eligibility of the applicant to engage in certain operations, to determine location and extent of operations, and to determine whether the operations will be in conformity with Federal laws and regulations. The information requested is required to obtain or retain a benefit and is mandatory by statute (18 U.S.C. 923).</p> <p>The estimated average burden associated with this collection is .95 hours per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Reports Management Officer, Information Programs Branch, Room 7011, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, N.W., Washington D.C., 20226, or the Office of Management and Budget, Paperwork Reduction Project (1512-0042), Washington, D.C., 20503.</p>

registration...." In addition, the "applicant for a permit shall sign a waiver at time of application, allowing the chief of police of the county issuing the permit access to any records which have a bearing on the mental health of the applicant." Such strict standards do not apply to FFL applicants in Hawaii, or any other state.

Because of the cursory nature of the application check, those with felony records can avoid detection by having relatives, girlfriends, or even pets register for them. In 1990 ATF officials were embarrassed when it was revealed that they had approved Type 1 FFL license applications for two dogs. "The point is well taken," ATF public affairs chief Jack Killorin told the *Washington Post* a year later, "The dogs would clearly pass a record check designed for human beings."⁷

Such embarrassments are a result of the fact that fewer than 10 percent of all FFL applicants undergo an actual inspection in the form of a personal interview or on-site visit. In Fiscal Year (FY) 1989, ATF inspected only seven percent of all FFL applicants (2,384 of 34,318), while in FY 1990, fewer than 10 percent of all applications were inspected (3,358 of 34,336).⁸

Section Two: Type 1 Dealers

The Type 1 FFL is the basic license required to sell guns in America and is the most commonly abused category of FFL (see Figure 2-1). The more than 245,000 Type 1 firearms dealers in America fall into two categories: those operating storefront businesses, or "stocking" dealers; and "kitchen-table" dealers who operate out of their homes. (Some stocking dealers prefer to call the latter group "basement bandits" on account of their low overhead and discount prices.) ATF's best guess is that 20 percent (49,000) of all Type 1 FFLs are stocking dealers. In truth, no one knows the exact number of stocking versus kitchen-table dealers. And until recently ATF has felt no urge to find out.

Despite this imprecision, it can be comfortably asserted that the overwhelming majority of Type 1 FFLs are not businessmen, but gun enthusiasts who obtain the licenses to enjoy the broad privileges they grant—privileges not available to non-licensed individuals. Holders of FFLs may:

- o transfer firearms and ammunition in interstate commerce;
- o purchase firearms and ammunition from wholesalers at discount via common carrier in unlimited quantities;
- o obtain firearms for sale or private possession without meeting many of the standards established by federal, state, or local regulations that apply to unlicensed individuals, such as waiting periods, background checks, licensing, or registration.

It is important to note that while exempt from many regulations that apply to those buying firearms at retail, licensees are not exempt from state and local laws regarding zoning and business licensing, dealer licensing standards, or local bans on firearms sale or personal possession (see Figure 2-2) Whether or not FFL holders obey such laws is another matter.

The statutory requirements an individual or corporation must meet to be eligible to obtain a Type 1 FFL are neither complex nor burdensome.

- o The applicant must be at least 21 years of age.
- o The applicant may not be a convicted felon, fugitive from justice, user of controlled substances, illegal alien, or have been dishonorably discharged or adjudicated mentally incompetent. Also disqualified are those who have worked for a prohibited person and in the scope of their employment shipped or received firearms or ammunition in interstate commerce.

Figure 2-1: Type 1 Federal Firearms License (FFL)



DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

LICENSE (18 U.S.C. Chapter 44)

In accordance with the provisions of Title I, Gun Control Act of 1968, and the regulations issued thereunder (27 CFR Part 178), you are licensed to engage in the business specified in this license, within the limitations of Chapter 44, Title 18, United States Code, and the regulations issued thereunder, until the expiration date shown. See "WARNINGS" and "NOTICE" on reverse.

DIRECT ATF CORRESPONDENCE TO	CHIEF, F & E LICENSING CENTER BATF, P.O. BOX 2994 ATLANTA, GA 30301-2994	LICENSE NUMBER
		EXPIRATION DATE

LICENSED PREMISES

NAME

TYPE OF
LICENSE

01 - DEALER IN FIREARMS OTHER THAN DESTRUCTIVE DEVICES

CHIEF, F & E
LICENSING CENTER

Ray A. Hayes

PURCHASING CERTIFICATION

LICENSEE **MAILING ADDRESS**

I certify that this is a true copy of a license issued to me to engage in the business specified.

(SIGNATURE OF LICENSEE)

The licensee named herein shall use a reproduction of this license to assist a transferor of firearms to verify the identity and the licensed status of the licensee as provided in 27 CFR Part 178. The signature on each reproduction must be an ORIGINAL signature.

ATF FORM 8 (5310.11) (8/91) **PREVIOUS EDITION IS OBSOLETE**

Figure 2-2



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
ATLANTA, GEORGIA 30301-2994

Dear Licensee:

Enclosed you will find your Federal Firearms License.

If this is your first license, publications and an initial supply of forms which relate to the conduct of business as a federal licensee will be mailed from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153. Upon receipt of the packet, please use ATF Form 1600.8 to order additional forms. Please allow ten days for delivery of your packet. After reviewing the information, if you have questions or problems concerning recordkeeping requirements or other information, contact your local ATF Area Office or you may call the Licensing Center in Atlanta, Georgia at (404) 986-6040 or 1-800-366-5423.

Note you have received only one original license. DO NOT SIGN THE ORIGINAL LICENSE prior to making copies, as the signature on each certified copy must be an original.

A Federal Firearms License does not permit you to receive, sell or transfer firearms or ammunition without first obtaining the proper State and/or local licenses, if any. Please check with your local authorities.

ATF National Licensing Center

*U.S. GPO: 1991-282-702/26670

- o The applicant must have never willfully violated any provisions of the Gun Control Act of 1968.
- o The applicant must not have withheld any material information nor made any false statements in his application.
- o The applicant must have, in a state, premises from which he conducts or intends to conduct business within a reasonable length of time (such period has not been formally defined by ATF, although the agency acknowledges that the applicant can take up to the full three-year term of the initial licensing period).

ATF interprets these criteria to be objective, and the statutory language for issuance states that ATF "shall" issue a license for those who meet the requirements. Federal statutes state that ATF must approve or deny a license application within 45 days of submission.

The Kitchen-Table Dealers

The motivations of the Type 1 FFL applicant who plans to become a stocking dealer and operate a storefront business are probably no different than any other small-business person. But what are the advantages of an FFL to someone who has no intention of ever opening a gun store? The principal attraction of an FFL is that it allows the licensee to purchase firearms wholesale for his personal use or for friends and family. (Transfers to friends and family must meet all federal, state, and local sales requirements to be legal.) The savings available to an FFL holder are illustrated in the February 1992 Davidson's distributor's catalog. The AP-9 assault pistol, which retails for \$265, is available to dealers for \$172. The 25 caliber Raven semiautomatic handgun retails for \$65, but is offered in the Ashland Shooting Supplies catalog to FFLs for \$34.50 each. This wholesale/retail price ratio is constant throughout the gun trade.

In addition to using the Type 1 FFL for personal use or resale, kitchen-table dealers can also broker sales between wholesalers and retail purchasers for a "handling fee." *The Dangers, Surprises and Legal Traps of the Federal Firearms License*, a seven-page monograph available through *Shotgun News* reveals the advantages to both buyer and seller using this approach—beating taxes:

Have you seen those ads placed by FFL licensees stating that they will get you any gun for wholesale plus a \$25 processing fee...? Having your customer write a check to the out-of-state company you're getting the gun from, and a check to you for your fee, in most cases will help you and your customer legally avoid sales tax. This is because your customer is actually entering into a purchase transaction with an out-of-state company, which currently is not a sales taxable transaction in most states. Most states do not charge sales tax on labor or personal services. Your FLAT fee will probably be looked upon as a service charge.⁹

Recognizing gun owners' interest in obtaining FFLs for private use, publications such as *Shotgun News* and the National Rifle Association's *American Rifleman* contain ads promising help to neophyte gun dealers (see Figure 2-3). For example: Sports Wholesale offers the "BEST FFL KITS! Follow our instructions to Fast Gun license approval, \$5." Business Consultants of Uniontown, Pennsylvania offers the "QUICKEST FFL! Guaranteed Kit gives you forms, instructions, regulations & lists 250 Wholesalers! \$4.95." Shooters Gunshop promises the "BEST FFL LICENSE KIT! Professional Gun Dealer Kit gives you Everything you need!! License forms, Regulations, Professional Advice, Hundreds of Wholesalers, & Phones! Moneyback Guarantee! \$4.95."¹⁰

FFL kits are little more than a restatement of the ATF application guidelines, or actual cut-and-paste copies, and a copy of the ATF Form 7—materials that are available free from ATF. Most FFL kits also include a brief list of recommended firearms wholesalers. Contrary to the premise on which FFL kits are marketed, anyone who can read and write can easily fill out the ATF form. More ominously, other kits offer information useful in evading federal firearms laws. Business Consultants offers information on

WHERE TO BUY—AMMO with EXPLODING BULLETS, Incendiary Ammo, Machinegun Parts and Receiver Kits, Silencers and Silencer Kits, Manuals for making Machineguns, Silencers, Booby Traps, etc., hard to find Chemicals, Plans for "Make at Home" Machineguns and Silencers, and MANY MORE HARD TO FIND AND ASK ABOUT ITEMS! Most sell mail order, and require no license. Complete names and addresses of current sources. Only \$4.00 postpaid.

Although some FFL kits offer the tools for illegal firearms use (supplying information both on how to obtain the license as well as manufacture National Firearms Act weapons, such as machine guns, at home) ATF has no information on them. In response to a FOIA request filed for this study seeking all information on FFL kits, ATF stated that it had no such information.

In contrast, some material aimed at the fledgling licensee highlights the legal responsibilities accompanying the privileges granted by possessing a Type 1 FFL. *The Dangers, Surprises and Legal Traps of the Federal Firearms License* laments the responsibilities that come with FFL possession: "Federal, state and local governments expect you to abide by all the laws that impact you when you sell that first gun or take that first order. Unfortunately neither you nor I have the time to become thoroughly acquainted with the many laws that govern the firearms business."¹¹ The authors warn, "However difficult it may seem to you to understand these laws, you will have to make an effort to become aware of their presence and of the penalties that accompany them."¹²

Figure 2-3

Shotgun News

The Trading Post
for anything
that shoots.

SHOTGUNS - RIFLES - HANDGUNS - ACCESSORIES - MODERN AND ANTIQUE

Established 1948
Published 3 Times a Month

\$20.00 Per Year

SNELL PUBLISHING CO.
P.O. Box 669
Hastings, NE 68902
PHONE 402-463-4589

POSTMASTER
TIME VALUE EXPEDITE

Bulk Rate
U.S. POSTAGE PAID
Minneapolis, Minnesota 55401
Permit No. 1538

OCTOBER 10, 1992

*** ATTENTION ADVERTISERS, SUBSCRIBERS, EVERYONE! ***
YOU CAN UTILIZE THIS SPACE FOR YOUR ADVERTISING NEEDS
PROMOTE YOUR GUN SHOWS - SELL OR TRADE - THE ADVANTAGES
ARE NUMEROUS! DON'T HESITATE! FOR MORE INFORMATION YOU
CAN CALL 1-492-463-4589. THIS IS FOR INFORMATION ONLY!!
REMEMBER-----WE DO NOT TAKE ADVERTISING OVER THE PHONE!!

00000000\2291P*****3-DIGIT 200
P013 0002/31 34576 #20 07/95-2

NO GUN DEALER LICENSE CONFUSION! Our FFL packages cost less, provide more & are guaranteed best. "The Basic", 9 prod., \$17.95; "Home Business", (14 prod.), \$35.95; "Complete", (20 prod.), \$62.95; Applications, instructions, Guide, ATF bound book, wholesalers & supplies in ea. above. Better elsewhere? No! We guarantee it (since '79). Call: Robin at 1-602-440-3492 for help. Order from: Metro Dealers, Drawer 2267-AN, Sun City, AZ 85372. (Never hidden shipping or "charge" fees). 10-3XX

OLD Time Montana Buffalo Hunts; Ken Allaman's Montana Adventures, 406-821-3763. 12-1XX

DON'T BE MISLED BY LOW PRICE! Get the best firearms record keeping system for your IBM compatible computer. Designed by a gun dealer for gun dealers. Easy to use, totally automated, prints your "bound book" pages completely filled out. Automatic invoicing, calculates sales tax, your handling charges, & much more. Customer data base, mail list & sorting by 473 number. With a capacity of over 1 billion records this is the most POWERFUL system you can buy. Order today! \$89.95 plus \$4. shipping: VISA/MC or personal check. Phoenix Computer Services, 4749 Southwood, Lincoln, NE 68512. 402-423-8003. 11-2XX

BEST FFL LICENSE KIT! Professional Gun Dealer Kit gives you Everything you need! License forms, Regulations, Professional Advice. Hundreds of Wholesalers, & Phoneal Moneyback Guarantee! \$4.95; Shooters Gunshop, PO Box 379, Hopwood, PA 15445. TF-3XX

GUN DEALER'S PROFITS! Everything needed. EASIEST LICENSE application kit, \$5; "Starting your own Gun Business", \$5.95; New, unique manual with complete BATF Gun Control Act laws, Commerce in Firearms, Collecting & Transportation (of firearms)-Class III, "Concealed" Weapons - make money with out inventory - Importation & much more, \$23.95; To sell guns the day your license comes, have on hand (BATF required) Firearms Dealer's Bound Book, \$5.75 & "Dealer's Guide", \$3; FAST START PKG. all above - (\$43.85 value), just \$34.85! License guaranteed or full (\$34.85) refund! (Never any hidden "fees" or hassles! Mohawk, 1400 Colorado St., C26, Boulder City, NV 89006. TF-3XX

G.I. NAVY FLIGHT JACKET or A-2 AIRFORCE, dark brown or black cowhide, Regular \$295, SALE \$159.95 + \$5. freight; 36-46 Long or 48R add \$20; SAN DIEGO LEATHER, 1121 Bay Blvd., Chula Vista, CA 91911. 1-800-232-6626. TF-3XX

PAYING \$50. - \$200. for BLACK LEATHER MOTORCYCLE JACKETS, 1940's - 1960's; 1-800-666-9553. 10-3XX

IVOREX GUN GRIPS: Looks Like - Feels Like!!!! Genuine Ivory!!!! Tyler's True-Fit Grips also in Stag, Pearl, Wood, Plastic, Rubber; Tyler's T-Grip & Trigger Shoe Outside Okla. Call Free: 800-654-8415. In Okla. Dial: 405-842-8044. TF-3XX

MAIL ORDER AUCTION of Antique Guns, Swords, Relics, Coins Send SASE for list with estimated prices: Auctions Unlimited, PO Box 3145, Gettysburg, PA 17325. TF-3XX

JAPANESE SWORDS, ARMOR, MATCHLOCKS, FINE ART WANTED. \$200. to no limit paid; Free evaluation sheet provided; Contact: David Popin, PO Box 354, Grant Park, IL 60940. TOLL FREE: 1-800-435-5119. TF-3XX

GUARANTEED BEST FFL LICENSE KIT! Professional Gun Dealer kit with everything you need: Forms, regulations, professional illustrated guide, hundreds of real wholesalers, phones, 10% discount catalog, money back guarantee. \$4.95; Sports Wholesalers, Drawer 608039, Orlando, FL 32860. 10-2XX

"THE people are not to be disarmed of their weapons. They are left in full possession of them." - Zachariah Johnson, 3 Elliot, Debates at 646.

ATTENTION SURVIVALIST! America is on the brink of economic collapse. Act Now! Learn about The New American Network. Subscribe to "Prophecy Newsletter". Private monthly publication for God fearing survivalist & gun owners. Sample pkg. \$3; Jericho Publications, PO Box 891285, Houston, TX 77289-1285. 12-1XX

FFL FAST START kit with application, instructions, wholesale sources, helps. \$5; "Starting Your Own Gun Business", \$5.95; No kit is a Fast Start Kit without providing a (BATF required) Firearms Dealer's Acquisition & Disposition Bound Book. Sell guns the day you get your license. No delay! Bound Book, \$5.95; Kit & Booklet, \$9.95; Kit & Bound Book, \$14.95; License guaranteed or refund on all you have paid; Mohawk, 1400 Colorado St., C27, Boulder City, NV 89006. TF-3XX

SURVIVALIST! Buy, sell, trade. Reach thousands. New publication, super low rates. Free information: JERICHO PRODUCTIONS, PO Box 891285, Houston, TX 77289-1285. SGN. 10-3XX

FFL MADE Easy License Kit Complete from Professionals, forms, regulations, applications, dealers guide, record book, supplies. One package, one price, \$80. 1-800-231-2275. TF-3XX

THE How To Make America Work Handbook! Hottest, New, 2nd Edition Laymans Guide! Just \$15. ppd; Am-Anon, PO Box 400, New Market, TN 37820. (615-475-4311 for COD's). 11-2XX

THE Best gun dealer software. On-line: Firearms inventory, customer & supplier data bases. Print reports & labels. Relational design reduces typing. Guaranteed. Free S&H, \$34.95 to: Sotano Software, Suite 900, 13908 Lee Jackson Hwy., Chantilly, VA 22021. For IBM Compatible PCs. Specify 5.25" or 3.5". 12-3XX

BEST FFL KITSM! Follow our instructions for FAST License Approval, \$5; BATF Approved Dealer Transaction RECORD BOOK, 11"x17" writing area, \$5; Personal Collection Book, \$5; Dome Tax Bookkeeping System, \$9.95; Sales Receipt Books, 3 for \$5; Firearms Bill of Sale Forms, \$5; Firearms Consignment Forms, \$5; Wholesale Directory, \$2. or \$8. on Self Addressed Mailing Labels; Firearm Price Tags, \$3; 240 price labels, \$2; Dealer Special, everything above for \$35. Add \$2.40 shipping to all orders. VISA, M/C, COD accepted; Sandhill Supply, PO Box 336, Dept. M1, Roswell, NM 88202. 505-623-3222. TF-3XX

"THE best we can hope for concerning the people at large is that they be properly armed." - Alexander Hamilton, The Federalist Papers at 184-8.

LEARN GUN REPAIR at home in spare time. Start your own home business. Make money even before you graduate. No previous experience necessary. SPECIAL TOOLS, charts, exploded views all included. We help you get your FFL. Accredited, VA/GI approved since 1946. Learn how to start making money doing what you enjoy NOW! Call: 602-990-8346 or write today for FREE FACTS! Modern Gun Repair School, Dept. GCHI02, 2538 N. 8th St., PO Box 5338, Phoenix, AZ 85010. 10-3XX

QUICKEST FFL! Guaranteed Kit gives you forms, instructions, regulations & list 250 Wholesalers! \$4.95; Business Consultants, PO Box 1232-S, Uniontown, PA 15401. TF-3XX

INDOOR Shooting Range Sale: Decelerator type, 12+ lanes, stops .30-06, \$120,000, value: \$52,000; Delivery/Assembly arranged; Information: 804-479-4268, Photos, \$10; Serious Inquiries with Cash Only! 10-2XX

WARNING: FFL's Legal traps, dangers, loopholes. Free catalog, \$6; Law Publishers, 420 S. Berendo, Los Angeles, CA 90020. 10-2XX

MAADI - GRIFFIN 50 CALIBER COUNTER - SNIPER/MATCH RIFLE. Superb accuracy 1/4 MOA. 0-2500 yds, effective range, very low recoil, \$2595. Send SASE to: Bob Stewart, 500 S. Main (16), Springville, UT 84663. TF-3XX

"THE Right of the people to keep and bear...arms shall not be infringed. A well regulated militia, composed of the people, trained to arms, is the best and most natural defense of a free country..." James Madison, 1 Annals of Congress 434 (June 8, 1789).

GYRO-JET™ ROCKET PRODUCTS by Co-Inventor, BATF legal re-review finally completed. See Gyro-Jet ads in this issue under Guns, Handguns, Rifles, Amm. Books, Antiques & Miscellaneous. Send a \$5. bill now for complete Gyro-Jet™ Rocket Information Kit: See main Gyro-Jet™ Ad under GUNS FOR SALE this issue. XX

JAPANESE SWORDS, JAPANESE SWORDS. Paying \$300. & up. Matchlock guns, arms armor. Japanese/Korean pottery & other Japanese Works of Art: Contact: Ken Tillman, PO Box 808, Forney, TX 75126. Toll Free: 1-800-933-1600. TF-3XX

* USAS - 12 SHOTGUN * 12 ga., semi auto, gas operated. Includes: (2) 10 rd. box mags. \$1195; Extra 10 rd. mags. & 20 rd. drums available: KY IMPORTS, INC., 502-244-4400. TF-3XX

BEST FFL KITs, Record Books and DEALER SUPPLIES. COD, VISA, M/C; 505-623-3222. TF-3XX

WANTED: OLD PHOTOGRAPHS, (1850-1930): Indians, Cowboys, Wild West, mining, railroads, soldiers, famous events, etc. Cased, loose or mounted on cardboard; 1-800-666-9553. 10-3XX

ATTENTION SURVIVALIST! Hurry! Don't get left out of our 1993 directory. Buy, sell, trade, network, communicate. Closing date Oct. 30th, 1992. Free Information: Jericho Publications, PO Box 891285, Houston, TX 77289-1285. 11-1XX

FREE FFL application information when purchasing Disadvantages & Pitfalls of having an FFL. \$5; Could save you thousands; BGS, Box 73, Gaines, FL 16921. 11-1XX

JAPANESE SWORDS, MATCHLOCKS, ARMOR WANTED BY COLLECTOR. \$500. to \$250,000. + each! BOB LIGHTNER, Box 320042, Cocoa Beach, FL 32932-0042. 1-407-783-0314. TF-3XX

FOURTH REICH! German armies march into American cities. Read "Germany in Prophecy", \$3; Jericho Productions, PO Box 891285, Houston, TX 77289-1285. 10-3XX

GUN DEALER LICENSE. GUN DEALER LICENSE. GUN DEALER LICENSE.

Confused? Call Us Today. Speak with Bob or Jennie. FFL KITs: (805) 687-1416. SUPPLIES: (805) 687-1416. Free Help: (805) 687-1416. (Beware Bad Imitations). DEALER PACKAGES ©:

(Copyrighted Products - Not Available Elsewhere), "Basic Package", \$19.95; "Home-Bus. Package", \$39.95; "Complete Package", \$69.95; (FFL Application, Guide, Record Book, Custom Supplies, Wholesalers, and more in each above). Dealer Shirt & Hat, \$18.95; Gunsmith Package, \$11.95; Reloader Package, \$12.95; VISA, M/C, Check, COD; RK Enterprises, (Since '81), 2618 Las Positas Road, Santa Barbara, CA 93105. TF-3XX

BEST FFL KITs! Follow our instructions to Fast Gun license approval, \$5; BATF approved dealer record book, actual 11x17 pgs. \$5; Personal gun collection book, \$5; Firearms Bill of Sale forms, \$5; Professional Dealer Tax Bookkeeping System, \$7.95; Firearms consignment forms, \$4; Wholesale Directory, \$2. (15. on self stick labels! Fire arm price tags, \$3; 250 price labels, \$2; 3 Sales books, \$5; All Above Just \$30. FREE Shipping! NO hassles! Sport Wholesale, Drawer 608039, Orlando, FL 32860. 10-3XX

This study will explore two questions regarding kitchen-table dealers:

1. Do kitchen-table dealers as a rule follow the advice given above and obey local, state, and federal laws?
2. In what ways do kitchen-table dealers serve as a pipeline from the manufacturer and wholesaler directly to the criminal, or contribute in other ways to firearms abuse?

One group with clear and definite opinions on the problems created by the kitchen-table dealers (and the role of ATF in abetting them) is composed of their natural enemies—gun store owners, the "stocking" dealers.

Stocking Dealers Versus the Basement Bandits

Kitchen-table dealers are held in contempt by most in the industry, especially by the stocking dealers, who refer to their rivals as "basement bandits." This animosity is not surprising: If the stocking dealers are Macy's, the kitchen-table dealers are the sidewalk vendors peddling the same goods at half the price. Stocking dealers' animosity toward other Type 1 FFLs stems from two main complaints.

1. Kitchen-table dealers can undersell gun stores and cause them financial pain (despite some stocking dealers' protestations to the contrary).
2. Kitchen-table dealers consistently violate gun laws and contribute to firearms abuse, yet the blame is laid at the easily found doorstep of the stocking dealer.

Bill Bridgewater is the executive director of the National Alliance of Stocking Gun Dealers (NASGD) and owns the Croatan Rod and Gun Shop in Havelock, North Carolina. Membership in the NASGD is open to, "Any dealer in full compliance with federal/state/county/city licensing, sales tax and zoning requirements...."^d

Regarding ATF issuance policies, Bridgewater says, "Think seriously about a licensing scheme that says it's unlawful if you're not in compliance with state and local law. Then think about an agency that floods the nation with licenses that are not in compliance with state and local

^dIn the interview for this study, Bridgewater stressed that his comments were his own as a stocking gun dealer and did not officially represent the views of the NASGD.

laws. Do you really honestly believe they [ATF] regulate the industry? Here in this state, if you want to get ATF's attention, go and burn a building down." Bridgewater notes that the last time he looked, ATF had issued nearly 6,300 FFLs in North Carolina while only 370 gun dealers were legally licensed by the state.

Says Bridgewater, "ATF, they'll issue to anyone who fills out a Form 7 and sends them \$10 a year. Well, they've put crooks in the business of selling firearms." Bridgewater dismisses the argument that stocking gun dealer animosity towards kitchen-table dealers is based on price competition, stating, "I don't view them as a threat except as they provide ammunition for...[gun control activists]...intent on shutting the whole industry down. There's one set of laws applied to people who are legitimate [stocking gun dealers] and who [as a result] are routinely inspected. There's another set of laws that apply to everybody else...." Regarding issuance inspections, Bridgewater says:

I don't know one [kitchen-table dealer] in North Carolina that's been inspected in five years. They [kitchen-table dealers] don't have to comply with state and local laws—the majority are used exclusively to bypass compliance with state and local laws, and I think that's going to continue. It's absurd that we've spent the last five years with you [gun control] folks...[focusing on point-of-sale measures such as a national waiting period geared]...to someone who wants to buy one gun when you can send in \$10 [per year and deal in them].

To limit unlawful dealers Bridgewater suggests, "First, when an individual fills out a form for licensing by ATF, he should be fingerprinted by the local police department, with a front and side picture. And then his application should be routed through the local police for comments..., then forward it to ATF who will then give it to the FBI for a complete background investigation."

Regarding how this plan—which is in many ways similar to federal licensing procedures for private machine gun ownership—would be received by law-abiding dealers, Bridgewater says, "I don't think the legitimate gun dealers would care one iota." He doesn't however, hold up much hope for change, "This time two years from now they'll be another 25,000 licenses, and they'll [ATF] have even less of an idea of what's going on in the industry. I don't know what their game is. I'm totally at a loss to understand it."

At the 1992 SHOT (Shooting Hunting and Outdoor Trade) show, the annual trade show for the firearms industry, stocking dealers voiced their concerns to ATF regarding the kitchen-table dealers. The occasion was a seminar held at the show titled "The BATF—Issues and Answers." The meeting was described as a vehicle to, "Learn what is new and what you should be doing to comply with the law. Plus record keeping, inspections, Federal Firearms Licenses and more."¹³

After a presentation by then-ATF Firearms and Explosives Division Chief Robert Daugherty, Wayne Ashling, a stocking gun dealer from Homestead, Florida voiced a complaint common among the attendees:

You've spent a lot of time here discussing minute regulations that you hope to enforce, but we have a very busy South Florida region in your office down there and they have told me frankly they don't have the manpower to enforce 90 percent of what you've just told us. I have repeatedly been involved in situations down there [that] ATF simply does not even recognize. Some of it concerning [gun] shows, where..flagrant violations...are happening on a regular basis. And where do we [stocking dealers] go? The state attorney's office is not interested at all. They refer me to you. And when I go to building and zoning, they refer me to you. Seventy-five percent of our dealers in South Florida are not storefront operations—at least that many.

Following Ashling's statement, Daugherty explained, "We do not have the authority to revoke a license because somebody does not have a storefront operation, or is not operating between the hours of eight and five. They need to give business hours, [but] they can be seven to 11 at night. One to five in the morning. We may not like that, but that's a provision that's set up in the statute." Daugherty's only suggestion was that Ashling band together with like-minded stocking dealers and find a sympathetic member of Congress to champion their cause against the kitchen-table dealers. Dismissing this suggestion, Ashling asked Daugherty, "Is there a lack of availability of manpower to enforce these things, or is it just not a high degree of interest?"

Even the National Rifle Association (NRA), which tends to view all participants in America's gun industry as firsts among equals, takes a less than enthusiastic view of the kitchen-table dealers. At the 1992 SHOT show NRA staffers enthusiastically promoted a new NRA/National Shooting Sports Coalition (NSSC) program that would use gun dealers to sign up customers as new NRA members. However, the program is open only to stocking dealers.

As will be shown later, Bridgewater's assertion that kitchen-table dealers routinely operate in defiance of state and local law is true, as is his charge that ATF is either unwilling or incapable of doing much about it. A more serious question to be addressed, however, is determining which of the two Type 1 FFL dealers (stocking or kitchen-table) is responsible for the abundant supply of guns contributing so effectively to crime and violence in America. Not surprisingly, the answer—as will be detailed later—is that it is both.

Engaged in the Business

Ironically, although McClure-Volkmer is often cited as the primary reason for ATF's regulatory laxity, the law empowers the agency—in fact requires the agency—to deny FFLs to those not legitimately "engaged in the business" as defined by the law's modifications to the violations section of the Gun Control Act of 1968 (GCA). In fact, ATF is not even supposed to issue FFLs to persons who do not meet a specified level of business activity.

The level of activity required to be considered "engaged in the business" under McClure-Volkmer and to legitimately hold an FFL is defined in the violations section of 18 U.S.C.

§ 921(a)(21)(C) as:

a person who devotes time, attention and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges or purchases for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.

This relatively high threshold was designed to protect gun enthusiasts who made occasional sales from prosecution by ATF for engaging in the business of selling firearms without a license. Prior to McClure-Volkmer, the GCA did not statutorily define "engaged in the business" for the purposes of prosecuting those dealing in firearms without a license. Instead, the courts defined it as the devotion of some time, attention, and labor to the sale of firearms for profit or as a regular course of conduct carried on over a period of time or at least on more than one or two related occasions.⁶ As a result, many "hobbyists" feared prosecution by ATF for dealing in firearms without a license.

While the pre-McClure-Volkmer definition of "engaged in the business" was still in force, the National Coalition to Ban Handguns (NCBH)⁷ filed suit against ATF in 1980. NCBH argued that FFLs should be restricted to only those persons who planned to operate bona fide commercial enterprises and should not be granted to those planning to engage in occasional sales or purchases. In its suit, NCBH cited § 923 of the Gun Control Act of 1968, which outlined the conditions an applicant must meet to be entitled to a Type 1 FFL. The last condition required that the applicant

⁶See e.g. *United States v. Tarr*, 589 F.2d55 (1st Cir., 1978).

⁷The National Coalition to Ban Handguns is a 501(c)(4) lobbying organization founded in 1975 that works to ban the private sale and possession of handguns in America. In 1990 the organization changed its name to the Coalition to Stop Gun Violence.

have "premises from which he conducts business subject to license under this chapter or from which he intends to conduct business within a reasonable period of time [emphasis added].⁹ The U.S. Court of Appeals for the District of Columbia Circuit found in 1983 that the term "conducts business" in the applications section of the GCA was indistinguishable from the term "engaged in the business"^h contained in its violations section.

Like the term "engaged in the business," at the time the term "conducts business" was not defined in the GCA. The court reviewed cases of those who had been found guilty of selling firearms without a license under the violations section of the GCA. After review, it found that the lower threshold of activity ("devoting some time and attention") had been deemed sufficient to qualify as a violation of the criminal provisions of the GCA. Recognizing this, the court held that the same standard ("devoting some time and attention") should be applied to those applying for a license. The court held, "The clear implication is that whatever constitutes engaging in the business *can be* licensed so long as the requirement of the licensing provisions are complied with. Since, therefore, the case law under § 922(a)(1) is applicable, it suffices to meet the business requirement of § 923(d)(1)(E) that the applicant devote some time attention and labor to the selling of firearms for profit."

NCBH, having lost its suit, turned its attentions elsewhere. Yet the court's finding that the term "engaged in the business" in the violations section of the law was synonymous with the term "conducts business" in the applications section of the law would give NCBH the opportunity it was looking for three years later following the passage of McClure-Volkmer. When Congress approved the new, higher threshold for determining who was "engaged in the business" it also raised the threshold for those who should be able to initially obtain the license.

Following passage of the law, NCBH submitted comments on the final rule implementing the changes made to the GCA by McClure-Volkmer. NCBH argued that the new McClure-Volkmer definition of "engaged in the business" now constituted a requirement that would have to be met before ATF could issue a license. ATF agreed with this interpretation in a letter dated June 14, 1988 (see Figure 2-4). In response to NCBH's comments, Wayne Miller, Chief of the Firearms and Explosives Operations Branch wrote, "We would certainly agree that only those who meet the level

⁹§923(d)(1)(E).

^h§923(a) and 922(a)(1).

Figure 2-4



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

JUN 14 1988

C:F:F:DEC
923(d)(1)(e)

National Coalition to Ban Handguns
100 Maryland Avenue, NE
Washington, DC 20002

Dear Ms. Rand:

This is in response to your letter of April 5, 1988, discussing the recent final rule containing regulations to implement firearms legislation passed by Congress in 1986. Specifically, you called to our attention that in our response to comments received we had not directly addressed the substance of the NCBH comment regarding the requirement of "being engaged in business" or having the intent to "engage in business" as a qualification for receipt of a firearms license or renewal of an existing license.

We would certainly agree that only those who meet the level of activity or intend within a reasonable length of time to meet the level of activity described in the statutory definition of "engaging in business" are qualified to be licensed as dealers providing they meet all the other statutory criteria.

Failure of a licensee to conduct business during the three year term of his license would be strong evidence, barring extenuating circumstances, that the licensee is not eligible for license renewal.

Sincerely yours,

A handwritten signature in cursive script, reading "Wayne Miller", is positioned above the typed name.

Wayne Miller
Chief, Firearms and Explosives
Operations Branch

of activity or intend within a reasonable length of time to meet the level of activity described in the statutory definition of 'engaging in business' are qualified to be licensed as dealers providing they meet all the other statutory criteria."

Although the phrase "intend within a reasonable length of time" may at first glance appear to be a gaping loophole left open by ATF to avoid restricting dealer licenses, in the letter the agency agreed that the three-year term of the license constituted a reasonable length of time for the licensee to become fully engaged in the business. In the end, even though the level of activity necessary to qualify for a dealer's license was changed by congressional action and ATF agreed with this interpretation, the agency took no steps to implement the change.

As a result, NCBH filed a petitionⁱ that year with ATF to amend the regulations implementing the 1968 Gun Control Act (see Figure 2-5). The petition requested that ATF amend its regulations implementing the licensing approval and renewal procedures to make it clear that the new statutory definition of "engaged in the business" applied to licensing. It also requested that license application forms be amended to inform applicants of the new level of activity required. The petition was supported by a letter to ATF Director Stephen Higgins signed by 20 members of the U.S. House of Representatives. The letter stated in part, "In 1986, Congress amended the Gun Control Act of 1968 to restrict the issuance of dealer licenses to people 'engaged in the business' of selling firearms . . . These changes eliminated the occasional seller as a person eligible for a federal firearms license." The letter requested that ATF grant the petition and implement the regulatory changes requested. Despite ATF's prior concurrence with NCBH's interpretation of the statutory changes, the petition was denied in December 1988 (see Figure 2-6).

If ATF had strictly enforced the "engaged in the business" requirement contained in § 923(d)(1)(E) it could have limited issuance of licenses to new applicants who expressed an intent to "engage in the business" within a reasonable length of time, and renewed the licenses of only those applicants able to demonstrate that they were indeed "engaged in the business." Such actions would have aided ATF enforcement by drastically reducing the hundreds of thousands of FFLs held by kitchen-table dealers. ATF chose to ignore this regulatory option.

ⁱThe petition was filed by Kristen Rand (one of the authors of this study) on behalf of the National Coalition to Ban Handguns.

PETITION FOR RULEMAKING

This is a petition for rulemaking in accordance with procedures set forth in 27 C.F.R. section 71.41 for rulemaking under the Gun Control Act of 1968, 18 U.S.C. section 921 et seq., and the 1986 amendments thereto contained in the Firearm Owners' Protection Act, public law 99-308 (hereinafter "The Act"), to amend 27 C.F.R. section 178.47 (b)(5) and to otherwise provide notice to applicants for and holders of Federal Firearms Licenses that the level of activity required to be carried on or intended to be carried on by dealers, in order to be eligible for a license, has increased.

PETITIONER

Petitioner is the National Coalition to Ban Handguns, 100 Maryland Ave. N.E., Suite 402, Washington D.C. 20002. Please address all communications regarding this petition to the above address, Attn: M. Kristen Rand.

The National Coalition to Ban Handguns (NCBH) is a coalition of 35 religious, professional and political member organizations with the common goal of banning the private possession of handguns in the United States. Petitioner is an interested person within the meaning of 27 C.F.R. section 71.41(c) as petitioner was named plaintiff in the case of National Coalition to Ban Handguns v. Bureau of Alcohol, Tobacco and Firearms 715 F.2d 632 (D.C. Cir. 1983).

NECESSITY FOR AN ORDER

In order to be eligible for a federal firearms license, entitling the holder to ship and receive firearms in interstate commerce, an applicant must meet the criteria set forth in 18 U.S.C. section 923 (d)(1)(A) through (E). Section 923(d)(1)(E) requires that an applicant have, in a state, premises from which he "conducts business or from which he intends to conduct business within a reasonable period of time." The term "conducts business" is not statutorily defined but has been judicially interpreted to include the devotion of some time, attention and labor to the selling of firearms for profit. Stone v. District of Columbia, 198 F.2d 601, 603 (D.C. Cir. 1952).

The United States Court of Appeals for the District of Columbia held in 1983 that there is no distinction between the term "conducts business" as used in section 923 (d)(1)(E) and the term "engaged in the business." Therefore, whatever the courts construed as "engaging in the business" was a sufficient level of activity to meet the "conducts business" requirement of section 923 (d)(1)(E) and would support issuance of a dealer's license. NCBH v. BATF 715 F. 2d 632 (D.C. Cir. 1983).

Cases establishing the level of activity necessary to constitute engaging in business without a license hold that

Figure 2-5

those engaged in "a regular course of conduct carried on over a period of time or, at least, on one or more than one or two unrelated occasions," who do not obtain a federal firearms license could be prosecuted for engaging in the business of selling firearms without a license. United States v. Tarr, 589 F.2d 55 (1st Cir. 1978).

In 1986, Congress, dissatisfied with the definition being given the term by the courts, saw fit to statutorily define the term "engaged in the business." The intention of Congress was to raise the level of activity necessary to be considered to be "engaged in the business." Because the terms have been held to be equivalent, the definition assigned by Congress to the term "engaged in the business" applies equally to the term "conducts business."

Therefore, the redefinition of the term "engaged in the business" raises the level of activity that a licensee must engage in to support an application for renewal as well as that level of activity that new applicants must intend to engage in in order to qualify for a license.

The Bureau of Alcohol, Tobacco and Firearms has adopted this interpretation, and agrees that "only those who meet the level of activity or intend within a reasonable length of time to meet the level of activity described in the statutory definition of "engaging in the business" are qualified to be licensed as dealers providing they meet all other statutory criteria." Letter from Wayne Miller, Chief, Firearms and Explosives Operation Branch to M. Kristen Rand, Attorney, National Coalition to Ban Handguns, June 14, 1988 (attached hereto as "Exhibit A").

Although the level of activity necessary to qualify for a dealer's license has been changed by congressional action, the agency has taken no steps to implement this change or to inform applicants of the change. Such notice is necessary since only those familiar with the applicable case law would be aware that the new definition of "engaged in the business" redefines the term "conducts business" for licensing purposes.

Fundamental notions of fairness and due process require that applicants for new licenses and for renewal be informed that the level of activity required to support an application for a federal firearms license has increased. New applicants must be made aware that intending to engage in the level of business that sufficed to qualify for a license prior to the 1986 amendments is no longer sufficient. Current license holders have acquired a property interest in holding a federal firearms license and minimum due process requires that they be notified that failure to engage in the level of activity described in the new statutory definition of "engaged in the business" will result in denial of application for renewal. Board of Regents v. Roth, 408 U.S. 564, 92 S. Ct. 2701 (1972), In re Carter, 192 F. 2d 15 (D.C. Cir. 1951), cert. denied, 342 U.S. 862 (1951), Jordan v. United Insurance Company of America, 289 F. 2d 778 (D.C. Cir 1961). The agency must act to provide applicants with adequate notice of the change in licensing

Figure 2-5

requirements. To fail to do so would leave the agency vulnerable to claims by rejected applicants that their due process rights have been violated.

REQUEST FOR RULEMAKING

For the reasons stated above, petitioner requests that the agency initiate rulemaking proceedings to amend 27 C.F.R. section 178.47 (b)(5) by replacing the phrase "conducts business" with the phrase "engages in the business" after the words "premises from which he . . .". Petitioner further requests that the phrase "conducts such business" be replaced with the phrase "engages in such business" after the words "from which he intends to . . .". In the alternative, petitioner requests that the agency insert some parenthetical reference after the phrase "conducts business" designed to provide notice that the term "conducts business" is to be interpreted as synonymous with the statutory definition of "engaged in the business."

Petitioner furthermore requests that that 27 C.F.R. section 178.45 be amended to read, "If a licensee intends to continue a business or activity which meets the requirements of 178.47(b)(5) described on a license issued under this part . . .". This change will ensure that applicants for renewal will be notified of the level of activity necessary to be eligible for renewal.

Petitioner also requests that the agency amend the current application form for a federal firearms license in a manner consistent with petitioner's previously stated requests calculated to provide notice to applicants that the level of activity required to support issuance of a dealer's license has been increased by congressional action.

Because this rulemaking would result only in codification in agency regulation of a de facto change in the applicable law, and the promulgated rules would function only as an expression of the agency's interpretation of the statute, petitioner submits that a notice and comment period is not required as the rule(s) would be interpretive pursuant to 5 U.S.C. section 553(b)(3)(A) of the Administrative Procedures Act, Chamber of Commerce of U.S. v. Occupational Safety and Health Administration, 636 F.2d 464 (D.C. Cir. 1980), Alcaraz v. Block, 746 F. 2d 593 (9th Cir. 1984).

Petitioner offers in support of the petition for rulemaking the attached document labeled "Exhibit A".

Respectfully submitted,

M. Kristen Rand, Attorney
on behalf of
National Coalition to
Ban Handguns

Figure 2-6



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

DEC 15 1988

CC-37,274 FE:TGT

M. Kristen Rand, Esq.
National Coalition to Ban Handguns
100 Maryland Avenue, N.E.
Washington, DC 20002

In re: Petition to Amend 27 C.F.R. § 178.47(b)(5)

Dear Ms. Rand:

This is in response to your petition for rulemaking to amend the regulations implementing the Gun Control Act of 1968 (GCA), as amended. Specifically, the petition requests that 27 C.F.R. § 178.47(b)(5) be amended to provide notice to applicants for Federal firearms licenses and holders of current licenses that the level of activity required for eligibility for a Federal firearms license was increased by the Firearms Owners Protection Act of 1986 (FOPA). The petition also requests that ATF amend the application form for a license in such a way that notice is given to applicants concerning the level of activity required for issuance of a dealer's license.

Final regulations implementing the FOPA were published in the Federal Register on March 31, 1988. 53 Fed. Reg. 10480 (March 31, 1988). The regulations implementing 18 U.S.C. §§ 921 and 923 include a provision at 27 C.F.R. § 178.11, defining "engaged in the business," which is virtually identical to the definition of the same term in section 921(a)(21) and a provision at 27 C.F.R. § 178.47(b)(5) which is virtually identical to the licensing requirements of section 923(d)(1).

Senate Report No. 583, 98th Cong., 2d Sess. (1984), to accompany S. 914 which eventually became the FOPA, indicates that Congress' concern in adding a definition of "engaged in

- 2 -

M. Kristen Rand, Esq.

the business" to section 921 was to preclude the prosecution of hobbyists whose firearms transactions were for the purpose of enhancing or liquidating a personal firearms collection. S. Rep. No. 583, 98th Cong., 2d Sess. at 7, 8 (1984). The Senate Report also points out Congress' concern that judicial interpretation of the phrase "engaged in the business" have applied standards which are less than clear and which could be applied to a hobbyist to whom profit is a secondary objective. *Id.* at 8. The report states that the addition of the definition of "engaged in the business" to section 921 was added to make it clear that licensing requirements "do not extend to hobbyists who make occasional sales, exchanges or purchases of firearms for the enhancement of their personal collection, nor to those who occasionally do gunsmithing work." *Id.*

Thus, the legislative history of section 921(a)(21), defining the term "engaged in the business" indicates that Congress was primarily concerned with easing licensing requirements rather than imposing more stringent licensing criteria. Consequently, we cannot agree with your contention that the effect of the amendment was to "raise" the level of business activity necessary to qualify for a firearms license. None of the judicial decisions interpreting the term prior to the 1986 amendment required a minimum number of firearms transactions or a specific level of activity in order for a person to be subject to the licensing requirement for a Federal firearms license. Since there was no quantifiable level of activity prior to 1986, and since the statutory definition added in 1986 does not specify a particular level of activity, it is difficult to see how the level of activity has been "raised." As previously stated, the legislative history of the 1986 amendments indicates that Congress' primary concern in adding the definition of "engaged in the business" was to make it clear that the licensing requirement does not apply to hobbyists or collectors who make intermittent sales and purchases to enhance their personal firearms collections. Rather, Congress wished to clarify that "engaged in the business" does not include this type of activity, but did not go so far as to specify the number of transactions constituting "engaged in the business."

We are in agreement with the statement in your petition that there is no difference in meaning between the terms "engaged in the business" as used in section 923(a) and "conducts

Figure 2-6

- 3 -

M. Kristen Rand, Esq.

business" as used in section 923(d)(1). Both the Secretary's mandate to issue a license under section 923(d)(1) and the requirement that a person be licensed under section 923(a) hinge upon the fact that the applicant is "engaged in the business" as that term is defined in section 921(a)(21). In this regard, we would point out that section 923(d)(1)(E) requires that the applicant have in a State "premises from which he conducts business subject to license under this chapter. . . ." (Emphasis added.) In order to determine what persons are "subject to license under this chapter," one must refer back to section 923(a). Thus, the Secretary is not required to issue a license under section 923(d)(1) unless the applicant is subject to license under section 923(a). Congress has, therefore, incorporated by reference the "engaged in the business" language of section 923(a) into section 923(d)(1).

In conclusion, we see no need to amend the regulations or the application form at this time. Therefore, we must deny your petition.

Sincerely yours,



Associate Director
(Compliance Operations)

Section Three: Class III Dealers

In April 1986 the National Rifle Association's crowning legislative achievement—passage of the McClure-Volkmer bill—was somewhat soured when in the final minutes of House debate an amendment was approved by a voice vote banning the future sale and possession of machine guns for civilian use. The measure restricted the sale of machine guns manufactured after 1986 to police and military and was retained in the final version of the bill signed into law by President Ronald Reagan that year.

Not surprisingly, the American machine gun industry worked feverishly during the time between the bill's signing and its enactment to produce machine gun receivers that could be registered as machine guns with ATF for sale to the general public after the ban went into effect. Less noticed was that the number of ATF-licensed machine gun dealers doubled from 2,696 in 1985 to a record-high 5,427 in 1988.

Yet this McClure-Volkmer inspired jump was just part of a long-term upward trend. From 1980 to 1987 the number of machine gun dealers skyrocketed from 920 to 5,427—a 490 percent increase (see Figure 3-1). Machine gun dealers are Type 1 FFLs who have paid an annual Special Occupancy Tax (SOT) allowing them to deal in weapons regulated under the National Firearms Act (NFA). Such dealers are known as Class III dealers.

This remarkable jump did not likely stem from an increased number of people wanting to deal in a valuable commodity. It in fact resulted from the discovery by machine gun enthusiasts that an FFL was a cheap and easy way to own an increasingly limited commodity with a minimum of red tape and expense (currently \$500, in 1986 the SOT was \$200). It is far easier to become a dealer in machine guns than to obtain a license to own a fully automatic weapon as an individual. Under the National Firearms Act of 1934 (NFA), to legally possess a machine gun, sawed-off shotgun, silencer, or "specialty" weapon the applicant must be fingerprinted, photographed, undergo a fingerprint background check, receive local police approval, wait approximately three months, and pay a \$200 tax.

Figure 3-1

NATIONAL FIREARMS ACT
SPECIAL OCCUPANCY TAX (SOT) CLASS III (MACHINE GUN) DEALERS

Fiscal Year	Number of SOTs	Change From FY 1980	% Change From FY 1980	Change From Prior Fiscal Year	% Change From Prior Fiscal Year
1980	920				
1981	1,192	272	+ 30%	272	+30%
1982	1,758	838	+ 91%	566	+47%
1983	2,306	1,386	+151%	548	+31%
1984	2,678	1,758	+191%	372	+16%
1985	2,696	1,776	+193%	18	+ .6%
1986	3,297	2,377	+258%	601	+22%
1987	5,427	4,507	+490%	2,130	+65%
1988	3,673	2,753	+299%	-1,754	-32%
1989	2,977	2,057	+224%	- 696	-19%
1990	2,827	1,907	+207%	- 150	- 5%

Source: Primary figures from ATF Public Affairs Office

Yet to become a dealer, an individual must merely obtain a Type 1 FFL and then pay an annual Special Occupancy Tax (SOT) of \$500. Aside from the standard background check for the Type 1 FFL, no additional checks are conducted on the prospective automatic weapons dealer. An applicant may pay the SOT at the same time he applies for his Type 1 FFL.

Following passage of McClure-Volkmer, many police departments—in possession of newly valuable machine guns—sold their old stocks to buy new weapons. Noted one ATF staffer, "Collectors decided that they wanted to buy the guns so they got their licenses so they could buy the guns and not pay the transfer tax. [Police] sold them to these NFA people who were, in essence, collectors. All they [the licensees] were doing was evading the tax."

A Class III dealer can buy, sell, and trade regular firearms, machine guns, silencers, short-barrelled rifles and shotguns, and any other firearm that falls under the National Firearms Act of

1934—subject to federal, state, and local laws. A Class III can also receive any registered NFA weapon other than a destructive device without a law enforcement signature, photographs, or fingerprints.¹⁴ Most recent figures available list 2,259 machine gun dealers in America (see Figure 3-2).

Figure 3-2

MACHINE GUN DEALERS BROKEN OUT BY STATE					
State	Number of Dealers	State	Number of Dealers	State	Number of Dealers
AL	34	KY	23	ND	4
AK	31	LA	59	OH	134
AZ	91	ME	9	OK	47
AR	19	MD	49	OR	47
CA	82	MA	40	PA	109
CO	39	MI	57	RI	6
CT	77	MN	17	SC	5
DE	0	MS	21	SD	5
DC	2	MO	57	TN	39
FL	203	MT	10	TX	291
GA	82	NE	13	UT	13
HA	0	NV	38	VT	9
ID	9	NH	21	VA	77
IL	89	NJ	21	WA	9
IN	60	NM	16	WV	17
IA	16	NY	22	WI	32
KS	19	NC	79	WY	10
Total		2,259			

Source: *Machine Gun News*

The Class III license offers three loopholes:

1) It can be used to circumvent the authority of local law enforcement. For an individual to legally obtain a license to own a machine gun under the National Firearms Act, it is necessary for local law enforcement to grant approval—something many police officials are reluctant to do. In his book the *Machine Gun Dealer's Bible*, a frank, how-to book for those wishing to enter the "Class III World," author Dan Shea writes:

Many...dealers are people who live in an area where they can't get a signature.... This is getting much more common, and these anti-gun public servants are increasingly willing to face off in court. The enthusiast who is effectively forbidden to own an NFA firearm by the inability to get a signature... will sooner or later come to the realization that dealers don't have to get signatures, or fingerprints, or photographs. This flash of hope is well founded, and the source of many new Class 3 dealers.¹⁴

2) It allows dealers access to new, post-1986 "dealer-sample" machine guns that can be held for the lifetime of the license. Although post-1986 machine guns are not available for individual ownership, Class III dealers can possess post-1986 fully automatic weapons as sales samples with a letter from a law enforcement agency requesting a demonstration. The samples may be kept for the life of the license. With a law-enforcement letter, Class III dealers may also possess as dealer samples short-barreled (sawed-off) shotguns, short-barreled rifles, silencers, and "any other weapons." The weapons may be kept by the dealer once he ceases to conduct business, if allowed under state or local law.¹⁵

3) Upon allowing their SOT status to lapse, machine gun dealers may transfer all pre-1986 dealer samples to their personal collection without paying the \$200-per-weapon transfer tax or undergoing the more rigorous background check required for machine gun sales to individuals.

The standards set by ATF to qualify as a "legitimate" Class III dealer are low and easily met.

Writes Shea:

Private collectors who have chosen to get Class 3 licensing to enhance a personal collection, whether it's to avoid the \$200 transfer tax, to by-pass a chief of police who just won't sign, or to get Pre-86 dealer samples to keep, are breaking the law. I strongly recommend that people in these positions buy some inexpensive machine guns, AOW's [Any Other Weapon] and silencers, then advertise them and at least try and sell to other dealers. Get some transfers on your books, and some advertising expenses. Keep the license for three or four years.¹⁶

Adds Shea, "Hobby dealers should note that the expenses from having a table at an occasional gun show are great proof of business deductions to prove you are in the business."¹⁷

Machine Gun Dealers: An American Tribe

America's legal machine gun owners are a close-knit group who see themselves stigmatized not only by the general public, but by most gun owners as well. In the *Machine Gun Dealer's Bible*, author Dan Shea acknowledges that "quite a few people think we're borderline psycho outlaws." Yet to Shea, machine gun enthusiasts are "really just a bunch of people who are enjoying ourselves in a non-threatening way. We're the crazy old uncle that the gun world likes to keep in its closet

when company comes to visit."¹⁸

Shea's positive view of legal "full-auto enthusiasts" is shared by Linda Farmer, head of the all-volunteer National Firearms Association (NFA). Says Farmer, whose association shares an acronym with the National Firearms Act, "If a real estate person said to me that every person in this neighborhood was a machine gun owner, I know they'd mow their grass, wouldn't beat their wives on the weekend, and wouldn't get drunk and run over my mailbox. I'd buy a house in second."¹⁹

Farmer's view is correct in at least one respect: the majority of machine-gun crime is committed with weapons illegally converted from semi-automatic to full-auto—not by machine guns possessed by Class III dealers or individual licensees. In 1989 National Rifle Association lawyer Richard Gardiner went so far as to state that "since 1934 no legally owned fully automatic firearms have ever been used in the commission of a violent crime by civilians." Gardiner was wrong. Prior to 1990 ATF had told reporters that agency "old-timers" remembered a few cases, but nothing recent. The story changed that year when ATF acknowledged that instances of legal machine gun misuse did exist and were not uncommon. (Regarding the previous explanation, an ATF staffer acknowledged that in essence the agency had lied.²⁰)

ATF claims, however, that under the National Firearms Act, such cases of legal machine gun misuse by licensees is personal tax information and cannot be divulged. Therefore, the amount and nature of misuse involving legal machine guns owned by licensees or Type 1 dealers who have paid the SOT is unknown.

Section Four: ATF Enforcement and Regulation of FFLs

ATF: A Bureaucratic History

The federal Bureau of Alcohol, Tobacco and Firearms (ATF) is a patchwork agency within the Treasury Department bringing together under one roof the regulation of three industries traditionally subject to federal excise taxes. It was elevated to bureau status in 1972. The new agency inherited responsibility for enforcement of federal firearms laws, such as the Gun Control Act of 1968, a role which soon brought it the unwelcome attention of the National Rifle Association. In Fiscal Year 1972, ATF had 3,952 full-time employees and a budget of \$72 million. Twenty years later, the agency has 4,159 employees and a budget of \$342 million.²¹

ATF's present lack of regulatory enthusiasm can be traced to events that began in 1978 when the agency, with the support of the Carter administration, announced plans to computerize its files to aid in tracing guns used in crimes. To the NRA this was a thinly disguised gun registration scheme. Reacting to NRA pressure, Congress not only refused to fund the \$4.2 million program, but when ATF officials testified before Congress that they could use money from other parts of their budget to finance it, the agency's appropriation was reduced accordingly—and then some.

With the election of Ronald Reagan in 1980, the NRA launched an all-out campaign to have ATF abolished. The centerpiece of the effort was an NRA "documentary" film titled *It Can't Happen Here*. In the film, Representative John Dingell, Democrat of Michigan and NRA board member, charged that "if I were to select a jack-booted group of fascists who are perhaps as large a danger to American society as I could pick today, I would pick BATF. They are a shame and a disgrace to our country."²²

In November 1981 the Reagan Administration announced that ATF would be disbanded, its firearms enforcement activities curtailed and transferred to other agencies. Testifying before a Senate appropriations subcommittee in early 1982, Dingell labeled ATF a "rogue agency" adding, "I would love to put them [ATF agents] in jail. I would dearly love it. That is," he corrected himself, "after trial and proper procedures."²³ With no constituency in the general public and virtually friendless on Capitol Hill, ATF appeared doomed. Bizarrely enough, ATF was rescued at the 11th hour by the NRA itself after the organization discovered that federal firearms enforcement was to

be shifted to the Secret Service. Clearly, it was far better to have a cowed ATF to kick around than to risk crossing swords with the well-respected lawmen who protect the president. (In 1986 the NRA further hamstrung ATF with the McClure-Volkmer bill.)

If the NRA's intent had been to get ATF out of the lives and record books of gun dealers it had clearly succeeded—despite the agency's survival. In Fiscal Year 1981, ATF conducted 11,035 compliance inspections of FFLs; the next year that figure plummeted to 1,829. (Lest the NRA be granted full credit, it should be noted that 1982 marked the peak year of Reagan-era deregulation). ATF's history is marked by savage gun lobby hostility combined with criticism from gun control advocates for its regulatory failures. It is no wonder that the agency has developed a bureaucratic culture that strives to avoid controversy and in its regulatory activities almost always adopts the most pro-industry interpretation possible. In the wake of increasing firearms violence and gun trafficking however, ATF has recently attained newfound respect by focusing on its law enforcement activities. With TV footage of agents in black jackets with large ATF letters on the back kicking in crack-house doors or interdicting gun runners on Interstate 95 now common, ATF hopes to be seen as a cadre of specialized lawmen—not as drab regulators leafing through gun store account books. (Originally known as BATF, the agency dropped the B so that its acronym would more resemble the better-known FBI and DEA.)

Increased respect appears to have fortified ATF with enough self-confidence to take a few halting steps in investigating the path firearms travel from manufacturer to the criminal world—including the role FFLs play in this traffic (see Addendum Three: Forward Trace). ATF's newfound aggressiveness (relatively speaking) has not, however, spread to the routine regulation of FFLs. The agency still remains leery of offending the gun lobby and the firearms industry. At the 1992 SHOT show ATF seminar, many agency staffers on the panel presented themselves not so much as federal regulators, but as virtual partners with industry. Wayne Miller, chief of the NFA branch, voiced sympathy for those affected by the sales slump in the machine gun industry that followed the 1986 federal ban on the future production of machine guns for civilian use. Miller noted, "The Title III dealers know that we've had our ups and downs in the NFA industry, but if you'll work with us we're gonna try do some things to help you accomplish your mission and keep those jobs that President Bush is talking about in place." And in introducing himself, Tony Haynes, chief of the Firearms and Explosives Licensing Center in Atlanta, noted of the SHOT show, "I'm pleased to be here. It's a nice show and I want to wish you all the very best and profitable new year."

Inspection and Compliance

The primary tool available to ATF to determine if gun dealers are operating within the law is the on-site inspection (see Addendum Four: ATF Inspection Report). According to ATF guidelines, "A compliance inspection is generally conducted to determine if a licensee is complying with Federal laws and regulations, or to obtain limited or specific data in support of an ongoing criminal investigation." ATF's ability to enforce compliance with the law through inspections is rendered all but nugatory by two factors:

1. The sheer size of the FFL universe (nearly 270,000 present licensees) makes it unlikely that more than a tiny fractions of FFLs will be inspected in a given year. One result of this is that ATF limits its routine inspections primarily to stocking dealers, ignoring the kitchen-table dealers unless they turn up in a criminal investigation.
2. Congress—acting on the NRA's bidding via the McClure-Volkmer bill—has placed severe roadblocks in ATF's way, making a coherent enforcement policy exceedingly difficult. McClure-Volkmer has helped curtail ATF enforcement activity by: limiting ATF to one unannounced dealer inspection per year; reducing the record-keeping requirements for dealers selling guns from their "personal" collections; removing record-keeping requirements for ammunition dealers; prohibiting ATF from centralizing dealer records or establishing any system of firearms registration; imposing a high standard of proof (violations need to be "knowing" or "willful") while lessening penalties for dealer violations; creating a due process system of legal redress for those who have had their licenses denied or revoked, or who have committed firearms crimes, that places the agency at a distinct disadvantage.

On an annual basis, the vast majority of current FFL holders (97 percent) are not inspected. In Fiscal Year 1989, ATF inspected only 7,142 (2.7 percent) of the 264,063 FFL holders (Types 1-11) in America. According to ATF, Class III machine gun dealers are inspected every year. In 1989 there were 2,977 Type 1 dealers who paid the SOT. Therefore, at most, only 4,165 non-Class III FFLs were inspected—or 1.5 percent.

In FY 1990, ATF conducted 8,471 FFL compliance inspections (Type 1-11). That year there were 2,827 Class III dealers, leaving the number of possible FFL inspections (Types 1-11) at 5,644—or 2 percent.

Figure 4-1

APPLICATION AND COMPLIANCE INSPECTIONS FOR TYPE 1-11 FFLS					
Fiscal Year	Number of FFLs Types 1-11	Application Inspections	Percentage Inspected	Compliance Inspections	Percentage Inspected
1975	161,927	26,695	16%	10,944	7%
1976	165,697	28,222	17%	15,171	9%
1977	173,484	20,736	12%	19,741	11%
1978	169,052	8,361	5%	22,130	13%
1979	171,216	1,037	1%	14,744	9%
1980	174,619	1,157	1%	11,515	7%
1981	190,296	2,128	1%	11,035	6%
1982	211,918	1,831	1%	1,829	1%
1983	230,613	2,723	1%	2,662	1%
1984	222,443	2,551	1%	8,861	4%
1985	248,794	2,672	1%	9,527	4%
1986	267,166	2,519	1%	8,605	3%
1987	262,022	2,191	1%	8,049	3%
1988	272,953	1,431	1%	9,283	3%
1989	264,063	2,384	1%	7,142	3%
1990	269,079	3,358	1%	8,471	3%

Source: Primary figures obtained from ATF Public Affairs Office

Recent inspection numbers stand in sharp contrast to the 1971 high of 32,684 compliance inspections. That year ATF inspectors visited 23 percent of the 144,548 FFL holders (Types 1-11) in America. ATF has acknowledged, however, that many of the visits during this period were little more than brief informational drop-ins as the agency implemented the Gun Control Act of 1968 and that one reason for the drop in inspections throughout the 1970s was the introduction of more rigorous inspection standards (see Figure 4-2). By 1982, the National Rifle Association's near-success in dismantling the agency, combined with the anti-regulatory zeal of the Reagan administration, destroyed ATF's capability and will in this area sending inspections to an all-time

Figure 4-2

ATF INSPECTION ACTIVITY FOR TYPE 1-11 FFLS

Fiscal Year	Application Inspections	Compliance Inspections	Number of Compliance Inspections With Violations	Percentage of Compliance Inspections With Violations
1970	n/a	21,295	n/a	n/a
1971	n/a	32,684	n/a	n/a
1972	31,259	31,164	4,008	12.9%
1973	21,732	16,003	1,316	8.2%
1974	27,483	15,751	1,752	11.1%
1975	26,695	10,944	2,233	20.4%
1976	28,222	15,171	3,693	24.3%
1977	20,736	19,741	6,727	34.1%
1978	8,361	22,130	7,219	32.6%
1979	1,037	14,744	4,159	28.2%
1980	1,157	11,515	2,500	21.7%
1981	2,128	11,035	2,109	19.1%
1982	1,831	1,829	372	20.3%
1983	2,723	2,662	573	21.5%
1984	2,551	8,861	1,660	18.7%
1985	2,672	9,527	1,663	17.5%
1986	2,519	8,605	n/a	n/a
1987	2,191	8,049	n/a	n/a
1988	1,431	9,283	n/a	n/a
			Number of Violations	Average Number Per Inspection
1989	2,384	7,142	4,731	0.662
1990	3,358	8,471	7,652	0.903

Source: Primary figures obtained from ATF Public Affairs Office

low of 1,829 (less than 1 percent of all FFLs). Annual inspections have since climbed back—reaching 8,471 in 1990 (3 percent)—but as the number of FFLs has mushroomed, ATF is far from regaining its pre-1982 levels.²⁴ However, the numbers indicate that throughout ATF's history—except perhaps in the earliest years of the agency's existence—FFL inspections have never been a high priority.

In 1986 the McClure-Volkmer bill purposefully made ATF's job more difficult by limiting the agency to only one unannounced compliance inspection of any given dealer per year. With the exception of this single annual inspection, a criminal investigation of a person other than the licensee, or firearms tracing, an inspection warrant is required to inspect the records and inventory of licensed dealers, manufacturers, and importers.²⁵ Prior to McClure-Volkmer, ATF was allowed an unlimited number of unannounced dealer inspections. ATF did not take advantage of this, but it was generally agreed that the threat of an unannounced ATF inspection at any time helped keep dealers in line. At the time of the bill's passage, gun control advocates warned that the inspection restrictions would give unscrupulous dealers year-long carte blanche to engage in illegal activity following an unannounced inspection. In reality, although McClure-Volkmer restricted ATF compliance activity, inspections were already so rare that the effect has probably been slight.

ATF's skittishness about incurring the NRA's wrath by aggressive inspection procedures is clearly present in its internal guidelines for inspectors, which state:

In conducting compliance inspections, it should be remembered that the purpose of the Gun Control Act of 1968, as amended, is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence. It is not the purpose of the Act to place any undue or unnecessary Federal restrictions on law-abiding citizens with respect to possession or use of firearms for lawful activity.²⁶

Further complicating matters is the fact that the large number of Type 1 FFLs has resulted in a distribution network that ATF characterizes as "geographically difficult to regulate." The agency notes that 60 percent of FFLs are outside metropolitan areas where ATF inspector posts of duty are located and that 17 percent of FFLs are located in a county that is more than 100 miles from an ATF inspector post of duty.²⁷

It is acknowledged by ATF that close to 80 percent of FFL licensees are kitchen-table dealers, typified by ATF spokesperson Jack Killorin as "part-time, home wannabes." There is also general agreement between the agency and industry members that nearly all inspections focus on stocking gun dealers, i.e. gun stores. (Providing exact figures to back up this assertion is

impossible because ATF has never separated the two groups out in its inspection record keeping.)

Bill Bridgewater, president of the National Alliance of Stocking Gun Dealers (NASGD), has no doubts regarding compliance checks of kitchen-table dealers, "ATF is not conducting compliance checks on anyone but storefront dealers. That's because they can find us. They just simply do not conduct compliance inspections on anything but storefront dealers." ATF does not deny Bridgewater's charge, but counters with the claim that since most guns used in crime come from stocking dealers, this bias is justifiable. ATF spokesperson Killorin offers the traditional agency view of kitchen-table dealers, "I never fear a low-volume dealer, the kind of guy who got a license to get guns at wholesale. Should he have a license? No. Do the foundations of the Republic shiver because he does? No. It's a neatness counts issue. We don't have the resources to do neatness counts."

In February 1987 ATF did finally admit that all dealers are not the same when it proposed a new Type 1 record-keeping classification, "low-volume dealers." ATF defines a low-volume dealer as one "contemplating the disposition of not more than 50 firearms within the succeeding 12-month period." Low-volume dealers are allowed to simplify their record keeping by abandoning the bound book and standard Form 4473 and maintaining their records solely on a modified Form 4473, the Form 4473(LV), which must be completed by the dealer by the close of the business day following the date of purchase (see Figure 4-3 for both forms). The new form became available in August 1988. The low-volume option is strictly voluntary, and ATF does nothing more than send the new simplified forms to the dealer upon request. No records are maintained; ATF cannot even say how many self-designated low-volume dealers exist.²⁸

At the time ATF proposed the new classification, the agency estimated that 77 percent of Type 1 FFLs (185,500 of 239,637 in 1988) would meet the criteria outlined for low-volume dealers. ATF also estimated that 92,750—or 50 percent—would use the forms. The agency also estimated that the average number of firearms sold per low-volume dealer was 10.²⁹ Using ATF's figures, in 1988 such small-timers accounted for the sale of 1,855,000 firearms, suggesting there is more to the matter than "neatness counts."

Of the 8,471 compliance inspections of FFL Types 1-11 conducted by ATF in 1990, 7,652 (90 percent) had violations. Most of these were characterized by ATF as minor record-keeping violations that would result in a letter to the licensee, a "note in their file," or some other admonishment. If a violation is perceived to be criminal, ATF agents will be contacted.

Figure 4-3: ATF Form 4473

DEPARTMENT OF THE TREASURY — BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS FIREARMS TRANSACTION RECORD PART I — OVER-THE-COUNTER				Form Approved: OMB No. 1512-0129	
				TRANSFEROR'S TRANSACTION SERIAL NUMBER	
<small>NOTE: Prepare in original only. All entries on this form must be in ink. See Notices and Instructions on back.</small>					
SECTION A — MUST BE COMPLETED PERSONALLY BY TRANSFEREE (BUYER) (See Notices and Instructions on reverse)					
1. TRANSFEREE'S (Buyer's) NAME (Last, First, Middle)		<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	2. HEIGHT	3. WEIGHT	4. RACE
5. RESIDENCE ADDRESS (No., Street, City, County, State, ZIP Code)			6. DATE OF BIRTH MONTH DAY YEAR		7. PLACE OF BIRTH (City and State or City and Foreign Country)
8. CERTIFICATION OF TRANSFEREE (Buyer)—An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:					
a. Are you under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year? <i>"A formal accusation of a crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury."</i>					
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (NOTE: A "yes" answer is necessary if the judge could have given a sentence of more than one year. A "yes" answer is not required if you have been pardoned for the crime or the conviction has been expunged or set aside, or you have had your civil rights restored and, under the law where the conviction occurred, you are not prohibited from receiving or possessing any firearm).					
		c. Are you a fugitive from justice?			
		d. Are you an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?			
		e. Have you even been adjudicated mentally defective or have you ever been committed to a mental institution?			
		f. Have you been discharged from the Armed Forces under dishonorable conditions?			
		g. Are you an alien illegally in the United States?			
		h. Are you a person who, having been a citizen of the United States, has renounced his/her citizenship.			
I hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.					
TRANSFEREE'S (Buyer's) SIGNATURE				DATE	
SECTION B — TO BE COMPLETED BY TRANSFEROR (SELLER) (See Notices and Instructions on reverse)					
THIS PERSON DESCRIBED IN SECTION A: <input type="checkbox"/> IS KNOWN TO ME <input type="checkbox"/> HAS IDENTIFIED HIMSELF/HERSELF TO ME IN THE FOLLOWING MANNER					
9. TYPE OF IDENTIFICATION (Driver's license or identification which shows name, date of birth, place of residence, and signature.)			10. NUMBER ON IDENTIFICATION		
On the basis of (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) described below and on the back to the person identified in Section A.					
11. TYPE (Pistol, Revolver, Rifle, Shotgun, etc.)	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.	15. MANUFACTURER (and importer, if any)	
1.					
2.					
16. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Hand stamp may be used)			17. FEDERAL FIREARMS LICENSE NO. (Hand stamp may be used)		
THE PERSON MAKING THE ACTUAL FIREARMS SALE MUST COMPLETE ITEMS 18 THROUGH 20					
18. TRANSFEROR'S (Seller's) SIGNATURE		19. TRANSFEROR'S TITLE		20. TRANSACTION DATE	

Figure 4-3: ATF Form 4473

11. TYPE (Pistol, Revolver, Rifle, Shotgun, etc.)	12. MODEL	13. CALIBER OR GAUGE	14 SERIAL NO	15 MANUFACTURER (and importer, if any)
3.				
4.				
5.				
6.				

Complete ATF F 3310.4 for multiple purchases of handguns (See item 10 below)

NOTICES AND INSTRUCTIONS

PAPERWORK REDUCTION ACT NOTICE

The information required on this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of the information is to determine the eligibility of the buyer (transferee) to receive firearms under Federal law. The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C. 922 and 923.

IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEE (BUYER)

1. Under 18 U.S.C. 921-929 firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under 18 U.S.C. 921-929 may determine if he may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms. This form should not be used for sales or transfers where neither person is licensed under 18 U.S.C. 921-929.

2. **WARNING**—The sale or delivery of a firearm by a licensee to an eligible purchaser who is acting as an agent, intermediary or 'straw purchaser' for someone whom the licensee knows or has reasonable cause to believe is ineligible to purchase a firearm directly, may result in a violation of the Federal firearms laws.

3. The transferee (buyer) of a firearm should be familiar with the provisions of law. Generally, 18 U.S.C. 921-929 prohibit the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of, a crime punishable by imprisonment for a term exceeding one year, by one who is a fugitive from justice, by one who is an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance, by one who has been adjudicated mentally defective or has been committed to a mental institution, by one who has been discharged from the Armed Forces under dishonorable conditions, by one who, having been a citizen of the United States, has renounced his citizenship, or by one who is an alien illegally in the United States.

EXCEPTION: For one who has been convicted of a crime punishable by imprisonment for a term exceeding one year, the prohibition does not apply if that individual has received a pardon for the crime or the conviction has been expunged or set aside or under the law where the conviction occurred that individual has had his/her civil rights restored and as a result of the civil rights restoration is not prohibited from receiving or possessing firearms.

KNOW YOUR CUSTOMER—Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. Satisfactory identification should verify the buyer's name, date of birth, address, and signature. Thus, a driver's license or identification card issued by a State in place of a license is particularly appropriate. Social Security cards are not acceptable because no address or date of birth is shown on the card. Also, alien registration receipt cards and military identification cards are not acceptable by themselves because the State of residence is not shown on the cards. However, although a particular document may not be sufficient to meet the statutory requirement for identifying the buyer, any combination of documents which together disclose the required information concerning the buyer is acceptable.

INSTRUCTIONS TO TRANSFEE (BUYER)

4. The buyer (transferee) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers may be written by other persons, excluding the dealer. Two

persons (other than the dealer) will then sign as witnesses to the buyer's answers and signature.

5. When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a written statement, executed under penalties of perjury, stating

(a) that the firearm is being acquired for the use of and will be the property of that business entity, and

(b) the name and address of that business entity.

INSTRUCTIONS TO TRANSFEROR (SELLER)

6. Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.

7. The transferor (seller) of a firearm will, in every instance, complete Section B of the form.

8. Additional firearms purchases made by the same buyer may not be added to this form after the seller has signed and dated it.

9. If more than six firearms are involved, the identification required by Section B, Items 11 through 15, must be provided for each firearm. The identification of the firearms transferred in a transaction which covers more than six weapons may be on a separate sheet of paper which must be attached to the form covering the transaction.

10. In addition to completing this record, you must report any multiple sale or other disposition of pistols or revolvers on ATF F 3310.4 in accordance with 27 CFR 178.126a.

11. The transferor (seller) of a firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of 18 U.S.C. 921-929 and the Federal firearms regulations, Title 27, Code of Federal Regulations, Part 178. In determining the lawfulness of the sale or delivery of a rifle or shotgun to a non-resident, the transferor is presumed to know applicable State laws and published ordinances in both States.

12. After you have completed the firearm transaction, you must make the completed, original copy of the ATF F 4473, Part I part of your permanent firearms records including any supporting documents. Filing may be chronological (by date), alphabetical (by name), or numerical (by transaction serial number), so long as all of your completed Forms 4473, Part I are filed in the same manner.

DEFINITIONS

1. **Over-the-counter Transaction**—The sale or other disposition of a firearm by the transferor (seller) to a transferee (buyer), occurring on the transferor's licensed premises. This includes the sale or other disposition of a rifle or a shotgun to a non-resident transferee (buyer) occurring on such premises.

2. **Published Ordinances**—The publication (ATF P 5300.5) containing State firearms laws and local ordinances which is annually distributed to Federal firearms licensees by the Bureau of Alcohol, Tobacco and Firearms.

3. **Under indictment or convicted in any court**—An indictment or conviction in any Federal, State or Foreign court.

ATF F 4473 (5300.9 PART I (1-88)

Figure 4-3: ATF Form 4473(LV)

Form Approved: OMB No. 1512-0490 (3/31/91)

DEPARTMENT OF THE TREASURY — BUREAU OF ALCOHOL, TOBACCO AND FIREARMS					TRANSFEROR'S TRANSACTION SERIAL NUMBER	
FIREARMS TRANSACTION RECORD						
PART I — LOW VOLUME — OVER-THE-COUNTER						
THIS FORM MAY BE USED ONLY BY DEALERS SELLING OR DISPOSING OF 50 OR LESS FIREARMS PER YEAR (See Instructions On Reverse)						
NOTE: Prepare in original only. All entries on this form must be in ink. See Notices and Instructions on back.						
1. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Hand stamp may be used)				2. FEDERAL FIREARMS LICENSE NO. (Hand stamp may be used)		
3. FIREARM RECEIVED FROM: a. NON LICENSEE (Name & address) OR b. LICENSEE (Name & License Number)				4. DATE RECEIVED		
5. DESCRIPTION OF FIREARM	MANUFACTURER (and importer, if any)	TYPE (Pistol, Revolver, Rifle, shotgun, etc.)	MODEL	CALIBER OR GAUGE	SERIAL NUMBER	
SECTION A — MUST BE COMPLETED PERSONALLY BY NONLICENSED TRANSFEREE (BUYER) (See NOTICE, Instructions on Reverse)						
6. TRANSFEREE'S (Buyer's) NAME (Last, First, Middle)				<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	7. HEIGHT	8. WEIGHT
10. RESIDENCE ADDRESS (No., Street, City, State, ZIP Code)				11. DATE OF BIRTH MONTH DAY YEAR		12. PLACE OF BIRTH (City and State or City and Foreign Country)
13. CERTIFICATION OF TRANSFEREE (Buyer) — An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:						
a. Are you under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year? *A formal accusation of a crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury.				c. Are you a fugitive from justice?		
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (NOTE: A "yes" answer is necessary if the judge could have given a sentence of more than one year. A "yes" answer is not required if you have been pardoned for the crime or the conviction has been expunged or set aside, or you have had your civil rights restored and, under the law where the conviction occurred, you are not prohibited from receiving or possessing any firearm).				d. Are you an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance.		
				e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?		
				f. Have you been discharged from the Armed Forces under dishonorable conditions?		
				g. Are you an alien illegally in the United States?		
				h. Are you a person who, having been a citizen of the United States, has renounced his/her citizenship?		
I hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a felony.						
14. TRANSFEREE'S (Buyer's) SIGNATURE					15. DATE	
SECTION B — TO BE COMPLETED BY TRANSFEROR (SELLER) (See Notices and instructions on reverse)						
THIS PERSON DESCRIBED IN SECTION A:				<input type="checkbox"/> IS KNOWN TO ME <input type="checkbox"/> HAS IDENTIFIED HIMSELF/HERSELF TO ME IN THE FOLLOWING MANNER		
16. TYPE OF IDENTIFICATION (Driver's license or identification which shows name, date of birth, place of residence, and signature)				17. NUMBER ON IDENTIFICATION		
On the basis of (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) described to the person identified in Section A.						
18. TRANSFEROR'S (Seller's) SIGNATURE					19. DATE	
SECTION C — TO BE COMPLETED WHEN THE TRANSFEREE (BUYER) IS A FEDERAL FIREARMS LICENSEE (INCLUDES NON OVER THE COUNTER)						
20. ENTER FFL'S NAME AND LICENSE NUMBER				21. TRANSFEROR'S (Seller's) SIGNATURE		22. DATE

Figure 4-3: ATF Form 4473(LV)

NOTICES AND INSTRUCTIONS

PAPERWORK REDUCTION ACT NOTICE

The information required on this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of the information is to determine the eligibility of the buyer (transferee) to receive firearms under Federal law. The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C. 922, 923, and 926.

IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEE (BUYER)

1. Under 18 U.S.C. 921-929 firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under 18 U.S.C. 921-929 may determine if he/she may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms. This form should not be used for sales or transfers where neither person is licensed under 18 U.S.C. 921-929.
2. **WARNING**—the sale or delivery of a firearm by a licensee to an eligible purchaser who is acting as an agent, intermediary or "straw purchaser" for someone whom the licensee knows or has reasonable cause to believe is ineligible to purchase a firearm directly, may result in a violation of the Federal firearm laws.
3. The transferee (buyer) of a firearm should be familiar with the provisions of the law. Generally, 18 U.S.C. 921-929 prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of, a crime punishable by imprisonment for a term exceeding one year, by one who is a fugitive from justice, by one who is an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance, by one who has been adjudicated mentally defective or has been committed to a mental institution, by one who has been discharged from the Armed Forces under dishonorable conditions, by one who, having been a citizen of the United States, has renounced his/her citizenship, or by one who is an alien illegally in the United States.

EXCEPTION: For one who has been convicted of a crime punishable by imprisonment for a term exceeding one year, the prohibition does not apply if that individual has received a pardon for the crime or the conviction has been expunged or set aside or under the law where the conviction occurred that individual has had his/her civil rights restored and as a result of the civil rights restoration is not prohibited from receiving or possessing firearms.

KNOW YOUR CUSTOMER—Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. Satisfactory identification should verify the buyer's name, date of birth, address, and signature. Thus, a driver's license or an identification card issued by a State instead of a license is particularly appropriate. Social Security cards are not acceptable because no address or date of birth is shown on the card. Also, alien registration receipt cards and military identification cards are not acceptable by themselves because the State of residence is not shown on the cards. However, although a particular document may not be sufficient to meet the statutory requirement for identifying the buyer, any combination of documents which together disclose the required information concerning the buyer is acceptable.

INSTRUCTIONS TO TRANSFEE (BUYER)

4. The nonlicensed transferee (buyer) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers may be written by other persons, excluding the dealer. Two persons (other than the dealer) will then sign as witnesses to the buyer's answers and signature.
5. When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a written statement, executed under penalties of perjury, stating:
 - (a) that the firearm is being acquired for the use of and will be the property of that business entity, and
 - (b) the name and address of that business entity.

INSTRUCTIONS TO TRANSFEROR (SELLER)

6. Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.
7. The transferor (seller) of a firearm will, in every instance where Section A is completed, complete Section B of the form.
8. The transferor (seller) of a firearm will, in every instance, complete Section C of the form if disposing of a firearm to a transferee (buyer) who is a Federal Firearms Licensee. (Applies to both over the counter and non over the counter transactions between licensed dealers.)
9. In addition to completing this record, you must report any multiple sale or other disposition of pistols or revolvers on ATF F 3310.4 in accordance with 27 CFR 178.126a.
10. The transferor (seller) of a firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of 18 U.S.C. 921-929 and the Federal firearms regulations, Title 27, Code of Federal Regulations, Part 178. In determining the lawfulness of the sale or delivery of a rifle or shotgun to a non-resident, the transferor is presumed to know applicable State laws and published ordinances in both States.
11. Each transferor (seller) maintaining firearms acquisition and disposition records pursuant to 27 CFR 178.124a (Low Volume Dealers) shall retain form 4473-LV, Part I and II, reflecting firearms possessed by such business in chronological (by date of receipt) or numerical (by transaction serial number) order. Forms 4473-LV, Part I and II, reflecting the transferor's sale or disposition of firearms shall be retained in alphabetical (by name of purchaser), chronological (by date of disposition) or numerical (by transaction serial number) order.

DEFINITIONS

1. **Low volume dealer**—A licensed dealer contemplating the disposition of not more than 50 firearms within the succeeding 12-month period. Such 12-month period commences from the date the licensed dealer first records the purchase or acquisition of a firearm on the reverse side of this form. If during the course of the 12 month period, dispositions exceed the 50 firearm limitation, the licensed dealer should begin keeping standard records required in 27 CFR 178 for non low volume dealers.
2. **Over-the-counter Transaction**—The sale or other disposition of a firearm by the transferor (seller) to a transferee (buyer), occurring on the transferor's licensed premises. This includes the sale or other disposition of a rifle or a shotgun to a non-resident transferee (buyer) occurring on such premises.
3. **Published Ordinances**—The publication (ATF P 5300.5) containing State firearms laws and local ordinances which is annually distributed to Federal firearms licensees by the Bureau of Alcohol, Tobacco and Firearms.
4. **Under indictment or convicted in any court**—An indictment or conviction in any Federal, State or Foreign court.

Nonetheless, it is certain that because of the small percentage of FFLs that are inspected, only a fraction of the most flagrant offenders need fear the possibility of losing their license. Considering the low number of annual inspections and ATF's attitude toward low-volume dealers, the average kitchen-table dealer can expect to hold his FFL for a lifetime without meeting an ATF inspector.

ATF is apparently aware of the need to both improve its inspection records and learn more about the functioning of low-volume dealers. In 1991 the agency announced that it would begin a "significant enhancement" of FFL inspections and that new resources would be devoted to inspections as part of Project X-Caliber in fiscal years 1992 and 1993. Under the program, 15,000 additional inspections will be conducted of new-dealer applicants and current license holders.

According to the public affairs office, X-Caliber will look beyond stocking dealers to low-volume licensees—including those in rural America—to begin to get a sense of low-volume dealer activity. A May 1992 descriptive sheet prepared by ATF on X-Caliber for this study states:

X-Caliber inspections will focus on areas not covered under the present selection process for new dealer inspections. Under Project X-Caliber, new dealers (applicants) may be inspected within 6 months of issuing the Federal license. In addition to improving dealers' firearms records and compliance with Federal firearms laws and relations with the firearms dealers, these application inspections will give ATF an improved view of a particular dealer and new dealers in general.

As part of X-Caliber, ATF "will be conducting shorter, more efficient inspections.... X-Caliber inspections will be clustered in defined geographical areas, and within those areas, application inspections of new dealers will be conducted concurrently with inspections of more established dealers." ATF has also begun to focus on gun shows in the words of one spokesperson "to see what's going on out there" and determine if large numbers of guns are being sold off the books at shows by licensees. As promising as X-Caliber may sound, the agency still has a tendency to crumple in the face of NRA or gun industry displeasure (see Addendum Three: Forward Trace). After more than a decade, ATF is still gun shy.

Revocation and Denial

Type 1 FFLs are almost always granted and renewed, and almost never revoked. From 1975 to 1990, the agency revoked only 155 existing licenses. Of the 95,872 FFL applications and renewals acted upon by ATF in 1990, only 75 were denied—eight hundredths of one percent.³⁰

Reasons for denial were: underage and fugitive from justice (1); former mental patient who

falsified forms (1); personal use/not engaged in the business/no business premises from which to operate (25); convicted felons (24); under indictment/fugitive from justice (1); hidden ownership (4); record-keeping violations (19).

Figure 4-4

APPLICATION, RENEWAL, AND REVOCATION DATA FOR FFLS (TYPES 1-11)

Fiscal Year	Processed		Denied		Withdrawn		Abandoned		Licenses Revoked
	Original	Renewal	Original	Renewal	Original	Renewal	Original	Renewal	
1975	29,183	138,719	150	273	1,651	334	n/a	n/a	7
1976	29,511	138,050	209	261	2,077	436	n/a	n/a	6
1977	32,560	136,629	216	207	1,645	409	n/a	n/a	10
1978	29,531	139,383	151	168	1,015	141	414	449	0
1979	32,678	143,021	124	93	432	240	433	942	12
1980	36,052	143,527	96	31	601	336	661	800	10
1981	41,798	152,153	85	16	742	385	329	495	7
1982	44,745	161,390	52	12	580	332	370	350	4
1983	49,669	163,386	151	48	916	514	649	700	6
1984	39,321	163,950	98	23	706	449	833	825	9
1985	37,385	52,768	103	9	666	226	598	307	18
1986	42,842	47,648	299	14	698	135	452	181	27
1987	36,835	61,596	121	38	874	428	458	225	14
1988	32,724	52,738	30	19	506	422	315	182	4
1989	34,318	54,892	34	14	561	1,456	360	215	12
1990	34,336	61,536	75*	n/a	1,408+	n/a	n/a	n/a	9

Source: ATF Public Affairs Office

*Includes "Renewals." Separate figures not available.

+ Includes both "Withdrawn" and "Abandoned." Separate figures not available.

Figure 4-5

ORIGINAL FFL APPLICATIONS (TYPES 1-11)—APPLICATIONS DENIED,
WITHDRAWN, OR ABANDONED

Fiscal Year	Original Applications	Applications Denied	Percentage Denied	Applications Withdrawn	Percentage Withdrawn	Applications Abandoned	Percentage Abandoned
1975	29,183	150	1%	1,651	6%	n/a	
1976	29,511	209	1%	2,077	7%	n/a	
1977	32,560	216	1%	1,645	5%	n/a	
1978	29,531	151	1%	1,015	3%	414	1%
1979	32,678	124	.4%	432	1%	433	1%
1980	36,052	96	.3%	601	2%	661	2%
1981	41,798	85	.2%	742	2%	329	1%
1982	44,745	52	.1%	580	1%	370	1%
1983	49,669	151	.3%	916	2%	649	1%
1984	39,321	98	.2%	706	2%	833	2%
1985	37,385	103	.3%	666	2%	598	2%
1986	42,842	299	.7%	698	2%	452	1%
1987	36,835	121	.3%	874	2%	458	1%
1988	32,724	30	.1%	506	2%	315	1%
1989	34,318	34	.1%	561	2%	360	1%
1990	34,336	75*	.2%	1,408+	4%	n/a	

Source: Primary figures obtained from ATF Public Affairs Office

*Includes "Renewals." Separate figures not available.

+Includes both "Withdrawn" and "Abandoned." Separate figures not available.

In 1990, the most recent year available, ATF computers logged the revocation of nine Federal Firearms Licensees (see Figure 4-6). Only three, however, had actually occurred that year. The remaining six merely reflected an updating of ATF's computer files. That year, there were 235,684 Type 1 FFLs. ATF revoked one thousandth of one percent of them. The three were:

- o Pomranky Sport Center, Inc., Midland, Michigan.
Revoked in May 1990 because of record-keeping violations.
- o Mark S. Price, Las Vegas, Nevada.
Revoked in September 1990 because of a felony conviction.
- o Laird Logging, Inc., North Bend, Oregon.
Revoked in May 1990 because of record-keeping violations.

The six pre-1990 revocations logged on ATF's computers that year were:

- o Tom Lance Klein, Tom Klein Sporting Goods, Florissant, Missouri.
Revoked in September 1983 due to a felony conviction.
- o Michael D. Jackson, North Woods Firearms & Sporting Goods, Springfield, Missouri.
Revoked in October 1983 for violations of the Gun Control Act of 1968.
- o Lonnie & Ernest Moss, M & M Law Enforcement & Shooting Supplies, Fort Devens, Missouri.
Revoked in September 1987 for violations of the Gun Control Act of 1968.
- o Lonnie & Ernest Moss, M & M Law Enforcement & Shooting Supplies, Velda Village, Maryland.
Revoked in September 1987 for violations of the Gun Control Act of 1968.
- o John W. Johnson, Second Avenue Pawn Shop, Dallas, Texas.
Revoked in April 1988 due to record-keeping violations.
[Apparently a Type 02—pawn shop—license]
- o Gary E. Ditty, Ditty's Wildlife Art Sales, Northumberland, Pennsylvania.
Revoked in February 1989 as the result of record-keeping violations of the Gun Control Act of 1968.
- o Freeman J. Robinson, Jaguar Firearms & Gunsmith, Baltimore, Maryland.
Revoked due to a felony conviction with license being voided in June 1990.³¹

Figure 4-6

FFL (TYPE 1-11) LICENSE REVOCATION			
Fiscal Year	Total Number of FFLs (Type 1-11)	Number Revoked	Percentage Revoked
1975	161,927	7	.004%
1976	165,697	6	.004%
1977	173,484	10	.006%
1978	169,052	0	0%
1979	171,216	12	.007%
1980	174,619	10	.006%
1981	190,296	7	.004%
1982	211,918	4	.002%
1983	230,613	6	.003%
1984	222,443	9	.004%
1985	248,794	18	.007%
1986	267,166	27	.01%
1987	262,022	14	.005%
1988	272,953	4	.001%
1989	264,063	12	.005%
1990	269,079	9	.003%

Source: Primary Figures From ATF Public Affairs Office

The low number of revocations is slightly misleading. According to ATF, because of its distaste for the legal entanglements involved in the formal revocation of a license, the agency often waits until the suspect dealer's license comes up for renewal, at which point it will simply not be renewed. And although denial rates for renewal applications are—not surprisingly—higher than the handful of revocations that occur each year, for most licensees renewal is routine.

Figure 4-7

FFL RENEWALS (TYPES 1-11) DENIED, WITHDRAWN, AND ABANDONED							
Fiscal Year	Total Renewal Applications	Renewals Denied	Percentage Denied	Renewals Withdrawn	Percentage Withdrawn	Renewals Abandoned	Percentage Abandoned
1975	138,719	273	.2%	334	.2%	n/a	
1976	138,050	261	.2%	436	.3%	n/a	
1977	136,629	207	.2%	409	.3%	n/a	
1978	139,383	168	.1%	141	.1%	449	.3%
1979	143,021	93	.1%	240	.2%	942	.7%
1980	143,527	31	.02%	336	.2%	800	.6%
1981	152,153	16	.01%	385	.3%	495	.3%
1982	161,390	12	.01%	332	.2%	350	.2%
1983	163,386	48	.03%	514	.3%	700	.4%
1984	163,950	23	.01%	449	.3%	825	.5%
1985	52,768	9	.02%	226	.4%	307	.6%
1986	47,648	14	.03%	135	.3%	181	.4%
1987	61,596	38	.06%	428	.7%	225	.4%
1988	52,738	19	.04%	422	.8%	182	.3%
1989	54,892	14	.03%	1,456	2.7%	215	.4%
1990	61,536	n/a		n/a		n/a	

Source: Primary figures obtained from ATF Public Affairs Office

In renewing an FFL, ATF does not routinely attempt to ascertain whether the licensee is entitled to hold the FFL under the definition of "engaged in the business" as legislated by McClure-Volkmer (for example, by determining the numbers of weapons sold or excise taxes paid by the dealer) or whether the licensee is in compliance with state or local licensing regulations. Unless questionable information has surfaced through an inspection or a criminal investigation, renewals are essentially pro forma.

The ATF public affairs office states that when faced with licensee abuses, the agency will also try to convince the FFL holder to voluntarily surrender the license or abandon it rather than face increased surveillance or the actual revocation process. In criminal prosecutions, surrender of the FFL is often an aspect of sentencing.

From 1980 to 1989—a period in which there were only 120 license revocations—224 license renewals were denied, 4,683 license renewals were withdrawn by the licensee, and 4,280 license renewals were abandoned by the licensee. It is not known, however, what percentage of these were the result of ATF action and what stemmed from the standard afflictions of any small businessman: ill health, death, sale or abandonment of a business, etc.

In fairness to ATF, even when the agency is aware of questionable—or criminal—activity being conducted by an FFL, it cannot simply pull the license. Licensees do have minimal due process protection under common law. However the primary culprit, once again, is McClure-Volkmer.

Under the 1986 law, an individual whose license is revoked or application denied is entitled to take advantage of a clearly defined administrative process to challenge ATF's decision that leaves the agency at a distinct legal disadvantage and open to litigation. Such extensive due process rights might be warranted in the case of a refusal to renew that results in the forfeiture of a profitable business. However, in the case of a denial of an initial application in which the applicant has acquired no property rights, such a level of process seems excessive.

As the result of McClure-Volkmer, any person whose application has been denied or whose FFL has been revoked

shall receive a written notice from the Secretary [of the Treasury] stating specifically the grounds upon which the application was denied or upon which the license was revoked. Any notice of a revocation of a license shall be given to the holder of such license before the effective date of the revocation. If the Secretary denies an application for, or revokes, a license, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation of a license, the Secretary shall upon the request of the holder of the license stay the effective date of the revocation. A hearing...shall be held at a location convenient to the aggrieved party.

If after a hearing...the Secretary decides not to reverse his decision to deny an application or revoke a license, the Secretary shall give notice of his decision to the aggrieved party. The aggrieved party may at any time within sixty days after the date notice was given...file a petition with the United States district court...for a de novo judicial review of such denial or revocation. [T]he court may consider any evidence submitted by the parties to the proceeding whether or not such evidence was

considered at the [previous] hearing.... If the court decides that the Secretary was not authorized to deny the application or to revoke the license, the court shall order the Secretary to take such action as may be necessary to comply with the judgment of the court.^j

As noted before, whenever ATF denies an application, refuses to renew, or revokes a license, the applicant is entitled to an administrative hearing to appeal the decision of the agency. If ATF decides to uphold the decision to deny or revoke, the applicant is entitled to appeal the agency's decision in federal district court.

Prior to McClure-Volkmer, the standard to be applied by the reviewing court was unclear. Some courts interpreted the statute to entitle the applicant to what is known as *de novo* review. Others held that ATF denial and revocation decisions were to be reviewed using a "substantial evidence" test.^k The two review procedures differ primarily in the type of evidence the applicant can present to the court and the amount of discretion the court can exercise in its judgment of the facts.

Under *de novo* review, the court examines the evidence presented at the administrative hearing but also takes account of any additional, relevant evidence that an applicant may choose to present. The court then conducts an independent review of the evidence and makes its own findings of facts. When applying the "substantial evidence" test, the court may look only at the record compiled by the agency. From this evidence it would then determine whether the decision of the agency was supported by substantial evidence. The court is not allowed to substitute its own judgment for that of the agency. The result is that *de novo* review gives the court much broader discretion to reject the factual findings of the agency and to overturn the agency's decision to deny or revoke a license.

As part of the McClure-Volkmer amendments in 1986, in order to clear up the confusion in the courts, Congress specifically adopted the *de novo* standard for review of ATF decisions to deny or revoke a dealer's licenses. A common assumption is that the change gave a tremendous advantage to applicants and greatly increased the burden of proof on ATF. However, the majority of courts that looked at the issue prior to the passage of McClure-Volkmer already applied a *de*

^j18 U.S.C. § 923(f).

^kDecisions expressing view that *de novo* review was required: *Shyda v. Director, Bureau of Alcohol, Tobacco and Firearms*, 448 F. Supp. 409 (M.D. Pa. 1977); *Prino v. Simon*, 606 F.2d 449 (4th Cir. 1979) (upholding district court finding that correct standard was *de novo* review). Cases holding that correct standard was "substantial evidence": *McLemore v. United States Treasury Dept.*, 317 F. Supp. 1077 (N.D. Fla. 1970).

novus standard of review. In practice, the amendment should have had minimal impact on ATF's enforcement activities.

When May ATF Revoke a License for Willful Violations?

Pursuant to 18 U.S.C. § 923(d)(1)(C), ATF is required to issue or renew a dealer's license if the applicant does not fall into a prohibited category and "has not willfully violated any of the provisions of this chapter or regulations issued thereunder." Moreover, ATF may lawfully revoke a dealer's license if he has willfully violated the Gun Control Act of 1968 or its regulations.¹

The courts have had ample opportunity to define what constitutes a willful violation. They have, almost uniformly, determined that a license may be revoked or not renewed when a dealer is shown to know the legal requirements of the law and nevertheless acts in contravention of them. For example:

- o In a 1978 case ATF refused to renew the license of Oklahoma firearms dealer Service Arms Co. Agents found that the dealer had failed to record the receipt of a .45 pistol, represented in his acquisition and disposition log that a revolver had been sold to a customer when in fact it hadn't, failed to record in his acquisition log 27 firearms that were displayed for sale, and had sold 192 firearms without first obtaining permits required by city ordinance. The federal district court upheld ATF's denial of Service Arms' application for renewal. The court was careful to point out that ATF agents had explained the record-keeping requirements of the Act to the dealer. Taking into account the applicant's experience and knowledge of the law, the court ruled that the failure to keep accurate records constituted a willful violation of the Gun Control Act. The denial was upheld despite the fact that the applicant explained some of the discrepancies found by ATF to the satisfaction of the court^m
- o In 1981 the Ninth Circuit Court of Appeals affirmed a lower court decision to revoke a dealer's license for his participation in straw-man purchases. On two occasions a convicted felon provided money for the purchase of a firearm, selected the gun, received the change, and left the premises with the gun. On each occasion the felon was accompanied by another person who completed and signed the Form 4473.ⁿ

¹18 U.S.C. § 923 (e)

^m*Service Arms Co., Inc. v. U.S.*, 463 F. Supp. 21 (1978).

ⁿ*Perri v. Department of Treasury*, 637 F.2d 1332 (9th Cir. 1981). See also: *AI's Loan Office v. U.S. Dept. of Treasury*, 738 F. Supp.221 (E.D. Mich. 1990); *Mayesh v. Schultz*, 58 FRD 537 (SD Ill 1973); *Stein's, Inc. v. Blumenthal*, 649 F.2d 463 (7th Cir. 1980)..

- o In 1991, the federal district court in Wisconsin upheld the revocation of an FFL held by Larry Cisewski of Larry's Guns as the result of violations that included sales by the licensee and an employee to underage individuals, 32 multiple gun sales on five or less consecutive days that were not properly recorded on a multiple sales form, and the alteration of one or more Form 4473s to disguise the dates of multiple sales. In addition to these violations, after the revocation of his license Cisewski continued to sell guns. Customers would negotiate the purchase of a firearm through Cisewski from a licensed dealer. In two instances, Cisewski himself delivered the weapons. The court found ample evidence in Cisewski's actions to support a finding of willful violation.⁹

The courts have also found that revocation or non-renewal is also proper in cases where dealers act with complete indifference to the requirements of the GCA. For example, a federal court in Florida upheld denial of renewal of a license where the dealer exhibited blatant disregard for his obligations as a licensee. ATF agents had visited the dealer and found a number of violations including failure to maintain records and falsely recording sales of firearms. Upon finding these violations, ATF personnel pointed out the violations to the dealer and explained his statutory obligations. The dealer nevertheless sold a pistol to a minor less than six months after the inspection. The court held that this behavior graphically illustrated the dealer's indifference to his duties under the law.⁹

The courts' interpretation of the "willful violation" standard—in which they have refused to interpret "willfully" as conduct necessary to support a criminal conviction—gives ATF significant discretion in proceeding with revocation actions. Standards of willfulness that have been held sufficient by the courts to support revocation have been the same as those supporting the assessment of civil penalties under acts such as the Occupational Safety and Health Act (OSHA) or the Fair Labor Standards Act.⁹ In essence, revocation and non-renewal of Federal Firearms Licenses is intended to be viewed as a routine administrative enforcement action, not as a quasi-criminal prosecution.

When ATF's authority to revoke or deny a license has actually been challenged in court, its actions have been routinely upheld. A review of pertinent legal cases conducted for this study identified only one reported case that modified ATF's decision to deny or revoke a dealer's license

⁹*Cisewski v. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms*, 773 F. Supp. 148 (E.D. Wis. 1991).

⁹*Powers v. Bureau of Alcohol, Tobacco and Firearms*, 505 F. Supp. 695 (N.D. Fla. 1980). See also: *Fin & Feather Sport Shop, Inc. v. United States Treasury Dept.*, 481 F. Supp. 800 (D.C. Neb. 1979).

⁹*Prino v. Simon*, 606 F.2d 449 (4th Cir. 1979).

based on a willful violation of the statute.'

The standards for revocation and for judicial review of decisions to revoke or deny are clearly defined. Furthermore, ATF has an excellent track record defending its decisions to revoke dealer licenses even when such decisions are reviewed *de novo*. This makes it difficult to divine a motive for ATF's reluctance to use this potent administrative remedy more often. Probably ATF's timidity reflects not so much a fear of losing in court as a basic aversion to being dragged into litigation in the first place.

¹In *Rich v. United States* (383 F. Supp. 797 (S.D. Ohio 1974)), a license was revoked based on record-keeping violations revealed in several inspections. The federal court in Ohio ruled that the violations were due to negligence and did not rise to a "willful" violation. The case was remanded to the Secretary of Treasury with instructions to impose a suspension on the dealer not to exceed 60 days.

Section Five: Federal, State, and Local Dealer Regulation

Obtaining an FFL is merely the first step for those who wish to deal in firearms. Although no individual or corporation may legally deal in guns in America without an FFL, the license does not preempt state and local regulation of gun dealers. However, federal FFL policy undercuts state and local efforts in two ways:

1. With only a few exceptions, ATF has no system by which states and cities are informed who within their jurisdictions possesses an FFL.
2. The sheer size of the FFL universe of more than a quarter of a million licensees makes it administratively impossible for ATF to develop effective cooperative efforts with state and local governments to regulate gun dealers.

Three Tiers of Regulation

The degree of regulation of firearms dealers on the state and local level varies wildly. For example, Arizona has no statewide licensing standards and has a state preemption that explicitly forbids local jurisdictions from regulating the sale, possession, or use of firearms. (Arizona, with a population of 13.7 million, has 4,062 Type 1 FFLs).

In comparison, New Jersey state law states that no retail dealer^a shall sell or possess with the intent to sell firearms unless licensed to do so under the standards prescribed by the superintendent of the state police. Applications, accompanied by a fee of \$50.00, are made to a judge of the superior court in the county of the applicant's place of business. The judge shall grant a license to an applicant that meets the superintendent's standards and can engage in business without any danger to the public safety. Each New Jersey state license is valid for three years and authorizes the holder to sell firearms in a specified municipality. No license shall be granted to any person who cannot qualify to obtain a permit to purchase a handgun or a firearms purchaser identification card, or to any business entity in which the controlling interest is held by an ineligible person.

^aNew Jersey law defines a firearms dealer as a person who "sells, transfers or assigns for a fee or profit any firearm or parts of firearms or ammunition which he has purchased or obtained with the intention, or for the purpose, of reselling or reassigning to persons who are reasonably understood to be the ultimate consumers and includes any person who is engaged in the business of repairing firearms...."

In addition to statewide standards, some states allow for additional local licensing. North Carolina requires that "every person, firm, or corporation...engaged in the business of selling or offering for sale firearms....shall obtain a license from the Secretary of Revenue..." Additionally, under North Carolina law, counties and cities may levy their own licensing tax on businesses already taxed by the state "at an amount that does not exceed the [\$50.00] State tax."

The three-tiered system of federal, state, and local regulation as found in North Carolina, or even the two-tiered system of many states, should in theory effectively regulate those dealing in firearms. In practice, this system is an all but complete failure. In fact, it is the Type 1 FFL itself, originally designed to keep track of all firearms dealers, that serves as the tool by which individuals evade the registration and record-keeping requirements of state and local laws. This is the result of three factors:

1. Lack of communication between ATF and state and local licensing authorities. Unless a specific state or locality asks ATF to be informed when an FFL is granted, they will not be told. (And asking does not always generate a response.) ATF does not contact local police regarding license applicants. Additionally, although ATF advises licensees that they must meet all local and state laws, many FFLs claim that ATF's answers to anything more complicated than routine questions (such as interstate transportation of National Firearms Act weapons) are often confusing or inaccurate. (It can be assumed that some FFLs want to hear inaccurate information so that they can do as they please and hope to blame ATF if they run afoul of local or state laws.)
2. Non-explicit definition by states and local jurisdictions of what constitutes being "engaged in the business" as a firearms dealer. In every state merely obtaining an FFL does not by definition make the licensee a legal gun dealer. He must also actually sell weapons and then meet state and local standards. However, state and local jurisdictions often define gun dealers using vague criteria regarding either the amount of time and energy devoted to the business, or by surpassing a sales threshold of a certain number of guns in a given year. If an FFL does not apply for a state or local license, it is assumed by local authorities (if they even know of his existence) that he has not reached a level of activity that would bring him under state or local regulation. Yet, unless he is "engaged in the business" as defined by the Gun Control Act of 1968 as amended by the 1986 McClure-Volkmer law (a level of activity that would qualify the license holder as a gun dealer under every state and local law reviewed for this study) he should not have an FFL in the first place.
3. Most states with state and local licensing systems require it only for dealers selling concealable weapons, i.e. handguns. The presumption here is that a dealer not selling handguns will be selling only long guns for sporting purposes and poses only a limited public safety risk. However, firearms technology has outpaced such laws; non-handgun dealers might well be dealing in assault rifles or shotguns, yet would escape state and local licensing regulations.

LA Story

There is no consistency in the relationships between various state and local governments and ATF. At the positive end, the ATF public affairs office states that it has a relationship with the city of Chicago (which banned handgun sales in 1982) where after issuance of an FFL, ATF informs Chicago police, who then visit the FFL to determine the reason for his having obtained the license.

In addition, state initiative can make a difference, as in the case of New Jersey's determined effort to tighten FFL regulation. New Jersey state police say that they have developed a good working relationship with ATF regarding license issuance and renewal, and as a result have been able to reduce the number of FFLs in the state. For most other jurisdictions, it is a far different story. A prime example is the city of Los Angeles.

In June 1991, the Los Angeles Police Department listed 129 "sellers of firearms" as defined by Los Angeles law. Of these, 15 were either K-Marts or Big 5 Sporting Goods Stores. The Los Angeles Municipal Code defines a "seller of firearms" as "any person who sells or offers for sale at retail any pistol, revolver, rifle, shotgun or other firearm...." However, Los Angeles police are aware of more than 2,000 FFL holders in the city.

According to Officer Terese Churchill of the Los Angeles Police Department, FFLs are a "pretty big problem." Regarding the coordination between ATF, state, and local dealer licensing authorities, she describes them as "worlds apart on each level." On the local level, L.A. police and other jurisdictions "are just trying to keep up...it's a hit or miss proposition. We don't have as much cooperation as we'd like. There's no funding, no manpower. It's just not viewed as a priority." In an October 1991 interview, Churchill noted that LAPD had "asked ATF for a listing of FFLs in Los Angeles. It's been a year and we still haven't received it." After proving "just cause" to ATF's Atlanta Licensing center, the LAPD finally received an FFL list. (An ATF spokesperson characterized the incident as an isolated case.) As to possible criminal use of any one of LA's 2,000 FFLs, Churchill notes that "anything's possible," including guns being sold off the books.

In October 1991 LAPD noted that during the previous year there were no violations by the city's 129 licensed, storefront dealers. (Actions against storefront dealers in Los Angeles are referred to the Police Commission. Most violations are minor and usually result in a reprimand.)

This does not mean, however, that other FFLs were not involved in illegal firearms trafficking, as the following narrative (taken from ATF documents obtained under the Freedom of Information Act) illustrates.

In March 1990 as part of an investigation of LA gangs, ATF agents became aware of Mario Luna Miranda. Miranda, who had a criminal history of drug violations and burglary dating to the early 1970s, had approached Hispanic gang members in East LA to sell them firearms. ATF agents suspected that an FFL was working with Miranda and began a series of undercover weapon buys. Miranda's partner was soon revealed to be Gustavo Salazar, a Type 1 FFL holder. A full licensee investigation was soon authorized for Salazar. ATF agents noted that "Salazar is believed to be...dealing in firearms from unlicensed premises, aiding and abetting in the sales of firearms by an unlicensed person, and...[falsifying]...federal firearms forms."

Salazar obtained his Type 1 FFL in 1988 and frequently changed addresses to avoid detection. Miranda would meet the buyers to make the deal, then he and Salazar would drive to either a safehouse where the weapons were stored, or to a legitimate firearms dealer to purchase them. Miranda would deliver the weapons to complete the sale. By using his FFL to purchase from legitimate dealers, Salazar bypassed California's waiting period and background check.

An August 1990 ATF investigative report noted that in the previous six months Salazar "had purchased over...1,500 firearms from at least three major firearms distributors in the Los Angeles area and had distributed them to gang members and other individuals throughout the Los Angeles area." An ATF check conducted the month before through the California Department of Justice's Automated Firearms System found that of the 1,165 firearms purchased by Salazar since January 1990, only four had been registered with the state. The check also revealed that LA law enforcement had recovered 90 of the firearms purchased by Salazar in crime incidents. When Miranda and Salazar were arrested in August 1990 by Los Angeles police for firearms violations, some 140 firearms were seized—including 90 Davis Industries 38 caliber pistols, 40 Raven Arms 25 caliber pistols, and a Javelina 10mm pistol.

That month Miranda was indicted by a federal grand jury for selling firearms without the benefit of a Federal Firearms License and conspiracy. Salazar was charged with aiding and abetting and other firearms crimes. Salazar, the FFL, pleaded guilty to conspiracy and was sentenced to one year imprisonment and two years probation. Miranda pleaded guilty to selling firearms without the benefit of an FFL and was sentenced to eight months imprisonment and two years probation.

Under California law, "no person shall engage in the business of selling, leasing, transferring, advertising, offering, or exposing for sale, lease, or transfer of firearms unless he or she has been issued a license...."³² California delegates the responsibility for administering such licenses to the cities and counties: "The duly constituted licensing authorities of any city, county, or city and county shall accept applications for, and may grant, licenses permitting the licensee to sell at retail within the city, county, or city and county, any firearms."³³ However, those engaged in "infrequent" sales are not required to obtain a license. For concealable weapons, such as handguns, California law defines "infrequent" as "less than six transactions per calendar year." For non-concealable firearms, "infrequent" is defined as "occasional and without regularity."³⁴

Although Salazar possessed an FFL, he was not assumed to be a firearms dealer by Los Angeles authorities. Because he had not registered with the Los Angeles Police Department, the LAPD assumed—on nothing more than good faith—that he was not selling more than six handguns a year. Of the nearly 2,000 FFLs in Los Angeles who are not registered with LAPD, there is no way to accurately gauge how many are acting in a similar criminal manner.

Gene Urban, legal counsel for the California Assembly Judiciary Subcommittee on the Administration of Justice, which has worked to tighten up dealer standards in the state, says, "The FFL is just plain bull—. I hate them."

The Alexandria Study

For this study, the Violence Policy Center conducted a survey of FFL licensees in Alexandria, Virginia, in order to determine the compliance rate of such licensees with local ordinances. Alexandria was selected as it is the only relatively large (population 113,000) incorporated municipality bordering Washington, D.C. with its own licensing regulations affecting firearms dealers. This proximity allowed the VPC to make on-site visits and verifications as needed.

For this study, the Violence Policy Center obtained a computer tape listing all Federal Firearms Licensees from ATF. The lists are maintained by a private firm which charges a fee for supplying the information. The VPC constructed a data base in which FFL licensees could be culled out by state, city, zip code, name, or other criteria. (Information in the VPC FFL database is available for a fee to any interested party.)

ATF lists 173 FFLs with an Alexandria address. Of these, 62 come under the licensing jurisdiction of the City of Alexandria. The remainder come under the licensing jurisdiction of Fairfax County.

The study found that only seven of the 62 FFLs (11 percent) were registered with the city as required by law. As a result of the study, the city of Alexandria informed the Violence Policy Center, "Those dealers that are located in the City of Alexandria and do not have a current business license have been sent a letter advising them to contact our office for licensing purposes."

According to Philip Leventhal of the city's business licensing office, Alexandria does not look to federal regulations in their determination of whether an FFL holder needs to have a business license, but makes an independent determination applying the city's own criteria. Mere possession of an FFL would not result in the FFL holder having to register with the city of Alexandria. Yet once the FFL holder began to sell firearms, in any number, he would be required to obtain the business license. Of course, under federal law, the FFL holder should not possess the license unless he is actually selling firearms. Explaining that as with any other business the burden of obtaining a license is placed on the business owner, Leventhal notes, "This is probably the first instance that we've run into these people." Leventhal found the high number of FFLs in Alexandria "surprising. You don't really think of that many people with firearms licenses, especially when you know they have exemptions...[compared to individual purchasers.]"

In conclusion, while it might seem desirable for all states and cities to have the kind of close and productive relationship with ATF as that enjoyed by New Jersey, it is an ironic fact that ATF would quickly collapse under the administrative weight of such a demand. In fact, based on conversations with ATF personnel, at current levels of funding and staffing, it is unlikely that the agency would even be capable of undertaking such a minimal, common sense action as notifying each state of both existing and newly minted FFLs.

If so inclined, ATF could take advantage of the widespread non-compliance with state and local regulations by dealers—not to mention those revealed to be ineligible for an FFL under federal regulations—to prune back the number of licensees. The likelihood of ATF courting the political and legal whirlwind that would follow such an initiative can be confidently rated as zero.

Section Six: FFL Misuse

Abuses conducted by Federal Firearms License holders fall into five categories: 1) straw-man purchases; 2) unrecorded sales; 3) "buy and dump" sales; 4) license falsification; 5) gun show violations. The following documented case studies illustrate each type of violation and are taken from ATF investigative files obtained by the Violence Policy Center for this study under the Freedom of Information Act (FOIA).

Straw-Man Purchases

In a straw-man purchase, a person who is not in a restricted category (the straw man) purchases a weapon for someone who is prohibited by federal or local law from purchasing or possessing a firearm.

Donald Percival was an FFL who owned two pawn shops, Ted's Coin, Guns, Pawnbrokers in Woodbridge, Virginia and Ted's Coins, Guns, and Machineguns in Stafford, Virginia. In June 1981 the Woodbridge store was granted a Type 2 pawnbroker's license. On December 7, 1988 Percival opened the Stafford pawn shop and received the second license.

In October 1988 ATF became aware that Percival and his employees were selling firearms to underage residents of the District of Columbia. (District of Columbia law bans the possession of handguns by its residents. Federal law bans the sale of handguns to out-of-state residents and requires that handgun purchasers be 21 years of age or over.) A suspect in an unrelated investigation into narcotics trafficking and firearms violations had told ATF agents of the ease with which District drug dealers could purchase firearms through a straw man at Percival's shops. The weapons purchased were models popular with drug dealers and criminals—MAC-11 assault pistols, 9mm pistols, and inexpensive .22 and .25 Saturday Night Special handguns. Percival had warned buyers that he was required to notify ATF of multiple purchases (two or more handguns during five consecutive business days), something the drug dealer described as "information he needed in his business." The dealer said Percival had stated that all he required was a Virginia driver's license or someone with a Virginia driver's license to act as the straw man and "you can come down and get a gun."

The weapons soon began turning up at D.C. crime scenes, including crack houses. By

tracing the paper trail of the weapons from the manufacturer through the distribution chain, ATF agents soon found themselves at Percival's stores. One individual testified before a grand jury that in November 1988 he had acted as a straw man using his Virginia I.D., purchasing six guns over three days from Ted's. The District of Columbia resident who accompanied him had chosen the guns, paid for them, taken possession of them, and walked out of the store with them. When a Ted's salesman was asked how to get rid of the serial number on a gun, he replied, "You have to pour acid over the serial number to get it off." (It is a violation of federal law to transport or receive a firearm which has had the serial number obliterated or altered.)

A March 1989 ATF investigation report described Percival as "a passive participant in the straw purchase for Washington area crack dealers, fully aware of what is actually happening." In March 1989, two ATF undercover agents went to the Woodbridge store, told the clerk they were not Virginia residents, and inquired about purchasing firearms. After being shown one agent's Texas driver's license, the clerk informed the pair that they needed someone with a Virginia ID to sign the ATF Form 4473. The agents asked the clerk to hold the two guns. They returned later with a third undercover agent. The clerk asked if they had found someone to sign for the weapons. The third agent showed his Virginia ID and signed the Form 4473s; he never looked at or took possession of the guns. The Texas agent paid for the weapons and took possession of them as the trio left the store. (Following the purchase, a suspicious Percival called ATF telling them of the sale, saying that he had gone through with it only to get the purchaser's name.)

Two months later a pair of ATF agents purchased two guns at the Woodbridge store using the straw-man technique. One of the agents told Percival that he was in Virginia from Indiana and wanted to buy his son a shotgun as a present. He then asked Percival about purchasing a 9mm Beretta semi-automatic handgun. Percival told the agent that he would have to be a Virginia resident to purchase it. The agent then told Percival that he would allow his companion, a Virginia resident, to buy the handgun for him. Percival attempted to cover himself by asking the Virginia resident if the firearm was for her. She replied that the gun was for her out-of-state companion, but that she would say it was for herself so that he could obtain it. She then filled out the forms for the handgun, but her out-of-state companion paid for the weapon and took custody of it when they left the store. In November 1989 Percival was found guilty by a jury of conspiracy and related felony federal firearms violations.

According to ATF, straw-man sales are the preferred method by which weapons are obtained for criminal use in the District of Columbia. This is not surprising. Firearms sales are in

effect banned in the District of Columbia, and ATF—contrary to standard procedure—apparently does visit FFL applicants there prior to the granting of a license. Secondly, the surrounding states of Maryland and Virginia have far more lax firearms laws and allow the sale of all categories of firearms.

From March 1 to August 30, 1991 ATF personnel and D.C. Metropolitan Police participated in Project Lead, to "determine the various sources of firearms used in crimes in Washington, DC."³⁵ The top 11 FFLs who supplied guns that were eventually traced were stocking gun dealers. These 11 dealers accounted for 121 (14.3 percent) of the 856 crime guns confiscated by D.C. police that were eventually traced. (The study noted that it was not its intention "to indicate [that] the FFL is intentionally diverting weapons to the criminal element."³⁶)

Figure 6-1

PROJECT LEAD CRIME GUN TRACES		
Type of Dealer	State	Number of Traces
1. Stocking	Maryland	28
2. Stocking	Maryland	12
3. Stocking	Virginia	12
4. Stocking	Virginia	11 (two stolen)
5. Stocking	Virginia	10
6. Stocking	Virginia	10
7. Stocking	Virginia	10 (two stolen)
8. Stocking	Virginia	9 (seven stolen)
9. Stocking	Maryland	7
10. Stocking	Virginia	6
11. Stocking	Maryland	6

Source: ATF Project Lead Trace Study

Of these 121 guns purchased from the 11 dealers, four Maryland stocking FFLs accounted for 53 firearms (43.8 percent) while seven stocking Virginia FFLs accounted for 68 firearms (56.1 percent). The study noted that there were numerous other FFLs with five or less traces, but noted that "they are too numerous to mention."³⁷

Unrecorded Sales

In an unrecorded sales purchase, the FFL sells weapons to a purchaser without logging the guns into his firearms acquisition book or confirming the identify of the purchaser as required under federal, state, or local law.

Carroll Landis Brown, a Baltimore FFL, sold guns on and off premises to convicted felons and purchasers who used false names. Brown's original record book reflected the acquisition of 146 handguns. However, an ATF-reconstructed record book showed that Brown had actually acquired 357 handguns. When ATF agents raided Brown's residence and business premises 15 handguns were recovered. Of the remaining 342 handguns disposed of by Brown, less than 5 percent of the transactions were supported by the Maryland state registration/waiting period Form 77R, required by state law for the purchase of a handgun in Maryland. Less than 2 percent were supported by an executed ATF Form 4473. In sentencing Brown to 21 months in prison in March 1991, United States District Court Judge Herbert F. Murray stated "This was a serious case because so many handguns were involved and so many have turned up in serious crimes...why anybody would want to create that possibility just for profit is something that appalls me."³⁸

Buy and Dump

Unrecorded sales often involve large quantities of guns purchased and distributed in a short period of time. ATF spokesperson Jack Killorin notes that individuals who use their FFLs to buy large quantities of guns and then sell them off the books to criminals are "half-smart." They are eventually found out as the weapons begin turning up in crimes. Yet by the time an investigation is launched into a buy-and-dump dealer (who is almost always a kitchen-table dealer) large numbers of guns are already on the street.

In January 1988 Detroit resident McClinton Thomas received his FFL and became a kitchen-table dealer. In June 1988 an ATF compliance inspection was conducted (no reason for the

inspection was stated in the report). From February to June 1990 Thomas ordered hundreds of handguns, most of them from Ohio distributor Ashland Shooting Supplies. All the guns were sold by Thomas off the books. Among the sales were 90 guns to one customer described by Thomas as "a big-time dope dealer." In June 1990 Thomas picked up 15 guns from the United Parcel Service depot in Detroit. Thomas was met by ATF agents who had begun investigating his activities. Thomas explained to the agents to whom he had intended to sell the weapons. The agents had Thomas contact both prospective buyers and set meeting times.

The first buyer was arrested after paying Thomas \$1,500 and placing the weapons into the trunk of his car. A box from a previous shipment was also found in the car trunk. The second firearms transaction was scheduled to take place in a lot across the street from the UPS depot. The second buyer drove up with two women and paid Thomas \$1,900. When ATF agents stopped and questioned the two women, both were found to have loaded 25 caliber pistols in their purses. One of the women was also carrying 2.2 grams of heroin and 11.7 grams of cocaine.

One of the investigation's closing reports noted, "As of this writing, some of the firearms sold by Thomas are beginning to surface in various crimes. A log is being maintained of these firearms and the incidents that they are involved in, which will be presented to the Associate United States Attorney." In October 1991 Thomas entered into a plea agreement.

License Falsification

In order for a dealer to receive weapons from a wholesaler or another FFL, he must merely send him a photocopy of his FFL with an original signature. As a result, the FFL license itself can be altered or falsified to permit illegal firearms transactions.

James and Erma Chapman each held an FFL for a business located in the same building in Elizabethtown, Kentucky. James Chapman's FFL was for Jimmy's Discount Guns while Erma Chapman's licensed business name was J & E Distributors. The Chapmans would hide off-the-book sales by making copies of altered FFLs and having buyers sign the "signature" of the fictitious licensee as it appeared at the top of the license. The Chapmans would also have purchasers sign the same fictitious names at the bottom of their store receipts. The Chapmans would sell many of their weapons—primarily small-caliber Saturday Night Specials such as the Raven—to gun show attendees. These unlicensed individuals would then act as "bootleggers" and resell the

guns—often cases at a time—to interested parties.

One seller told an ATF undercover agent of how his distributor [Chapman] got his guns straight from the factory and then billed them out to phony FFLs to cover himself if his records were ever checked. The bootlegger noted that he bought from Chapman every month or two because the guns moved so quickly. He noted that Chapman worked many of the major gun shows around the country and drove a large van filled with cases of the guns.

In January 1989 an unnamed buyer met James Chapman at a gun show in Roanoke, Virginia. Chapman told the buyer that he could handle orders for large quantities of small caliber handguns and told him to give him a call. Chapman provided the buyer with altered FFLs, instructing him to bring the modified licenses with him when he picked up his order. In February 1989 the buyer telephoned J & E distributors and placed an order for 360 Raven 25 caliber pistols (10 cases) and 150 Davis derringers (three cases). He then obtained three cashier's checks totaling \$15,000.

In March 1989, the buyer received a telephone call from Erma Chapman requesting that he drive to Kentucky to receive the 13 cases of firearms. Erma Chapman instructed the buyer to sign the multiple blank licenses that he had brought with him and provided the buyer with different ink pens and multiple blank sales invoices. She further instructed the buyer to sign the altered licenses with a fake signature to correspond to the fake name appearing on the license and to sign the multiple blank sales invoices with the same signatures. After signing the licenses and sales invoices, Erma Chapman placed each set of license, signed correlating blank invoice, and pen in separate envelopes. During this time UPS arrived with the 13 cases of firearms. James Chapman helped the UPS driver transfer the 13 cases of firearms to the buyer's vehicle.

ATF agents eventually placed an order with Chapman for 144 Raven Arms 25 caliber pistols (four cases) at a purchase price of \$43.00 each (one of Chapman's bootleggers bragged that the guns brought a price of \$100 each "up North"). ATF agents also ordered two Sig Sauer 9mm pistols and a Smith and Wesson 9mm pistol. At Chapman's store the ATF agent asked if he had the phony papers for him to sign. Chapman handed the agent five padded envelopes, each containing one unsigned copy of an altered Federal Firearms License with a fake name, several blank sales receipts, and individual ink pens. Chapman instructed the agent to correlate the signatures on the licenses and invoices, signing each with the separate ink pen provided. Chapman bragged to the agent that "if BATF ever tried to check me they would run up against the wall with

phony paperwork." ATF agents then raided Chapman's place of business. During the raid the agents found FFL licenses in a copier that were in the process of being altered. Seized documents revealed transactions with at least 11 non-existent FFLs.

In March 1990 James Chapman plead guilty to conspiracy to violate federal firearms laws and was sentenced to three months community confinement and to five years of supervised release. Erma Chapman plead guilty to one count of conspiracy to violate federal firearms laws and was sentenced to two months community confinement, five years of supervised release, fined \$2,000, and ordered to perform 200 hours of community service.

Gun Shows

On any given weekend, gun shows can be found in fairgrounds, National Guard armories, and convention halls across America. For a set fee, non-licensed and licensed individuals can set up a table to buy, sell, and trade firearms. Under federal law, non-licensed individuals may sell guns from their personal collections to in-state residents without the paperwork (Form 4473, etc.) required of a retail sale. Additional state and local standards may apply regarding secondary transfer of firearms in the state or community in which the show is held.

• Holders of FFLs may sell firearms at gun shows in their home state as an extension of their place of business. All federal, state, and local laws must be met. In-state residents would be able to leave with the weapon from the show if there were no state or local laws to the contrary. Otherwise, the in-state resident would have to pick up the weapon at the FFL's regular place of business or have the weapon shipped intra-state after having met all state and local requirements. Out-of-state residents, after having met all state and local requirements, would have to have the weapon shipped to an FFL in their home state before taking possession.

Federal laws regarding gun shows are often ignored. As a result, gun shows can—and often do—serve as the first step in the criminal sale of guns. The lack of regulation of shows is widely known and as a result they are a favored venue for unscrupulous dealers and criminal purchasers. Illegal sales usually occur three ways at gun shows: 1) out-of-state dealers sell through a local FFL; 2) guns are sold by out-of-state licensees at the show even though it is not their licensed place of business; and, 3) guns are simply sold off the books.

North Carolina stocking gun dealer Bill Bridgewater promises that gun show violations occur all the time:

If you can't see them, you're blind. When you go to a [North Carolina] gun show and you see every state licensee around you for 250 to 300 miles and you chat with various folk standing behind their table of handguns...[from Ohio, Florida, Virginia], does that give you a clue? There are a lot of [illegal sales being committed] under the color of an FFL traveling state to state every weekend and attending firearms shows and selling firearms unlawfully in those states. The principal reason they do is that at every gun show in this nation no one pays any attention to the law.

At the 1992 SHOT show seminar, "BATF: Issues and Answers," audience members complained to the ATF panel that the first method, essentially using a "straw" licensee, was a common practice about which the agency appeared to be unconcerned. Said one stocking FFL, "My main concern is out-of-state dealers coming and going through another [in-state] dealer to transfer. That's the only time this person ever sees this guy who's a resident of our state—[who] works basically for this person in another state. I think it's a serious problem, that doesn't seem to be addressed—at least in our state—by ATF."

In response to the licensee's complaints, then-ATF Firearms and Explosives Division Chief Robert Daugherty noted, "If we find the individual selling at an out-of state gun show, we wouldn't go after a license revocation right out of the starting block, but if that person were warned and continued to do that we have every right legally to revoke that individual's license. If he's not an FFL, it's a different story." Daugherty noted that for most prosecuting attorneys, illegal firearms sales at gun shows were just not a high priority. Yet to the stocking gun dealers they were. Said one:

I've contacted my state regarding these laws, and they've referred me to ATF. I've spoken with ATF regarding these people coming in from out of state and...sales going on without 4473 forms to people that shouldn't even have a handgun. When these [firearm] crimes occur within our city, the dealers that have the stores are the people being blamed for selling these weapons. I can't get any enforcement. I've spoken with our local ATF about this problem. They say, 'contact me before the next show.' I've done so. For some reason or another I can't get them to come. Are you saying that ATF cannot keep this person from say, Missouri out of our state, that goes to California the next week, and Florida the next week?

That gun shows often degenerate into criminal swap meets is no surprise. In response to questions submitted for this study, ATF noted that, "Given the number of shows and flea markets, the agency cannot patrol these events, but does respond to information and allegations of illegal activity." In 1991 ATF did initiate a pilot "educational" program to make gun show participants aware of federal sales requirements. In the late summer and early fall of 1991, ATF agents

attended approximately 20 gun shows, manning information booths at the shows. At the SHOT show the agency promised that it intended to maintain a "moderate" presence at the shows.

Such promises are little comfort to FFL's like Bridgewater, who says, "I don't think they [ATF] have any idea what they're looking at. They went to a couple of shows in Virginia, and they put up their little signs..... I don't think they'd know a violation if they went to a gun show and bought a gun unlawfully."

Project Detroit

In spite of all these possibilities of abuse, little research has been conducted by ATF to gauge misuse by FFLs in general and kitchen-table dealers in particular. One study that gives a disturbing glimpse into the role of kitchen-table dealers is ATF's Project Detroit, a study conducted by ATF and the Detroit Police from January 1989 to April 1990.

Project Detroit described itself as "an in-depth study of crime weapons taken into custody by DPD [Detroit Police Department] for the purpose of identifying illegal sources of weapons to the criminal element. The project was also intended to identify weapons of preference and to determine the validity of statements alleging certain firearms were more often used by violent narcotics violators than others."³⁹ A total of 2,342 weapons were considered for the trace program. Incorrect identification by officers, age of the weapon, unnumbered firearms, lack of FFL records, and obliterated serial numbers resulted in only slightly more than half of the weapons being successfully traced.

Three hundred and sixty of the weapons had had their serial numbers obliterated. Through indirect methods ATF was able to trace most of them. As a result of the project, ATF identified and prosecuted three FFLs who had obliterated the serial numbers on all weapons received from wholesalers.⁴ The agency estimated that more than 3,000 firearms had been sold by these three dealers and "that law enforcement officers will be recovering them in various crimes for years to come."⁴⁰

ATF identified a total of 13 Federal Firearms Licensees who were knowing suppliers of

⁴It is a federal crime punishable by a fine of not more than \$5,000 and imprisonment of not more than five years to move in interstate commerce a firearm which had had the serial number removed or altered (18 USC § 922(K)).

weapons to the criminals. Search warrants and arrest warrants were obtained for all 13.

Regarding the criminal activity of FFLs, the report noted:

Just because an FFL has sold a large number of weapons that were subsequently used in crimes does not necessarily indicate the FFL is intentionally diverting weapons to the criminal element. The probability that large volume dealers will stand out is a natural result since they sell hundreds or thousands of weapons each year. But, we have proven that the majority of the FFLs in Michigan who have sold large numbers of the weapons involved in the Trace Project were violating federal and state laws. Ten of the 13 FFLs that were arrested by ATF special agents were conspicuous by their multiple appearances in the data base. We must consider the possibility that out-of-state dealers may be intentionally diverting weapons to persons who are trafficking guns to the Detroit area. We must also consider that Detroit area individuals are traveling to other states and purchasing weapons from high-volume dealers through the straw purchase method or by using counterfeit identification.⁴¹

Of the 13 FFLs prosecuted as the result of Project Detroit, eight were apparently kitchen-table dealers: One was the aforementioned McClinton Thomas. The remaining seven were:

Steve Durham, who provided hundreds of firearms "to the most visible and violent narcotics organizations in the Detroit metropolitan area." Durham sold the weapons off the books out of his home under the business name of The All-Gun Cleaning Service. Durham also solicited individuals to sign 4473 forms for firearms they had never purchased. He also supplied prospective buyers with fake names and addresses to be used on the 4473s. Between the time he was granted his FFL in September 1986 to his arrest in November 1989, ATF agents had executed three federal search warrants at Durham's home seizing several firearms which Durham had offered to sell to undercover officers posing as convicted felons.

John Deering, an FFL doing business as Han's Precision Drilling, used his FFL to acquire AR-15 type lower receivers (the portion of the firearm housing the trigger and firing mechanism). He then turned the lower receivers over to his brother, Lewis Deering, who manufactured them into complete firearms and then sold them without maintaining proper production or sales records.

Henry C. Rhone, who in March 1985 became a Type 1 FFL. On June 12, 1989, Rhone met with an ATF agent on a Michigan street corner, selling the agent a Ruger Mini-14 rifle. On June 26, 1989, Rhone sold two ATF special agents another Mini-14 as well as a Mossberg shotgun equipped with a pistol grip. On July 25, 1989, Rhone sold an ATF agent a scoped Mini-14 and a .32 Colt revolver. In January 1990 a federal warrant was issued for Rhone's arrest. At the time of his arrest, 55 firearms not listed in his dealer's acquisition and disposition records were seized.

Wilfred DeWitt Hart, who falsified his FFL renewal application, concealing a felony conviction. Doing business out of his home as Hart Firearms Sales, Hart bought more than 300 firearms from January 1987 to February 1990. Hart would order the weapons from an out-of-state wholesaler and have them delivered via UPS Next-Day-Air to his Detroit home. An arrest warrant was issued on February 16, 1990. A federal search warrant was issued for a residence that Hart had delivered weapons to earlier in the day. At the residence eight firearms were seized, their serial numbers already ground off.

Boris Taylor, who was arrested by ATF in October 1990 for making false statements in the acquisition of a firearm. The firearms he purchased were found in a stolen car that was to be used in a prison break. In September 1988 ATF agents interviewed Taylor regarding a gun he had sold that was subsequently found at the residence of a large-scale drug dealer. During the investigation, agents learned that Taylor had sold 300 to 350 firearms over the past two years. Taylor told the agents that he had no record of the firearms sales, claiming that all of his firearms-related records had been stolen from his garage. Based on information that Taylor had ordered large numbers of firearms from out-of-state wholesalers and upon receipt bored out the weapons' serial numbers, a search warrant was executed in February 1989 at his residence/place of business.

Darryl Turnley, a Type 1 FFL in Detroit, Michigan who during the months of October, November, and December 1989 received at least 219 firearms from various wholesalers. No paperwork existed on the guns. Turnley was also rumored to be manufacturing home-made hand grenades that he sold for \$125 each. On January 28, 1990 Turnley was killed while tinkering with one of the grenades. Found in his home after his death were three completed grenades and approximately 100 rocks of crack cocaine.

Earl Robert Bower, a Type 1 FFL who in December 1989 sold a short-barreled UZI carbine to an undercover ATF agent for \$900 at a Detroit gun and knife show. The next month Bower was arrested and surrendered his FFL.

Project Detroit lists 1,226 successful traces of weapons used in crime to the original dealer. ATF has refused to release under the FOIA the original point-of-purchase dealers listed in Project Detroit, arguing that the release of such information would infringe on the dealers' privacy and make them less likely to answer ATF trace requests over the phone. (Although FFLs must voluntarily open their books to an agent conducting a firearms trace who appears at their place of business, they are not required to supply the information to ATF over the phone. Their doing so, is, in fact, a "courtesy" to the agency.) This denial is currently being appealed.

For this study, ATF did agree to determine—for those original point-of-purchase dealers named in Project Detroit with five or more criminal traces—whether the dealer was a storefront dealer or a non-stocking kitchen-table dealer.

The information revealed that of the 32 dealers who had sold five or more guns that turned up in criminal traces, 10 were classified as kitchen-table dealers, 21 were stocking gun dealers, and the status of one was unknown. Of the total of 343 guns traced back to the 32 dealers, 139 were traced back to the 10 kitchen-table dealers while 196 were traced back to the 21 stocking gun dealers.

Figure 6-2

ATF PROJECT DETROIT: STOCKING AND KITCHEN-TABLE DEALERS
WITH FIVE OR MORE CRIMINAL TRACES

Rank	State	Stocking or Kitchen-table	Number of Firearms Traced
1.	MI	Kitchen-table	29
2.	MI	Kitchen-table	27
3.	MI	Stocking	20
4.	MI	Stocking	20
5.	MI	Stocking	19
6.	MI	Kitchen-table	16
7.	MI	Kitchen-table	15
8.	MI	Kitchen-table	15
9.	KY	Kitchen-table	14
10.	MI	Stocking	11
11.	IL	Stocking	11
12.	MI	Stocking	10
13.	OH	Stocking	9
14.	MI	Stocking	9
15.	AL	Stocking	8
16.	AL	Unknown	8
17.	MI	Stocking	8
18.	OH	Stocking	8
19.	MI	Stocking	8
20.	IL	Kitchen-table	8
21.	MI	Stocking	7
22.	MS	Stocking	7
23.	MI	Stocking	7
24.	OH	Stocking	6
25.	MI	Stocking	6
26.	OH	Stocking	6
27.	KY	Stocking	6
28.	KY	Kitchen-table	5
29.	VA	Stocking	5
30.	MI	Kitchen-table	5
31.	AL	Stocking	5
32.	MI	Kitchen-table	5
Total			343

For the 32 dealers who had five or more firearms traced back to them, the ATF figures show that:

1. One third of all gun dealers who had five or more crime guns traced back to them were kitchen-table dealers (10 out of 32, with one dealer status unknown).
2. In a ranking of dealers by number of crime guns traced back to them, kitchen-table dealers ranked first (29 guns), second (27 guns), sixth (16 guns), seventh (15 guns), eighth (15 guns), and ninth (14 guns).
3. Kitchen table dealers supplied 41 percent of all guns traced (139 of 343) even though they accounted for only one third of all dealers with five or more traces. In comparison, stocking gun dealers accounted for two thirds of all dealers with five or more traces and supplied 57 percent of all guns traced.
4. The average number of crime guns traced per kitchen-table dealers, (13.9), was nearly 50 percent higher than that of stocking gun dealers (9.3).

Although the sample used in the Detroit study is too small to make general inferences for the whole country, it provides disturbing evidence that kitchen-table dealers contribute significantly to criminal gun flow, perhaps at a rate far higher than stocking gun dealers. Based on interviews with police and licensing personnel, it is not presumptuous to assume that similar statistics would be found in other major metropolitan areas. What is most disturbing is that the Project Detroit kitchen-table dealer statistics outlined above are the first of their kind.

Section Seven: Recommendations

The Federal Firearms License (FFL) was initially developed to aid law enforcement in the regulation of those who deal in firearms. The license's low cost, coupled with ATF's lax issuance, renewal, and revocation policies, however, have transformed it from a law enforcement tool to a criminal weapon.

From our research we draw the following general conclusions regarding the way ATF issues and regulates Federal Firearms Licenses:

1. Application standards are low, approval and renewal rates are high;
2. Unless involved in blatant criminal activity, the vast majority of licensees can expect to avoid inspection;
3. ATF record-keeping and reporting requirements are minimal;
4. Licenses are seldom revoked by ATF;
5. Originally designed to aid in dealer regulation, the FFL has become the key factor that makes regulation virtually impossible.
6. Under the McClure-Volkmer definition of "engaged in the business," the vast majority of FFL license holders are not entitled to be licensed.

As states and local communities tighten firearms controls and Congress eventually concedes to some version of a national waiting period or "instant check" for point-of-sale firearms purchases, the popularity of FFLs can only increase as the result of the license's accompanying privileges. Recognizing this, FFLs will inevitably become a major issue in America's firearms debate. Yet unlike many measures that fall under the "gun control" rubric, it is one in which clear, concise steps can be taken that would have an immediate, tangible effect on public safety.

ATF's policy of benign neglect has resulted in a bloated, unmanagable universe of illegitimate FFL holders. The first and most important step the agency must take is to limit licenses only to those who ought to possess them under existing federal law. To this end, ATF should begin enforcing the "engaged in the business" requirement for FFL eligibility as clarified by McClure-Volkmer. The level of activity required to be considered "engaged in the business" under McClure-Volkmer and to legitimately hold an FFL is defined in the violations section of 18 U.S.C. § 921(a)(21)(C) as:

a person who devotes time, attention and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges or purchases for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.

In order to meet the criteria for license eligibility as set forth in 18 U.S.C. § 921(d)(1)(E) an applicant is required to conduct a level of business that meets this activity threshold within a reasonable length of time. If this requirement were enforced, using ATF's own estimates, the universe of Type 1 FFLs would shrink to a far more manageable and easily regulated 50,000 licensees or fewer.

The process of winnowing down the number of illegitimate FFLs will require that ATF take an aggressive stance—including a willingness to devote the manpower and funding necessary for litigation—in denying and revoking FFLs. Recognizing the agency's past success in court when it has been forced to litigate, such a stance will send a strong message to unscrupulous dealers and those hoping to obtain the license merely for personal use.

Other actions that ATF could undertake immediately include:

- o Develop a process by which state and local police, business, and zoning authorities are notified of FFLs granted in their jurisdiction as well as any subsequent changes to the status of an FFL, such as ceasing business. (In September 1992 ATF contacted state attorneys general, departments of public safety, and state police departments to see if they wished to receive FFL lists. By October 26 ATF had filled 74 requests for the information.)
- o Dramatically increase the number of FFLs inspected each year and seek congressional funding to ensure that every FFL licensee is inspected once a year.
- o Develop a more effective relationship with United Parcel Service and other common carriers so that they can report suspicious activity to ATF.
- o Determine a more efficient and controlled method of distributing firearms from manufacturers and wholesalers to legitimate FFL holders. The current system of having the FFL holder supply a copy of his license with original signature to the wholesaler or manufacturer for each purchase is archaic and easily abused.
- o Encourage such programs as Forward Trace and X-Caliber that use information embedded in the distribution chain to help the agency better understand the nature of gun flow in the country, including the ability to discern specific categories of firearms that are more likely to be involved in criminal activity.

In addition to these immediate steps, additional measures that could be undertaken which would require federal legislation or other federal action include:

- o Require that before ATF issues an FFL, the applicant must show proof that all state and local licensing and zoning requirements have been met, or require that ATF issue licenses on the contingency that such requirements be met within a specified amount of time. Applicants who fail to meet these standards would have their licenses revoked. Upon renewing a license, an FFL holder would also have to demonstrate compliance with state and local laws, or face having his renewal denied.
- o Require that Federal Firearms Licensees report all firearms thefts immediately to ATF.^u
- o Require that Federal Firearms Licensees report all firearms records thefts immediately to ATF.
- o Require that Federal Firearms Licensees must voluntarily give ATF information over the phone for firearms traces.
- o Require that Federal Firearms Licensees must report all personal injury suits filed against them to aid in pinpointing dealers who sell to prohibited persons.
- o Require that those dealing in firearms undertake security precautions to help deter firearms theft. Such measures might include: specified alarm systems, specified wall and door thickness and material; specified firearms safe design; requirement that all firearms be placed in secure storage when the business is closed.
- o Increase the dealer licensing fee from \$30 for three years to an annual fee of at least \$1,000, indexed for inflation.
- o Require that FFL holders carry a minimum level of liability insurance sufficient to cover possible civil suits for personal injury or sales of defective firearms.

^uThefts from Federal Firearms Licensees appear to have increased dramatically in the past three years, although no comprehensive statistics exist. FFLs are not required to report thefts to ATF and the agency becomes aware of thefts only through newspaper clippings, or notification by dealers or local police. In fact, it was not until 1991 that the agency unofficially began keeping a tally of such incidents. In the past two years, criminals have become increasingly aware of the ease with which large numbers of firearms can be obtained by robbing or burglarizing gun stores. Often criminals forsake armed robbery for "smash-and-grab" burglaries, driving a vehicle through the front of a store during non-business hours and escaping with as many guns as can be thrown into the vehicle. 1991's Project Lead noted that between August 24, 1990 and May 25, 1991, burglaries occurred at 45 FFLs in Maryland and Virginia. There were approximately 1,240 firearms stolen from dealers during this period. Of the 203 stolen firearms confiscated by District Police from January to October 1991, 53 were from these FFL burglaries. At the 1992 SHOT show seminar, an ATF spokesperson noted that since the summer of 1991 there had been four cases in which licensees were murdered in their stores. In July thieves murdered an Ohio dealer and took more than 20 firearms, including fully automatic weapons. In September 1991 a Baltimore gun dealer was murdered and a second employee shot during a robbery of his shop. In October 1991, two sisters—aged 70 and 75—were murdered in their Maryland gun store; it was the second robbery that had occurred there in four months. In December 1991 a Texas licensee was murdered in his home by underage individuals to whom he had refused to sell firearms.

- o Modify the background check for granting of an FFL from the current name felony check to one more closely resembling that for private machine gun ownership. This would include: photograph, fingerprint background check, local police approval, and whatever time frame necessary to complete the process.
- o Rescind the prohibition contained in McClure-Volkmer preventing ATF from computerizing its firearms tracing records.
- o Restore ATF's power to conduct unlimited, unannounced dealer inspections.
- o Grant ATF the power to assess civil penalties for FFL violations and allow the agency discretion as to the amount that can be assessed, up to a maximum of \$25,000 per violation indexed for inflation.
- o Review the criminal penalties for violations of the Gun Control Act by dealers and bring them more in line with penalties for other firearms crimes under Federal law.
- o Modify federal law so that information on fully automatic machine gun misuse is no longer treated as tax information and withheld from the public.
- o Develop a separate FFL for those dealing in Class III weapons (machine guns) and require application standards that are at least as strict as those for private NFA weapons ownership.
- o Create an explicit private cause of action for violations of the Gun Control Act of 1968.
- o Ban gun shows.

In the research conducted for the state firearms dealer regulations contained in Addendum Two of this study, three facts quickly become clear:

- o Dealer licensing is not a priority in most states. Twenty-eight states have no dealer licensing. And of those that do, many rely on ATF to discern unscrupulous dealers. Obtaining information on dealers licensed by an individual state is for the most part difficult and time consuming, and often exact figures are hard to obtain. Some states do not centralize dealer records. One reason for this is that dealer licensing is often seen as solely a "business" regulation as opposed to a law enforcement component of public safety.
- o Many state dealer licensing laws have been rendered obsolete by changes in firearms technology. In many states, dealer licensing laws apply only to individuals dealing in concealable weapons such as handguns—not long guns such as rifles and shotguns. This is because handguns are misused far more often than long guns. The burgeoning assault rifle and shotgun market has rendered this delineation invalid. Although handguns remain the preferred weapon of criminals, assault weapons—because of their unique characteristics—pose a far greater public health threat than standard rifles or shotguns and those who deal in them are far more likely to come into contact with individuals involved in criminal activity.
- o State standards as to what level of business activity constitutes being "engaged in the business" are often vague.

Recognizing the key role states and local communities can play in helping regulate those involved in selling firearms, the following measures should be enacted on the state level:

- o For states that have no dealer licensing, establish a licensing system for firearms dealers. A key aspect of this would be a requirement that any FFL licenseholder would be required to obtain a state firearms dealer license. Many states do not require a state license for dealing in firearms. This is often based on the mistaken assumption that FFLs are being actively policed by ATF.
- o Centralize firearms dealer licensing information, even in states where issuance is through a local authority.
- o Require a state firearms dealer license for a dealer in any type of firearm. Currently, many states require a state firearms dealer license only for those dealing in concealable weapons such as handguns.
- o Develop clear and quantifiable definitions under state law of what constitutes a firearms dealer. Often state laws contain vague definitions regarding time and attention devoted to firearms sales. Dealer definition should center on number of weapons sold (with clear exemptions for disposing of a collection or other uncommon occurrences) or amount of revenue received. For example: more than five weapons per year with revenue totalling more than \$500.

Addendum One: Civil Liability of Firearms Dealers

Don't say "this gun is safe" or "we stand behind this gun no matter what."
What business men need to say to sell guns runs head to head with
protecting oneself from liability.

Speaker at the 1992 SHOT show seminar on
"Liability Insurance and the Firearms Industry"

Firearms dealers, like most other small business men, live in fear of being sued. However, most dealers—like the great majority of other small business owners^a—will never be named in a lawsuit involving the sale of a product or the conduct of business.^b

This may change as gun control advocates take a renewed interest in using litigation as a weapon against dealers in the gun control battle. Having failed in persuading courts to adopt novel theories of liability that hold manufacturers, distributors, and sellers liable for weapons misuse, gun control advocates have rediscovered traditional theories of negligence as a tool to hold dealers liable when they sell defective products or their wares are used to kill innocent people.

This section is intended to provide an overview of the potential civil liability that may attach to dealers in firearms. It is not intended to be an exhaustive case law review of dealer liability, but merely provide a snapshot of specific liability areas. Issues addressed include:

^aIn his 1988 study, *Product Liability and the Business Sector: Litigation Trends in Federal Courts*, Terence Dungworth examined which companies have been defendants in federal product liability suits. Dungworth found that 34 companies were lead defendants in more than 35,000 of the 85,694 suits filed between 1970 and 1986. At the other end of the scale, 17,000 companies were lead defendants in only one case.

^bMike Sapparido of RSR Corporation, a major wholesaler, observed at the 1992 SHOT Show seminar on liability that RSR had paid only one claim in 13 years. Industry lawyers also admonish dealers that any time liability adheres they are also likely to be held liable for punitive damages. Generally, punitive damages are awarded in cases in which the defendant has engaged in outrageous conduct in disregard of public safety. Fear of punitive damages for firearms dealers is generally unfounded. Punitives function to punish and deter the defendant and similarly situated others from endangering the public welfare. But according to Michael Rustad's *Demystifying Punitive Damages in Product Liability Cases: A Survey of a Quarter Century of Trial Verdicts*, the most recent and comprehensive study of punitive damage awards, in the past 25 years there have only been 24 punitive damage awards against those doing business in "recreational products"—a category which includes firearms, snowmobiles, ATVs, catamarans, and sports apparel. These products account for only seven percent of all punitive damage awards.

- o Negligent sales to minors
- o Store owner liability for injuries to customers
- o Failure to provide adequate warnings
- o Sale of defective firearms
- o Sales in contravention of federal statutes
- o Strict liability for sales of non-defective firearms

Negligent Sales to Minors

In 1992 a Virginia jury found Norfolk's Guns Unlimited liable for \$100,000 in damages for having sold a 9mm M-11 assault pistol to a 16-year-old. The teen later used the gun in a shooting rampage at his private school during which he killed one teacher and wounded another. The suit was filed by the husband of the murdered teacher. The jury found that Guns Unlimited was negligent when it allowed the sale of the gun to the adult accompanying the teen when it was obvious that the purchase was actually being made for the minor.

According to evidence offered at trial, the pistol was purchased by the boy's second cousin who was accompanied by the teen to the gun store. Testimony was presented that a store employee witnessed the boy select the weapon and then give his cousin the \$300 necessary to buy the weapon. Having completed the straw purchase, the teen carried the pistol out of Guns Unlimited. Witnesses for the gun store maintained that they had no knowledge that the gun was being purchased for the minor. Guns Unlimited has expressed an intent to appeal.⁶

Some gun control advocates have mistakenly described this decision as a landmark case, characterizing it as the first against a gun dealer for a straw purchase. However, it can more accurately be described as an appropriate application of traditional negligence theory, and such a decision is certainly not without precedent.

For example, in 1957 a New York state court found a retailer liable for injuries sustained by a girl shot by a 9-year-old boy with a BB gun the boy's father had purchased for him. The facts of the case were similar to those in the Guns Unlimited case. Sale directly to the boy was prohibited by state law. The boy was with his father during the purchase and tested the gun in the store.

⁶*Liability Week*, (January 20, 1992).

The court held that the record supported a finding that the retailer had knowingly put a dangerous instrumentality in the hands of a child who it should have known was irresponsible and inexperienced at handling the gun because of his youth.^d

Several older cases also found gun shop owners liable for injuries to third persons that resulted from illegal sales to minors. For example, in 1921 a Georgia court ruled that a gun store owner could be held liable for selling a pistol to a 14-year-old in violation of a statute. The minor later lent the pistol to another boy about the same age who shot and injured a third minor. The court held that the purpose of the statute prohibiting sales of pistols to minors was to prevent injuries resulting from negligence in the handling of weapons by irresponsible persons. This purpose, said the court, was applicable to sellers. The court held that whether the sale in violation of the statute was the proximate cause of the injury and whether the act of the minor who shot the victim was an intervening cause that would break the chain of causation was a question for the jury.^e

Store Owner Liability for Injuries to Customers

Some of the earliest instances of gun seller liability involve facts in which a customer of the dealer was injured on the dealer's premises by a firearm manipulated by another customer. For example, in 1937, a Texas court held a gun store owner liable for injuries caused when the dealer permitted a customer purchasing shotgun shells to try them in his shotgun while in the store. The court refused to insulate the dealer from liability under the theory that the customer's actions constituted an intervening cause.^f

^d*Sickles v. Montgomery Ward and Co.*, 6 Misc. 2d 1000, 167 N.Y.S.2d 977 (1957). But see *Stephan v. Marlin Firearms Co.*, 353 F.2d 819, cert. denied, 384 U.S. 959 (2d Cir. 1965) (Whether a rifle dealer who knew rifle would be used by a 15-year-old who eventually shot a hunting companion was negligent when he sold the gun to the boy's uncle was a question for the jury).

^e*Spires v. Goldberg*, 26 Ga. App. 530, 106 SE 585 (1921). See also, e.g. *McMillen v. Steele*, 275 Pa. 584, 119 A 721 (1923) (sale in violation of a statute prohibiting the sale to any person under 16 years of age rendered the seller liable for injuries to a playmate shot by the boy); *Bernard v. Smith*, 36 R.I. 377, 90 A 657 (1914); *Hartnett v. Boston Store of Chicago*, 265 Ill. 331, 106 N.E. 837 (1914) (gun sold in violation of state ordinance); *Robinson v. Howard Bros. of Jackson Inc.*, 372 So. 2d 1074 (Miss. 1979) (gun and ammunition sold to a minor in violation of 1968 Gun Control Act); *Ward v. University of South*, 209 Tenn. 412, 354 S.W. 2d 246 (1962) (accidental discharge of a weapon in the death of a third person is an unforeseeable intervening cause); *Halsebosch v. Ramsey*, 435 S.W. 2d 161 (Tex. Civ. App. 14th Dist. 1968); *First Trust Co. v. Scheels Hardware and Sports Shop, Inc.*, 429 N.W. 2d 5 (N.D. 1988) (A 15-year-old shot a friend. The court ruled that it was not a superceding cause and would not extinguish cause of action for negligent entrustment against the hardware store).

^f*Berry v. Harper*, 111 S.W.2d 795 (Tex. Civ. App. 1937).

Likewise, a Nebraska court held that a gun store customer could pursue a case against a store owner who had allowed another customer to place shells into a shotgun and pump the gun's mechanism while in the store. The court ruled that it was reasonable to expect the store owner to anticipate the possibility that manipulation of the gun in his place of business might cause it to discharge.^g

Failure to Provide Adequate Warnings

Recent cases have shown that failure on the part of dealers to provide adequate warnings and instructions may result in substantial liability.

In May 1989, a Pennsylvania gun shop was found potentially liable for \$11 million as the result of a gun accident in which a woman was left severely brain-damaged.^h The plaintiff was 14 when she visited a neighbor whose mother had bought a pistol from Donn's Gun Room in Montgomeryville, Pennsylvania. Another acquaintance, then 18 years old, was examining the weapon when he accidentally fired it. The jury found the gun shop 30 percent liable for failing to provide written or oral instructions on proper use of the handgun. Pennsylvania law on joint and several liabilityⁱ allows the plaintiff to attempt to collect the entire award from the gun shop as the only defendant with sufficient assets. If the apparent trend of holding gun shops liable in these types of incidents continues, dealers may face increased financial responsibility in cases in which other responsible defendants have insufficient assets.

Sale of Defective Firearms

Under some circumstances courts have displayed a willingness to expand the liability of sellers of firearms in instances involving the sale of firearms with manufacturing defects.

In 1991, the Wisconsin Supreme Court ruled in a landmark decision that a seller could be held strictly liable for the accidental discharge of a used shotgun even though the defective

^g*Naegele v. Dollen*, 158 Neb. 373, 63 N.W.2d 165 (1954).

^h*Liability Week*, (May 30, 1989).

ⁱJoint and several liability allows victims to recover 100 percent of the amount awarded to them by permitting recovery of the full amount of the award from any one defendant should one or more of the defendants found liable prove to be judgment-proof or bankrupt.

condition that caused harm to the consumer arose from the original manufacturing process.^j The case expanded the doctrine of strict liability under Sec. 402A of the *Restatement of Torts 2d*—which has traditionally only been applied to sellers of new products—to sellers of used products.

The accident occurred in 1983. The plaintiff, a 14-year-old boy, was shot in the hand when an uncocked Stevens 10-gauge model 940-E single-shot shotgun fell about eight feet to a barn floor from a ladder he was climbing and discharged. The hardware store had taken the weapon, manufactured in the 1970s, in trade in 1982. The store owner had inspected the gun and had made no alterations or modifications to it. The hardware store was sued after the manufacturer, Savage, filed for Chapter 11 bankruptcy.

The Wisconsin court was careful to limit the application of 402A in the case of a used product to instances in which the seller is in the business of selling and where the defective condition causing harm to the consumer of the used product arose from the original manufacturing process. Expansion of used product liability should make dealers much more careful about inspecting weapons they take for resale and may dissuade many dealers from dealing in used guns. This may have serious ramifications for pawnbrokers.

Sales in Contravention of Federal Statutes

In 1979, a Wisconsin court looked at the question of whether the sale of a pistol to a minor in violation of 18 U.S.C. § 922 (b)(1) of the 1968 Gun Control Act (which prohibits the sale of firearms other than shotguns or rifles to any individual who the licensee knows or has reasonable cause to believe is less than 21 years of age) constituted negligence *per se*.^k The suit also alleged that the violation of a state statute creating criminal liability for intentional sales of pistols to minors created *per se* civil liability.

The court decided that the federal criminal standard was not clearly suitable for use as the reasonable person standard in civil negligence cases. Interestingly, the court's reasoning turned to a large extent on the regulatory role vested in the Secretary of the Treasury (and delegated to ATF)

^j*Nelson v. Nelson Hardware Inc.*, Wis. Sup. Ct. No 89-1099-FT (1991).

^kNegligence *per se* means that the very fact that the sale took place triggers liability.

by Congress. The court accorded considerable weight to the fact the "GCA provisions vest discretion in the Secretary of the Treasury and prosecutors to determine a gun dealer's eligibility for a license and clearly contemplate administrative enforcement as a primary means of achieving the purposes of the Act" [emphasis added].¹ The court enumerated the powers of ATF to revoke licenses and deny license renewals for violation of federal, state, or local statutes as evidence of ATF's regulatory discretion.

The court was convinced that where causation could be shown to be reasonably direct a jury would be likely to find negligence when the seller knew or should have known that the purchaser was under 21 years of age. The court therefore declined to find that the Gun Control Act creates a private cause of action against gun dealers for sales of pistols to minors.

In light of ATF's current lax enforcement stance, it would make sense to create an explicit private cause of action where violation by a dealer of the GCA results in injury. The threat of civil liability would enhance the incentive for dealers to comply with the Act and would exponentially increase the number of "cops on the beat," making every private citizen a potential enforcer.

Strict Liability for Sales of Non-Defective Firearms

Courts overwhelmingly rejected the efforts made in the 1980's to create a new cause of action holding sellers or manufacturers of handguns liable for deaths and injuries caused when the weapons were used by criminals.^m Most of these cases advanced "ultrahazardous activity" as a theory under which manufacturers, distributors, and sellers should be held liable for injuries caused by the products they sold.

¹With regard to keeping handguns out of the hands of minors, Congress' findings included the recognition that, "There is a causal relationship between the easy availability of firearms other than a rifle or shotgun and juvenile and youthful criminal behavior, and that such firearms have been widely sold by federally licensed importers and dealers to emotionally immature or thrill-bent juveniles and minors prone to criminal behavior." Pub.L.No. 90-351, § 901, 82 Stat. 197, reprinted in [1968] U.S. Code Cong. and Admin. News, pp. 237, 270.

^mFlorida: *Shipman v. Jennings Firearms, Inc.* 791 F.2d 1532 (11th Cir. 1986) (manufacturer and distributor of Saturday Night Special handguns found not liable to the estate of the wife of a husband who used the gun to shoot and kill her); Illinois: *Martin v. Harrington and Richardson, Inc.* 743 F. 2d 1200 (7th Cir. 1984) (Illinois law does not recognize the sale of handguns as an ultrahazardous activity giving rise to strict liability); New Mexico: *Armijo v. ExCam, Inc.* 656 F. Supp. 771, *aff'd* 843 F. 2d 406 (D. N.M. 1987) (handgun manufacturer and distributor found not liable under theories of strict product liability for criminal misuse, ultrahazardous activity); Ohio: *Caveny v. Raven Arms*, 665 F.Supp. 530, *aff'd* 849 F.2d 608 (S.D. Ohio 1987) (manufacture and distribution of handguns is not an ultrahazardous activity under Ohio law, no strict liability).

"Ultrahazardous activity" operates to hold those who engage in abnormally dangerous activities strictly liable for injuries caused by their activities. These activities have historically been those associated with land use—such as dynamite blasting, pile driving, or heavy construction—and liability attaches only to the user of the product, not the seller or manufacturer. This theory is ill suited for use against firearms dealers and manufacturers. As the Seventh Circuit Court of Appeals explained, "If plaintiffs were claiming that the use of a handgun was an ultrahazardous activity the argument would clearly fit within the parameters of Illinois law. However, plaintiffs' attempt to impose strict liability for engaging in ultrahazardous activity upon the sale of a non-defective product is unprecedented in Illinois."ⁿ

The one exception where a court did hold that sellers and manufacturers could be liable for injuries to third parties was in the 1985 Maryland case *Kelly v. R.G. Industries*.^o In *Kelly* the court ruled that Maryland law did recognize strict liability for manufacturers and anyone else in the marketing chain—including retailers—of Saturday Night Special handguns^p when the weapons were used by criminals to kill or injure innocent bystanders. *Kelly*, however, was overturned by the Maryland legislature as part of a legislative ban of Saturday Night Special handguns.

An outgrowth of the failure of efforts to win acceptance of strict liability in the courts has been legislation to statutorily create such liability. The first, so far successful, effort to create such liability has been in the District of Columbia.

On November 5, 1991, District voters approved a ballot initiative holding "Any manufacturer, importer, or dealer of an assault weapon . . . strictly liable in tort, without regard to fault or proof of defect, for all direct and consequential damages that arise from bodily injury or death if the bodily injury or death proximately results from the discharge of an assault weapon in the District of Columbia."^q

ⁿ*Martin v. Harrington and Richardson, supra* note m.

^o*Kelly v. R.G. Industries, Inc.*, 304 Md. 124, 497 A.2d 1143 (1985).

^pThe court acknowledged that there is no clear cut definition of Saturday Night Special. Characteristics it listed as to be considered in making that determination included: barrel length, concealability, cost, quality of materials, quality of manufacture, accuracy, reliability, and whether the weapon had been banned from import by ATF. The court said that whether a handgun is a Saturday Night Special was a question of fact for the jury. Under this test, it would be possible that the same gun could be found by one jury to be a Saturday Night Special and not to be by another.

^qD.C. Code Ann. § 6-2391 (1991).

Such an approach raises constitutional concerns. First is that the measure would apply to dealers, manufacturers, and importers of specifically named weapons and not to dealers, manufacturers, and importers of other, essentially similar, assault weapons. This would make the provision vulnerable to attack in the courts as equal protection of law requires that arbitrary or capricious distinctions not be made.⁷ Historically, distinctions made among products very similar in composition, appearance, and use have been struck down.⁸ This problem could be addressed by formulating an objective definition of "assault weapon" and making the provision applicable to dealers, manufacturers, and importers of all weapons determined to fall within the definition of "assault weapon."⁹

Second, the provision would primarily be directed at defendants who operate outside of the District of Columbia. This would make it very difficult for a District court to properly exercise personal jurisdiction over the defendant. Under prevailing Supreme Court precedents, a dealer or manufacturer would have to take affirmative steps to market its product in the District of Columbia. It is not sufficient for the defendant simply to place its product into the stream of commerce with the knowledge that it is likely to end up in the District.¹⁰ The manufacturers named in the referendum are sophisticated businesses. It would be fairly easy for them to avoid being brought into court in the District by taking no steps to market their weapons in the District or to take affirmative steps to see that no marketing efforts are made there. Since many or most of the weapons listed are presently illegal in the District, most manufacturers would probably not need to change current marketing plans at all. At the 1992 SHOT Show, dealers who sell anywhere in the vicinity of the District of Columbia were advised by a member of the National Shooting Sports Coalition to be extremely careful and not to sell the named weapons at all if they were located in neighboring Maryland or Virginia.

If a D.C. court cannot exercise personal jurisdiction over the named manufacturers and importers, the only recourse for a plaintiff to be able to sue under the provision would be to file suit in another state and argue, under conflict of laws, that the laws of the District of Columbia should

⁷*Wickard v. Filburn*, 317 U.S. 111 (1942).

⁸*Milnot Company v. Richardson*, 350 F.Supp. 221 (1972).

⁹For such a definition, see the March 1989 Violence Policy Center study *Assault Weapons: Analysis, New Research, and Legislation*.

¹⁰*Burger King Corp. v. Rudzewicz*, 105 S. Ct. 2174 (1985); *Asahi Metal Ind. v. Superior Court of California, Salano County*, 107 S. Ct. 1026 (1987).

be applied by the state court. This would not seem to hold much appeal, especially in light of the fact that the state in which the court sits would not have an analogous law.

As of October 1992 no suits have been brought under the D.C. law, but similar measures have been considered in Chicago and New York City.

Conclusion

"Most lawyers don't know anything about guns," noted one of the speakers at the 1992 SHOT Show at a seminar on the liability concerns of firearms dealers. This observation helps to explain why civil liability has not played a substantial role in disciplining FFL holders. Plaintiffs' lawyers are generally uneducated about firearms and are therefore at a disadvantage when it comes to recognizing defective firearms. In addition, gun control advocates have spent far too much time trying to convince courts to embrace esoteric legal arguments to hold manufacturers and sellers of firearms liable when the guns they sell are used to inflict injury or death.

Increasingly, sellers of firearms are being held to the same standards as dealers in other consumer products. As a result, a trend appears to be emerging in which established theories of negligence and product liability are being viewed as a means to hold dealers responsible when they sell defective firearms or market their goods in an irresponsible manner.

As firearms violence continues unabated, it is inevitable that attention will expand beyond legislative solutions to the courts. As those working to reduce firearms violence come to view it not solely as a crime problem, but as a broad-based public health problem of which crime is merely the most recognized aspect, focus on those involved in manufacturing and distributing firearms can only increase.

Addendum Two: State Firearms Dealer Regulations

Addendum Two is a state-by-state breakout of firearms dealer regulations. The listing for each state includes: whether there is a state licensing provision, whether there is a state firearms preemption, summary of provision, jurisdictions that require a local dealer's license or additional record keeping, and the number of FFL holders known to ATF. If a state has a dealer licensing provision, the number of licensees known to state authorities is also listed. The following is an explanation of the headings for each entry.

State Provision: under state law those dealing in handguns or other firearms must obtain a state license or meet additional standards beyond possession of an FFL.

State Preemption: The state has occupied the field of firearms regulation whole or in part, therefore local jurisdictions cannot enact firearms laws or dealer standards stricter than state standards. In states where the preemption allows for local dealer standards, this is noted.

Summary: A synopsis of state licensing standards taken from the Bureau of Alcohol, Tobacco and Firearms' *State Laws and Published Ordinances—Firearms 19th Edition* (ATF P 5300.5 12/89). The ATF publication is the only detailed listing of state firearms laws and the 19th edition is the most recent volume available. The summary description is a synopsis and not always a direct or complete citation and should not be used as a substitute for the actual language of the law. Aspects of dealer licensing standards not included in each summary are state record-keeping requirements, access of state or local enforcement officials to dealer records, ammunition sales standards, details of revocation procedures, or sales standards.

Local jurisdictions that require additional licensing or record keeping: A listing of local jurisdictions that have their own additional standards for firearms dealers. Specific standards are not detailed.

Number of firearms dealers known to state authorities: In states that require additional dealer licensing, the number of those dealing in handguns or other categories of firearms, as obtained from the appropriate state office.

Number of FFL holders known to ATF: Number of FFL licensees in the state known to ATF as of October 1990.

State and Local Licensing Requirements

ALABAMA

STATE PROVISION — YES

STATE PREEMPTION-YES

SUMMARY

No dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol without being licensed. The duly constituted licensing authorities of any city, town or political subdivision...may grant licenses in forms prescribed by the secretary of state, effective for not more than one year from date of issue, permitting the licensee to sell pistols at retail.... The business shall be carried on only in the building designated in the license.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 3,547

NUMBER OF FIREARMS DEALERS KNOWN TO STATE: No centralized state tally is maintained.

ALASKA

STATE PROVISION — NO

STATE PREEMPTION-NO

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 3,001

ARIZONA

STATE PROVISION — NO

STATE PREEMPTION-YES

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 4,062

ARKANSAS

STATE PROVISION — NO

STATE PREEMPTION-NO

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 3,185

CALIFORNIA

STATE PROVISION —YES

STATE PREEMPTION-NO

No person shall engage in the business of selling, transferring, advertising, offering, or exposing for sale or transfer, any pistol, revolver or other firearm capable of being concealed upon the person unless he has been issued a license by the local licensing authority. Exemptions to this include those who engage in the "infrequent" sale of concealable firearms, interpreted to be five or fewer weapons per year.

The duly constituted licensing authorities of any city, county, or city and county shall accept applications for, and may grant licenses permitting the licensee to sell at retail within the city, county, or city and county, pistols, revolvers, and other firearms capable of being concealed upon the person. If a license is granted, it shall be in the form prescribed by the Attorney General, effective for not more than one year from the date of issue. Sales must be registered on Dealers Record of Sale (DROS) and such information sent to the California Attorney General's office for background check.

[In March 1992 California required that all firearms dealers obtain a "certificate of eligibility" to prove that they had met all state and local business, zoning, and law enforcement requirements. The dealers being contacted, however, are only those who are already licensed through local authorities. The state, will not, for example, be contacting all FFLs in California. The California Attorney General's office noted that ATF has stated that it will begin reviewing FFLs not legitimately "engaged in the business" in California. Local law enforcement interviewed expressed skepticism.]

California jurisdictions that require additional licensing or record keeping: Anaheim, Burbank, Caprinteria, Chowchilla, Chula Vista, Clovia, Corona, Cupertino, Daly, El Monte, El Segundo, Fullerton, Glendale, La Puente, Lompoc, Long Beach, Los Angeles, Los Banos, Manteca, Merced, Oceanside, Oxnard, Palmdale, Palo Alto, Pasadena, San Bernardino County, San Diego, San Diego County, San Francisco, San Jose, San Luis Obispo County, San Marcos, San Mateo County, Santa Barbara County, Santa Barbara, Santa Monica, Seaside, South Pasadena, Stanislaus County, Stockton, Walnut, Yreka.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 19,643

NUMBER OF FIREARMS DEALERS KNOWN TO STATE: 11,499

COLORADO

STATE PROVISION —NO

STATE PREEMPTION-NO

Colorado jurisdictions that require additional licensing or record keeping: Boulder, Denver city and county.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 4,318

CONNECTICUT

STATE PROVISION —YES

STATE PREEMPTION-YES

No person shall advertise, sell, deliver, offer or expose for sale or delivery, or have in his possession with intent to sell or deliver, any pistol or revolver at retail without having a permit therefor.

[According to the Connecticut Attorney General's office, in practice the chief of police of a community signs a permit to sell at retail. The state has no centralized licensing of dealers and there is no threshold as to what entails being "engaged in the business." In October 1991 Connecticut law was amended to expand the licensing category to those who sold rifles and shotguns.]

Connecticut jurisdictions that require additional licensing or record keeping: Hartford, New Haven.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 3,035

NUMBER OF FIREARMS DEALERS KNOWN TO STATE: Estimated to be "a couple thousand."

DELAWARE

STATE PROVISION —YES

STATE PREEMPTION-NO

No person shall sell or expose to sale any pistol or revolver, or revolver or pistol cartridges without first having obtained a "special license to sell deadly weapons." Application must be made to the state Department of Administrative Services. Licensees may conduct business until the first day of June the year succeeding the license's date of issuance.

Delaware jurisdictions that require additional licensing or record keeping: Wilmington.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 481

NUMBER OF FIREARMS DEALERS KNOWN TO STATE: 167

DISTRICT OF COLUMBIA

PROVISION —YES

PREEMPTION-NOT APPLICABLE

Since 1976 the District of Columbia has banned the future sale and possession of sawed-off shotguns, machine guns, short-barreled rifles, and handguns to its citizens. One of the purposes of the District of Columbia firearms law is to "regulate deadly weapons dealers...." Under District law dealer licenses cannot be obtained "for such person's private use or protection, or for the protection of his business."

Under District law a "dealer's license" is "a license to buy or sell, repair, trade, or otherwise deal in firearms, destructive devices, or ammunition...." Under District law, no person or organization shall engage in the business of selling, purchasing, or repairing any firearm, destructive device...or ammunition without first obtaining a dealer's license, and no licensee shall engage in the business of selling, purchasing, or repairing firearms which are unregistrable under District law unless under

a valid work or purchase order for those in exempted categories.

Those in the limited pool that may deal in unrestricted firearms and ammunition must apply to the Chief of Police and meet specific standards that include the following. The applicant: must be 21 years of age; must not have been convicted of a crime of violence, weapons offense, or a violation of District firearms law; not be under indictment for a crime of violence or a weapons offense; must not have been convicted within five years prior to the application of any violation in any jurisdiction of any law restricting the use, possession, or sale of any narcotic or dangerous drug or threat to do bodily harm; must not have within the five-year period immediately preceding application been acquitted of any criminal charge by reason of insanity or been adjudicated a chronic alcoholic by any court; must not have within the five years preceding the application been voluntarily or involuntarily committed to any mental hospital or institution; must not have been adjudicated negligent in a firearm mishap causing death or serious injury to another human being.

Additional information required on the dealer's application includes: the address where the applicant conducts or intends to conduct his business; such information as the Chief may require, such as fingerprints and photographs of the applicant. A license application must be approved or denied within 60 days, unless good cause is shown. Licenses are good for one year. The licensee must also supply District police with a listing of all employees, including their address and home phone. District law requires that all firearms, destructive devices, and ammunition be kept at all times in a securely locked place affixed to the dealer premises except when being shown to a customer or otherwise worked on.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 40
NUMBER OF FIREARMS DEALERS KNOWN TO DISTRICT: 0

FLORIDA

STATE PROVISION —NO
STATE PREEMPTION-YES

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 10,089

GEORGIA

STATE PROVISION —YES
STATE PREEMPTION-NO

Any person, firm, retail dealer, wholesale dealer, pawnbroker, or corporation who shall sell, dispose of, or offer for sale or cause or permit to be sold, disposed of, or offered for sale any pistol, revolver, or short-barreled firearm of less than 15 inches in length, whether the same shall be his own property or whether he shall sell the same as an agent or employee of another, shall obtain from the state Department of Public Safety a license permitting the sale of such pistols, revolvers, and firearms. The law does not apply to casual sales between individuals or bona fide gun collectors. License applications must include an affidavit stating that the applicant is a U.S. citizen, 21 years of age or older, and not a convicted felon. A surety bond for \$1,000 must also be submitted with the application.

[According to a spokesperson for the Georgia Department of Public Safety, there is no enforcement on the state level as regards dealer activity. In addition, there is also no penalty for operating as a dealer in the state without a license. Although not stated in state law, the unofficial procedure for the department is not to issue a state license without possession of an FFL. In the past three years, there have been no revocations or denials of renewal for state licensee. The state is aware that there are many FFL licensees who operate without a state license, but the "vague" nature of state law regarding "casual sales" allows this.]

Georgia jurisdictions that require additional licensing or record keeping: Atlanta, Decatur, Liberty County, Macon, Savannah, Warner Robins.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 5,706

NUMBER OF FIREARMS DEALERS KNOWN TO STATE: 1,215

HAWAII

STATE PROVISION — YES

STATE PREEMPTION-NO

Firearms dealers must annually file an application for a license with the director of finance of each county of the state. The annual license fee is \$10.00. Licenses expire on June 30 following the date of issuance of the license. During times of "national emergency or crisis" as defined under state law, dealer licenses may be suspended or canceled and firearms may be seized and held in possession by the state government or purchased by the state government until such time that the crisis has passed. Any person who manufactures or sells firearms in the state without a license can be fined no less than \$100 or more than \$1,000 or imprisoned not less than three months nor more than one year.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 776

NUMBER OF FIREARMS DEALERS KNOWN TO STATE: No centralized state tally is maintained.

IDAHO

STATE PROVISION — NO

STATE PREEMPTION-YES

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 1,951

ILLINOIS

STATE PROVISION —NO
STATE PREEMPTION-NO

Illinois jurisdictions that require additional licensing or record keeping: Chicago, Chicago Ridge, Cicero, Evanston (no firearms sales allowed), Franklin Park, Highland Park, Joliet, Morton Grove (no handgun sales allowed), Niles, Peoria, Rockford, Streamwood, Worth.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 8,376

INDIANA

STATE PROVISION—YES
STATE PREEMPTION-YES

A dealer is any person who holds himself out as a buyer and seller of handguns on a regular and continuing basis. A person desiring a retail handgun dealer's license shall apply to the sheriff of the county in which he resides, or if he is a resident of another state and has a regular place of business in Indiana, then to the sheriff of the county in which he has a regular place of business. The applicant shall state his name, full address, occupation, sex, race, age, place of birth, date of birth, nationality, height, weight, build, color of eyes, color of hair, complexion, scars and marks, and any criminal record (minor traffic offenses excepted). The application will be verified by the local officer. The officer shall send to the state superintendent: the verified application; the results of the officer's investigation; the officer's recommendation for approval or disapproval of the application; and a set of the applicant's fingerprints. A retail dealer's business shall be carried out only at the site designated in the license.

[According to a spokesperson for the state of Indiana, "If they're going to be selling handguns, they have to be licensed by the state. Long guns, then it's just a federal license." The spokesperson acknowledged that the Indiana definition of engaged in the business—"selling handguns on a regular and continuing basis"—"could be a loophole." Also, he acknowledged, assault rifle and shotgun dealers would not have to be licensed, unless perhaps the weapons had a pistol grip. He also noted that "if they [FFL holders] are buying [handguns] with their FFLs, that would be illegal...in the state of Indiana. That is a concern. It's a possibility." The state sometimes catches FFLs illegally dealing in handguns by attending gun shows, where under law dealers must display their federal and state licenses.]

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 5,517
NUMBER OF FIREARMS DEALERS KNOWN TO STATE: Approximately 1,900

IOWA

STATE PROVISION —NO
STATE PREEMPTION-NO

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 3,748

KANSAS

STATE PROVISION —NO

STATE PREEMPTION-NO

Kansas jurisdictions that require additional licensing or record keeping: Junction City, Kansas City, Lawrence.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 3,584

KENTUCKY

STATE PROVISION —NO

STATE PREEMPTION-YES

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 4,649

LOUISIANA

STATE PROVISION —YES

STATE PREEMPTION-NO

A dealer is any person not a manufacturer or importer engaged in the business of selling any firearm. The term includes wholesalers, pawnbrokers, and other persons dealing in used firearms. Every dealer in firearms must register with the Louisiana Department of Public Safety his name, principal place of business, and other places of business in this state. Every wholesale dealer in pistols, pistol cartridges, blank pistols, blank cartridges, and all rifles except .22 and .25 calibers, and rifle cartridges, except .22 and .25 calibers, shall pay an annual license fee. Every retail dealer in pistols or pistol cartridges, blank pistols or blank pistol cartridges, or any rifles, except rifles of .22 and .25 calibers, or any rifle cartridges, except rifle cartridges of .22 and .25 calibers, shall also pay an annual license tax. No person shall sell, at wholesale or retail, pistols or pistols cartridges, blank pistols or blank pistol cartridges, or any rifles, except rifles of .22 and .25 calibers, without first obtaining the license required...or without first obtaining the license which may be imposed by any municipal or parochial authority for the sale of pistols or pistols cartridges, blank pistols or blank pistol cartridges, rifles or rifle cartridges. Violators shall be fined not less than \$50 nor more than \$200, or imprisoned for not more than 60 days, or both.

Louisiana jurisdictions that require additional licensing or record keeping: Jefferson Parish, New Orleans, Westwego.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 5,188

NUMBER OF FIREARMS DEALERS KNOWN TO STATE: No centralized state tally is maintained.

MAINE

STATE PROVISION —NO
STATE PREEMPTION-NO

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 2,101

MARYLAND

STATE PROVISION —YES
STATE PREEMPTION-YES

A dealer is any person engaged in the business of selling firearms at wholesale or retail, or any person engaged in the business of repairing such firearms. No person shall engage in the business of selling pistols or revolvers unless he lawfully possesses and conspicuously displays at his place of business, in addition to any other license required by law, a pistol and revolver dealer's license issued by the Superintendent of the Maryland State Police or his duly authorized agent. One such license shall be required for each place of business where pistols or revolvers are sold. The application for a pistol and revolver dealers license shall contain the following information: (1) applicant's name, address, place and date of birth, height, weight, race, eye and hair color, and signature. In the event the applicant is a corporation, the application shall be completed and executed by a corporate officer who is a resident of the jurisdiction in which the application is made; (2) a clear and recognizable photo of the applicant.... (3) a set of the applicant's fingerprints; (4) a statement by the applicant that he or she—is a citizen of the United States, is at least 21 years of age as required by federal law, has never been convicted of a crime of violence, is not a fugitive from justice, is not an habitual drunkard, is not an addict or an habitual user of narcotics, barbiturates or amphetamines, has never spent more than 30 consecutive days in any medical institution for treatment of a mental disorder (unless there is attached to the application a physician's certificate, issued within 30 days prior to the date of application, certifying that the applicant is capable of possessing a pistol or revolver without undue danger to himself or others).

[According to a Maryland State Police spokesperson, a state license is required for those dealing in handguns or specific assault weapons. Regarding FFLs, "their license is no good except for long guns." Maryland does not concern itself with FFLs as regards long gun sales, but the spokesperson acknowledged that "if people are using their FFLs in violation of Maryland licensing laws, how would we know?"]

Maryland jurisdictions that require additional licensing or record keeping: Annapolis.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 2,894
NUMBER OF FIREARMS DEALERS KNOWN TO STATE: 350

MASSACHUSETTS

STATE PROVISION —YES

STATE PREEMPTION-YES

The chief of police or the board or officer having control of the police in a city or town, or persons authorized by them, may, after an investigation, grant a license to any person except an alien, a minor, or a person who has been convicted of a felony or of the unlawful use, possession, or sale of narcotic or harmful drugs, to sell, rent, or lease firearms, rifles, shotguns or machine guns, or to be in business as a gunsmith. Every license shall specify the street and number, if any, of the building where the business is to be carried on, and the license shall not protect a licensee who carries on business in any other place. Licenses may be suspended or revoked by the issuing authority after due notice and following proper proceedings. The commissioner of public safety shall be notified in writing of any license forfeiture. Licensing requirements do not apply to citizens who do not sell more than four firearms per year provided that the seller has a firearm identification card or a license to carry firearms and is legally allowed to possess firearms. Sales by such persons must be reported to the commissioner of public safety within seven days on forms furnished by the commissioner.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 3,477

NUMBER OF FIREARMS DEALERS KNOWN TO STATE: Approximately 1,200, includes dealers in all categories of firearms, gunsmiths, and dealers in ammunition. Does not include FFL holders whose sales are wholesale only.

MICHIGAN

STATE PROVISION —NO

STATE PREEMPTION-NO

In order to legally buy and sell firearms and transport them in interstate commerce one must be in possession of a Federal firearms license. No immunity to state law or other law is granted by virtue of the possession of a Federal firearms license.

Michigan jurisdictions that require additional licensing or record keeping: Grand Rapids (which also requires that the licensee must have injury and property damage insurance in effect).

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 11,638

MINNESOTA

STATE PROVISION —NO

STATE PREEMPTION-YES

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 5,470

MISSISSIPPI

STATE PROVISION —NO
STATE PREEMPTION-NO

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 3,116

MISSOURI

STATE PROVISION —NO
STATE PREEMPTION-NO

Missouri jurisdictions that require additional licensing or record keeping: St. Louis.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 7,364

MONTANA

STATE PROVISION —NO
STATE PREEMPTION-YES

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 2,776

NEBRASKA

STATE PROVISION —NO
STATE PREEMPTION-NO

Nebraska jurisdictions that require additional licensing or record keeping: Hastings, Lincoln.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 2,622

NEVADA

STATE PROVISION —NO
STATE PREEMPTION-NO

Nevada jurisdictions that require additional licensing or record keeping: Clark County, Las Vegas.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 1,651

NEW HAMPSHIRE

STATE PROVISION —YES

STATE PREEMPTION-NO

The selectmen of a town and the chief of police of a city may grant licenses, the form of which shall be prescribed by the secretary of state, effective for not more than one year from date of issue, permitting the licensee to sell at retail pistols and revolvers subject to conditions that include the following: the business shall be carried on only in the building designated in the license or at an organized sporting show or arms collectors' meeting sponsored by a chartered club or organization; and the license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read. Any breach of the issuing standards can result in license forfeiture. Any unlicensed person who sells, advertises or exposes for sale, or has in his possession with intent to sell, pistols or revolvers shall be guilty of a class B felony if a natural person, or guilty of a felony if any other person.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 1,389

NUMBER OF FIREARMS DEALERS KNOWN TO STATE: No centralized state tally is maintained.

NEW JERSEY

STATE PROVISION—YES

STATE PREEMPTION-YES

A "retail dealer" is any person including a gunsmith, except a manufacturer or a wholesale dealer, who sells, transfers or assigns for a fee or profit any firearm or parts of firearms or ammunition which he has purchased or obtained with the intention, or for the purpose, of reselling or reassigning to persons who are reasonably understood to be the ultimate consumers. This definition includes any person who is engaged in the business of repairing firearms.

A "wholesale dealer" is any person, except a manufacturer, who sells, transfers, or assigns firearms, or parts of firearms, to persons who are reasonably understood not to be the ultimate consumers, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms. The definition does not include persons dealing exclusively in grips, stocks, and other nonmetal parts of firearms.

No retail dealer of firearms nor any employee of a retail dealer shall sell, or possess with the intent of selling, any firearm unless licensed to do so by the state. The superintendent of the state police shall prescribe standards and qualifications for retail dealers of firearms and their employees. Applications shall be made in a form prescribed by the superintendent, accompanied by a fee of \$50.00 payable to the superintendent, and shall be made to a judge of the superior court in the county where the applicant maintains his place of business. The judge shall grant a license to an applicant if he finds that the applicant meets the standards and qualifications established by the superintendent and that the applicant can be permitted to engage in business as a retail dealer of firearms or employee thereof without any danger to the public safety, health, and welfare. Each license shall be valid for a period of three years from the date of issuance, and shall authorize the holder to sell firearms at retail in a specified municipality. In addition, every retail dealer shall pay a fee of \$50.00 for each employee actively engaged in the sale or purchase of firearms. The superintendent shall issue a license for each employee for whom a fee has been paid. The license shall be valid for as long as the employee remains in the employ of the retail dealer. No license

shall be granted to any retail dealer under the age of 21 years, any employee of a retail dealer under the age of 18, or any person who could not qualify to obtain a permit to purchase a handgun or a firearms purchaser identification card, or to any corporation, partnership or other business organization in which the actual or equitable controlling interest is held or possessed by such an ineligible person.

[According to a spokesperson for the New Jersey State Police, the most recent tally conducted by New Jersey State Police showed a total of 2,300 Federal Firearms Licensees, of which 900 were licensed to do business in the state resulting in "1,400 businesses that cannot [legally] conduct business." (The number of FFLs in the state has apparently dropped since then as reflected by the ATF licensing figure below.) Said the spokesperson, "If you have an FFL in New Jersey, you cannot order firearms on the power of that FFL [without the state license]. If you do, you're in violation of state law." Currently, New Jersey "is working closely with ATF" to reduce the number FFLs who are not licensed with the state. ATF now sends a referral to New Jersey state police on licenses granted and renewed. As a result, illegal FFL holders "are at the lowest point in the history of this state."]

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 1,612

NUMBER OF FIREARMS DEALERS KNOWN TO STATE: Approximately 900

NEW MEXICO

STATE PROVISION —NO
STATE PREEMPTION-NO

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 2,062

NEW YORK

STATE PROVISION—YES
STATE PREEMPTION-YES

A "dealer in firearms" is any person, firm, partnership, corporation, or company that engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of any pistol or revolver. Dealer licenses are issued by the licensing officer of the jurisdiction—in the city of New York, the police commissioner; in Nassau county, the commissioner of police; in Suffolk county, the county sheriff except in the towns of Babylon, Brookhaven, Huntington, Islip, and Smithtown, where licenses are issued by the the county commissioner of police, and elsewhere in the state a judge or justice of a court of record having his office in the county of issuance. No license shall be issued or renewed except for an applicant: of good moral character; who has not been convicted anywhere of a felony or a serious offense; who has stated whether he has ever suffered any mental illness or been confined to any hospital or institution, public or private, for mental illness; and concerning whom no good cause exists for the denial of the license. An applicant must also be 21 years of age, a citizen of the United States, and maintain a place of business in the city or county where the license is issued. For such business, if the applicant is a firm or partnership, each member thereof shall comply with all requirements. If the applicant is a corporation, each officer thereof shall comply. The licensing officer shall act upon any license application within six months. The application for any license, if granted, is a public record. The conviction of a licensee anywhere of a felony or serious offense shall operate as a revocation of the

license.

New York jurisdictions that require additional licensing or record keeping: Albany, New York.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 9,421

NUMBER OF FIREARMS DEALERS KNOWN TO STATE: Approximately 3,500

NORTH CAROLINA

STATE PROVISION —YES

STATE PREEMPTION-YES

Every person, firm, or corporation engaged in the business of selling or offering for sale firearms, other than antique firearms or firearms that are weapons of mass death and destruction, shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax of 50 dollars for the license. "Engaged in the business" means devoting time, attention, and labor to selling or offering for sale firearms as a regular course of trade or business with the principal object of profit through the repetitive purchase and sale, or the manufacture for sale, of firearms. Such term shall not include the making of occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection, or the sale of all or part of personal collection of firearms. A license authorizes the licensee to engage in business at the location for which the license is issued and at a gun show held in the state. Counties and cities may levy a license tax at an amount that does not exceed the state tax.

North Carolina jurisdictions that require additional licensing or record keeping: Elizabeth, Greensboro, High Point, Winston-Salem.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 6,228

NUMBER OF FIREARMS DEALERS KNOWN TO STATE: 3,662

NORTH DAKOTA

STATE PROVISION —YES

STATE PREEMPTION-YES

A retail dealer licensed to sell handguns by the federal government shall send a copy of the license, within seven days after receiving it, to the chief of police of the city and the sheriff of the county in which the dealer is licensed to sell handguns.

North Dakota jurisdictions that require additional licensing or record keeping: Fargo.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 1,604

NUMBER OF FIREARMS DEALERS KNOWN TO STATE: No centralized state tally is maintained.

OHIO

STATE PROVISION—NO
STATE PREEMPTION-NO

Ohio jurisdictions that require additional licensing or record keeping: Cincinnati, Cleveland, Columbus, East Cleveland, Kent, Mayfield Heights, Shaker Heights, South Euclid, Toledo, Whitehall, Youngstown.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 8,306

OKLAHOMA

STATE PROVISION —NO
STATE PREEMPTION-YES

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 3,758

OREGON

STATE PROVISION —YES
STATE PREEMPTION-NO

Licensing authorities of any city, county, town or other municipality may grant licenses in a form prescribed by the attorney general, effective for not more than one year from date of issue, permitting the licensee to sell at retail within the municipality, pistols, revolvers and other firearms capable of being concealed upon the person subject to specific conditions including the following: the business shall be carried on only in the building designated in the license; the license or a copy thereof, certified by the issuing authority, shall be displayed where it can easily be read by the customer. Breach of any of the conditions would subject the license to forfeiture. Any person who, without being licensed, engages in the business of selling or otherwise transferring, or who advertises for sale or offers or exposes for sale or transfer, any pistol, revolver or other firearm capable of being concealed upon the person, is guilty of a misdemeanor.

Oregon jurisdictions that require additional licensing or record keeping: Pendleton, Springfield.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 4,428
NUMBER OF FIREARMS DEALERS KNOWN TO STATE: No centralized state tally is maintained.

PENNSYLVANIA

STATE PROVISION —YES
STATE PREEMPTION-YES

The chief or head of any police force or police department of a city, and elsewhere, the sheriff of the county, shall grant to reputable applicants licenses, on forms prescribed by the Pennsylvania State Police, effective for not more than one year from date of issue, permitting the licensee to sell firearms direct to the consumer, subject to explicit conditions including the following. The business shall be carried on only in the building designated in the license. The license, or a copy thereof certified by the issuing authority, shall be displayed on the premises where it can easily be read.

No retail dealer shall sell, or otherwise transfer or expose for sale, or transfer or have in his possession with intent to sell or transfer, any firearm without being licensed as provided in state law.

Pennsylvania jurisdictions that require additional licensing or record keeping: McKeesport, Mt. Lebanon, Scott.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 10,903

NUMBER OF FIREARMS DEALERS KNOWN TO STATE: A copy of each license granted by any of Pennsylvania's 67 counties is sent to the Pennsylvania State Police. Licenses can be pulled for review by name or county. The state police, however, do not maintain a tally of state-licensed firearms dealers.

RHODE ISLAND

STATE PROVISION —YES

STATE PREEMPTION-YES

No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol, revolver, or other firearm without being licensed. The duly constituted licensing authorities of any city, town, or political subdivision of the state may grant licenses in form prescribed by the attorney general effective for not more than one year from date of issue permitting the licensee to sell pistols and revolvers at retail within the state subject to specific conditions that include the following. The business shall be carried on only in the building designated in the license. The license or copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read. The licensing fee will be five dollars and shall be applied for the use and benefit of the city or town.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 487

NUMBER OF FIREARMS DEALERS KNOWN TO STATE: No centralized state tally is maintained.

SOUTH CAROLINA

STATE PROVISION —YES

STATE PREEMPTION-YES

A dealer is any person engaged in the business of selling firearms at retail or any person who is a pawnbroker. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol without being licensed. There is, however, no provision in South Carolina law requiring a wholesaler to be licensed for dealing in the wholesale distribution of firearms. The State Law Enforcement Division shall grant a license to any person doing business in the state not ineligible to purchase, acquire, or possess a pistol or be licensed as a dealer. Licenses shall be issued on a form furnished by the Division and be effective for two years from the date of issuance. Licensees shall be authorized to sell pistols at retail as dealers within the state subject to explicit conditions including the following. The license or a copy thereof, authenticated by the issuing authority, shall at all times and places of sale be available for inspection or displayed where it can easily be read. Dealer licenses are not transferable.

[A State Law Enforcement Division staffer acknowledged that it was likely that many FFL holders

were operating in violation of state law, adding: "the federal inspectors, even they realize that a lot of these people are selling more than they realize. If they're buying and selling [handguns], then of course they're breaking the [state] law. But we don't really have a good way of catching those people."]

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 2,476
NUMBER OF FIREARMS DEALERS KNOWN TO STATE: 426 (Estimate)

SOUTH DAKOTA

STATE PROVISION—NO
STATE PREEMPTION—YES

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 1,453

TENNESSEE

STATE PROVISION—YES
STATE PREEMPTION—NO

Before any person, firm or corporation shall engage in the business of selling, offering for sale, giving away or otherwise disposing of any pistol, revolver or other handgun, such person, firm or corporation shall obtain from the commissioner of revenue a permit. The annual permit fee shall be \$10 per year. The permit shall expire on the 31st day of December of each year. Prior to the issuance of such permit by the commissioner of revenue, the applicant shall provide to the commissioner a certificate of good moral character signed by the chief of police or the sheriff of the county in which the licensed premises shall be located. In the event the licensed premises are located in the corporate limits of a municipality, said certificate of moral character shall be signed by the chief of police. If the licensed premises are located outside the corporate limits of the municipality, the certificate of moral character shall be signed by the sheriff of the county. The certificate of moral character must state that the applicant or applicants who are to be in actual control of the business are of good moral character and are personally known to the official signing the certificate, and if the applicant is a corporation, that the executive officers or those in control are of good moral character and personally known to the official.

Tennessee jurisdictions that require additional licensing or record keeping: Greenville, Knoxville, Lawrenceburg, Nashville-Davidson Metro.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 4,872
NUMBER OF FIREARMS DEALERS KNOWN TO STATE: 1,676

TEXAS

STATE PROVISION —NO
STATE PREEMPTION-YES

The Texas preemption does not forbid local jurisdictions from regulating the use of property or location of businesses or uses therein pursuant to the city's fire code, zoning ordinance, or land use regulations so long as such codes, ordinances, and regulations are not used to circumvent the intent of the preemption.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 17,367

UTAH

STATE PROVISION —NO
STATE PREEMPTION-YES

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 1,803

VERMONT

STATE PROVISION —NO
STATE PREEMPTION-NO

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 1,450

VIRGINIA

STATE PROVISION—YES
STATE PREEMPTION-YES

The governing body of any county may impose a license tax of not more than \$25 on persons engaged in the business of selling pistols and revolvers to the public. Permits may be required to sell or purchase pistols or revolvers in any county having a population density of more than one thousand persons per square mile. A dealer in firearms is any person, firm, partnership, or corporation engaged in the business of selling firearms at retail, or any person, firm, partnership or corporation engaged in the business of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or any person firm, partnership, or coloration that is a pawnbroker. "Engaged in business" as applied to a dealer in firearms means a person, firm, partnership, or corporation that devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through repetitive purchase or resale of firearms. The definition does not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms. Any person convicted of a first offense for willfully violating the provisions of the state law shall be guilty of a Class 2 misdemeanor. Any person convicted of a second or subsequent offense shall be guilty of a Class 1 misdemeanor.

Virginia jurisdictions that require additional licensing or record keeping: Alexandria, Charlottesville, Fairfax, Fairfax County, Falls Church, Henrico County, Herndon, Newport News, Richmond.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 6,775
NUMBER OF FIREARMS DEALERS KNOWN TO STATE: No centralized state tally is maintained.

WASHINGTON

STATE PROVISION —YES
STATE PREEMPTION-YES

No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol without being licensed. The duly constituted licensing authorities of any city, town, or political subdivision of the state shall grant licenses in forms prescribed by the director of licensing effective for not more than one year from the date of issue permitting the licensee to sell pistols within the state subject to specific conditions that include the following. The business shall be carried on only in the building designated in the license and the license shall be displayed on the premises. Regulations do not apply to wholesale sales.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 4,891
NUMBER OF FIREARMS DEALERS KNOWN TO STATE: 2,700

WEST VIRGINIA

STATE PROVISION —NO
STATE PREEMPTION-YES

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 2,980

WISCONSIN

STATE PROVISION —NO
STATE PREEMPTION-NO

Wisconsin jurisdictions that require additional licensing or record keeping: Cudahy, Glendale, Madison, Milwaukee, Shorewood, Wauwatosa, Whitefish Bay.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 5,627

WYOMING

STATE PROVISION—NO
STATE PREEMPTION-NO

Wyoming jurisdictions that require additional licensing or record keeping: Cheyenne.

NUMBER OF FIREARMS DEALERS LICENSED BY ATF: 1,741

Addendum Three: Forward Trace

In 1988, as part of its compliance program, ATF began Project Forward Trace. The program was "designed to test and validate the records of, and promote compliance by, firearms licensees. It is also to insure that firearms are not being distributed to prohibited persons and to detect violations of the gun control laws for referral to appropriate Federal and State agencies."

According to an ATF description, Forward Trace "focuses...on the types of firearms which are frequently involved in drug trafficking and other violent crimes, and entails tracing these firearms through the distribution chain from importer or manufacturer to retail distribution to insure accurate record keeping." Because of McClure-Volkmer's ban on anything resembling a national firearms registration system, ATF promises that "the compliance inspection program does not call for or permit the collection or recording of firearms purchasers' names for the purpose of maintaining any system of registration of firearms or firearms owners." As part of Forward Trace, inspectors focus their criminal checks on sales of firearms favored by criminals and gun traffickers. In Section C-Records of the ATF inspection form, inspectors are instructed, "Concentrate on high power handguns, paramilitary weapons, and weapons identified for Forward Trace." Other weapons that would most likely be identified by Forward Trace would include inexpensive Saturday Night Special handguns such as the .25 Raven.

The National Rifle Association has been quick to jump on Forward Trace as yet another example of ATF's efforts to harass law-abiding gun owners. A 1991 *American Rifleman* column by NRA president Dick Riley argued that ATF agents were "essentially spying on law-abiding gun owners," and photocopying "...the Federal forms you fill out when you buy a gun," refusing to explain "why they need this information." Riley questioned whether ATF was in fact entering this information into a "big, government controlled data base of all firearms owners?" At the January 1992 SHOT show seminar, then-ATF Firearms and Explosives Branch head Robert Daugherty answered questions from meeting attendees, most of whom were FFLs deeply suspicious of Forward Trace. The general feeling among the licensees was that they were being used by ATF to help harass their own customers. Responding to the audience's questions, Daugherty contradicted ATF's public affairs office, promising that Forward Trace had been discontinued, stating:

Forward Trace was a program that was started probably 10 years ago, and I don't think there's anything active, been done under it for the last year and a half. It has gotten some recent attention in publications and quite candidly, from where I sit in Washington I do not know why. We have not done that program. It was a program that was designed to check the integrity of the record system from the manufacturer down through the retailer level. That program has pretty much been

discontinued. I won't stand up here and tell you that we do not ever check a purchaser anymore, that's still a minor part of a compliance [inspection] of a licensed dealer's records. But as far as what the original Forward Trace program envisioned—that was getting sales data from manufacturers and tracking that through the wholesale/ distribution/retail level—that program is not being, and hasn't been done, for quite some time.

At the seminar, Daugherty dismissed the NRA's concerns that Forward Trace information was being used to establish a computer data base, and bragged of the inefficiency of ATF's record-keeping systems, "None of that information is computerized. It goes with our inspection reports into a filing system that's as manual as can be. The only thing automated about it is that it gets microfilmed. If..[we]...ever wanted to find a record on John Smith purchasing a Smith & Wesson handgun with a particular serial number on January 1, 1992, it would probably take...until January 1, 2002 to ever find it in the system...."

When questioned by the Violence Policy Center regarding the contradiction presented by Daugherty's statements and those of the public affairs office, ATF promised to draft a response. After repeated requests—and promised delivery—over seven months, a response was finally delivered in July 1992. The public affairs office's response made it clear that Daugherty had misled the licensees at the SHOT show, stating:

The [Forward Trace] tracing subprogram began in October, 1989 and continued through the end of September of 1991, when most of the information gathered from Phase One [checking firearm manufacturers' production and shipping records] was exhausted. The results of the project revealed that most of the firearms were traceable and the majority of licensees' records were accurate. Forward Tracing of firearms is still occasionally used as an investigative tool in some...inspections.

Forward Trace was one of the most innovative programs to come out of ATF. It is one of the few enforcement tools that recognized the value of preemptive action in blocking illegal gun flow. However, ATF's attempt to use the information base embedded in the distribution chain for law enforcement purposes has inevitably brought it face to face with the gun lobby's fear of anything remotely resembling gun registration. ATF must also abide by the anti-registration strictures of McClure-Volkmer. The end result is that Forward Trace stands not as an example of ATF regulatory innovation, but as a symbol of the self-imposed political confines under which the agency currently operates.

Addendum Four: ATF Inspection Report

The following document is a September 1989 ATF compliance inspection conducted of Old Town Sporting Arms (although an apparent storefront dealer, Old Town Sporting Arms maintained a limited stock). The files were obtained by the Violence Policy Center under the Freedom of Information Act (FOIA).

The licensee, a stocking gun dealer, had sold approximately 50 handguns and 30 long guns over the past year. The current stock consisted of 39 guns. The inspection took 10 and a half hours.

The "Firearms Full Compliance Inspection Summary—Licensee." offers an overview of ATF inspection activities. "Section A—Preparation" directs the inspector to review pertinent state and local laws and ATF directives for the region before visiting the licensee. Area office files are also reviewed for background information, and the NFA (National Firearms Branch) and Import Branch are contacted if the FFL is an importer or a Class III dealer.

"Section B—Operations," directs the inspector to review: if the licensee has the proper license for the type of business being conducted; that the license is posted; that no firearms are being manufactured, assembled, or re-manufactured by the licensee without the proper licensing authority; that all firearms have proper markings; that there have been no unreported changes in ownership or control of the business; if any other type of business activity is being conducted on the licensed premises. Background checks are also conducted on a sample of firearms and of firearms purchasers to see if the dealer has handled any stolen weapons or sold weapons to convicted felons.

Two questions in Section B directly address kitchen-table dealers. Question B-4 asks, "Does the licensee possess a current state license? (if no, contact local law enforcement authorities to determine the reputation/criminal history of the licensee's principals associates or family members)." Question B-6 asks, "Does the licensee have a bonafide firearms business? If licensee claims that no activity has been conducted, check with UPS [United Parcel Service] to determine if shipments were received from firearms licensees...."

"Section C—Records," covers the inspection of the licensee's sales and stock records. Questions include: Is the licensee maintaining all required records properly; are firearms on hand accurately recorded; do sales to individuals or other licensees appear unusual; is the licensee properly reporting multiple handgun sales; are stolen firearms being properly reported and recorded; were transaction verifications conducted; is the licensee requiring sufficient purchaser identification prior to purchase; and is a certified copy of the license furnished by licensed purchasers? (In fact "certified" copies of FFLs are not required on sales between dealers or wholesalers, merely photocopies with an original signature). A comparison between the Form 4473s and commercial records is made if possible.

Sections D, E, and F offer additional questions for manufacturers, importers, and NFA licensees.

"Section G—Closing Action" outlines any referrals prepared for federal, state or local agencies and whether any ATF Form-5030.5s, Report of Violation, were prepared.

"Section H—Remarks," offers a narrative of inspection activities. In the report the inspector notes:

The licensee is operating a small business in downtown Petersburg, VA. His inventory consisted of 39 firearms. 8 of them were compared to the acquisition and disposition record. Also, a sample of 8 firearms with open entries in the bound book were compared to the inventory. No discrepancies were revealed. Out of 100 sales 17 completed entries in the acquisition and disposition book were compared to the ATF F4473s. 17 ATF F4473s were compared to the boundbook. No discrepancies were revealed. 23 ATF F4473s were examined for completeness. No discrepancies were disclosed.

A National Crime Information Center (NCIC) check was run on six firearms to see if they had been reported stolen. A criminal history check was run on a limited number of individuals' names. No discrepancies were found.

DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS														
ASSIGNMENT AND REPORT														
1. OPERATING NAME AND ADDRESS (Include ZIP Code and County) OLD TOWNE SPORTING ARMS, LTD. -0- 20 WEST BANK STREET PETERSBURG, VA -0-							2. ORGANIZATION SEGMENT CODE, ASSIGNMENT NO., BPC, SPC 15160 800626 FC							
1a. PERMIT/LICENSE NUMBER AND TYPE 54-01-19709							3. DATE/TYPE OF LAST ASSIGNMENT				4. DATE/LAST ASSIGNMENT OF TYPE BEING ASSIGNED			
							5. TARGET DATE/HOURS -0- / /				6. REQUESTED BY (Signature, Title and Date) [REDACTED] 08/29/89			
7. ATF OFFICER(S) ASSIGNED SIMS							8. ASSIGNED BY (Signature, Title and Date) [REDACTED] 08/29/89							
9. PURPOSE/SPECIAL INSTRUCTIONS LE/CO PROJECT - FIREARMS FORWARD TRACE.														
10. INSPECTION DATA <input type="checkbox"/> CHECK IF NO VIOLATIONS, ADJUSTMENTS, REFERRALS, ETC.														
a. VIOLATION SUMMARY						b. TAX ADJUSTMENTS MADE			d. REFERRALS		e. TRANSACTION VERIFICATIONS		f. TECH/NCIC HITS	
NO.	CODE	NO.	CODE	NO.	CODE	NO.	CODE	\$ AMOUNT	NO.	CODE	NO.	TYPE	NO.	TYPE
												UNLICENSED PURCHASERS		PURCHASERS (CRIMINAL RECORD)
												LICENSED PURCHASERS		FRAUDULENT FFL/XPL
						c. TAX ADJ. RECOMMENDED						ID VERIFICATIONS		FALSE/FICTITIOUS ID
						NO.	CODE	\$ AMOUNT				FFL/XPL LICENSE VERIFICATION		FIREARMS
												ILLEGAL NFA SALES		g. TOTAL NUMBER OF TECH/NCIC CHECKS
11. ATF OFFICER'S RECOMMENDATION <div style="font-size: 1.5em; font-family: cursive;">Recommend no further action</div>														
12. TIME ACCOUNTING DATA														
WEEK ENDING	MONTH AND DAY	9	16	9	22									
HOURS	1	05	.5											
13. DATE SUBMITTED 9-29-89						14. TOTAL HOURS 11			15. [REDACTED]					
16. TOTAL HOURS ATF OFFICER'S SIGNATURE						18. TOTAL HOURS ATF OFFICER'S SIGNATURE			17. TOTAL CUMULATIVE HOURS					
REVIEW AND ROUTING														
18. <input type="checkbox"/> ACCEPTED WITHOUT REVIEW <input checked="" type="checkbox"/> REVIEWED <input checked="" type="checkbox"/> CONCUR <input type="checkbox"/> SEE COMMENTS			19. REVIEW COMMENTS AND RECOMMENDATION							20. ROUTING SEQUENCE AND DATE <input checked="" type="checkbox"/> [REDACTED] <input checked="" type="checkbox"/> 10-6-89 JH <input type="checkbox"/> <input type="checkbox"/>				
21. <input type="checkbox"/> CONTROL FILE POSTED DATE			22. SIGNATURE AND TITLE [REDACTED]							23. DATE 9/29/89				

PROFILE WORKSHEET

Licensee Name: OLD TOWN Sporting Arms Person Interviewed: Richard W. Bean Mark T. Lere
 License Number: 54-01-19709 Title: President Vice President
 Type: 01
 Business Address: 20 West Bank St
 County Petersburg State VA Zip Code 23903

Business Location Residential ☐ Commercial ☒
 Urban ☐ (Over 100,000 population)
 Suburban ☐ (Within 25 miles of urban)
 Rural ☐

Licensee Operations Long Guns ☒ Black Powder ☐
 Hand Guns-New ☒ Hand Guns-Used ☒
 Paramilitary Weapons ☐ NFA ☒
 Ammunition Only ☐ Gunsmith Only ☐

Sales-to licensees ☒ Approx \$ 0
 -on ATF F 4473 ☒ Approx \$
 -multiple sales ☒

Dispositions last twelve months (approx)
 Handguns 50 Long guns 30

Principle Suppliers None

No. of Traces Conducted
 in last twelve months
 No. unsuccessful

Part of large chain: Yes ☐ No ☒
 If yes-name:

Major Distributor for Manufacturer: Yes ☐ No ☐
 If yes-name:

Compliance History: First inspection
 Serious Minor Violations Excellent
 Violations . Noted
 Noted
 1 2 3 4 5 6 7 8 9 10

STATE VIOLATIONS NOTED: None

FEDERAL VIOLATIONS NOTED: None

EXCISE TAX REQUIRED: ☐ YES ☒ NO
 -RETURNS FILED WITH IRS: ☐ YES ☐ NO
 -APPROXIMATE QUARTERLY PAYMENT:

9/15/89

FIREARMS FULL COMPLIANCE INSPECTION SUMMARY - LICENSEE

NAME OR TRADE NAME OLDTOWNE Sporting Arms, LTD		LICENSE NUMBER AND EXPIRATION DATE April 1, 1990		FFL 54-01-14
BUSINESS ADDRESS 20 West Bank St.		NAME AND TITLE OF PERSON INTERVIEWED Mr. Richard W. Bean, Resident & Mr. Mark T. Lencbe, Jr.		
COUNTY Petersburg	CITY VA	STATE VA	ZIP CODE 23803	DATE OF INSPECTION REPORT 9/14/89
INSPECTION REVIEW PERIOD 9/14/89-9/15/99		TELEPHONE NUMBER 804-861-3635		

SECTION A - PREPARATION

	YES	NO	COMMENT
1. Were pertinent laws, regulations, ATF and Regional directives reviewed?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
2. Were area office files reviewed for background information?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	No file was c hand. This is licensee's first inspection
3. Was the licensee contacted for an appointment?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
4. Was the NFA Branch contacted to determine registered firearms on hand? (If a Title II licensee)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
5. Was the Import Branch contacted to determine the details of importations? (If a importer)	<input type="checkbox"/>	N/A	<input type="checkbox"/>

SECTION B - OPERATIONS

1. Does the licensee have current and proper license for the type of business conducted? Was the license posted?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
2. Are firearms being manufactured, assembled, or re-manufactured by licensee w/o proper FFL?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
3. Was there any unreported change in the ownership, control or individuals executing Forms 4473?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
4. Does the licensee possess a current state license? (if no, contact local law enforcement authorities to determine the reputation/criminal history of the licensee's principals associates or family members).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	City of Petersb Permit to sell firearm
5. Is any other type of business activity being conducted on the licensed premises? (if a holder of a black powder dealer's license, conduct an explosives compliance inspection under separate ATF Form 5700.14).	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Does the licensee have a bonafide firearms business? If licensee claims that no activity has been conducted, check with UPS to determine if shipments were received from firearms licensees. (A/S approval needed).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

SECTION B - OPERATIONS (T)	YES	NO	COMMENT
Do firearms on hand have proper markings?	<input checked="" type="checkbox"/>	<input type="checkbox"/> *	
Are TECS checks conducted on new and used long guns and handguns? (if yes, document firearms checked).	<input checked="" type="checkbox"/>	<input type="checkbox"/> *	
Were TECS checks conducted on purchasers of firearms to determine if firearms are being sold to convicted felons? (if yes, document purchasers checked).	<input checked="" type="checkbox"/>	<input type="checkbox"/> *	
Check firearms on hand for possible illegal Title II conversions.	<input checked="" type="checkbox"/>		

SECTION C - RECORDS	YES	NO	COMMENT
Is the licensee maintaining all the required records? (Firearms - Ammo)	<input checked="" type="checkbox"/>	<input type="checkbox"/> *	
Does the licensee maintain records under an approved variance?	<input type="checkbox"/> *	<input checked="" type="checkbox"/>	
Are Forms 4473 properly executed and filed?	<input type="checkbox"/>	<input type="checkbox"/> *	
Are firearms on hand accurately recorded? (Compare firearms on hand to record entries and record entries to firearms on hand. Concentrate on high power handguns, semiautomatic weapons, and weapons identified for forward sale).	<input checked="" type="checkbox"/>	<input type="checkbox"/> *	
Do sales to individuals or other licensees appear unusual? (Types/numbers of firearms purchased).	<input type="checkbox"/> *	<input checked="" type="checkbox"/>	
Is the licensee properly reporting multiple handgun sales?	<input checked="" type="checkbox"/>	<input type="checkbox"/> *	
Are stolen firearms being properly reported and recorded? (document nature of thefts, if any).	<input type="checkbox"/>	<input type="checkbox"/> N/A	<u>None reported stolen</u>
Were transaction verifications conducted?	<input checked="" type="checkbox"/>	<input type="checkbox"/> *	
Is the licensee requiring sufficient purchaser identification prior to purchase? (Conduct TECS/ NLET inquiry on validity of driver's license, if used for identification).	<input checked="" type="checkbox"/>	<input type="checkbox"/> *	
Is a certified copy of the license furnished by licensed purchasers?	<input checked="" type="checkbox"/>	<input type="checkbox"/> *	
Submit a list of licensed purchasers to T.S.B. to determine if license is bonafide.		N/A	
Compare bound book entries to Forms 4473 and to commercial records, if possible.	<input checked="" type="checkbox"/>		
Complete the area office profile sheet.	<input checked="" type="checkbox"/>		

- ONLY COMPLETE THE FOLLOWING SECTIONS IF APPLICABLE -





SECTION D - MANUFACTURER

	YES	NO	COMMENT
<input checked="" type="checkbox"/> NO MANUFACTURER OPERATIONS CONDUCTED			
1. Does the licensee maintain proper and separate acquisition and disposition records for firearms and ammunition produced or otherwise acquired?	[]	[]*	
2. Is the licensee properly submitting their yearly Firearms Manufacturing and Exportation Reports, ATF Form 4483 A?	[]	[]*	
3. Are firearm manufacturer's excise tax returns (Forms 720) being filed with the I.R.S.?	[]	[]*	
4. If licensee is selling large quantities of frames? If yes request collateral inspection to determine disposition.	[]*	[]	

SECTION E - IMPORTER

<input checked="" type="checkbox"/> NO IMPORTING OPERATIONS CONDUCTED			
1. Are proper procedures being followed for the importation of firearms? (ATF Forms 6 and 6A properly prepared, approved, forwarded and filed).	[]	[]*	
2. Does the licensee maintain proper and separate records of firearms and ammunition imported?	[]	[]*	
3. Are firearms importer's excise tax returns (Forms 720) being filed with the I.R.S.?	[]	[]*	
4. Are imported firearms properly marked, markings durable and legible?	[]	[]*	
5. Were importation verified with the Import Branch?	[]	[]*	
6. Are imported firearms being altered thereby circumventing the intent of importation restrictions?	[]*	[]	

SECTION F - TITLE II LICENSEE

<input checked="" type="checkbox"/> NO TITLE II OPERATIONS CONDUCTED			
1. Has the NFA special occupational tax been satisfied?			
2. Are NFA firearms in the licensed premises, (and other storage locations) properly marked, registered and lawfully acquired?			
3. Are proper procedures being followed regarding NFA firearms transfers?			
4. Were NFA firearms on hand verified with the NFA Branch?			

SECTION F - TITLE II LICENSEE (CON'T)

	YES	NO	COMMENT
Were any NFA firearms voluntarily abandoned by the licensee? (contact ATF LE or Area Supervisor for instructions).		<input checked="" type="checkbox"/>	
2. Analyze all NFA sales to individuals in order to determine if any are repeat purchases and advise ATF LE.			

SECTION G - CLOSING ACTIONS

1. Were referrals prepared to federal, state or local agencies?	<input type="checkbox"/> *	<input checked="" type="checkbox"/>	
2. Was a Report of Violations, ATF F-5030.5 prepared?	<input checked="" type="checkbox"/>	<input type="checkbox"/> *	
3. Prepare a narrative report, if necessary, to explain or expand on violations or suspected illegal activity.	<input checked="" type="checkbox"/>		

* - EXPLAIN UNDER REMARKS/OR COMMENT SECTIONS.
COMMENTS TO INCLUDE ANY REFERENCES TO: N/A, W.P., ATT.,
PROHIBIT, OR SHORT NARRATIVE STATEMENT.

SECTION H - REMARKS

SECTION PARAGRAPH NO.

The licensee is operating a small business in downtown Petersburg, VA. The inventory consisted of 39 firearms. 8 of them were compared to the acquisition and disposition record. Also, a sample of 8 firearms with open entries in the handbook were compared to the inventory. No discrepancies were revealed.

Out of 100 sales 17 completed entries in the acquisition and disposition book were compared to the ATF F4473s. 17 ATF F4473s were compared to the handbook. No discrepancies were revealed.

23 ATF F4473s were examined for completeness. No discrepancies were disclosed.

The licensee is expecting to move his business location. Attached to the report is a copy of his letter which was submitted to the Regional Office in Atlanta, GA. (see exhibit 1)

Recommend no further action

DATE	MANUFACTURER NAME	SERIAL # OF FIREARM	MODEL	CALIBER OR GAUGE	TYPE OF FIREARM	PREMISES LOCATION IN	ENTRY LOCATION AND BOOK	UNACCOUNTED FOR? EXPLAIN...
4/16/11	UWC Scott	70235		12	Shotgun	Stock Room	Page 21	
4/18/11	U Remington	239735	31	12	shotgun	Stock Room	Page 15	
4/14/11	U Stevens	E248123	69	12	Shotgun	Stock Room	Page 15	
4/14/11	U Remington	15F132	878	12	Shotgun	Stock Room	Page 4	
4/14/11	U Oregon Arms	4098	chip mink	22	Rifle	Stock Room	Page 19	
4/14/11	M Taurus	5240432	669	357	Revolver	Showcase	Page 20	
4/14/11	Browning	655V09833	Blackhawk	22	Pistol	Showcase	Page 20	
4/14/11	U Colt	310645C	Govsgr	45	Pistol	Showcase	Page 20	

FEL 54-01-19704

PAGE # 1A2

DATE REC'D	MANUFACTURER NAME	SERIAL # OF FIREARM	MODEL	CALIBER OR GAUGE	TYPE OF FIREARM	PREMISES LOCATION IN INVENTORY	ENTRY LOCATION AND BOOK	A & U ENTRY CORRECT OR INCORRECT
9/14/89	Winchester	356-3208	73	.22	Rifle	Showcase	Page 21	
9/14/89	" "	174388	1890	.22	"	Showcase	"	
9/14/89	Remington	2985	1911	.45	Pistol	Showcase	Page 20	
9/14/89	Jennings	597762	3-22	.22	Pistol	Showcase	Page 20	
9/14/89	Raven	1513275	MR25	.25	Pistol	Showcase	Page 21	
9/14/89	THORUS	HE42006	85	38	Rev	Showcase	Page 11	
9/14/89	TAURUS	KHH09685	PF58	380	Pistol	Showcase	Page 11	
9/14/89	J.P. Sauer 2 SORN	F1156	Drill- ing	12ga 300	Shotgun Rifle	Showcase	Page 4	

PAGE : 11A3

COMPARISON OF FIREARMS ACQUISITION AND DISPOSITION RECORD AGAINST THE
CURN 4473 AND 4473 COMPLETENESS

DATE OF SALE	PURCHASER'S NAME	DESCRIPTION OF FIREARM	ENTERED IN A & D PROPERLY	4473 TRANSACTION #	DO RECORDS AGREE
6/29/89		Rem. 1105 L35-7777V	Yes	84-06	Yes
6/12/84		Auto. 12ga Stevens 66C N/A	Yes	84-4	Yes
9/28/84		Bolt action 22 LR Springfield GA 410	Yes	84-15	Yes
2/5/85		Sniper rifle 438mm Mossberg 340 22RF	Yes	85-5	Yes
2/25/85		819714 Bolt action Browning 07A9	Yes	85-13	Yes
1/16/85		72012960 Shotgun 41K 7725 REV.	Yes	85-3	Yes
11/14/85		3250J Ruger GA 36P	Yes	85-60	Yes
2/27/86		REV 16157627357	Yes	86-16	Yes
1/15/86		TAURUS 8515 EC 53172 (01).375	Yes	86-42	Yes
11/10/86		British Lee-Enfield 1911WET 43792 Bolt action	Yes	86-71	Yes
5/1/87		Browning Auto 5 2595416 Auto DCS	Yes	87-27	Yes
8/1/87		Ruger GA 36P 16143166 Rev. 357	Yes	87-46	Yes
12/11/87		Rev 16157627357 Rev 357	Yes	87-81	Yes
1/20/88		Browning 100 011922 Auto 12ga	Yes	88-5	Yes
6/3/88		Auto Hard Emitter Mossberg Auto LIS	Yes	88-44	Yes
11/15/88		Rev 16157627357 Pistol 25	Yes	88-88	Yes
1/12/89		Raven mips 14134455 Pistol 25	Yes	89-3	Yes
4/13/89		TAURUS PT 9 2 THT 30017 Pistol 9mm	Yes	89-47	Yes
8/10/89		Raven mips 14134455 Pistol 25	Yes	89-45	Yes
		BSA Gov. Martinique 2006415 36cl 3mm			

PROPRIETOR: OLD Town Sporting Arms
 DATE: 9/14/89
 PREPARED BY: [REDACTED]
 INSPECTION PHASE: RECORDS VERIFICATION
 SOURCES: A & D RECORDS, 4473's
 CONCLUSIONS: No discrepancies

FFL # 54-01-1970A
 UI # 890636 FC

PAGE # B.1

COMPARISON OF FORM 4473 AGAINST FIREARMS ACQUISITION & DISPOSITION RECORD
AND 4473 COMPLETENESS

DATE OF SALE	PURCHASERS NAME	DESCRIPTION OF FIREARM	ENTERED IN A & D PROPERLY	4473 TRANSAC #	IS 4473 COMPLET
7/19/89		Pistol 322 22LR 5977 61 Tonnings	YES	89-111	YES
8/25/89		Rifle 135 22LR 0491651 Savage	YES	89-77	
1/8/89		Rifle Chipmunk 22LR 40541 Oregon Arms	YES	89-413	
2/30/89		Shotgun 1100 12GA 2550213 Remington	YES	88-102	YES
1/8/89		Pistol 1911-H-1 HS&P 3706 Springfield Arms	YES	88-105	
8/3/89		Pistol MP-25 .25 1384220 Arvin	YES	77-44	YES
1/14/87		Pistol .38 .25 M369AD Armi Tontowlingus	YES	87-1	YES
5/20/87		Pistol 422 22LR 3679 Advantage Arms	YES	87-28	YES
1/6/87		Revolver KGP-160 357 W 17056704 Ruger	YES	87-69	YES
1/3/86		Revolver Agent .38 spec W-1202 Colt	YES	86-1	YES
8/25/86		Revolver 65-4 357 ADA1464 S&W	YES	86-38	YES
2/19/86		Rifle 55 LowWall 25-20 94232 Win	YES	86-83	YES
1/23/85		Shotgun 12 12GA 1206941 Winchester	YES	85-16	YES
1/2/85		Revolver 95 B-2 .38 EC53672 Taurus	YES	85-38	YES
11/29/84		Pistol Mark II 22LR 211-541984 Arvin	YES	85-65	YES
8/25/84		Rifle 64-C 22LR No Serial Number S&W	YES	84-041	YES
6/29/84		Revolver 64 38 D-65 7164 Rossi	YES	84-05	YES
1/19/84		Rifle 1411 63737 Remington	YES	84-19	YES
2/22/84		Shotgun 500 20GA G-173644 Mossberg	YES	84-341	YES

PROPRIETOR: OLD Town Sporting Arms

DATE: 7/15/89

PREPARED BY: [REDACTED]

INSPECTION PHASE: RECORDS VERIFICATION

FFL 54-01-19704

122

DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS REQUEST FOR NATIONAL CRIME INFORMATION CENTER (NCIC) QUERY				1. DATE OF REQUEST	
PART I—REQUESTING OFFICER					
2. NAME AND TITLE <div style="background-color: black; width: 100%; height: 20px;"></div>			3. POST OF DUTY (Region and Area Office) Richmond, VA		
PART II—DESCRIPTION OF FIREARM(S)					
4. SERIAL NUMBER	5. MAKE/MODEL	6. CALIBER/GAUGE	7. TYPE (See Part III)	8. MANUFACTURER	
51-30991	Blackhawk	.30 caliber	R	Fisker	
1744906	106	22 LR	R	High Standard	
86391	Sterling worth	12 GA	S	A.H. Fox Gun Co	
597761	J-22	22 LR	R	Jennings	
1996266	military	22 LR	P	High Standard	
31054C	Gov. Model	45	P	Colt	
PART III—TYPE OF FIREARMS (Codes) <small>(The type of firearm code must be at least one and no more than two alpha characters)</small>					
COLUMN #1 (Required)			COLUMN #2 (If Known)		
A CANNON B SUBMACHINE GUN C RIFLE/SHOTGUN COMBINATION G GRENADE K ROCKET M MACHINE GUN O MORTAR P PISTOL R RIFLE S SHOTGUN T TEAR GAS V SILENCER Z ALL OTHERS			A AUTOMATIC (Full) B BOLT ACTION C CARBINE D DERRINGER E DOUBLE BARREL (Side by Side) F FLARE GUN G GAS OR AIR H FLINTLOCK I SEMI/AUTOMATIC J JET PROPELLED GUN K BLANK PISTOL L LEVER ACTION M MACHINE N LAUNCHER O OVER & UNDER P PUMP ACTION Q ANTIQUE R REVOLVER S SINGLE SHOT T RECOILLESS U PERCUSSION W THREE BARRELS X FOUR OR MORE BARRELS		
PART IV—LICENSEE INFORMATION					
9. NAME OF LICENSEE Old Town Sporting Arms			10. FEDERAL FIREARMS LICENSE NUMBER 54-01-19704		
11. TRADE NAME (If Any) N/A			12. ADDRESS (Number, Street, City, State & Zip Code) 20 West Bank St. Petersburg, VA 23803		

SALES TO NON-LICENSEES TECS/NCIC/NLETS QUERIES

[illegible]

PROPRIETOR: OLDTOWN Sporting Arms
DATE: 9/15/94

DATE: 9/15/99

PREPARED BY:

INSPECTION PHASE: TECS/NCIC CHECKS

FFL 54-01-19709

LICENSEE NAME:
ADDRESS:

FFL 54-01-1974

DRIVER LIC. #

RACE

[illegible]

Endnotes

1. "Gun Laws' Lethal Loophole," New York Newsday, (August 2, 1988).
2. Shooting Industry, (Volume XXXVI, Number XII), p. 116.
3. Shooting Industry, (Volume XXXVI, Number XII), p. 117.
4. Shooting Industry, (Volume XXXVI, Number XII), p. 94.
5. Sugarmann, Josh, National Rifle Association: Money, Firepower & Fear, National Press Books, Washington, D.C., (June 1992), p. 93.
6. "Gun Dealers' Great Scam," The Washington Post, (May 8, 1991).
7. "Gun Dealers' Great Scam," The Washington Post, (May 8, 1991).
8. ATF Public Affairs Office.
9. The Dangers, Surprises and Legal Traps of the Federal Firearms License, Law Publishers, Los Angeles, (1991).
10. Shotgun News, (January 20, 1992).
11. The Dangers, Surprises and Legal Traps of the Federal Firearms License, Law Publishers, Los Angeles, (1991).
12. The Dangers, Surprises and Legal Traps of the Federal Firearms License, Law Publishers, Los Angeles, (1991).
13. Shooting Industry, SHOT Show Extravaganza issue, (January 1992).
14. Shea, Dan, Machine Gun Dealers Bible, Lane Publishing, Hot Springs, AR, (1991), p. 3-12.
15. Shea, Dan, Machine Gun Dealers Bible, Lane Publishing, Hot Springs, AR, (1991), p. 14-100.
16. Shea, Dan, Machine Gun Dealers Bible, Lane Publishing, Hot Springs, AR, (1991), p. 12-91.
17. Shea, Dan, Machine Gun Dealers Bible, Lane Publishing, Hot Springs, AR, (1991), p. 15-104.
18. Shea, Dan, Machine Gun Dealers Bible, Lane Publishing, Hot Springs, AR, (1991), p. 12-90.
19. Sugarmann, Josh, National Rifle Association: Money, Firepower & Fear, National Press Books, Washington, D.C., (June 1992), p. 139.
20. Sugarmann, Josh, National Rifle Association: Money, Firepower & Fear, National Press Books, Washington, D.C., (June 1992), p. 224.
21. ATF Public Affairs Office.
22. Sugarmann, Josh, National Rifle Association: Money, Firepower & Fear, National Press Books, Washington, D.C., (June 1992), p. 123.

23. Sugarmann, Josh, National Rifle Association: Money, Firepower & Fear, National Press Books, Washington, D.C., (June 1992), p. 125.
24. ATF Public Affairs Office.
25. ATF Firearms Compliance Inspections—Order ATF O 5300.81, (February 5, 1988). Obtained under the FOIA.
26. ATF Firearms Compliance Inspections—Order ATF O 5300.81, (February 5, 1988). Obtained under the FOIA.
27. ATF Public Affairs Office.
28. Federal Register, Vol. 53, No. 126, (Thursday, June 30, 1988), p. 24686.
29. Department of the Treasury, ATF, Information Collection Request Supporting Statement, (January 1988). Obtained under the FOIA.
30. ATF Public Affairs Office, December 12, 1991.
31. ATF Public Affairs Office, December 12, 1991.
32. Deerings Penal, Article 4, Licenses to Sell Firearms, Section 12070, p. 1000.
33. Deerings Penal, Article 4, Licenses to Sell Firearms, Section 12070, p. 1001.
34. Deerings Penal, Article 4, Licenses to Sell Firearms, Section 12070, p. 1001.
35. Shantz, Phyllis, Sherrow, Tina M., ATF Project Lead Trace Study—March 1-August 30, 1991.
36. Shantz, Phyllis, Sherrow, Tina M., ATF Project Lead Trace Study—March 1-August 30, 1991.
37. Shantz, Phyllis, Sherrow, Tina M., ATF Project Lead Trace Study—March 1-August 30, 1991.
38. ATF investigative documents regarding Carol Landis Brown, received under the FOIA.
39. ATF/DPD Firearms Trace: Project Detroit, ATF Public Affairs Office.
40. ATF/DPD Firearms Trace: Project Detroit, ATF Public Affairs Office.
41. ATF/DPD Firearms Trace: Project Detroit, ATF Public Affairs Office.